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# Federal Register

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# Contents

**Federal Register**

Vol. 66, No. 198

Friday, October 12, 2001

**Agriculture Department**
*See* Forest Service

**Blind or Severely Disabled, Committee for Purchase From People Who Are**
*See* Committee for Purchase From People Who Are Blind or Severely Disabled

**Centers for Medicare & Medicaid Services**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 52137–52139
Submission for OMB review; comment request, 52139–52140
Medicare:
Hospice wage index; correction, 52189

**Coast Guard**
RULES
Ports and waterways safety:
Lake Erie, Monroe, MI; Enrico Fermi nuclear power plant; security zone, 52039–52041
Lake Erie, Perry nuclear power plant, OH; security zone, 52043–52044
Lake Erie, Toledo, OH; Davis Besse nuclear power plant; security zone, 52038–52039
Lake Michigan, Kewaunee nuclear power plant, WI; security zone, 52036–52038
Lake Michigan, Point Beach nuclear power plant, WI; security zone, 52041–52043
Lake St. Clair, Grosse Pointe Shores, MI; safety zone, 52035–52036

**Commerce Department**
*See* International Trade Administration
*See* National Institute of Standards and Technology
*See* National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 52095

**Committee for Purchase From People Who Are Blind or Severely Disabled**
NOTICES
Procurement list; additions and deletions, 52094–52095

**Commodity Futures Trading Commission**
NOTICES
Meetings; Sunshine Act, 52116

**Defense Department**
*See* Navy Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 52116 52116–52117
Meetings:
Dependents' Education Advisory Council, 52117
Science Board, 52117
Scientific Advisory Board, 52117

**Education Department**
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 52118–52119
Grants and cooperative agreements; availability, etc.:
Special education and rehabilitative services—
Children with Disabilities Programs; correction, 52189
Meetings:
Institutional Quality and Integrity National Advisory Committee, 52119–52120

**Employment Standards Administration**
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 52153–52154

**Energy Department**
*See* Federal Energy Regulatory Commission

**Environmental Protection Agency**
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Missouri, 52060–52062
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 52044–52060
PROPOSED RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Missouri, 52077
Hazardous waste management system:
RCRA hazardous waste management facilities; standardized permit, corrective action, and financial responsibility, 52191–52268
NOTICES
Air pollution control:
Citizens suits; proposed settlements—
Louisiana Environmental Action Network et al., 52128–52129
Air programs:
State implementation plans; adequacy status for transportation conformity purposes—
Colorado, 52129
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 52130–52131
Weekly receipts, 52130
Meetings:
State FIFRA Issues Research and Evaluation Group, 52131–52132
Pesticide registration, cancellation, etc.:
Benomyl, 52132–52135
Water pollution control:
Clean Water Act—
Class II administrative penalty assessments, 52135–52136

**Executive Office of the President**
*See* Management and Budget Office

*See* Presidential Documents

**Federal Aviation Administration**
**RULES**
Airmen certification:
Training and testing qualification requirements; time limits temporarily extended, 52277–52280
Airworthiness directives:
Empresa Brasileira de Aeronautica S.A. (EMBRAER), 52027–52031
Fairchild, 52020–52023
Pratt & Whitney, 52023–52027
Airworthiness standards:
Special conditions—
Boeing Model 777 series airplanes, 52017–52020
**PROPOSED RULES**
Airworthiness directives:
Airbus, 52066–52070
BAE Systems (Operations) Ltd., 52070–52072
Bell, 52072–52073
Sikorsky, 52073–52076
Class E airspace, 52076–52077
**NOTICES**
Air traffic operating and flight rules, etc.:
High density airports; takeoff and landing slots, slot exemption lottery, and slot allocation procedures LaGuardia Airport, NY and NJ, 52170–52171
Environmental statements; availability, etc.:
Licensing launches, 52171–52178
Meetings:
Aviation Rulemaking Advisory Committee, 52178
Research, Engineering, and Development Advisory Committee, 52178–52179

**Federal Deposit Insurance Corporation**
**NOTICES**
Meetings; Sunshine Act, 52136

**Federal Energy Regulatory Commission**
**NOTICES**
Electric rate and corporate regulation filings:
Gilroy Energy Center, L.L.C., et al., 52125–52127
PECO Energy Co. et al., 52127–52128
Environmental statements; availability, etc.:
John C. Jones Project, Waldo County, ME; facilitators improving fish habitat, 52128
*Applications, hearings, determinations, etc.:*
Alliant Energy Corporate Services, Inc., et al., 52121
American Transmission Co., 52121–52122
Consumers Energy Co., 52122
Duquesne Light Co., 52122
Entergy Services, Inc., 52122
Progress Energy, Inc., 52122–52123
Questar Pipeline Co., 52123
Southwestern Electric Power Co., 52123
TransColorado Gas Transmission Co., 52123–52124
Transcontinental Gas Pipe Line Co., 52124
Transcontinental Gas Pipe Line Corp., 52124–52125

**Federal Mine Safety and Health Review Commission**
**NOTICES**
Meetings; Sunshine Act, 52156–52157

**Federal Reserve System**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 52186–52187
Banks and bank holding companies:
Permissible nonbanking activities, 52136

**Fish and Wildlife Service**
**PROPOSED RULES**
Migratory bird hunting:
Light goose populations; harvest management, 52077–52090
Migratory birds; revised list, 52281–52300
**NOTICES**
Environmental statements; availability, etc.:
Migratory bird hunting—
Light goose management; meetings, 52147–52148

**Food and Drug Administration**
**NOTICES**
Agency information collection activities:
Reporting and recordkeeping requirements, 52140
Submission for OMB review; comment request, 52140–52141
Meetings:
Transmissible Spongiform Encephalopathies Advisory Committee, 52141–52142

**Forest Service**
**NOTICES**
Meetings:
Giant Sequoia National Monument Scientific Advisory Board, 52094

**General Services Administration**
**NOTICES**
Acquisition regulations:
Foreign Service Residence and Dependency Report (OF 126); form cancellation, 52136–52137

**Health and Human Services Department**
*See* Centers for Medicare & Medicaid Services
*See* Food and Drug Administration
*See* Inspector General Office, Health and Human Services Department
**NOTICES**
Scientific misconduct findings; administrative actions:
Arnold, Steven F., Ph.D., 52137

**Health Care Financing Administration**
*See* Inspector General Office, Health and Human Services Department

**Housing and Urban Development Department**
**NOTICES**
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 52147

**Inspector General Office, Health and Human Services Department**
**NOTICES**
Program exclusions; list, 52142–52147

**Interior Department**
*See* Fish and Wildlife Service
*See* Land Management Bureau
*See* Minerals Management Service
*See* National Park Service
*See* Surface Mining Reclamation and Enforcement Office

**Internal Revenue Service**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 52185–52186

**International Trade Administration**
NOTICES
Antidumping:
Corrosion-resistant carbon steel flat products from—
Canada, 52095–52097
Dynamic random access memory semiconductors of one megabit or above from—
Korea, 52097–52100
Freshwater crawfish tail meat from—
China, 52100–52107
Mechanical transfer presses from—
Japan, 52107
Polyester staple fiber from—
Taiwan, 52107–52108
Polyethylene terephthalate film, sheet, and strip from—
India and Taiwan, 52108–52109
Stainless steel bar from—
India, 52109
Tin mill products from—
Japan, 52109–52111
Export trade certificates of review, 52111
North American Free Trade Agreement (NAFTA); binational panel reviews:
Carbon steel flat products from—
Canada, 52111

**Justice Department**
NOTICES
Privacy Act:
Systems of records; correction, 52189

**Labor Department**
*See* Employment Standards Administration
*See* Mine Safety and Health Administration
*See* Occupational Safety and Health Administration

**Land Management Bureau**
NOTICES
Environmental statements; notice of intent:
Western United States, including Alaska; conservation and restoration of vegetation, watershed, and wildlife habitat treatment on public lands, 52148–52149
Public land orders:
California, 52149
Utah, 52149

**Management and Budget Office**
RULES
Air Transportation Safety and System Stabilization Act:
Aviation disaster relief; air carrier guarantee loan program, 52269–52275

**Minerals Management Service**
NOTICES
Environmental statements; availability, etc.:
Eastern Gulf of Mexico OCS—
Oil and gas lease sales, 52149–52150
Outer Continental Shelf operations:
Oil and gas lease sales—
Restricted joint bidders list, 52150

**Mine Safety and Health Administration**
NOTICES
Safety standard petitions:
AB&J Coal Co., Inc., et al., 52154–52156

**Mine Safety and Health Federal Review Commission**
*See* Federal Mine Safety and Health Review Commission

**National Institute of Standards and Technology**
NOTICES
Grant and cooperative agreement awards:
American Ceramic Society Inc.; FORTRAN Content Management System update, 52112

**National Oceanic and Atmospheric Administration**
RULES
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
West Coast salmon, 52062–52064
PROPOSED RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands and Gulf of Alaska groundfish, 52090–52093
NOTICES
Committees; establishment, renewal, termination, etc.:
National Sea Grant Review Panel, 52112
Environmental statements; availability, etc.:
National Estuarine Research Reserve System—
Tijuana National Estuarine Research Reserve, CA; Goat Canyon Creek and watershed, 52112–52113
Meetings:
National Sea Grant Review Panel, 52113–52114
Pacific Fishery Management Council, 52114–52116

**National Park Service**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 52150–52151
Boundary establishment, descriptions, etc.:
Catoctin Mountain Park, MD, 52151
Environmental statements; notice of intent:
Apostle Islands National Lakeshore, WI, 52151–52152
Battle of Homestead and Carrie Furnaces sites, PA; special resource study, 52152

**National Science Foundation**
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 52157–52158

**Navy Department**
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
ALS Technologies, Inc., 52118
CG Industries, Inc., 52118
Shock Tube Systems, Inc., 52118
Meetings:
Naval Research Advisory Committee, 52305–52306

**Nuclear Regulatory Commission**
PROPOSED RULES
Rulemaking petitions:
Leyse, Robert H., 52065–52066
NOTICES
Terminated license review project; completion, 52158
*Applications, hearings, determinations, etc.:*
Duke Energy Corp., 52158

**Occupational Safety and Health Administration**
RULES
Occupational injuries and illnesses; recording and reporting requirements
Effective date delay, etc., 52031–52034

**Office of Management and Budget**
*See* Management and Budget Office

**Personnel Management Office**
**NOTICES**
Agency information collection activities:
Submission for OMB review; comment request, 52158–52159

**Presidential Documents**
**PROCLAMATIONS**
*Special observances:*
General Pulaski Memorial Day (Proc. No. 7484), 52301–52304
Leif Erikson Day (Proc. 7483), 52015–52016

**Public Health Service**
*See* Food and Drug Administration

**Research and Special Programs Administration**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 52179–52180

**Securities and Exchange Commission**
**NOTICES**
Intermarket Trading System; plan amendments, 52159
Investment Company Act of 1940:
Exemption applications—
Firstmark Corp., 52159–52160
Securities Exchange Act:
Government securities reconciliations; correction, 52189
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 52161–52166
Government Securities Clearing Corp., 52166–52167
National Association of Securities Dealers, Inc., 52167–52169

**Social Security Administration**
**NOTICES**
Meetings:
Ticket to Work and Work Incentives Advisory Panel, 52169–52170

**State Department**
**NOTICES**
Art objects; importation for exhibition:
Luca Giordano (1634-1705), 52170

**Surface Mining Reclamation and Enforcement Office**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 52152–52153

**Surface Transportation Board**
**NOTICES**
Railroad services abandonment:
CSX Transportation, Inc., 52180–52181

**Thrift Supervision Office**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 52186–52187

**Transportation Department**
*See* Coast Guard
*See* Federal Aviation Administration
*See* Research and Special Programs Administration
*See* Surface Transportation Board
**NOTICES**
Aviation proceedings:
Agreements filed, weekly receipts, 52170
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 52170

**Treasury Department**
*See* Internal Revenue Service
*See* Thrift Supervision Office
**NOTICES**
Agency information collection activities:
Submission for OMB review; comment request, 52181–52185
Meetings:
Customs Service Commercial Operations Treasury Advisory Committee, 52185

**Veterans Affairs Department**
**NOTICES**
Senior Executive Service:
Performance Review Boards; membership, 52187–52188

---

**Separate Parts In This Issue**

**Part II**
Environmental Protection Agency, 52191–52268

**Part III**
Office of Management and Budget, 52269–52275

**Part IV**
Department of Transportation, Federal Aviation Administration, 52277–52280

**Part V**
Department of the Interior, Fish and Wildlife Service, 52281–52300

**Part VI**
The President, 52301–52304

**Part VII**
Department of Defense, Navy Department, 52305–52306

---

**Reader Aids**
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.
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## CFR PARTS AFFECTED IN THIS ISSUE

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

**3 CFR**

**Proclamations:**

7483.....52015
7484.....52303

**10 CFR**

**Proposed Rules:**

50.....52065

**14 CFR**

Ch. VI.....52270
25.....52017
39 (3 documents) .....52020, 52023, 52027
61.....52278
63.....52278
121.....52278
135.....52278
142.....52278
1300.....52270

**Proposed Rules:**

39 (5 documents) .....52066, 52068, 52070, 52072, 52073
71.....52076

**29 CFR**

1904.....52031

**33 CFR**

165 (6 documents) .....52035, 52036, 52038, 52039, 52041, 52043

**40 CFR**

52 (3 documents) .....52044, 52050, 52055
62.....52060

**Proposed Rules:**

62.....52077
124.....52192
260.....52192
267.....52192
270.....52192

**50 CFR**

660.....52062

**Proposed Rules:**

10.....52282
20.....52077
21.....52077
679.....52090

Federal Register
Vol. 66, No. 198
Friday, October 12, 2001

# Presidential Documents

**Title 3—**

**The President**

**Proclamation 7483 of October 9, 2001**

## Leif Erikson Day, 2001

**By the President of the United States of America**

**A Proclamation**

On Leif Erikson Day, we join our friends in Denmark, Finland, Iceland, Norway, and Sweden to celebrate and pay homage to our shared ideals and commemorate the contributions of Nordic Americans to our culture. We honor the explorers who led the first Viking explorations at the beginning of the last millennium, and we pay tribute to the many Nordic pioneers who helped to explore and settle America's 19th Century frontiers. The Nordic and American peoples share the virtues of courage, resourcefulness, and self-reliance, and they have built nations based on the principles of liberty, justice, and equality.

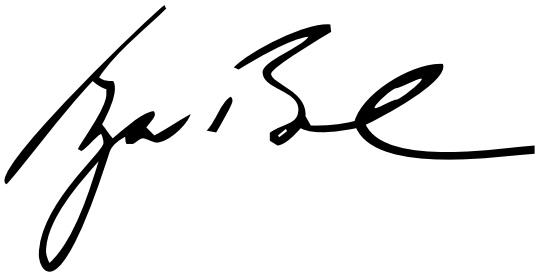
Leif Erikson and his men braved the unknown and risked their lives to become the first Europeans to set foot on North American soil. As we reflect upon Erikson's groundbreaking achievements and marvel at the adversity and dangers he and his explorers endured, we are thankful for their great endeavor and recognize that achieving difficult goals requires people who are courageous and willing to sacrifice, who take action and take risks.

Today, American researchers and entreprenuers, including many of Nordic descent, are making landmark discoveries in the fields of genetics, information technology, biotechnology, and renewable energy. Through our Northern European Initiative and the ''Northern Dimension'' program that Scandinavian countries have sponsored, we are deepening our cooperation and connections with the Baltic region, building regional links in Northwest Russia, and renewing historic trade relationships. And, we are working closely with our Nordic Allies in NATO by helping to provide for the region's common defense and stability. These and other efforts to improve the world mark the citizens of theUnited States as a people possessing virtues that echo those of Leif Erikson and the first Vikings who landed on our northern shores.

To honor Leif Erikson, the brave son of Iceland and grandson of Norway, and our Nordic American heritage, the Congress, by joint resolution (Public Law 88–66) approved on September 2, 1964, has authorized and requested the President to proclaim October 9 of each year as Leif Erikson Day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 9, 2001, as Leif Erikson Day. I call upon all Americans to observe this day with appropriate ceremonies, activities, and programs to honor our rich Nordic-American heritage.

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



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# Rules and Regulations

Federal Register
Vol. 66, No. 198
Friday, October 12, 2001

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

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. NM198; Special Conditions No. 25–187–SC]**

## Special Conditions: Boeing Model 777 Series Airplanes; Seats with Inflatable Lapbelts

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Boeing Model 777 series airplanes. These airplanes, which are manufactured by Boeing Commercial Airplanes, will have novel and unusual design features associated with seats with inflatable lapbelts. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is October 3, 2001. Comments must be received on or before November 13, 2001.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–113, Attention: Rules Docket No. NM198, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM198. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Jayson Claar, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2194; facsimile (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are unnecessary because these special conditions are substantially identical to those that have been issued on three previous occasions, and that further new comments are unlikely.

### Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number identified above and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered. The special conditions may be changed in light of the comments received.

All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number NM198.'' The postcard will be date stamped and returned to the commenter.

### Background

On April 20, 2001, Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124, applied for a type certificate design change to install inflatable lapbelts for head injury protection on certain seats in Boeing Model 777 series airplanes. The Model 777 series airplane is a swept-wing, conventional-tail, twin-engine, turbofan-powered transport. The inflatable lapbelt is designed to limit occupant forward excursion in the event of an accident. This will reduce the potential for head injury, thereby reducing the Head Injury Criteria (HIC) measurement. The inflatable lapbelt behaves similarly to an automotive airbag, but in this case the airbag is integrated into the lapbelt, and inflates away from the seated occupant. While airbags are now standard in the automotive industry, the use of an inflatable lapbelt is novel for commercial aviation.

Title 14 Code of Federal Regulations (14 CFR) § 25.785 requires that occupants be protected from head injury by either the elimination of any injurious object within the striking radius of the head, or by padding. Traditionally, this has required a set back of 35 inches from any bulkhead or other rigid interior feature or, where not practical, specified types of padding. The relative effectiveness of these means of injury protection was not quantified. With the adoption of Amendment 25–64 to 14 CFR part 25, specifically § 25.562, a new standard that quantifies required head injury protection was created.

Section 25.562 specifies that dynamic tests must be conducted for each seat type installed in the airplane. In particular, the regulations require that persons not suffer serious head injury under the conditions specified in the tests, and that a HIC measurement of not more than 1000 units be recorded, should contact with the cabin interior occur. While the test conditions described in this section are specific, it is the intent of the requirement that an adequate level of head injury protection be provided for crash severity up to and including that specified.

Amendment 25–64 is part of the Model 777 certification basis. Therefore, the seat installation with inflatable lapbelts must meet the requirement that a HIC of less than 1000 be demonstrated for occupants of seats incorporating the inflatable lapbelt.

Because §§ 25.562 and 25.785 and associated guidance do not adequately address seats with inflatable lapbelts, the FAA recognizes that appropriate pass/fail criteria need to be developed that do fully address the safety concerns specific to occupants of these seats.

The inflatable lapbelt has two potential advantages over other means of head impact protection. First, it can provide significantly greater protection than would be expected with energy-absorbing pads, for example, and

second, it can provide essentially equivalent protection for occupants of all stature. These are significant advantages from a safety standpoint, since such devices will likely provide a level of safety that exceeds the minimum standards of the Federal Aviation Regulations (FAR). Conversely, inflatable lapbelts in general are active systems and must be relied upon to activate properly when needed, as opposed to an energy-absorbing pad or upper torso restraint that is passive, and always available. These potential advantages must be balanced against the potential disadvantages in order to develop standards that will provide an equivalent level of safety to that intended by the regulations.

The FAA has considered the installation of inflatable lapbelts to have two primary safety concerns: first, that they perform properly under foreseeable operating conditions, and second, that they do not perform in a manner or at such times as would constitute a hazard to the airplane or occupants. This latter point has the potential to be the more rigorous of the requirements, owing to the active nature of the system. With this philosophy in mind, the FAA has considered the following as a basis for the special conditions.

The inflatable lapbelt will rely on electronic sensors for signaling and pyrotechnic charges for activation so that it is available when needed. These same devices could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of such deployment must be considered in establishing the reliability of the system. Boeing Commercial Airplanes must substantiate that the effects of an inadvertent deployment in flight are either not a hazard to the airplane, or that such deployment is an extremely improbable occurrence (less than $10^{-9}$ per flight hour). The effect of an inadvertent deployment on a passenger or crewmember that might be positioned close to the inflatable lapbelt should also be considered. The person could be either standing or sitting. A minimum reliability level will have to be established for this case, depending upon the consequences, even if the effect on the airplane is negligible.

The potential for an inadvertent deployment could be increased as a result of conditions in service. The installation must take into account wear and tear so that the likelihood of an inadvertent deployment is not increased to an unacceptable level. In this context, an appropriate inspection interval and self-test capability are considered necessary. Other outside influences are lightning and high intensity electromagnetic fields (HIRF). Since the sensors that trigger deployment are electronic, they must be protected from the effects of these threats. Existing Special Conditions No. 25–ANM–78 regarding lightning and HIRF are therefore applicable. For the purposes of compliance with those special conditions, if inadvertent deployment could cause a hazard to the airplane, the inflatable lapbelt is considered a critical system; if inadvertent deployment could cause injuries to persons, the inflatable lapbelt should be considered an essential system. Finally, the inflatable lapbelt installation should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the pyrotechnic squib.

In order to be an effective safety system, the inflatable lapbelt must function properly and must not introduce any additional hazards to occupants as a result of its functioning. There are several areas where the inflatable lapbelt differs from traditional occupant protection systems, and requires special conditions to ensure adequate performance.

Because the inflatable lapbelt is essentially a single use device, there is the potential that it could deploy under crash conditions that are not sufficiently severe as to require head injury protection from the inflatable lapbelt. Since an actual crash is frequently composed of a series of impacts before the airplane comes to rest, this could render the inflatable lapbelt useless if a larger impact follows the initial impact. This situation does not exist with energy-absorbing pads or upper torso restraints, which tend to provide protection according to the severity of the impact. Therefore, the inflatable lapbelt installation should be such that the inflatable lapbelt will provide protection when it is required, and will not expend its protection when it is not needed. There is no requirement for the inflatable lapbelt to provide protection for multiple impacts, where more than one impact would require protection.

Since each occupant's restraint system provides protection for that occupant only, the installation must address seats that are unoccupied. It will be necessary to show that the required protection is provided for each occupant, regardless of the number of occupied seats and considering that unoccupied seats may have inflatable lapbelts that are active.

Since a wide range of occupants could occupy a seat, the inflatable lapbelt should be effective for a wide range of occupants. The FAA has historically considered the range from the fifth percentile female to the ninety-fifth percentile male as the range of occupants that must be taken into account. In this case, the FAA is proposing consideration of a broader range of occupants, due to the nature of the lapbelt installation and its close proximity to the occupant. In a similar vein, these persons could have assumed the brace position, for those accidents where an impact is anticipated. Test data indicate that occupants in the brace position may not require supplemental protection, and so it would not be necessary to show that the inflatable lapbelt will enhance the brace position. However, the inflatable lapbelt must not introduce a hazard in that case by deploying into the seated, braced occupant.

Another area of concern is the use of seats so equipped by children whether lap-held, in approved child safety seats, or occupying the seat directly. Similarly, if the seat is occupied by a pregnant woman, the installation needs to address such usage, either by demonstrating that it will function properly, or by adding appropriate limitation on usage.

Since the inflatable lapbelt will be electrically powered, there is the possibility that the system could fail due to a separation in the fuselage. Since this system is intended as crash/post-crash protection means, failure due to fuselage separation is not acceptable. As with emergency lighting, the system should function properly if such a separation occurs at any point in the fuselage. A separation that occurs at the location of the inflatable lapbelt would not have to be considered.

Since the inflatable lapbelt is likely to have a large volume displacement, the inflated bag could potentially impede egress of passengers. Since the bag deflates to absorb energy, it is likely that an inflatable lapbelt would be deflated at the time that persons would be trying to leave their seats. Nonetheless, it is considered appropriate to specify a time interval after which the inflatable lapbelt may not impede rapid egress. Ten seconds has been chosen as a reasonable time since this corresponds to the maximum time allowed for an exit to be openable. In actuality, it is unlikely that an exit would be prepared this quickly in an accident severe enough to warrant deployment of the inflatable lapbelt, and the inflatable lapbelt will likely deflate much quicker than ten seconds.

Finally, it should be noted that the special conditions are certification requirements applied to the inflatable lapbelt system as installed. The special

conditions are not an installation approval. Therefore, while the special conditions relate to each such system installed, the overall installation approval is a separate finding, and must consider the combined effects of all such systems installed.

**Type Certification Basis**

Under the provisions of § 21.101, Boeing Commercial Airplanes must show that the Model 777 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. T00001SE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. T00001SE are as follows: Amendments 25–1 through 25–82 for the Model 777–200 and Amendments 25–1 through 25–86 with exceptions for the Model 777–300. The U.S. type certification basis for the Model 777 is established in accordance with §§ 21.29 and 21.17 and the type certification application date. The U.S. type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for Boeing Model 777 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777 must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36.

Special conditions, as appropriate, are issued in accordance with § 11.19 after public notice, as required by § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

**Novel or Unusual Design Features**

The Model 777 series airplanes will incorporate the following novel or unusual design features: Boeing Commercial Airplanes is proposing to install an inflatable lapbelt on certain seats of Boeing Model 777 series airplanes, in order to reduce the potential for head injury in the event of an accident. The inflatable lapbelt works similar to an automotive airbag, except that the airbag is integrated with the lap belt of the restraint system.

The CFR states the performance criteria for head injury protection in objective terms. However, none of these criteria are adequate to address the specific issues raised concerning seats with inflatable lapbelts. The FAA has therefore determined that, in addition to the requirements of part 25, special conditions are needed to address requirements particular to installation of seats with inflatable lapbelts.

Accordingly, in addition to the passenger injury criteria specified in § 25.785, these special conditions are adopted for the Boeing Model 777 series airplanes equipped with inflatable lapbelts. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

**Discussion**

From the standpoint of a passenger safety system, the inflatable lapbelt is unique in that it is both an active and entirely autonomous device. While the automotive industry has good experience with airbags, the conditions of use and reliance on the inflatable lapbelt as the sole means of injury protection are quite different. In automobile installations, the airbag is a supplemental system and works in conjunction with an upper torso restraint. In addition, the crash event is more definable and of typically shorter duration, which can simplify the activation logic. The airplane operating environment is also quite different from automobiles and includes the potential for greater wear and tear, and unanticipated abuse conditions (due to galley loading, passenger baggage, etc.); airplanes also operate where exposure to high intensity electromagnetic fields could affect the activation system.

The following special conditions can be characterized as addressing either the safety performance of the system, or the system's integrity against inadvertent activation. Because a crash requiring use of the inflatable lapbelts is a relatively rare event, and because the consequences of an inadvertent activation are potentially quite severe, these latter requirements are probably the more rigorous from a design standpoint.

**Prior Comment**

One comment was received in response to the most recent publication of the inflatable lapbelt special conditions (65 FR 60343) which are substantially identical to the special condition contained herein. The disposition of this comment is contained in Rules Docket No. NM176 and is available for examination by interested parties. In our disposition, we substantially agreed with the commenter, but noted that the substance of the comment was already addressed in the special conditions. Therefore, this comment did not result in a change to the special conditions.

**Applicability**

As discussed above, these special conditions are applicable to the Model 777 series airplanes. Should Boeing Commercial Airplanes apply at a later date for a change to the type certificate to modify any other model included on Type Certificate No. T00001SE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

**Conclusion**

This action affects only certain novel or unusual design features on the Boeing Model 777 series airplanes. It is not a rule of general applicability, and it affects only Model 777 series airplanes listed on TCDS T00001SE.

**Immediate Adoption of Special Conditions**

The FAA has determined that notice and opportunity for prior public comment hereon are unnecessary because these special conditions are substantially identical to those that have been issued on three previous occasions, and that further new comments are unlikely.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

**Authority Citation**

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special

conditions are issued as part of the type certification basis for the Boeing Model 777 series airplanes.

1. *Seats With Inflatable Lapbelts.* It must be shown that the inflatable lapbelt will deploy and provide protection under crash conditions where it is necessary to prevent serious head injury. The means of protection must take into consideration a range of stature from a two-year-old child to a ninety-fifth percentile male. The inflatable lapbelt must provide a consistent approach to energy absorption throughout that range. In addition, the following situations must be considered:

a. The seat occupant is holding an infant.

b. The seat occupant is a child in a child restraint device.

c. The seat occupant is a child not using a child restraint device.

d. The seat occupant is a pregnant woman.

2. The inflatable lapbelt must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have active seatbelts.

3. The design must prevent the inflatable lapbelt from being either incorrectly buckled or incorrectly installed such that the inflatable lapbelt would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant, and will provide the required head injury protection.

4. It must be shown that the inflatable lapbelt system is not susceptible to inadvertent deployment as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), likely to be experienced in service.

5. Deployment of the inflatable lapbelt must not introduce injury mechanisms to the seated occupant, or result in injuries that could impede rapid egress. This assessment should include an occupant who is in the brace position when it deploys and an occupant whose belt is loosely fastened.

6. It must be shown that an inadvertent deployment that could cause injury to a standing or sitting person is improbable.

7. It must be shown that inadvertent deployment of the inflatable lapbelt during the most critical part of the flight will either not cause a hazard to the airplane or is extremely improbable.

8. It must be shown that the inflatable lapbelt will not impede rapid egress of occupants 10 seconds after its deployment.

9. The system must be protected from lightning and HIRF. The threats specified in Special Condition No. 25–ANM–78 are incorporated by reference for the purpose of measuring lightning and HIRF protection. For the purposes of complying with HIRF requirements, the inflatable lapbelt system is considered a ''critical system'' if its deployment could have a hazardous effect on the airplane; otherwise it is considered an ''essential'' system.

10. The inflatable lapbelt must function properly after loss of normal aircraft electrical power, and after a transverse separation of the fuselage at the most critical location. A separation at the location of the lapbelt does not have to be considered.

11. It must be shown that the inflatable lapbelt will not release hazardous quantities of gas or particulate matter into the cabin.

12. The inflatable lapbelt installation must be protected from the effects of fire such that no hazard to occupants will result.

13. There must be a means for a crewmember to verify the integrity of the inflatable lapbelt activation system prior to each flight or it must be demonstrated to reliably operate between inspection intervals.

Issued in Renton, Washington, on October 3, 2001.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 01–25753 Filed 10–11–01; 8:45 am]

**BILLING CODE 4910–13–U**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–CE–28–AD; Amendment 39–12462; AD 2001–20–14]**

**RIN 2120–AA64**

## Airworthiness Directives; Fairchild Aircraft, Inc., Models SA226 and SA227 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to certain Fairchild Aircraft SA226 and SA227 series airplanes. This AD requires you to replace the brake shuttle valves with parts of improved design and install a shield over the hydraulic lines. This AD also requires replacing the rubber fuel hose with a metal device for certain SA226 series airplanes. This AD is the result of a report of a wheel brake system malfunction caused by a faulty brake shuttle valve. The actions specified by this AD are intended to correct potential brake shuttle valve problems, which could cause the brake assembly to drag and overheat. Hydraulic or fuel line damage could then occur if the overheated brake assembly is retracted into the main wheel well, with a consequent fire if the hydraulic or fuel lines ruptured.

**DATES:** This AD becomes effective on November 21, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of November 21, 2001.

**ADDRESSES:** You may get the service information referenced in this AD from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490; telephone: (210) 824–9421; facsimile: (210) 820–8609. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–28–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Werner Koch, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5133; facsimile: (817) 222–5960.

**SUPPLEMENTARY INFORMATION:**

### Discussion

*What Events Have Caused This AD?*

The FAA received a report of an accident involving a Fairchild Model SA226-TC airplane where the flight crew lost control of the airplane at low altitude during the final approach for landing. Prior to the accident, the flight crew reported a loss of hydraulic pressure and a fire on the left side of the airplane.

Investigation of this accident indicates the following:

—The flight crew applied right rudder power during the takeoff roll to compensate for a dragging and overheated left wheel brake and then raised the landing gear into the left wheel well;

—The overheated left wheel brake ignited the tires and the hydraulic fluid; and

—The resultant fire burned the rubber fuel crossover hose and resulted in fuel leakage with a consequent fuel fire.

The accident investigation shows that the brake shuttle valve may have caused the left wheel brake to drag and overheat.

*Has FAA Taken Any Action to This Point?*

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Fairchild Aircraft SA226 and SA227 series airplanes. This proposal was published in the **Federal Register** as a supplemental notice of proposed rulemaking (NPRM) on December 5, 2000 (65 FR 75883). The supplemental NPRM proposed to require you to replace the brake shuttle valves with parts of improved design (except on airplanes with an anti-skid/power brake system); install a shield over the hydraulic lines; and replace the rubber fuel hose with a metal device on certain SA226 series airplanes.

*What Is the Potential Impact if FAA Took No Action?*

Original design brake shuttle valves, if not replaced with improved design valves, could cause the wheel brakes to drag and overheat. This could result in hydraulic or fuel line damage if the overheated brake assembly is retracted into the main wheel wells. A consequent fire could occur if the hydraulic or fuel lines ruptured.

*Was the Public Invited To Comment?*

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comment received on the proposal and FAA's response to this comment:

**Comment Disposition**

*What Is the Commenter's Concern?*

The commenter suggests that the cause of the wheel brake system malfunction may not be related to the brake shuttle valve. The commenter references an incident on a SA226 airplane relative to a dragging wheel brake that was traced to the master cylinder internal relief valve. The FAA infers that the commenter would like us to continue to investigate this issue.

*What Is FAA's Response to the Concern?*

After thorough investigation of all available information, we determined that the cause of this unsafe condition is related to the brake shuttle valve. The FAA welcomes comments and suggestions such as those made by the commenter. In fact, we have determined that the master cylinder relief valve may have been the cause of other main gear brake incidents. We issued a notice of proposed rulemaking (NPRM) (Docket No. 2001–CE–17–AD), which proposes these brake master cylinders be replaced with new or overhauled units. This NPRM was published in the **Federal Register** on August 21, 2001 (66 FR 43814).

We will continue to investigate any other potential causes for the dragging brakes on the SA226 and SA227 airplanes.

**FAA's Determination**

*What Is FAA's Final Determination on This Issue?*

We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—Will not change the meaning of the AD; and

—Will not add any additional burden upon the public than was already proposed.

**Cost Impact**

*How Many Airplanes Does This AD Impact?*

We estimate that this AD affects 258 airplanes in the U.S. registry.

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

We estimate the following costs to accomplish the replacement and installation:

SA226 SERIES AIRPLANES

| Labor cost | Parts cost | Total cost on U.S. operators |
|---|---|---|
| 65 workhours × $60 per hour = $3,900 | $3,431 per airplane | $7,331 per airplane × 258 = $1,891,398. |

SA227 SERIES AIRPLANES

| Labor cost | Parts cost | Total cost on U.S. operators |
|---|---|---|
| 55 workhours × $60 per hour = $3,300 | $1,369 per airplane | $4,669 per airplane × 258 = $1,204,602. |

**Compliance Time of This AD**

*What Is the Compliance Time of This AD?*

The compliance time of this AD is at whichever of the following that occurs later:

—Within 500 hours time-in-service (TIS) after the effective date of this AD; or

—Within 6 months after the effective date of this AD

*Why Is the Compliance Time of This AD Presented in Both Hours TIS and Calendar Time?*

The affected airplanes are used in both general aviation and commuter operations. Those commuter operators may accumulate 500 hours TIS on the airplane in less than 2 months and many owners have numerous affected airplanes in their fleets. We have determined that the dual compliance time:

—Gives all owners/operators of the affected airplanes adequate time to schedule and accomplish the actions in this AD; and

—Ensures that the unsafe condition referenced in this AD will be corrected within a reasonable time period without inadvertently grounding any of the affected airplanes

**Flexibility Determination and Analysis**

*What Are the Requirements of the Regulatory Flexibility Act?*

The Regulatory Flexibility Act of 1980 was enacted by Congress to assure that small entities are not unnecessarily or disproportionately burdened by government regulations. This Act establishes ''as principle of regulatory issuance that agencies shall endeavor,

consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve this principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that the rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

*What Is FAA's Determination?*

The FAA has determined that this AD could have a significant economic impact on a substantial number of small entities. However, we have determined that we should continue with this action in order to address the unsafe condition and ensure aviation safety.

You may obtain a copy of the complete Regulatory Flexibility Analysis (entitled ''Final Regulatory Flexibility Analysis'') that was prepared for this AD from the Docket file at the location listed under the **ADDRESSES** section of this document.

**Regulatory Impact**

*Does This AD Impact Various Entities?*

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

*Does This AD Involve a Significant Rule or Regulatory Action?*

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) could have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. You may obtain a copy of the complete Regulatory Flexibility Analysis (entitled ''Final Regulatory Flexibility Analysis'') that was prepared for this AD from the Docket file at the location listed under the **ADDRESSES** section of this document.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. FAA amends § 39.13 by adding a new AD to read as follows:

**2001–20–14 Fairchild Aircraft, Inc.:** Amendment 39–12462; Docket No. 2000–CE–28–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

| Model | Serial Nos. |
|---|---|
| SA226–T | T201 through T248. |
| SA226–T(A) | T(A)249 through T(A)–291. |
| SA226–T(B) | T(B) 276 and T(B) 292 through T(B) 417. |
| SA226–AT | AT001 through AT074. |
| SA226–TC | TC201 through TC419. |
| SA227–TT | TT421 through TT555. |
| SA227–TT(300) | TT447, TT465, TT471, TT483, TT512, TT518, TT521, TT527, TT529, and 536. |
| SA227–AT | AT421, AT423 through AT631, and AT695. |
| SA227–AC | AC406, AC415, AC416, and AC420 through AC599. |

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD. The AD applies to any airplane with or without an anti-skid/power brake system installed.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct potential brake shuttle valve problems, which could cause the brake assembly to drag and overheat. Hydraulic or fuel line damage could then occur if the overheated brake assembly is retracted into the main wheel well, with a consequent fire if the hydraulic or fuel lines ruptured.

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) For all affected airplanes, except those equipped with an anti-skid/power brake system, replace each brake shuttle valve with part number (P/N) MS28767–4 brake shuttle valve (or FAA-approved equivalent part number). | Within 500 hours time-in-service (TIS) after November 21, 2001 (the effective date of this AD), or within 6 months after November 21, 2001 (the effective date of this AD), whichever occurs later. | In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Aircraft Service Bulletin No. 226–26–003, or Fairchild Aircraft Service Bulletin No. 227–26–002, as applicable. Page numbers with respective dates are presented in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD. |

| Actions | Compliance | Procedures |
|---|---|---|
| (2) For all affected airplanes, install a shield over the hydraulic lines. | Within 500 hours time-in-service (TIS) after November 21, 2001 (the effective date of this AD), or within 6 months after November 21, 2001 (the effective date of this AD), whichever occurs later. | In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Aircraft Service Bulletin No. 226–26–003, or Fairchild Aircraft Service Bulletin No. 227–26–002, as applicable. Page numbers with respective dates are presented in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD. |
| (3) For all airplane models within the SA226 series, replace the rubber fuel hose with a metal device. | Within 500 hours time-in-service (TIS) after November 21, 2001 (the effective date of this AD), or within 6 months after November 21, 2001 (the effective date of this AD), whichever occurs later. | In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Aircraft Service Bulletin No. 226–26–003. Page numbers with respective dates are presented in paragraphs (h)(1)(i) of this AD. |
| (4) Do not install any brake shuttle valve that is not a P/N MS28767–4 brake shuttle valve (or FAA-approved equivalent part number) or a fuel hose that is made out of rubber. | As of November 21, 2001 (the effective date of this AD). | Not Applicable. |

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

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

(2) The Manager, Fort Worth Airplane Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Werner Koch, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5133; facsimile: (817) 222–5960.

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

(h) *Are any service bulletins incorporated into this AD by reference?*

(1) Actions required by this AD must be done in accordance with the following:

(i) Fairchild Service Bulletin No. 226–26–003, which incorporates the following pages:

| Pages | Date |
|---|---|
| 16 | Issued: March 1, 2000. |
| 14, 15 | Issued: March 1, 2000, Revised: June 27, 2000. |
| 17 | Issued: March 1, 2000, Revised: October 2, 2000. |
| 4, 5, 6, 7, 10, 11, 12, and 13 | Issued: March 1, 2000, Revised: January 19, 2001. |
| 1, 2, 3, 8, and 9 and | Issued: March 1, 2000, Revised: August 10, 2001. |

(ii) Fairchild Service Bulletin No. 227–26–002, which incorporates the following pages:

| Pages | Date |
|---|---|
| 1, 2, 8, and 9 | Issued: March 1, 2000. |
| 7 | Issued: March 1, 2000, Revised: June 27, 2000. |
| 3, 4, 5, and 6 | Issued: March 1, 2000, Revised: October 2, 2000. |

(2) The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51.

(3) You can get copies from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(j) *When does this amendment become effective?* This amendment becomes effective on November 21, 2001.

Issued in Kansas City, Missouri, on October 2, 2001.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 01–25397 Filed 10–11–01; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NE–49–AD; Amendment 39–12461; AD 2001–20–13]**

**RIN 2120–AA64**

## Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), that is applicable to certain models of Pratt & Whitney PW4000 series turbofan engines. This amendment requires operators to perform initial and repetitive inspections for cracking of high pressure compressor (HPC) front drum rotors based on cycle usage. This amendment also requires the removal from service of any cracked HPC front drum rotors. This amendment is prompted by reports that 11 HPC drum rotors have been found cracked on the spacer surface between the sixth and seventh stage disks. The actions specified by this AD are intended to detect premature cracking of the HPC drum rotor that could result in an uncontained engine failure and damage to the airplane.

**DATES:** Effective date November 16, 2001. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 16, 2001.

**ADDRESSES:** The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington MA 01803–5299; telephone: 781–238–7130, fax: 781–238–7199.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to certain models of Pratt & Whitney (PW) PW4000 series turbofan engines was published in the **Federal Register** on March 22, 2001 (66 FR 16017). That action proposed to require operators to perform initial and repetitive inspections for cracking of high pressure compressor (HPC) front drum rotors based on cycle usage. The action also proposed to require the removal from service of any cracked HPC front drum rotors in accordance with PW Alert Service Bulletin (ASB) No. PW4ENG A72–722, dated September 29, 2000.

## 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.

### Five-Cycle Flyback Allowance

Six commenters express concern with the deletion of the five-cycle flyback allowance.

One commenter requests clarification of the difference between the NPRM and ASB 72–722 with respect to the deletion of the five-cycle flyback allowance for engines with indications requiring eddy current inspection (ECI) verification.

Another commenter states that the AD should provide the five-cycle flyback allowance because eight reported findings of HPC front drum cracking were discovered in the shop and that the cracks do not propagate quickly.

A third commenter expresses concern that in cases of suspect cracks, the airline would incur an undue economic burden waiting for confirmation as to whether the visual indication is a crack or not. Also, the commenter suggests an initial inspection threshold of 1,200 cycles-since-new and a 20-cycle window for ECI reinspection to verify a visual crack indication. The commenter suggests that it is preferable to inspect compressor drums at a more frequent inspection interval and allow an engine with a ''suspect'' crack to continue in service for a limited time to allow for planning a reinspection. The same commenter suggests a 1,500 cycle repetitive inspection.

Another commenter provided information on the nature of the crack findings to date. Fifteen engines were identified with crack indications through borescope inspection. Three were obvious visual cracks and 12 required further assessment using the ECI inspection procedure cited in the SB. These 12 indications were confirmed not to be cracks.

Two commenters state that the five-cycle allowance for additional nondestructive inspections is effective in eliminating false initial crack indications and should be reinstated.

The FAA agrees that the five-cycle flyback allowance for engines with suspect crack indications is acceptable. Since the publication of the NPRM, results of a metallurgical investigation were provided that substantiate the five-cycle flight allowance. This information also determined that if a suspect crack indication extends from the knife edges to the disk radius of the sixth or seventh stage, an ECI reinspection must be accomplished before further flight. Accordingly, a five-cycle flyback allowance has been added to the compliance section of the AD.

However, the FAA does not agree with the suggested 20-cycle reinspection window or with the 1,500 cycle repetitive inspection interval. The FAA based the initial inspection threshold, reinspect flight allowance, and repetitive inspection interval on a risk assessment that uses known inspection data results to date.

### Initial Front Drum Rotor Inspection

Several commenters request clarification regarding initial and repetitive inspection of the HPC front drum rotors. Two commenters request clarification of the requirement stated in the NPRM that the initial inspection be performed before the drum accumulates 1,500 cycles-since-new (CSN). Other commenters express concern that the NPRM does not address front drum rotors that exceed 1,500 CSN.

The FAA agrees. It is the FAA's intent to be consistent with the analytical data associated with HPC front drum rotor cracking. The ASB states that the initial borescope inspection should be performed on all HPC front drum rotors that have accumulated 1,000 cycles (total drum cycles), at the next ''A'' check, or 500 cycles after the receipt of the ASB. The FAA agrees with the inspection threshold of 500 cycles determined by the risk assessment and chose the upper limit of 1,500 CSN as the compliance threshold for the initial inspection. Rewording the initial inspection threshold inadvertently introduced confusion. The requirements of the ASB and the AD are equivalent because they are based on the same data. Therefore, the FAA will change the wording to be consistent with the ASB.

### Repetitive Front Drum Rotor Inspection

One commenter requests that a drum rotor that was inspected in accordance with SB 72–722, having a total time beyond 1,500 CSN when inspected, be permitted to remain in service.

Another commenter asks if the AD has the same exemption as the ASB, which states that HPC front drum rotors previously inspected in accordance with the CIR Manual requirement at the last shop visit within 500 cycles, are exempt from the initial borescope inspection. That commenter also states that the requirement is not clear for the repetitive inspection requirement for HPC front drum rotors that were previously inspected in the shop.

Another commenter states that the provision in ASB PW4ENG A72–722 that exempts drums that were detail-part-inspected within 500 cycles from the initial inspection and fall into the 2,200 cycle reinspection interval should be included in the final rule.

The FAA agrees that if an HPC front drum rotor was inspected in accordance with On-Wing paragraphs of ASB 72–722, as required by the proposed rule, the initial inspection requirement is satisfied. However, the rotor is still subject to the repetitive On-Wing inspection requirements, within 2,200 cycles since last inspection.

The FAA also agrees that an HPC front drum rotor inspected in the shop utilizing the flourescent penetrant inspection (FPI) procedure within the past 500 CIS is exempt from the initial borescope inspection. Again, the rotor is still subject to the repetitive On-Wing inspection requirements, within 2,200 cycles since last inspection.

**Omission of ECI**

One commenter requests that the ECI of ASB 72–722 be omitted when the drum rotor is FPI per SPOP82 (CIR P/N 51A357 72–35–00). Another commenter asks whether the HPC front drum knife edge spacer area between the sixth and seventh stage disks previously visually inspected with split case condition or during light maintenance also should be exempted from initial borescope inspection.

As noted above, the FAA agrees that an HPC front drum rotor that was fluorescent penetrant inspected in the shop, as cited in the compliance section of the ASB, within the past 500 cycles in service (CIS), satisfies the initial inspection requirement. The ECI inspection requirement that is provided to confirm a suspect crack indication does not apply to HPC front drum rotors that have been fluorescent penetrant inspected in the shop within the past 500 CIS. The in-shop FPI inspection is more rigorous than the on-wing inspection requirements.

**Number of Confirmed Cracked Drum Rotors**

One commenter provides new information that there are eleven confirmed cracked HPC front drum rotors to date as compared to the seven that were described in the Summary and Discussion Sections of the NPRM. The FAA agrees that the higher number is accurate.

**Raise Inspection Requirement**

One commenter expresses a preference to inspect after 3,000 CIS, given that operator's experience with HPC front drum rotor cracking.

The FAA does not agree with the suggested 3,000 cycle repetitive inspection interval. The FAA based the initial inspection threshold, reinspect flight allowance, and repetitive inspection interval on a 20-year cumulative risk assessment that uses known inspection data results to date. The AD provides for individual operators to submit substantiating data that would support an increase in the repetitive inspection interval under the alternative method of compliance paragraph.

**Inclusion of PW SB PW4ENG A72–693 in AD**

One commenter states that the inspection procedure in Pratt & Whitney Service Bulletin PW4ENG A72–693 is the same as that required by the proposed rule; therefore, ''credit'' should be given for the inspections previously performed using this SB.

The FAA disagrees. PW ASB PW4ENG A72–693 was not referenced in the NPRM because that was a fleetwide campaign that has been completed and was not part of the 20-year risk assessment for which the start date was June 2000. However, credit will be given for inspections done prior to the issuance of this AD depending on when and how they were accomplished. These should be evaluated on an individual case basis within the context of the alternative method of compliance provision of the AD.

**Exemption of PW4158 Engine Serial Numbers**

One commenter notes that Revision 1 of the ASB does not exempt PW4158 engine serial numbers P728534 through P728546 from the inspection requirements and the AD does not need to include this information in the description of the differences between the manufacturer's service information and this AD. The FAA agrees and that statement has been removed from the AD.

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

**Differences Between Manufacturer's Service Information and This AD**

Since the publication of the NPRM, the manufacturer revised, and the FAA has approved the technical contents of alert service bulletin (ASB) No. PW4ENG A72–722, Revision 1, dated June 7, 2001. Although ASB No. PW4ENG A72–722, Revision 1, dated June 7, 2001, provides procedures for operators to perform off-wing initial and repetitive HPC drum rotor inspections, the off-wing requirements are not mandated by this AD. The FAA has evaluated a 20-year cumulative risk assessment and has determined that an acceptable level of safety will be met by requiring the on-wing inspections at the cyclic intervals detailed in the ASB.

**Economic Analysis**

The FAA estimates that there are 1,970 engines of the affected design in the worldwide fleet, and that 538 engines installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 2.5 work hours per engine to accomplish the proposed on-wing inspection, and that the average labor rate is $60 per work hour. It is estimated that three engines would be found with cracked HPC front drum rotors in the time frame of one year. Approximately 269 engines will be inspected on average per year. The cost of removal and reinstallation of an engine is approximately $10,000, and the cost of replacing the HPC front drum rotor is approximately $750,000. Required replacement parts would cost $356,130 per engine. Based on these figures, the total cost impact per year of the proposed AD for accomplishing initial inspections and replacing HPC front drum rotors, on U.S. operators is estimated to be $3,388,730.

**Regulatory Impact**

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

Accordingly, 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 adding a new airworthiness directive to read as follows:

**2001–20–13 Pratt & Whitney:** Amendment 39–12461. Docket 2000–NE–49–AD.

**Applicability**

This airworthiness directive (AD) applies to Pratt & Whitney (PW) models PW4052, PW4056, PW4060, PW4062, PW4152, PW4156A, PW4158, PW4460, and PW4462 turbofan engines. These engines are installed on but not limited to Boeing 747, 767, McDonnell Douglas MD–11, Airbus Industrie A300, and A310 series airplanes.

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

**Compliance**

Required as indicated, unless accomplished previously.

To detect premature cracking of the high pressure compressor (HPC) front drum rotor, that could result in an uncontained engine failure and damage to the airplane, accomplish the following:

**Initial Inspection**

(a) Perform an initial inspection in accordance with the Accomplishment Instructions, On-Wing paragraphs 1 through 13, of Pratt & Whitney (PW) Alert Service Bulletin (ASB) No. PW4ENG A72–722, dated September 29, 2000 or Revision 1, dated June 7, 2001, as follows:

(1) Perform an initial inspection of HPC front drum rotors before accumulating 1,000 cycles-since-new (CSN) within 500 cycles-in-service (CIS) after the effective date of this AD.

(2) If the presence of a crack needs to be confirmed, perform an eddy current inspection (ECI) within five flight cycles.

(3) If the presence of a crack needs to be confirmed and the suspect crack indication extends from the knife edges to the disk radius directly adjacent to the spacer wall of the sixth or seventh stage as shown in Figures 2 and 3 of PW ASB No. PW4ENG A72–722, Revision 1, dated June 7, 2001, the ECI inspection must be accomplished before further flight.

(4) If the presence of a crack is confirmed, remove and replace the HPC front drum rotor with a serviceable part before further flight.

(5) HPC front drum rotors fluorescent penetrant inspected at the last shop visit, as cited in the compliance section of the ASB, within 500 cycles of the publication date of this AD, satisfy the initial inspection requirement.

**Repetitive Inspections**

(b) Thereafter, perform inspections within 2,200 cycles-since-last-inspection, in accordance with the Accomplishment Instructions, On-Wing paragraphs 1 through 13, of PW ASB No. PW4ENG A72–722, dated September 29, 2000, or Revision 1, dated June 7, 2001.

(1) If the presence of a crack needs to be confirmed, perform an ECI within five flight cycles.

(2) If the presence of a crack needs to be confirmed and the suspect crack indication extends from the knife edges to the disk radius directly adjacent to the spacer wall of the sixth or seventh stage as shown in Figures 2 and 3 of PW ASB No. PW4ENG A72–722, Revision 1, dated June 7, 2001, the ECI inspection must be accomplished before further flight.

(3) If the presence of a crack is confirmed, remove and replace with a serviceable HPC front drum rotor before further flight.

**Definition of Suspect Crack Indication**

(c) For the purposes of this AD, a suspect crack indication is defined as a response from the visual borescope inspection procedure that denotes the possible presence of a material discontinuity and requires interpretation to determine its significance.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate Federal Aviation Administration (FAA) Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with §§ 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.

**Documents That Have Been Incorporated By Reference**

(f) The inspection must be done in accordance with the following Pratt & Whitney Alert Service Bulletin (ASB) PW4ENG A72–722, dated September 29, 2000 or (ASB) PW4ENG A72–722, Revision 1, dated June 7, 2001.

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| (ASB) PW4ENG A72–722 | All | Original | September 29, 2001. |
| (ASB) PW4ENG A72–722 | 1–4 | 1 | June 7, 2001. |
| (ASB) PW4ENG A72–722 | 5 | Original | September 29, 2000. |
| (ASB) PW4ENG A72–722 | 6 | 1 | June 7, 2001. |
| (ASB) PW4ENG A72–722 | 7–9 | Original | September 29, 2000. |
| (ASB) PW4ENG A72–722 | 10–11 | 1 | June 7, 2001. |
| (ASB) PW4ENG A72–722 | 12–16 | Original | September 29, 2000. |
| (ASB) PW4ENG A72–722 | 17 | 1 | June 7, 2001. |
| Total pages: 17. | | | |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**Effective Date**

(g) This amendment becomes effective on November 16, 2001.

Issued in Burlington, Massachusetts, on October 2, 2001.

**Mark C. Fulmer,**

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

[FR Doc. 01–25396 Filed 10–11–01; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–298–AD; Amendment 39–12465; AD 2001–20–17]**

**RIN 2120–AA64**

## Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to all EMBRAER Model EMB–120 series airplanes, that currently requires revising the Airplane Flight Manual, installing a placard on the main instrument panel, and removing the ''LIGHT–HEAVY'' inflation switch of the leading edge deicing boots. This amendment continues to require those actions and adds requirements to install a low speed alarm for icing conditions, to revise the AFM, and to replace an existing placard with a placard that directs the flightcrew to activate the deicing boots whenever ice is detected by visual cues or ice detector illumination. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This action is intended to ensure that the flightcrew is provided with accurate indications of the severity of ice accretion, clear indication of unintentional airplane speed reductions in icing conditions, and appropriate procedures to prevent reduced controllability of the aircraft due to accretion of ice on the airplane.

**DATES:** Effective October 22, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 22, 2001.

The incorporation of certain other publications listed in the regulations was approved previously by the Director of the Federal Register as of July 12, 2001 (66 FR 34083, June 27, 2001).

Comments for inclusion in the Rules Docket must be received on or before November 13, 2001.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–298–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–298–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Carla J. Worthey, Program Manager, ACE–118A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6062; fax (770) 703–6097.

**SUPPLEMENTARY INFORMATION:** On June 20, 2001, the FAA issued AD 2001–13–14, amendment 39–12295 (66 FR 34083, June 27, 2001), applicable to all EMBRAER Model EMB–120 series airplanes, to require revising the Airplane Flight Manual (AFM), installing a placard on the main instrument panel, and removing the ''LIGHT–HEAVY'' inflation switch of the leading edge deicing boots. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions required by that AD are intended to ensure that the flightcrew is provided with accurate indications of the severity of ice accretion and appropriate procedures and actions to prevent reduced controllability of the airplane due to accretion of ice on the airplane.

### Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, has notified the FAA that an unsafe condition may exist on all EMBRAER Model EMB–120 series airplanes. The DAC advises that it has received reports of loss of control events occurring on EMBRAER Model EMB–120 series airplanes that were flying during icing conditions. The DAC advises that such events indicate that the flightcrews may not have correctly determined both the severity of the ice accretion and the need to take immediate action to prevent excessive loss of airspeed, especially when using the autopilot. This situation, if not corrected, could result in reduced controllability of the airplane due to accretion of ice on the airplane.

### Issuance of Service Information

EMBRAER has issued Service Bulletin 120–30–0033, Change 01, dated September 6, 2001, that describes procedures for installing a low speed alarm on the glareshield panel, adding new electrical wires in the cockpit and in the electronic compartment, installing or replacing two placards, and reworking the pitot-static system between frames 3 and 4.

EMBRAER also issued Service Bulletin 120–30–0033, Change 02, dated September 14, 2001, which includes two new electrical diagrams, corrects the hook-up charts, and describes a check for correct installation of diodes.

EMBRAER has issued Service Bulletin 120–25–0258, Change 01, dated August 30, 2001, which describes procedures for installing a placard to instruct pilots to immediately activate the deicing boots and disengage the autopilot, whenever ice is detected by visual cues or ice detector illumination. The original issue of Service Bulletin 120–25–0258, dated May 14, 2001, was cited as a source of service information in AD 2001–13–14. Change 01 is identical in technical content to the original service bulletin, and merely specifies that a new placard has been developed for airplanes that have been modified per EMBRAER Service Bulletin 120–30–0033, and contains procedures for installing the new placard.

The DAC classified these service bulletins as mandatory and issued Brazilian airworthiness directive 2001–05–02R1, effective September 30, 2001, in order to assure the continued airworthiness of these airplanes in Brazil.

**FAA's Conclusions**

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

**Explanation of Requirements of Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 2001–13–14 to continue to require revising the AFM, installing a placard on the main instrument panel, and removing the ''LIGHT–HEAVY'' inflation switch of the leading edge deicing boots. This AD will also require installing a low speed alarm for icing conditions, revising the AFM, and replacing an existing placard with a placard that directs the flightcrew to activate the deicing boots whenever ice is detected by visual cues or ice detector illumination.

**Differences Between This AD and the Brazilian AD**

This AD differs from the Brazilian AD in the following ways:

1. This AD is more specific as to when to disconnect the autopilot.

2. This AD includes instructions to remove the current information contained in the Normal Procedures Section advising the flightcrew to select either HEAVY or LIGHT mode.

3. This AD adds a WARNING to the Normal Procedures section to exit icing conditions if the flightcrew detects large or frequent changes in trim or excessive performance degradation.

4. This AD includes additional AFM instructions regarding abnormal operations with the icing low speed alarm activated.

5. This AD also includes dispatch relief regarding certain Master Minimum Equipment List items for the ice detection system and the new icing low speed alarm system.

**Interim Action**

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

**Determination of Rule's Effective Date**

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

**Comments Invited**

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

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–298–AD.'' The postcard will be date stamped and returned to the commenter.

**Regulatory Impact**

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–12295 (66 FR 34083, June 27, 2001), and by adding a new airworthiness directive (AD), amendment 39–12465, to read as follows:

**2001–20–17 Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Amendment 39–12465. Docket 2001–NM–298–AD. Supersedes AD 2001–13–14, Amendment 39–12295.

*Applicability:* All Model EMB–120, –120RT, –120ER, and –120FC series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability

provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (m) 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 ensure that the flightcrew is provided with accurate indications of the severity of ice accretion, clear indication of unintentional airplane speed reductions in icing conditions, and appropriate procedures to prevent reduced controllability of the aircraft due to accretion of ice on the airplane; accomplish the following:

**Restatement of the Requirements of AD 2001–13–14**

*Airplane Flight Manual*

(a) Within 20 flight hours after July 12, 2001 (the effective date of AD 2001–13–14, amendment 39–12295): Revise the Limitations and Normal Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures, as specified in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD. This may be accomplished by inserting a copy of this AD in the AFM.

(1) In the Limitations section under the existing title 'Operation in Icing Conditions,' insert the following:

''Autopilot use is prohibited when atmospheric icing conditions exist, at the first sign of icing accretion anywhere on the airplane, or after the illumination of the Ice Condition light, whichever occurs first.

Leading edge deicers switch must be operated in the 'Heavy' mode only.''

(2) In the Normal Procedures section under the existing title, ''Operation in Icing Conditions,'' delete the following:

''Leading edge deicers switch ..... ON

Select ''Heavy'' or ''Light'' mode (1 or 3 minutes cycle), based on the flightcrew's judgement and evaluation of the severity of the ice encounter and rate of accretion.''

(3) In the Normal Procedures section under the existing title, 'Operation in Icing Conditions,' insert the following:

''Leading edge deicers switch ..... On (TIMER 1 or TIMER 2)

Select 'Heavy' mode if Light/Heavy switch is still installed.''

(4) In the Normal Procedures section insert the following warning:

''WARNING: If large or frequent changes in longitudinal trim, and/or excessive performance degradation occur (identified by large increases in power required to maintain airspeed and altitude), immediately request priority handling from air traffic control to exit icing conditions.''

*Placard Installation*

(b) Within 400 flight hours after July 12, 2001: Install a placard to activate the deicing boots and disengage the autopilot, whenever ice is detected by visual cues or ice detector illumination, to the left of the pilot's airspeed indicator and one placard to the right of the co-pilot's altimeter, per EMBRAER Service Bulletin 120–25–0258, dated May 14, 2001, or Change 01, dated August 30, 2001.

*Removal of Inflation Switch*

(c) Within 400 flight hours after July 12, 2001: Remove the ''Light-Heavy'' inflation switch of the leading edge deicing boots, per EMBRAER Service Bulletin 120–30–0032, Change 01, dated June 13, 2001.

**New Requirements of This AD**

*Installation of a Low Speed Alarm*

(d) Within 40 days after the effective date of this AD: Install a low speed alarm for icing conditions per EMBRAER Service Bulletin 120–30–0033, Change 01, dated September 6, 2001, or Change 02, dated September 14, 2001. Accomplish the installation together with or after the removal of the leading edge boots inflation cycle control ''light-heavy'' switch, required by paragraph (c) of this AD.

*Placards*

(e) Prior to further flight after accomplishment of the installation required by paragraph (d) of this AD: Remove the placard required by paragraph (b) of this AD, and prior to further flight, replace it with a new placard to specify activation of the deicing boots whenever ice is detected by visual cues or ice detector illumination, per EMBRAER Service Bulletin 120–30–0033, Change 01, dated September 6, 2001, or Change 02, dated September 14, 2001.

*Airplane Flight Manual*

(f) Prior to further flight after accomplishment of the installation required by paragraph (d) of this AD: Accomplish the actions specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD.

(1) Remove the AFM Limitation required by paragraph (a)(1) of this AD, and revise the Limitations Section of the FAA-approved AFM under the existing title of ''Operation in Icing Conditions'' to include the following procedures (This may be accomplished by inserting a copy of this AD in the AFM.):

For airplanes on which the HEAVY/LIGHT switch is installed: Leading edge deicers switch must be operated in the HEAVY mode only at the first sign of icing accretion anywhere on the airplane or after the illumination of the ICE CONDITION light, whichever occurs first.

For airplanes on which the low speed alarm has NOT been installed: Autopilot use is prohibited at the first sign of icing accretion anywhere on the airplane or after illumination of the ICE CONDITION light, whichever occurs first.

Airspeeds:

Flaps and Gear UP ..... 160 KIAS MINIMUM (All engines operating)

Flaps 15% Gear UP ..... 160 KIAS MINIMUM (All engines operating)

**Note:** In the event of an engine failure in icing conditions, maintain the engine failure airspeeds shown in Section V, Performance. The icing condition low speed alarm may activate if the airspeed is below 160 KIAS with the flaps up.''

(2) Remove the following paragraph from the Limitations Section of the AFM under the existing title of ''Operation in Icing Conditions,'' that currently reads as follows:

''When operating in known or forecast icing conditions, the specific procedures for operation in icing conditions presented in the Normal Procedures Section of this manual must be followed.''

(3) Insert the following into the Limitations Section of the AFM under the existing title of ''Operation in Icing Conditions'':

''When operating in known or forecast icing conditions, the specific procedures for operation in icing conditions presented in the Abnormal Procedures and Normal Procedures Sections of the AFM must be followed.''

(g) Prior to further flight after accomplishment of the installation required by paragraph (d) of this AD: Revise the Emergency and Abnormal Procedures Sections of the AFM under the existing titles of ''Flight With All Engines Inoperative,'' ''Forced Landing,'' ''Ditching,'' ''Takeoff with Engine Failure (Above $V_1$),'' ''One Engine Inoperative Approach and Landing,'' ''One Engine Inoperative Go-Around,'' and ''Engine Airstart'' to include the following **Note** (This may be accomplished by inserting a copy of this AD in the AFM.):

''**Note:** In the event of an engine failure in icing conditions, maintain the engine failure airspeeds shown in Section V, Performance. The icing condition low speed alarm may activate as airspeed decreases below 160 KIAS.''

(h) Prior to further flight after accomplishment of the installation required by paragraph (d) of this AD: Accomplish the actions specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) Revise the Abnormal Procedures Section of the AFM under the existing titles of ''Flap Control Fault,'' ''Flap Disagreement,'' ''Flap Asymmetry,'' ''Loss of the Green (Hydraulic) System,'' ''Loss of the Blue (Hydraulic) System,'' and ''Loss of Both Hydraulic Systems'' to include the following procedures (This may be accomplished by inserting a copy of this AD in the AFM.):

''**Note:** In the event of a 0° flap landing in icing conditions, maintain 160 KIAS until landing is assured. Reduce airspeed to cross runway threshold (50 ft) at VREF 45 + 35 KIAS. The icing condition low speed alarm may activate as airspeed decreases below 160 KIAS.''

(2) Revise the Abnormal Procedures Section of the AFM to include the following new section (This may be accomplished by inserting a copy of this AD in the AFM.):

''ICING CONDITION LOW SPEED ALARM (If installed):

- LOW SPEED amber light illuminated on the Icing Cond Low speed Alarm Panel.
- Buzzer sound.

| | |
|---|---|
| 1. Airspeed | ABOVE 160 KIAS |
| 2. Leading Edge Deicer Switch | VERIFY TIMER 1 OR TIMER 2 |

**Note:** ICING CONDITION LOW SPEED ALARM may not be cancelable by the flightcrew, and may not extinguish until 170 KIAS. Applying power should promptly recover speed. If necessary, disengage the autopilot, push over to regain airspeed, and notify ATC of altitude deviation.

When ICING CONDITION LOW SPEED ALARM extinguishes:

Autopilot ..... AS REQUIRED

**Note:** Monitor the ice accretion and the airspeed.

Severe Icing Conditions ..... CHECK

If Severe Icing Conditions are confirmed:

Flying in Severe Icing Conditions Procedure ..... APPLY

(i) Prior to further flight after accomplishment of the installation required by paragraph (d) of this AD: Add the following new procedure to the Normal Procedures Section of the AFM under the existing title of ''Daily Checks, Before Engine Start,'' as follows (This may be accomplished by inserting a copy of this AD in the AFM.):

''Icing Condition Low Speed Alarm System:

TEST Button ..... PRESS

Check the buzzer sounding continously and the LOW SPEED amber light illuminated. Release button. Check sound and light extinguished.''

(j) Prior to further flight after accomplishment of the installation required by paragraph (d) of this AD: Revise the Normal Procedures Section of the AFM under the existing title of ''Turbulent Air Penetration,'' as specified in paragraphs (j)(1) and (j)(2) of this AD. This may be accomplished by inserting a copy of this AD in the AFM.

(1) Remove the following from the existing paragraph under ''Turbulent Air Penetration'':

''1. Airspeed: 180 KIAS (from sea level to 15000 ft); 160 KIAS (above 15000 ft)''

(2) Replace the wording specified in paragraph (j)(1) with the following:

''1. Airspeed: 175 KIAS''

(k) Prior to further flight after accomplishment of the installation required by paragraph (d) of this AD: Revise the Normal Procedures Section of the FAA-approved AFM under the existing title of ''Operation in Icing Conditions'' as specified in paragraphs (k)(1) and (k)(2) of this AD. This may be accomplished by inserting a copy of this AD in the AFM.

(1) Remove the following from the wording under the existing title of ''Operation in Icing Conditions'':

''At the first sign of icing accretion anywhere on the airplane, proceed:

Windshield Heat Switches ..... ON

Leading Edge Deicers Switch ..... ON

Select HEAVY or LIGHT mode (1 or 3 minutes cycle), based on the pilot's judgement and evaluation of the severity of the ice encounter and rate of accretion.''

(2) Insert the following wording under the existing title of ''Operation in Icing Conditions'':

''At the first sign of icing accretion anywhere on the airplane or ICE CONDITION light illumination, whichever occurs first, proceed as follows:

If the icing condition low speed alarm is NOT installed:

Autopilot ..... DISENGAGE

Windshield Heat Switches ..... ON

Leading Edge Deicers Switch ..... ON (TIMER 1 or TIMER 2)

Inflation Cycle Switch (if installed) ..... HEAVY

If the icing condition low speed alarm IS installed:

Windshield Heat Switches ..... ON

Leading Edge Deicers Switch ..... ON (TIMER 1 or TIMER 2)

''WARNING: If large or frequent changes in longitudinal trim, and/or excessive performance degradation (identified by large increases in power required to maintain airspeed and altitude), immediately request priority handling from air traffic control to exit icing conditions.''

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*Master Minimum Equipment List (MMEL)*

(l) The dispatch relief conditions specified in paragraphs (l)(1) and (l)(2) of this AD are considered to be acceptable for continued operations if either the ice detection system or the low speed alarm system is inoperative:

(1) The airplane may be operated for a period of three days with the ice detection system inoperative, provided that, whenever operating in visible moisture at temperatures below 10 degrees C (50 degrees F):

(i) All ice protection systems are turned on (except leading edge deicing during takeoff), and

(ii) AFM limitations and normal procedures for operating in icing conditions are complied with.

(2) The airplane may be operated for a period of three days with the icing condition low speed alarm system inoperative, provided:

(i) It is not operated in known or forecast icing conditions, and

(ii) If icing conditions are inadvertently encountered, the autopilot must be disconnected and steps must be taken to exit icing conditions.

**Note 2:** Refer to MMEL/MEL system for complete dispatch requirements. Where a difference exists between this AD and the MMEL, the provisions of this AD prevail.

*Alternative Methods of Compliance*

(m) 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, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

*Special Flight Permits*

(n) 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*

(o) Except for the actions specified in paragraphs (a), (f), (g), (h), (i), (j), and (k) of this AD the actions shall be done in accordance with EMBRAER Service Bulletin 120–25–0258, dated May 14, 2001; EMBRAER Service Bulletin 120–30–0032, Change 01, dated June 13, 2001; EMBRAER Service Bulletin 120–25–0258, Change 01, dated August 30, 2001; EMBRAER Service Bulletin 120–30–0033, Change 01, dated September 6, 2001; and EMBRAER Service Bulletin 120–30–0033, Change 02, dated September 14, 2001; as applicable.

(1) The incorporation by reference of EMBRAER Service Bulletin 120–25–0258, Change 01, dated August 30, 2001; EMBRAER Service Bulletin 120–30–0033, Change 01, dated September 6, 2001; and EMBRAER Service Bulletin 120–30–0033, Change 02, dated September 14, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of EMBRAER Service Bulletin 120–25–0258, dated May 14, 2001; and EMBRAER Service Bulletin 120–30–0032, Change 01, dated June 13, 2001, was approved previously by the Director of the Federal Register as of July 12, 2001 (66 FR 34083, June 27, 2001).

(3) Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in Brazilian airworthiness directive 2001–05–02R1, effective date of September 30, 2001.

**Effective Date**

(p) This amendment becomes effective on October 22, 2001.

Issued in Renton, Washington, on October 3, 2001.

**Charles Huber,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

FR Doc. 01–25395 Filed 10–11–01; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Part 1904

**[Docket No. R–02A]**

**RIN 1218–AC00**

## Occupational Injury and Illness Recording and Reporting Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) is delaying the effective date of three provisions of the Occupational Injury and Illness Recording and Reporting Requirements rule published January 19, 2001 (66 FR 5916–6135) and is establishing interim criteria for recording cases of work-related hearing loss. The provisions being delayed are §§ 1904.10(a) and (b), which specify recording criteria for cases involving occupational hearing loss, § 1904.12, which defines ''musculoskeletal disorder (MSD)'' and requires employers to check the MSD column on the OSHA Log if an employee experiences a work-related musculoskeletal disorder, and § 1904.29(b)(7)(vi), which states that MSDs are not considered privacy concern cases. The effective date of these provisions is delayed from January 1, 2002 until January 1, 2003. OSHA will continue to evaluate §§ 1904.10 and 1904.12 over the next year.

OSHA is also adding a new paragraph (c) to §1904.10, establishing criteria for recording cases of work-related hearing loss during calendar year 2002. Section 1904.10(c) codifies the enforcement policy in effect since 1991, under which employers must record work related shifts in hearing of an average of 25dB or more at 2000, 3000 and 4000 hertz in either ear.

**DATES:** The amendments in this rule will become effective on January 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Jim Maddux, Occupational Safety and Health Administration, U.S. Department of Labor, Directorate of Safety Standards Programs, Room N–3609, 200 Constitution Avenue, N.W., Washington, DC 20210. Telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In January, 2001 (66 FR 5916–6135), OSHA published revisions to its rule on recording and reporting occupational injuries and illnesses (29 CFR parts 1904 and 1952) to take effect on January 1, 2002. On July 3, 2001, the agency proposed to delay the effective date of Sections 1904.10 *Recording criteria for cases involving occupational hearing loss,* and 1904.12 *Recording criteria for cases involving work-related musculoskeletal disorders,* until January 1, 2003 (66 FR 35113–35115). In that notice, OSHA explained that, as a result of the regulatory review required by the Andrew Card memorandum (66 FR 7702), it was reconsidering the requirement in Section 1904.10 to record a case involving an occupational hearing loss averaging 10dB, or more. OSHA found that there were reasons to question the appropriateness of 10dB as the recording criterion, and asked for comment on other approaches and criteria, including recording losses averaging 15, 20 or 25dB. In view of the uncertainty concerning the appropriate criteria, OSHA preliminarily concluded that it should delay implementing the 10dB requirement for a year while it reconsidered the question. The proposal stated that if implementation of Section

1904.10 were delayed for a year, employers would continue to record hearing loss cases during that year using the 25dB criterion articulated in OSHA's 1991 enforcement policy (See 66 FR 35114–35115).

OSHA also stated that it was reconsidering the requirement in Section 1904.12 that employers check the MSD column on the OSHA Log for a case involving a ''musculoskelal disorder'' as defined in that Section. This action was taken in light of a the Secretary's decision to develop a comprehensive plan to address ergonomic hazards, and to schedule a series of forums to consider key issues relating to the plan, including the approach to defining an ergonomic injury. OSHA preliminarily found that it would be premature to define a musculoskeletal disorder for recordkeeping purposes before further progress has been made in developing the comprehensive ergonomics plan, and that a delay in the effective date of Section 1904.12 was therefore appropriate. 66 FR 35115. The Agency noted that the proposed delay would not affect the employer's obligation to record all injuries and illnesses, including musculoskeletal injuries and illnesses, that meet the criteria in Sections 1904.4–1904.7, regardless of whether a particular injury or illness would meet the definition of MSD found in Section 1904.12. *Id.*

The period for submission of comments on the proposed rule closed on September 4, 2001. After considering the views of interested parties, OSHA has determined that the effective date of Sections 1904.10(a) and 1904.12(a) and (b) should be delayed until January 1, 2003, and that a new paragraph (c) should be added to Section 1904.10 re-establishing a 25dB recording criterion for hearing loss cases for calendar year 2002.

## II. Summary and Explanation of Final Rule

### *A. Recording Occupational Hearing Loss Cases*

Section 1904.10 of the final recordkeeping rule requires employers to record, by checking the ''hearing loss'' column on the OSHA 300 Log, a case in which an employee's hearing test (audiogram) reveals that a Standard Threshold Shift (STS) in hearing acuity has occurred. An STS is defined as ''a change in hearing threshold, relative to the most recent audiogram for that employee, of an average of 10 decibels (dB) or more at 2000, 3000 and 4000 hertz in one or both ears.'' The recordkeeping rule itself does not require the employer to test employee's hearing. However, OSHA's occupational noise standard (29 CFR 1910.95), requires employers in general industry to conduct periodic audiometric testing of employees when employees' noise exposures are equal to, or exceed, an 8-hour time-weighted average of 85dB. If such testing reveals that an employee has sustained hearing loss equal to an STS, the employer must take protective measures, including requiring the use of hearing protectors, to prevent further hearing loss.

The old recordkeeping rule, which remains in effect until January 1, 2001, contained no specific threshold for recording hearing loss cases. In 1991, OSHA issued an enforcement policy on the criteria for recording hearing loss cases, to remain in effect until new criteria were established by rulemaking. The 1991 policy stated that OSHA would cite employers for failing to record work related shifts in hearing of an average of 25dB or more at 2000, 3000 and 4000 hertz in either ear. Subsequently, OSHA released interpretations stating that the employer could adjust the audiogram for aging using the tables in Appendix F of the Noise Standard, and that the employer was to use the employee's pre-employment audiogram as the baseline reference audiogram for determining a recordable hearing loss.

One of the major issues in the recordkeeping rulemaking was to determine the level of occupational hearing loss that constitutes a health condition serious enough to warrant recording. This was necessary because the final rule no longer requires recording of minor or insignificant health conditions. See, *e.g.,* 66 FR 5931. OSHA proposed a requirement to record hearing loss averaging 15dB at 2000, 3000 and 4000 hertz in one or both ears. OSHA adopted the lower 10dB threshold in the final rule based in large part upon comments submitted by the Coalition to Preserve OSHA and NIOSH and Protect Workers' Hearing, asserting that ''[a]n age-corrected STS is a large hearing change that can affect communicative competence.'' 66 FR 6008.

In its July 3 proposal to delay implementation of Section 1904.10, OSHA expressed reservations about whether 10dB is the appropriate threshold for recording hearing loss. The agency acknowledged that there is evidence that an STS may not be a serious health problem, particularly for employees who have not previously sustained hearing loss, and that a 10dB shift may not be a reliable criterion for recording purposes because of normal variations in audiometric measurement (66 FR 35114). For these and other reasons, OSHA reopened the record to permit consideration of additional evidence and to explore alternative approaches (*Id.*).

Most commenters supported the proposed delay in implementation of Section 1940.10 (see, *e.g.,* Exs. 3–1, 3–6, 3–14, 3–22, 3–25, 3–26, 3–29, 3–34, 3–49, 3–50, 3–54). The view expressed by Organization Resources Counselors, Inc. is representative. ORC (Ex. 3–49, p. 3) argued:

> [T]he finding of a Standard Threshold Shift (STS) [is][ a 'flag' for the implementation of a series of actions required by the OSHA standard on exposure to occupational noise. It was not intended, by itself, to be an indicator of illness, or impairment, but, rather, a sentinel event that triggers a series of actions that will prevent illness or impairment from occurring. As such a tool, it has been an effective protector of employee hearing, but does not, by itself, rise to the level of recordability. See also, e.g., Ex. 3–54 (American Iron and Steel Institute), Ex. 3–50 (National Association of Manufacturers and Can Manufacturers Institute).

Several commenters opposed the delay, with most citing the protective purposes served by recordkeeping requirements (see, e.g., Exs. 3–3, 3–4, 3–8, 3–9, 3–10, 3–11, 3–12, 3–17, 3–31). In a representative comment, the AFL–CIO argued that the requirement to record a 10dB hearing loss on the Log would aid in the early detection and prevention of occupational hearing loss. It stated (Ex. 3–24–1, p.3) that,

> [r]ecording a 10 dB STS on Form 300 is a practical and reasonable means to assist in the early detection of a loss in hearing so that workplace intervention measures can be implemented to protect workers from the hazards of noise. Having employers continue to record shifts in hearing of an average of 25 dB * * * is too high a threshold of loss in hearing acuity to be sufficiently proactive in preventing worker hearing loss.

OSHA is not persuaded by this argument. As the AFL–CIO concedes (Ex. 3–24–1, p.6), Congress intended the recordkeeping system to capture non-minor injuries and illnesses. OSHA is reconsidering the finding that a 10dB shift in hearing acuity represents such a health condition, and intends to resolve this issue based on all the available evidence. In the meantime, there is sufficient question concerning the appropriateness of 10dB as a recording threshold to justify a limited delay in implementing Section 1904.10(a) and (b).

Delaying implementation of the 10dB threshold for a year while OSHA reconsiders the criteria for recording hearing loss cases will not deprive employers and employees of

information about noise hazards. The occupational noise exposure standard requires that employees in general industry be tested for hearing loss when noise exposure exceeds an 8-hour time-weighted average of 85dB, and that employees be informed, in writing, if a 10dB shift has occurred. The audiometric test records must be retained for the duration of the affected employee's employment. See 29 CFR 1910.95 (g), (m). The noise standard also specifies the protective measures to be taken to prevent further hearing loss for employees who have experience a 10dB shift, including the use of hearing protectors and referral for audiological evaluation where appropriate. See 29 CFR 1910.95 (g)(8). These requirements, which apply without regard to the recording criteria in the recordkeeping rule, will protect workers against the hazards of noise. The one-year delay in implementing Section 1904.10(a) and (b) will therefore not deprive employers and workers of the means to detect and prevent hearing loss.

Several commenters supported a requirement to record a hearing loss averaging 25 dB or more while OSHA reconsidered the 10dB criterion (see, *e.g.,* Exs. 3–49, 3–54), The American Iron and Steel Institute (AISI) argued that the 25dB criterion should be included in the regulatory text to avoid any confusion about employers' compliance responsibilities during calendar year 2002. OSHA agrees with AISI on this point, and has added a new paragraph (c) to Section 1904.10 specifying the criteria to be used for the 2002 recording year. The AISI also recommended that OSHA continue its policy of allowing employers to correct employee's audiograms for aging (presbycusis) using the age correction tables in the occupational noise standard (Ex. 3–54). Since this was OSHA's policy in the past, the Agency has also included language to this effect in the new paragraph, 1904.10(c).

A few commenters urged OSHA to make sure that the State Plan States have the same recording criteria as federal OSHA (see, *e.g.,* Exs. 3–22, 3–49). When OSHA issues a final determination for the recording of occupational hearing loss for calendar years 2003 and beyond, the states will be required to have identical criteria. However, the purpose of this notice is to maintain the status quo regarding the recording of occupational hearing loss for the year 2002, while OSHA reconsiders what the appropriate recording criteria should be. Therefore, the State Plan States will be allowed to maintain their policies for the recording of hearing loss during 2002.

*B. Defining an MSD and Checking the MSD Column*

Section 1904.12 provides that if an employee experiences a recordable musculoskeletal disorder (MSD), the employer must record it on the OSHA Log and must check the MSD column. For recordkeeping purposes, the rule defines MSDs as disorders of the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs that are not caused by slips, trips, falls, motor vehicle accidents or other similar accidents (see Section 1904.12(b)(1)). The Section also explains that in determining whether an MSD is recordable, the employer must use the same criteria that apply to other injuries and illnesses. To be recordable, the disorder must be work related, must be a new case, and must meet one or more of the general recording criteria. Section 1904.12 states that ''[t]here are no special criteria for determining which musculoskeletal disorders to record,'' and refers the reader to other sections of the rule in which the basic recording criteria are found.

OSHA's purpose in including an MSD column on the Log was to gather data on ''musculoskeletal disorders'' as that term is defined in Section 1904.12. Two months after publication of the new recordkeeping rule, Congress disapproved OSHA's ergonomics standard under the Congressional Review Act (Pub. L. 107.5 Mar. 20, 2001). Following Congressional disapproval of the ergonomics standard, the Secretary announced that she intends to develop a comprehensive plan to address ergonomics hazards and scheduled a series of forums to consider basic issues related to ergonomics (66 FR 31694, 66 FR 33578). One of the key issues to be considered in connection with the Secretary's comprehensive plan is the approach to defining an ergonomic injury.

In the July proposal, OSHA preliminarily found that it would be premature to implement the new definition of MSD in Section 1904.12 before considering the views of business, labor and the public health community on the problem of ergonomic hazards. It also preliminarily found that it would create confusion and uncertainty to require employers to implement the new MSD definition while the Secretary was considering how to define an ergonomic injury under the comprehensive plan. 66 FR 35115. Many commenters supported the delay, citing reasons similar to those in the July 3 proposal (*see,* e.g., Exs. 3–1, 3–6, 3–14, 3–19, 3–20, 3–25, 3–26, 3–27, 3–29, 3–32, 3–35, 3–37, 3–38, 3–43, 3–44, 3–49, 3–50, 3–54, 3–59, 3–61). OSHA continues to believe a delay is justified for these reasons.

Several commenters opposed a delay in implementing the recordkeeping rule's definition of MSD and the requirement to check the MSD column (*see,* e.g., Exs. 3–3, 3–8, 3–9, 3–10, 3–11, 3–12, 3–17, 3–21, 3–24, 3–28, 3–31, 3–36, 3–40, 3–42, 3–52). In a representative comment, the AFL–CIO argued that delayed implementation of Section 1904.12 will make it more difficult for employers, workers and OSHA to address workplace ergonomic hazards, and will seriously undermine OSHA's ability to enforce the general duty clause for ergonomic hazards (*see* Ex. 3–24–1, pp. 15–22).

OSHA does not agree with this assessment. Employers are required to record all injuries and illnesses meeting the criteria established in Sections 1904.4 through 1904.7 of the recordkeeping rule regardless of whether a particular injury or illness meets the definition of MSD in Section 1904.12. Thus, the delay in implementing Section 1904.12 will not reduce the number of cases recorded or affect the narrative description of the injury or illness that must be provided for each case. Employers who use the Log and injury reports to discover ergonomic hazards will be able to continue to do so, relying on the description-of-injury information and other data to identify soft-tissued disorders in their workplaces (Ex. 3–24–1, p. 15). Employees will continue to have access to the information provided in the Log and, under the new rule, to the information in the part of the Incident Report explaining how the incident occurred. Employers and employees will be able to categorize this injury and illness information in any manner they find useful.

The delay need not lead to the elimination of useful statistical data on MSDs, as the AFL–CIO suggests (Ex. 3–24–1, p. 16). The definition of MSD in Section 1904.12 is a new one. The Secretary is currently considering approaches to defining ergonomic injuries in connection with her comprehensive plan, and it is premature to say, at this point, what definition would be appropriate to produce useful data. To require employers to implement a new definition of MSD while the agency is considering the issue in connection with the comprehensive ergonomics plan could create unnecessary confusion which would not, in OSHA's view, be balanced by improvements in the national statistics.

Finally, OSHA notes that the delay in the implementation of Section 1904.12 will have no effect on the Department's enforcement of the general duty clause. The definition of MSD in that section has never been in effect, and has not been a factor in enforcement of the clause. The sole effect of the delay is that employers need not use the definition to categorize cases on the OSHA Recordkeeping Log for calendar year 2002. This recordkeeping issue does not affect an employer's obligation under the general duty clause. The employer remains obligated to free its workplace from recognized hazards that are likely to cause serious physical harm.

OSHA is adding a note following the introduction to Section 1904.12 to inform employers of the policy that will be in effect during 2002. The note also informs the employer that, instead of checking the column on the 300 Log for musculoskeletal disorders (since this column is being removed from the log), the employer is to check the column for ''injury'' or ''all other illness,'' depending on the circumstances of the case.

In a related matter, paragraph 1904.29(b)(7)(vi) of the rule states that employers must consider an illness case to be a privacy concern case, and withhold the employee's name from the forms, if the employee independently and voluntarily requests that his or her name not be entered on the Log. The second sentence of the paragraph states that ''[m]usculoskeletal disorders (MSDs) are not considered privacy concern cases.'' OSHA will be unable to enforce this requirement during the period of time that the definition of MSD in the rule is delayed. Accordingly, OSHA is adding a note to section 1904.29(b)(7)(vi) stating that the first sentence of that section takes effect on January 1, 2002, and the second sentence takes effect on January 1, 2003.

*C. The 1904 Forms*

Consistent with the above decisions, OSHA will issue new recordkeeping forms that have been modified to remove the MSD and hearing loss columns from the OSHA 300 Log of Work-Related Injuries and Illnesses and the OSHA 300A Summary of Work-Related Injuries and Illnesses. The instructions accompanying the forms have also been modified to reflect the decisions for the 1904 requirements that will be in effect during calendar year 2002.

Employers may obtain copies of the forms from OSHA's Internet homepage at *www.osha.gov,* or by contacting the OSHA publications office at (202) 693–1888.

**Paperwork Reduction Act**

OSHA has submitted to OMB a request for approval of the information collection requirements of the final recordkeeping rule, including the effect on the rule's paperwork burden of the delay in implementation of Sections 1904.10 and 1904.12 until January 1, 2003, and the adoption of an interim 25dB recording criterion for hearing loss cases for calendar year 2002. OSHA will publish a subsequent Federal Register document when OMB takes further action on the information collection requirements in the recordkeeping rule.

**Regulatory Flexibility Certification**

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601), the Assistant Secretary certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The rule does not add any new requirements, but merely delays the effective date of two sections of the rule. The delay will not impose any additional costs on the regulated public.

**Executive Order**

This document has been deemed significant under Executive Order 12866 and has been reviewed by OMB.

**Authority**

This document was prepared under the direction of John Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under Section 8 of the Occupational Safety and Health Act (29 U.S.C. 657) and 5 U.S.C. 553.

**John Henshaw,**

*Assistant Secretary of Labor.*

29 CFR part 1904 is hereby amended as set forth below:

## PART 1904—[AMENDED]

1. The authority citation for 29 CFR part 1904 is revised to read as follows:

**Authority:** 29 U.S.C. 657, 658, 660, 666, 669, 673, Secretary of Labor's Order No. 3–2000 (65 FR 50017), and 5 U.S.C. 533.

2. Section 1904.10 of 29 CFR is amended by adding a note to the section, and by adding a new paragraph (c), to read as follows:

**§ 1904.10 Recording criteria for cases involving occupational hearing loss.**

* * * * *

(c) *Recording criteria for calendar year 2002.* From January 1, 2002 until December 31, 2002, you are required to record a work-related hearing loss averaging 25dB or more at 2000, 3000, and 4000 hertz in either ear on the OSHA 300 Log. You must use the employee's original baseline audiogram for comparison. You may make a correction for presbycusis (aging) by using the tables in Appendix F of 29 CFR 1910.95. The requirement of § 1904.37(b)(1) that States with OSHA-approved state plans must have the same requirements for determining which injuries and illnesses are recordable and how they are recorded shall not preclude the states from retaining their existing criteria with regard to this section during calendar year 2002.

**Note to § 1904.10:** Paragraphs (a) and (b) of this section are effective on January 1, 2003. Paragraph (c) of this section applies from January 1, 2002 until December 31, 2002.

3. Section 1904.12 is amended by adding a note to the section, to read as follows:

**§ 1904.12 Recording criteria for cases involving work-related musculoskeletal disorders.**

* * * * *

**Note to § 1904.12:** This section is effective January 1, 2003. From January 1, 2002 until December 31, 2002, you are required to record work-related injuries and illnesses involving muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs in accordance with the requirements applicable to any injury or illness under § 1904.5, § 1904.6, § 1904.7, and § 1904.29. For entry (M) on the OSHA 300 Log, you must check either the entry for ''injury'' or ''all other illneses.''

4. Section 1904.29(b)(7)(vi) is revised to read as follows:

**§ 1904.29 Forms.**

* * * * *

(6) * * *

(7) * * *

(vi) Other illnesses, if the employee independently and voluntarily requests that his or her name not be entered on the log. Musculoskeletal disorders (MSDs) are not considered privacy concern cases. (**Note:** The first sentence of this § 1904.29(b)(7)(vi) is effective on January 1, 2002. The second sentence is effective beginning on January 1, 2003.)

* * * * *

[FR Doc. 01–25552 Filed 10–10–01; 8:45 am]

BILLING CODE 4510–26–M

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

**[CGD09–01–132]**

**RIN 2115–AA97**

## Safety Zone; Lake St. Clair, Grosse Pointe Yacht Club, Grosse Pointe Shores, MI

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a 400-yard radius safety zone off of Harbor Seawall in Lake St. Clair for a fireworks display on October 13, 2001. This regulation is necessary to control vessel traffic within the immediate vicinity of the fireworks launch site and to ensure the safety of life and property during the event. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative.

**DATES:** This regulation is effective from 9 p.m. until 11 p.m. on October 13, 2001.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket [CGD09–01–132] and are available for inspection or copying at: U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave., Detroit, MI 48207, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** ENS Brandon Sullivan, U. S. Coast Guard Marine Safety Office Detroit, (313) 568–9558.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

### Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the locations of the launch platform will help ensure the safety of persons and property at this event and help minimize the associated risk.

The safety zone will encompass all waters surrounding the fireworks launch platform within a 400-yard radius of the fireworks barge with its center in approximate position 42°26′01″ N, 083°51′56″ W, off of Harbor Seawall. The geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol representative. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

### Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed this rule under that order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This determination is based on the minimal time (2 hours) that vessels will be restricted from the zone.

### Small Entities

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

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

This rule would affect the following entities, some of which might be small entities: the owners or operators of commercial vessels intending to transit or anchor in a portion of the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 9 p.m. until 11 p.m. the day of the event. Vessel traffic may pass safely around the safety zone. Before the effective period, we will issue maritime advisories widely available to users of the Detroit River by the Ninth Coast Guard District Local Notice to Mariners, and Marine Information Broadcasts. Facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### Assistance for Small Entities

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

Small businesses may send comments on the actions of federal employees who enforce, or otherwise determine compliance with, Federal regulations to

the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

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

**Federalism**

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Environment**

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

**Indian Tribal Governments**

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

**Energy Effects**

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary § 165.T09–105 is added to read as follows:

**§ 165.T09–105 Safety Zone; Lake St. Clair, Grosse Pointe Yacht Club, Gross Pointe Shores, MI.**

(a) *Location.* The safety zone will encompass all navigable waters of Lake St. Clair within a 400-yard radius of the fireworks barge being used as the launch platform with its center in approximate position 42°26′01″ N, 083°51′56″ W, off of Harbor Seawall. The geographic coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Effective times and date.* This section is effective from 9 p.m. until 11 p.m. (local time) on October 13, 2001. The designated on-scene Patrol Commander may be contacted via VHF Channel 16.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative.

Dated: October 1, 2001.

**P.G. Gerrity,**

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

[FR Doc. 01–25650 Filed 10–11–01; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

**[CGD09–01–138]**

**RIN 2115–AA97**

## Security Zone; Lake Michigan, Kewaunee, WI

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone encompassing the navigable waters of Western Lake Michigan, adjacent to the Kewaunee nuclear power plant. This security zone is necessary to prevent unauthorized access into this nuclear power plant facility. Entry into, transit through or anchoring within this security zone is prohibited unless authorized by the Captain of the Port Milwaukee or his designated on-scene representative.

**DATES:** This rule is effective from September 28, 2001 through June 15, 2002.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket CGD09–01–138 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207 between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LCDR Timothy Sickler, U.S. Coast Guard Marine Safety Office Milwaukee, (414) 747–7155.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

As authorized by 5 U.S.C. 553, we did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Following the catastrophic nature and extent of damage realized from the aircraft flown into the World Trade Center towers September 11, 2001, this rulemaking is urgently necessary to protect the national security interests of the United States against future potential terrorists strikes against public and governmental targets. A similar attack was conducted against the Pentagon on the same day. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to protect against the possible loss of life, injury, or damage to property.

**Background and Purpose**

A temporary security zone is necessary to ensure the security of the Kewaunee nuclear power plant as a result of the terrorist attacks on the United States on September 11, 2001. The security zone is described as follows: all navigable waters of Western Lake Michigan commencing from a point on the shoreline at 44°20.85′ N, 087°32.1′ W; then easterly to 44°20.85′ N, 087°31.4′ W; then southerly to 44°20.35′ N, 087°31.4′ W; then westerly to 44°20.35′ N, 087°32.1′ W; then northerly following the shoreline back to the point of origin. These coordinates are based upon North American Datum 1983 (NAD 83). Entry into, transit through or anchoring within this security zone is prohibited unless authorized by the Captain of the Port Milwaukee or his designated on-scene representative. The designated on-scene representative will be the Patrol Commander and may be contacted via VHF/FM Marine Channel 16.

**Regulatory Evaluation**

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). This is a temporary rule and vessels will be able to transit around the security zone. In addition, vessels may request permission from the Captain of the Port to transit through the security zone.

**Small Entities**

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

For the reasons set out in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

**Assistance for Small Entities**

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

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant

energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Environment**

The Coast Guard considered the environmental impact of this regulation and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, it is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary § 165.T09–109 is added to read as follows:

**§ 165.T09–109 Security Zone; Lake Michigan, Kewaunee, WI.**

(a) *Location.* The following area is a temporary security zone: all navigable waters of Western Lake Michigan bound by the following coordinates beginning from a point on the shoreline at 44°20.85′ N, 087°32.1′ W; then easterly to 44°20.85′ N, 087°31.4′ W; then southerly to 44°20.35′ N, 087°31.4′ W; then westerly to 44°20.35′ N, 087°32.1 W; then northerly following the shoreline back to the point of origin. These coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Effective period.* This section is effective from September 28, 2001 through June 15, 2002.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Milwaukee, or his designated on-scene representative. The designated on-scene representative will be the Patrol Commander. The Captain of the Port Milwaukee or the Patrol Commander may be contacted via VHF/FM Marine Channel 16.

Dated: September 28, 2001.

**M.R. DeVries,**

*Commander, Coast Guard, Captain of the Port Milwaukee.*

[FR Doc. 01–25750 Filed 10–11–01; 8:45 am]

BILLING CODE 4910–15–U

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

**[CGD09–01–136]**

**RIN 2115–AA97**

### Security Zone; Lake Erie, Toledo, OH

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone encompassing navigable water of Lake Erie near the Davis Besse nuclear power plant. This security zone is necessary to prevent damage to the nuclear power plant. Entry into, transit through or anchoring within this security zone is prohibited unless authorized by the Coast Guard Captain of the Port Toledo or the designated on scene representative.

**DATES:** This rule is effective from September 28, 2001 through June 15, 2002.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–01–136] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Toledo, 420 Madison Ave, Suite 700, Toledo, Ohio, 43604 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Herb Oertli, Chief of Port Operations, Marine Safety Office Toledo, Ohio, (419) 418–6050.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

As authorized by 5 U.S.C. 553, we did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule it effective less than 30 days after publication in the **Federal Register**. The Coast Guard had insufficient advance notice to publish an NPRM followed by a temporary final rule. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or damage to property.

**Background and Purpose**

A temporary security zone is necessary to ensure the security of Davis Besse nuclear power plant, as a result of the terrorist attacks on the United States on September 11, 2001. The security zone consists of all navigable waters of Lake Erie within a line beginning from position 41°36.8′ N, 083°06.2′ W; north to 41°37.7′ N, 083°06.0′ W; east to 41°36.6′ N, 083°03.7′ W; south to 41°35.8′ N, 083°04.0′ W; back to the beginning point. Entry into, transit through or anchoring within this security zone is prohibited unless authorized by the Coast Guard Captain of the Port Toledo or the designated on scene representative. The designated on scene representative will be the Patrol Commander and may be contacted via VHF Channel 16.

**Regulatory Evaluation**

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). This finding is based on the historical lack of vessel traffic during this time of year. Also, vessel traffic can pass safely around the security zone and vessels may request permission from the Captain of the Port Toledo to transit through the security zone.

**Small Entities**

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

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

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of Lake Erie.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can pass safely around the security zone and commercial vessels may request permission from the Captain of the Port Toledo to transit through the security zone.

**Assistance for Small Entities**

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

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

**Collection of Information**

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

**Federalism**

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

**Indian Tribal Governments**

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

**Energy Effects**

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary § 165.T09–136 is added as follows:

**§ 165.T09–136 Security Zone: Lake Erie, Toledo, Ohio.**

(a) *Location.* This security zone consists of all navigable waters of Lake Erie within a line beginning from position 41°36.8′ N, 083°06.2′ W; north to 41°37.7′ N, 083°06.0′ W; east to 41°36.6′ N, 083°03.7′ W; south to 41°35.8′ N, 083°04.0′ W; back to the beginning point. All geographic coordinated are North American Datum of 1983 (NAD 1983).

(b) *Effective period.* This section is effective from September 28, 2001 through June 15, 2002.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: September 28, 2001.

**David L. Scott,**

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

[FR Doc. 01–25651 Filed 10–11–01; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

**[CGD09–01–135]**

**RIN 2115–AA97**

### Security Zone; Lake Erie, Monroe, MI

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone

encompassing navigable water of Lake Erie in the vicinity of the Enrico Fermi nuclear power plant. This security zone is necessary to prevent damage to the nuclear power plant. Entry into, transit through or anchoring within this security zone is prohibited unless authorized by the Coast Guard Captain of the Port Toledo or the designated on scene representative.

**DATES:** This rule is effective from September 28, 2001 through June 15, 2002.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [CGD09–01–135] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Toledo, 420 Madison Ave, Suite 700, Toledo, Ohio, 43604 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Herb Oertli, Chief of Port Operations, Marine Safety Office, Toledo, Ohio, (419) 418–6050.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

As authorized by 5 U.S.C. 553, we did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard had insufficient advance notice to publish an NPRM followed by a temporary final rule. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or damage to property.

**Background and Purpose**

A temporary security zone is necessary to ensure the security of Enrico Fermi nuclear power plant, as a result of the terrorist attacks on the United States on September 11, 2001. The security zone consists of all navigable waters of Lake Erie within a line beginning from position 41°58.5′ N, 083°14.8′ W; southeast to 41°58.2′ N, 083°13.7′ W; south to 41°56.7′ N, 083°14.8′ W; west to 41°56.7′ N, 083°15.3′ W; back to the beginning point. Entry into, transit through or anchoring within this security zone is prohibited unless authorized by the Coast Guard Captain of the Port Toledo or the designated on scene representative. The designated on scene representative will be the Patrol Commander and may be contacted via VHF Channel 16.

**Regulatory Evaluation**

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). This finding is based on the historical lack of vessel traffic during this time of year. Also, vessels can pass safely around the security zone and vessels may request permission from the Captain of the Port Toledo to transit through the security zone.

**Small Entities**

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

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

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of Lake Erie.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can pass safely around the security zone and commercial vessels may request permission from the Captain of the Port Toledo to transit through the security zone.

**Assistance for Small Entities**

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

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

**Collection of Information**

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

**Federalism**

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

**Indian Tribal Governments**

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

**Energy Effects**

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary § 165.T09–135 is added as follows:

**§ 165.T09–135 Security zone: Lake Erie, Toledo, Ohio.**

(a) *Location.* This security zone consists of all navigable waters of Lake Erie within a line beginning from position 41°58.5′ N, 083°14.8′ W; southeast to 41°58.2′ N, 083°13.7′ W; south to 41°56.7′ N, 083°14.8′ W; west to 41°56.7′ N, 083°15.3′ W; back to the beginning point. All geographic coordinated are North American Datum of 1983 (NAD 1983).

(b) *Effective period.* This section is effective from September 28, 2001 through June 15, 2002.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: September 28, 2001.

**David L. Scott,**

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

[FR Doc. 01–25649 Filed 10–11–01; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[CGD09–01–137]**

**RIN 2115–AA97**

## Security Zone; Lake Michigan, Point Beach Nuclear Power Plant, WI

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone encompassing the navigable waters of Western Lake Michigan, adjacent to the Point Beach nuclear power plant. This security zone is necessary to prevent unauthorized access into this nuclear power plant facility. Entry into, transit through or anchoring within this security zone is prohibited unless authorized by the Captain of the Port Milwaukee or his designated on-scene representative.

**DATES:** This rule is effective from September 28, 2001, through June 15, 2002.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket CGD09–01–137 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207 between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LCDR Timothy Sickler, U.S. Coast Guard Marine Safety Office Milwaukee, (414) 747–7155.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

As authorized by 5 U.S.C. 553, we did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Following the catastrophic nature and extent of damage realized from the aircraft flown into the World Trade Center towers on September 11, 2001, this rulemaking is urgently necessary to protect the national security interests of the United States against future potential terrorists strikes against public and governmental targets. A similar attack was conducted against the Pentagon on the same day. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to protect against the possible loss of life, injury, or damage to property.

**Background and Purpose**

A temporary security zone is necessary to ensure the security of the Point Beach nuclear power plant as a result of the terrorist attacks on the United States on September 11, 2001. The security zone is described as follows: All navigable waters of Western Lake Michigan commencing from a point on the shoreline at 44°17.1′ N, 087°32.3′ W; then northeasterly to 44°17.4′ N, 087°31.6′ W; then southeasterly to 44°16.9′ N, 087°31.3′ W; then southwesterly to 44°16.7′ N, 087°32.0′ W; then northwesterly along the shoreline back to the point of origin. These coordinates are based upon North American Datum 1983 (NAD 83). Entry into, transit through or anchoring within this security zone is prohibited unless authorized by the Captain of the Port Milwaukee or his designated on-scene representative. The designated on-scene representative will be the Patrol Commander and may be contacted via VHF/FM Marine Channel 16.

**Regulatory Evaluation**

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

regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

This is a temporary rule encompassing winter months. During periods when the waters in this area are not frozen, vessels will be able to transit around the security zone. In addition, vessels may request permission from the Captain of the Port to transit through the security zone.

**Small Entities**

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

For reasons stated in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

**Assistance for Small Entities**

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

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Environment**

The Coast Guard considered the environmental impact of this regulation and concluded that, under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, it is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary § 165.T09–110 is added to read as follows:

**§ 165.T09–110 Security Zone; Lake Michigan, Point Beach Nuclear Power Plant, WI.**

(a) *Location.* The following area is a temporary security zone: all navigable waters of Western Lake Michigan bound by the following coordinates beginning on the shoreline at 44°17.1′ N, 087°32.3′ W; then northeasterly to 44°17.4′ N, 087°31.6′ W; then southeasterly to 44°16.9′ N, 087°31.3′ W; then southwesterly to 44°16.7′ N, 087°32.0′ W; then northwesterly along the shoreline back to the point of origin. These coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Effective time and date.* This section is effective from September 28, 2001 through June 15, 2002.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of

this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Milwaukee, or the designated on-scene representative. The Captain of the Port Milwaukee or the designated on-scene representative may be contacted on VHF–FM Channel 16. The designated on-scene representative will be the Patrol Commander.

Dated: September 28, 2001.

**M. R. DeVries,**

*Commander, U.S. Coast Guard, Captain of the Port Milwaukee.*

[FR Doc. 01–25751 Filed 10–11–01; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[CGD09–01–130]**

**RIN 2115–AA97**

## Security Zone; Lake Erie, Perry, Ohio

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone in the Captain of the Port Cleveland zone for the Perry Nuclear Power Plant. This security zone is necessary to protect this nuclear power plant from possible sabotage or other subversive acts, accidents, or possible acts of terrorism. Entry into, transit through or anchoring within this security zone on Lake Erie is prohibited unless authorized by the Captain of the Port Cleveland or his designated on-scene representative.

**DATES:** This rule is effective from October 1, 2001 through June 15, 2002.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket CGD09–01–130 and are available for inspection or copying at U.S. Coast Guard Marine Safety Cleveland, 1055 East Ninth Street, Cleveland, Ohio 44126 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Allen Turner, U.S. Coast Guard Marine Safety Office Cleveland, (216) 937–0111.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

As authorized by 5 U.S.C. 553, we did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Following the catastrophic nature and extent of damage realized from the aircraft flown into the World Trade Center towers on September 11, 2001, this rulemaking is urgently necessary to protect the national security interests of the United States against future potential terrorists strikes against public and governmental targets. A similar attack was conducted against the Pentagon on the same day. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to protect against the possible loss of life, injury, or damage to property.

### Background and Purpose

A temporary security zone is necessary to ensure the security of the Perry nuclear power plant, as a result of the terrorist attacks on the United States on September 11, 2001. The security zone consists of all navigable waters of Lake Erie bound by a line beginning at a point 41°48′6″ N, 081°09′6″ W; thence due north to 41°48′36″ N, 081°09′6″ W; thence due east to 41°49′0″ N, 081°07′54″ W; thence due south to the south shore of Lake Erie at 41°48′36″ N, 081°07′54″ W; and thence westerly along south shore back to the beginning. These coordinates are based upon North American Datum 1983 (NAD 83). Entry into, transit through or anchoring within this security zone is prohibited unless authorized by the Captain of the Port Cleveland or his designated on-scene representative. The designated on-scene representative will be the Patrol Commander and may be contacted via VHF/FM Marine Channel 16.

### Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). This is a temporary rule and vessels will be able to transit around the security zone. In addition, vessels may request permission from the Captain of the Port to transit through the security zone.

### Small Entities

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

For reasons stated in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

### Assistance for Small Entities

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

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

### Collection of Information

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

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have

determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Environment**

The Coast Guard considered the environmental impact of this regulation and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, it is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary § 165.T09–111 is added to read as follows:

**§ 165.T09–111 Security Zone; Lake Erie, Perry, OH.**

(a) *Location.* The following area is a temporary security zone: all navigable waters of Lake Erie bound by a line beginning at a point 41°48′6″ N, 081°09′6″ W; thence due north to 41°48′36″ N, 081°09′6″ W; thence due east to 41°49′0″ N, 081°07′54″ W; thence due south to the south shore of Lake Erie at 41°48′36″ N, 081°07′54″ W; and thence westerly along south shore back to the beginning (NAD 83).

(b) *Effective period.* This section is effective from October 1, 2001 through June 15, 2002.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Cleveland, or the designated on-scene representative. The designated on-scene representative will be the Patrol Commander on may be contacted on VHF–FM Channel 16.

Dated: October 1, 2001.

**R. J. Perry,**

*Commander, U.S. Coast Guard Captain of the Port Cleveland.*

[FR Doc. 01–25752 Filed 10–11–01; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[PA–4172; FRL–7079–9]**

### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and $NO_X$ RACT Determinations for Eight Individual Sources in the Pittsburgh-Beaver Valley Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for eight major sources of volatile organic compounds (VOC) and nitrogen oxides ($NO_X$). These sources are located in the Pittsburgh-Beaver Valley ozone nonattainment area (the Pittsburgh area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

**EFFECTIVE DATE:** This final rule is effective on October 29, 2001.

**ADDRESSES:** 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:** Marcia L. Spink (215) 814–2104 or by e-mail at *spink.marcia@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On December 8, 1995, July 1, 1997, and April 19, 2001, PADEP submitted revisions to the Pennsylvania SIP which

establish and impose RACT for several sources of VOC and/or $NO_X$. This rulemaking pertains to eight of those sources. The remaining sources are or have been the subject of separate rulemakings. The Commonwealth's submittals consist of operating permits, enforcement orders and consent orders which impose VOC and/or $NO_X$ RACT requirements for each source. These eight sources are all located in the Pittsburgh area and consist of: Ashland Petroleum Company; BP Exploration & Oil, Inc.; Gulf Oil, L.P.; Penreco; Bellefield Boiler Plant; PA Dept. of Corrections; Pittsburgh Allegheny County Thermal; and Pittsburgh Thermal Limited Partnership.

On August 21, 2001, EPA published a direct final rule (66 FR 43783) and a companion notice of proposed rulemaking (66 FR 43822) to approve these SIP revisions. On September 7, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On September 27, 2001 (66 FR 49293), we published a timely withdrawal in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our August 21, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 43822). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the August 21, 2001 direct final rule and will not be restated here. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA's responses are provided in Section II of this document.

**II. Public Comments and Responses**

The Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on twenty proposed rules published by EPA in the **Federal Register** between August 6 and August 24, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for $NO_X$ and or VOC sources located in the Pittsburgh area. PennFuture's letter includes general comments and comments specific to EPA's proposals for certain sources. A summary of those comments and EPA's responses are provided below.

*A. Comment:* PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of $NO_X$ and VOC controlled. In citing the definition of the term ''RACT,'' and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas,* 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

*Response:* On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of* $NO_X$ and VOCs, requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.92, that proposal is to include, among other information: (1) A list of each subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by-case RACT determinations by the DEP. Rather, EPA stated that ''* * * RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources.''

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and $NO_X$ RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and $NO_X$ RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and $NO_X$ RACT regulations retained a limited approval status. On August 24, 2001 (66 FR 44578), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Pittsburgh area. EPA received no public comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Pittsburgh-Beaver area *or* (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the

case-by-case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt*).

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for only three sources located in the Pittsburgh area, namely for Duquesne Light's Elrama, Phillips and Brunot Island stations. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

*B. Comment:* PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour ''are some of the largest $NO_X$ emitting sources in the Commonwealth and in the Northeast United States'' [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by case RACT submissions, EPA has not demonstrated that these large boilers are subject to ''numeric emission limitations'' under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

*Response:* Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Pittsburgh area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Pittsburgh area.

*C. Comment:* PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories.

*Response:* EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, ''Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options' (September 1993) and ''Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options'' (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations. The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for ''major sources of VOC,'' located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered

by a CTG. One provides that states must adopt RACT for ''any category of VOC sources'' covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all ''VOC sources'' covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of ''source category'' in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account.

As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

*D. Comment:* PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the ''automatic'' selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a $NO_X$ RACT Guidance Document for implementation of its $NO_X$ RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish ''bright line'' or ''cook-book'' approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its ''Guidance Document on Reasonably Available Control Technology for Sources of $NO_X$ Emissions,'' March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to ''all source categories.'' PennFuture notes that EPA later objected to the $1500 per ton methodology as ''not generically acceptable to EPA'' [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** notice that a ''dollar per ton threshold'' is ''inconsistent with the definition of RACT'' [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. The commenter states that PennFuture's review of several of the current DEP evaluations indicate that the Commonwealth applied this standard and provides the examples of Duquesne Light'Elrama (auxiliary boiler); Allegheny Ludlum—Washington (formerly Jessop Steel). PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other ''bright line'' approach, as failing to follow EPA procedures established for Pennsylvania RACT.

*Response:* EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly indicates that the Commonwealth's document, ''Guidance Document on Reasonably Available Control Technology for Sources of $NO_X$ Emissions.'' March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced $NO_X$ emissions from 254.7 tons per year to 115 tons per year (by 55%) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced $NO_X$ emissions from 254.7 tons per year to 76 tons per year (by 69%) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton ''Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an ''automatic'' rejection of a control technology as RACT for a source.''

In no instance, including that for Duquesne Light—Elrama (auxiliary boiler) and Allegheny Ludlum—Washington (formerly Jessop Steel), has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely

on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

*E. Comment:* PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of $NO_X$-reducing rules, including the recent Chapter 145 rule, to reduce $NO_X$ at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

*Response:* EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

*F. Comment:* PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania Power—Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

*Response:* Title IV of the Act, addressing the acid rain program, contains $NO_X$ emission requirements for utilities which must be met *in addition* to any RACT requirements (see $NO_X$ Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the $NO_X$ RACT determination for PPNC [63 FR at 23669], that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that ''Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT.'' [62 FR at 43961]. EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other $NO_X$ control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in $NO_X$ control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

## III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or $NO_X$ RACT for eight major of sources located in the Pittsburgh area. EPA is approving these SIP revisions because ACHD and PADEP established and imposed these RACT requirements in accordance with the criteria set forth in its SIP-approved RACT regulations applicable to these sources. The Commonwealth has also imposed record-keeping, monitoring, and testing requirements on these sufficient to determine compliance with the applicable RACT determinations.

## 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 also not

subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

*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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for eight named sources.

*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 December 11, 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 approving the Commonwealth's source-specific RACT requirements to control VOC and or $NO_X$ from eight individual sources in the Pittsburgh-Beaver Valley area of Pennsylvania 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 3, 2001.

**Thomas C. Voltaggio,**

*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)(177) to read as follows:

**§ 52.2020 Identification of plan.**

* * * * *

(c) * * *

(177) Revisions pertaining to the Chapter 129 for VOC and $NO_X$ RACT for sources located in the Pittsburgh-Beaver Valley nonattainment area, submitted by the Pennsylvania Department of Environmental Protection on December 8, 1995, July 1, 1997, and April 19, 2001.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or $NO_X$ RACT determinations, in the form of operating permits, enforcement orders, and consent orders on the following dates: December 8, 1995, July 1, 1997, and April 19, 2001.

(B) Operating Permits (OP), Enforcement Orders (EO), and Consent Orders (CO) issued to the following sources:

(*1*) Penreco, OP 10–027, effective May 31, 1995.

(*2*) Ashland Petroleum Company, CO 256, effective December 19, 1996, except for condition 2.9.

(*3*) Bellefield Boiler Plant, EO 248, effective December 19, 1996.

(*4*) Gulf Oil L. P., CO 250, effective December 19, 1996, except for condition 2.5.

(*5*) PA Dept. of Corrections, EO 244, effective January 23, 1997.

(*6*) Pittsburgh Thermal Limited Partnership, CO 220, effective March 4, 1996, except for condition 2.5.

(*7*) BP Exploration & Oil, Inc., Greensburg Terminal, OP 65–000–378, effective March 23, 2001.

(*8*) Pittsburgh Allegheny County Thermal, Ltd., CO 265, effective November 9, 1998, except for condition 2.5.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT

determinations for the sources listed in paragraph (c)(177)(i)(B) of this section.

[FR Doc. 01–25575 Filed 10–11–01; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[PA–4163; FRL–7079–7]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and $NO_X$ RACT Determinations for Five Individual Sources in the Pittsburgh-Beaver Valley Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for five major sources of volatile organic compounds (VOC) and nitrogen oxides ($NO_X$). These sources are located in the Pittsburgh-Beaver Valley ozone nonattainment area (the Pittsburgh area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

**EFFECTIVE DATE:** This final rule is effective on October 29, 2001.

**ADDRESSES:** 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:** Marcia Spink, (215) 814–2104 or by e-mail at *spink.marcia@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On July 1, 1997 and April 19, 2001, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several major sources of VOC and/or $NO_X$. This rulemaking pertains to five of those sources. The remaining sources are or have been the subject of separate rulemakings. The Commonwealth's submittals consist of plan approval and agreement upon consent orders (COs) and enforcement orders (EOs) issued by the Allegheny County Health Department (ACHD). These five sources are located in the Pittsburgh area and consist of Pruett Schaffer, Chemical Company; PPG Industries, Inc.; Reichhold Chemicals, Inc.; Reichhold Chemicals, Inc.; and Valspar Corporation.

On August 10, 2001, EPA published a direct final rule (66 FR 42123) and a companion notice of proposed rulemaking (66 FR 42172) to approve these SIP revisions. On September 7, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On September 26, 2001 (66 FR 49108), we published a timely withdrawal in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our August 21, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 42172). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the August 10, 2001 direct final rule and will not be restated here. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA's responses are provided in Section II of this document.

### II. Public Comments and Responses

The Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on twenty proposed rules published by EPA in the **Federal Register** between August 6 and August 24, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for $NO_X$ and or VOC sources located in the Pittsburgh area. PennFuture's letter includes general comments and comments specific to EPA's proposals for certain sources. A summary of those comments and EPA's responses are provided below.

*A. Comment:* PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of $NO_X$ and VOC controlled. In citing the definition of the term ''RACT,'' and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas,* 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

*Response:* On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of $NO_X$ and VOCs,* requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.92, that proposal is to include, among other information: (1) A list of each subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited

approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by-case RACT determinations by the DEP. Rather, EPA stated that ''RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources.''

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and $NO_X$ RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and $NO_X$ RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and $NO_X$ RACT regulations retained a limited approval status. On August 24, 2001 (66 FR 44578), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Pittsburgh area. EPA received no public comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Pittsburgh-Beaver area *or* (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by-case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt*).

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for only three sources located in the Pittsburgh area, namely for Duquesne Light's Elrama, Phillips and Brunot Island stations. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

*B. Comment:* PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour ''are some of the largest $NO_X$ emitting sources in the Commonwealth and in the Northeast United States'' [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by case RACT submissions, EPA has not demonstrated that these large boilers are subject to ''numeric emission limitations'' under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

*Response:* Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Pittsburgh area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Pittsburgh area.

*C. Comment:* PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories.

*Response:* EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, ''Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options'' (September 1993) and ''Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options'' (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations. The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for ''major sources of VOC,'' located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for ''any category of VOC sources'' covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all ''VOC sources'' covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of ''source category'' in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account.

As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

*D. Comment:* PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the ''automatic'' selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a $NO_X$ RACT Guidance Document for implementation of its $NO_X$ RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish ''bright line'' or ''cook-book'' approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its ''Guidance Document on Reasonably Available Control Technology for Sources of $NO_X$ Emissions,'' March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to ''all source categories.'' PennFuture notes that EPA later objected to the $1500 per ton methodology as ''not generically acceptable to EPA'' [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** notice that a ''dollar per ton threshold'' is ''inconsistent with the definition of RACT'' [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. The commenter states that PennFuture's review of several of the current DEP evaluations indicate that the Commonwealth applied this standard and provides the examples of Duquesne Light—Elrama (auxiliary boiler); Allegheny Ludlum—Washington (formerly Jessop Steel). PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other ''bright line'' approach, as failing to follow EPA procedures established for Pennsylvania RACT.

*Response:* EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly indicates that the Commonwealth's document, ''Guidance Document on Reasonably Available Control Technology for Sources of $NO_X$ Emissions.'' March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had

not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced $NO_X$ emissions from 254.7 tons per year to 115 tons per year (by 55%) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced $NO_X$ emissions from 254.7 tons per year to 76 tons per year (by 69%) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton ''Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an ''automatic'' rejection of a control technology as RACT for a source.''

In no instance, including that for Duquesne Light—Elrama (auxiliary boiler) and Allegheny Ludlum—Washington (formerly Jessop Steel), has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

*E. Comment:* PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of $NO_X$-reducing rules, including the recent Chapter 145 rule, to reduce $NO_X$ at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

*Response:* EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

*F. Comment:* PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania Power—Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

*Response:* Title IV of the Act, addressing the acid rain program, contains $NO_X$ emission requirements for utilities which must be met *in addition to* any RACT requirements (see $NO_X$ Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the $NO_X$ RACT determination for PPNC [63 FR at 23669], that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that ''Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT.'' [62 FR at 43961]. EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other $NO_X$ control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in $NO_X$ control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

## II. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and $NO_X$ RACT for five major sources located in the Pittsburgh area. EPA is approving these RACT SIP submittals because ACHD and PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The ACHD and PADEP have also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

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

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

### *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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for five named sources.

### *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 December 11, 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 approving the Commonwealth's source-specific RACT requirements to control VOC and $NO_X$ from five individual sources in the Pittsburgh-Beaver Valley ozone nonattainment area of Pennsylvania 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 3, 2001.

**Thomas C. Voltaggio,**

*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)(165) to read as follows:

**§ 52.2020 Identification of plan.**

* * * * *

(c) * * *

(165) Revisions pertaining to VOC and $NO_X$ RACT for major sources, located in the Pittsburgh-Beaver Valley ozone nonattainment area, submitted by the Pennsylvania Department of Environmental Protection on July 1, 1997 and April 19, 2001.

(i) Incorporation by reference.

(A) Letters dated July 1, 1997 and April 19, 2001, submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and $NO_X$ RACT determinations.

(B) Plan Approval and Agreement Upon Consent Orders (COs) and an Enforcement Order (EO) for the following sources:

(*1*) Pruett Schaffer Chemical Company, CO 266, effective September 2, 1998, except for condition 2.5.

(*2*) PPG Industries, Inc., CO 254, effective December 19, 1996, except for condition 2.5.

(*3*) Reichhold Chemicals, Inc., CO 218, effective December 19, 1996, except for condition 2.5.

(*4*) Reichhold Chemicals, Inc., CO 219, effective February 21, 1996, except for condition 2.5.

(*5*) Valspar Corporation, EO 209, effective March 8, 1996, except for condition 2.5.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations submitted for the sources listed in paragraph (c)(165)(i)(B) of this section.

[FR Doc. 01–25574 Filed 10–11–01; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[PA–4162; FRL–7080–6]**

### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and $NO_X$ RACT Determinations for Eight Individual Sources in the Pittsburgh-Beaver Valley Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for eight major sources of volatile organic compounds (VOC) and nitrogen oxides ($NO_X$). These sources are located in the Pittsburgh-Beaver Valley ozone nonattainment area (the Pittsburgh area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

**EFFECTIVE DATE:** This final rule is effective on October 29, 2001.

**ADDRESSES:** 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:** Marcia L. Spink (215) 814–2104 or by e-mail at *spink.marcia@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On August 1, 1995, December 8, 1995, April 16, 1996, July 1, 1997, July 2, 1997, January 21, 1997, and February 2, 1999, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several major sources of VOC and/or $NO_X$. This rulemaking pertains to eight of those sources. The RACT determinations for the other sources are, or have been, the subject of separate rulemakings. The Commonwealth's submittals consist of Operating Permits (OP) issued by PADEP, and an Enforcement Order (EO) issued by the Allegheny County Health Department (ACHD). These OPs, and EOs impose VOC and/or $NO_X$ RACT requirements for each source. These sources are all located in the Pittsburgh area and consist of: Consolidated Natural Gas Transmission Corporation—South Oakford Station; Consolidated Natural Gas Transmission Corporation—Tonkin Station; Carnegie Natural Gas Company—Creighton Station; Consolidated Natural Gas Transmission Corporation—Beaver Station; Consolidated Natural Gas Transmission Corporation—Jeannette Station; Consolidated Natural Gas Transmission Corporation—South Bend Station; Consolidated Natural Gas Transmission Corporation—Oakford Station; and Texas Eastern Transmission Corporation—Uniontown Station.

On August 13, 2001, EPA published a direct final rule (66 FR 42418) and a companion notice of proposed rulemaking (66 FR 42487) to approve these SIP revisions. On September 7, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On September 24, 2001 (66 FR 48806), we published a timely withdrawal in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our August 13, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 42487). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the August 13, 2001 direct final rule and will not be restated here. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA's responses are provided in Section II of this document.

### II. Public Comments and Responses

The Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on twenty proposed rules published by EPA in the **Federal Register** between August 6 and August 24, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for $NO_X$ and or VOC sources located in the Pittsburgh area. PennFuture's letter includes general comments and comments specific to EPA's proposals for certain sources. A summary of those comments and EPA's responses are provided below.

A. *Comment:* PennFuture comments that EPA has conducted no independent

technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of $NO_X$ and VOC controlled. In citing the definition of the term ''RACT,'' and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas*, 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

*Response:* On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of* $NO_X$ *and VOCs,* requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements*. Under subsection 129.92, that proposal is to include, among other information: (1) A list each of subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by case RACT determinations by the DEP. Rather, EPA stated that '' * * *RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources.''

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and $NO_X$ RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and $NO_X$ RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and $NO_X$ RACT regulations retained a limited approval status. On August 24, 2001 (66 FR 44578), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Pittsburgh area. EPA received no public comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Pittsburgh-Beaver area *or* (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt*).

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for only three sources located in the Pittsburgh area, namely for Duquesne Light's Elrama, Phillips and Brunot Island stations. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

*B. Comment:* PennFuture comments that when EPA reviewed Pennsylvania's

RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour ''are some of the largest $NO_X$ emitting sources in the Commonwealth and in the Northeast United States' [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by case RACT submissions, EPA has not demonstrated that these large boilers are subject to ''numeric emission limitations'' under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

*Response:* Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Pittsburgh area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Pittsburgh area.

*C. Comment:* PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories.

*Response:* EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, ''Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options'' (September 1993) and ''Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options'' (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations. The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for ''major sources of VOC,'' located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for ''any category of VOC sources'' covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)].

The other provides that states must adopt VOC RACT for all ''VOC sources'' covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of ''source category'' in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account.

As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

*D. Comment:* PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the ''automatic'' selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a $NO_X$ RACT Guidance Document for implementation of its $NO_X$ RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish ''bright line'' or ''cook-book'' approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its ''Guidance Document on Reasonably Available Control Technology for Sources of $NO_X$ Emissions,'' March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to ''all source categories.'' PennFuture notes that EPA later objected to the $1500 per ton methodology as ''not generically acceptable to EPA'' [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** notice that a ''dollar per ton threshold'' is ''inconsistent with the definition of RACT'' [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. The commenter states that PennFuture's review of several of the current DEP evaluations indicate that the Commonwealth applied this standard and provides the examples of Duquesne Light—Elrama (auxiliary boiler); Allegheny Ludlum—Washington (formerly Jessop Steel). PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other ''bright line'' approach, as failing to follow EPA procedures established for Pennsylvania RACT.

*Response:* EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly indicates that the Commonwealth's document, ''Guidance Document on Reasonably Available Control Technology for Sources of $NO_X$ Emissions.'' March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced $NO_X$ emissions from 254.7 tons per year to 115 tons per year (by 55%) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced $NO_X$ emissions from 254.7 tons per year to 76 tons per year (by 69%) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton ''Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an 'automatic' rejection of a control technology as RACT for a source.''

In no instance, including that for Duquesne Light—Elrama (auxiliary boiler) and Allegheny Ludlum—Washington (formerly Jessop Steel), has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

*E. Comment:* PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of $NO_X$-reducing rules, including the recent Chapter 145 rule, to reduce $NO_X$ at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not

approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

*Response:* EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

*F. Comment:* PennFuture comments that as in the case with Pennsylvania Power-Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania Power-Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

*Response:* Title IV of the Act, addressing the acid rain program, contains $NO_X$ emission requirements for utilities which must be met *in addition to* any RACT requirements (see $NO_X$ Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the $NO_X$ RACT determination for PPNC [63 FR at 23669], that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'-Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that ''Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT.'' [62 FR at 43961]. EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other $NO_X$ control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in $NO_X$ control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

## III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and $NO_X$ RACT for eight major of sources located in the Pittsburgh area. EPA is approving these RACT SIP submittals because the ACHD and PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The ACHD and PADEP have also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

## 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 also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS),

EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for eight named sources.

*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 December 11, 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 approving the Commonwealth's source-specific RACT requirements to control VOC and $NO_X$ from eight individual gas compressor stations in the Pittsburgh area 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 3, 2001.

**Thomas C. Voltaggio,**

*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)(164) to read as follows:

**§ 52.2020 Identification of plan.**

* * * * *

(c) * * *

(164) Revisions to the Pennsylvania Regulations, Chapter 129 pertaining to VOC and $NO_X$ RACT, submitted by the Pennsylvania Department of Environmental Protection on August 1, 1995, December 8, 1995, April 16, 1996, July 1, 1997, July 2, 1997, January 21, 1997, and February 2, 1999.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of Environmental Protection dated August 1, 1995, December 8, 1995, April 16, 1996, July 1, 1997, July 2, 1997, January 21, 1997, and February 2, 1999, transmitting source-specific RACT determinations.

(B) The following companies' Operating Permits (OP) or Enforcement Order (EO):

(*1*) Consolidated Natural Gas Transmission Corporation, Beaver Station, OP 04–000–490, effective June 23, 1995.

(*2*) Consolidated Natural Gas Transmission Corporation, Oakford Station, OP 65–000–837, effective October 13, 1995.

(*3*) Consolidated Natural Gas Transmission Corporation, South Oakford Station, OP 65–000–840, effective October 13, 1995.

(*4*) Consolidated Natural Gas Transmission Corporation, Tonkin Station, OP 65–000–634, effective October 13, 1995.

(*5*) Consolidated Natural Gas Transmission Corporation, Jeannette Station, OP 65–000–852, effective October 13, 1995.

(*6*) Carnegie Natural Gas Company, Creighton Station, EO 213, effective May 14, 1996, except for condition 2.7.

(*7*) Texas Eastern Transmission Corporation, Uniontown Station, OP 26–000–413, effective December 20, 1996.

(*8*) Consolidated Natural Gas Transmission Corporation, South Bend Station, OP 03–000–180, effective December 2, 1998.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(164)(i)(B) of this section.

[FR Doc. 01–25582 Filed 10–11–01; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

**[MO 0136–1136a; FRL–7078–8]**

### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Emissions From Hospital/Medical/Infectious Waste Incinerators (HMIWIs); State of Missouri

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a revision to the state of Missouri's section 111(d) plan for controlling emissions from existing hospital/medical/infectious waste incinerators. The state modified two definitions contained in its 111(d) plan to make them equivalent to the EPA definitions. Approval of the revised state plan will ensure that it is consistent with the Federal regulations and is Federally enforceable.

**DATES:** This direct final rule will be effective December 11, 2001 unless EPA receives adverse comments by November 13, 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.

Information regarding this action is presented in the following order:

What are the regulatory requirements for HMIWIs?

Why is this action necessary?

What changes did the state make in their 111(d) plan?

What action are we taking in this document?

**What Are the Regulatory Requirements for HMIWIs?**

Standards and guidelines for new and existing HMIWIs were promulgated under the authority of sections 111 and 129 of the Clean Air Act on September 15, 1997 (62 FR 48374). These standards are 40 CFR part 60, subpart Ec for new sources, and 40 CFR part 60, subpart Ce for existing sources.

These rules apply to new and existing incinerators used by hospitals and health care facilities, as well as to incinerators used by commercial waste disposal companies to burn hospital waste and/or medical/infectious waste. Subpart Ce establishes an emission guideline (EG) which applies to existing HMIWIs that commenced construction on or before June 20, 1996.

The subpart Ce EG is not a direct Federal regulation but is a ''guideline'' for states to use in regulating existing HMIWIs. The EG requires states to submit for EPA approval a section 111(d) state plan containing air emission regulations and compliance schedules for existing HMIWIs.

**Why Is This Action Necessary?**

We originally approved the state's HMIWI 111(d) plan in 40 CFR part 62 on August 19, 1999 (64 FR 45187). Upon implementation of the plan, the state determined two definitions in rule 10 CSR 10–6.200, Hospital, Medical, Infectious Waste Incinerators (which is part of the 111(d) plan) were incomplete, and needed to be revised for clarification and to be consistent with the EPA definitions.

**What Changes Did the State Make in Their 111(d) Plan?**

Subsequently, in this rule, in subsection (2)(E), the term ''co-fired combustor'' was amended. The additional language addresses what is considered other waste for purposes of calculating the percentage of hospital and medical/infectious waste combusted of the total of all wastes combusted in a co-fired combustor. Other waste for purposes of the definition includes pathological, chemotherapeutic, and low-level radioactive waste. This amendment can affect applicability as companies calculate the percentage of other waste being incinerated. This definition is now consistent with the EPA definition at 40 CFR 62.14490.

In subsection (2)(T) of the same rule, the term ''medical/infectious waste'' was amended. The additional language helps to clarify what the term ''medical/infectious waste'' means by listing specific excluded wastes. These excluded wastes include such things as hazardous waste, household waste, and domestic sewage materials. This additional language can also affect applicability when calculating the percentage of waste incinerated. This definition is now consistent with the EPA definition at 40 CFR 62.14490.

**What Action Are We Taking in This Document?**

Since the additional language serves to clarify the meaning of the respective terms and these definitions are now equivalent to the EPA definitions, we are approving these revisions to the state's HMIWI 111(d) plan.

**Administrative Requirements**

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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 Clean Air Act, petitions for judicial review of this action must be filed in the United

States Court of Appeals for the appropriate circuit by December 11, 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 62**

Environmental protection, Air pollution control, Hospital/medical/infectious waste incinerators, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 27, 2001.

**William W. Rice,**

*Acting Regional Administrator, Region 7.*

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

## PART 62—[AMENDED]

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

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

## Subpart AA—Missouri

2. Section 62.6358 is amended by adding paragraph (d) to read as follows:

**§ 62.6358 Identification of plan.**

* * * * *

(d) Amended plan for the control of air emissions from Hospital/Medical/Infectious Waste Incinerators submitted by the Missouri Department of Natural Resources on July 13, 2001. The effective date of the amended plan is December 11, 2001.

[FR Doc. 01–25583 Filed 10–11–01; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

**[Docket No. 010502110–1110–01; I.D. 092601B]**

## Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Actions for the Recreational and Commercial Salmon Seasons from the U.S.-Canada Border to Cape Falcon, Oregon

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

**ACTION:** Inseason adjustments to the 2001 annual management measures for the ocean salmon fishery; request for comments.

**SUMMARY:** NMFS announces inseason actions for the ocean salmon fishery. A total of 20,000 marked coho were transferred from the overall marked coho quota for the commercial fishery area from Queets River, WA to Cape Falcon, OR to the overall coho quota for the recreational fishery area from Leadbetter Pt., WA to Cape Falcon, OR (Columbia River Area), effective August 22, 2001. The recreational fishery area from Queets River to Leadbetter Pt., WA opened 7 days per week effective Friday, September 7, 2001. Open periods and limited retention regulations for the commercial fishery from Queets River, WA to Cape Falcon, OR were modified and the fishery reopened Friday, August 31 to continue through the earliest of September 30 or the attainment of the overall chinook quota of 7,600 chinook or a 53,700 overall marked coho quota. The sub-areas opened for recreational salmon fishing in the Columbia River Area were modified to include the sub-area from Leadbetter Pt., WA to Klipsan Beach, WA (46°28′12″ N. lat.) effective Friday, September 7, 2001. These actions are necessary to conform to the 2001 annual management measures.

**DATES:** The transfer of marked coho to the Columbia River Area recreational fishery was effective 1600 hours local time (l.t.) August 22, 2001, until 2400 hours l.t. September 30, 2001, or the attainment of the overall coho quota. The inseason adjustment from Queets River to Leadbetter Pt., WA was effective 0001 hours l.t., September 7, 2001, until 2400 hours l.t. September 30, 2001, or the attainment of the marked coho subarea quota. The inseason adjustment from Queets River, WA to Cape Falcon, OR was effective 0001 hours l.t. August 31, 2001, until 2400 hours l.t. September 30, 2001, or the attainment of the overall chinook quota or the overall marked coho quota. The inseason adjustment for the Columbia River Area recreational fishery was effective 0001 hours l.t. September 7, 2001, until 2400 hours l.t. September 30, 2001, or the attainment of the overall subarea quota of coho. Comments will be accepted through October 29, 2001.

**ADDRESSES:** Comments on this action may be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; fax 206–526–6376; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; fax 562–980–4018. Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

**FOR FURTHER INFORMATION CONTACT:** Christopher Wright, 206–526–6140, Northwest Region, NMFS, NOAA.

**SUPPLEMENTARY INFORMATION:**

### Transfer of Marked Coho to the Columbia River Area Recreational Fishery

On August 22, 2001, the Northwest Regional Administrator, NMFS (Regional Administrator), transferred 20,000 coho from the overall marked coho quota for the commercial fishery area from Queets River, WA to Cape Falcon, OR to the marked coho sub-quota in the recreational fishery subarea from Leadbetter Pt., WA to Cape Falcon, OR (Columbia River Area), hence making the overall sub-quota 122,500 coho. Modification of quotas is authorized by regulations at 50 CFR 660.409 (b)(1)(i).

In the 2001 annual management measures for ocean salmon fisheries (66 FR 23185, May 8, 2001), NMFS announced that the recreational fishery from Leadbetter Pt., WA to Cape Falcon, OR would open July 1 through the earlier of September 3, or the attainment of the subarea sub-quota of 102,500 coho. NMFS also announced an opening for the commercial fishery for Queets River, WA to Cape Falcon, OR that would extend through the earliest of September 30, or the attainment of the overall chinook quota or a 63,000 marked coho guideline.

The Regional Administrator consulted with representatives of the Pacific Fishery Management Council (Council), Washington Department of Fish and Wildlife (WDFW), and Oregon Department of Fish and Wildlife (ODFW) by conference call on August 22, 2001. The chinook/coho catch rates and effort data indicated that the availability of marked coho was increasing in the area while the availability of chinook was decreasing. In addition, the marked coho subarea sub-quota of 102,500 marked coho in the recreational fishery was projected to be reached before the Labor Day weekend. The WDFW and ODFW therefore recommended, and the Regional Administrator concurred, that 20,000 marked coho be transferred from the overall marked coho quota for the commercial fishery to the marked coho sub-quota for the recreational fishery. This transfer provided the necessary buffer to allow the recreational fishery to continue without closing the area or modifying the season structure. The commercial fishery was unaffected by the transfer because information related to catch to date, the chinook and coho catch rates, and effort data indicated that it would be unable to catch its full quota. All other restrictions that apply to this fishery remain in effect as announced in the 2001 annual management measures and subsequent inseason actions.

**Inseason Adjustment From Queets River to Leadbetter Pt., WA**

The Regional Administrator modified the open period for the recreational fishery from Queets River to Leadbetter Pt., WA to be open 7 days per week effective Friday, September 7, 2001. Modification of recreational fishing days per calendar week is authorized by regulations at 50 CFR 660.409 (b)(1)(iii).

In the 2001 annual management measures for ocean salmon fisheries (66 FR 23185, May 8, 2001), NMFS announced that the recreational fishery from Queets River to Leadbetter Pt., WA would open July 1 through the earlier of September 30 or the attainment of the 83,250 coho subarea quota, with the weekly open period running Sunday through Thursday.

The annual management measures included weekly closures on Fridays and Saturdays with the intention of providing harvest opportunity as long as possible into the month of September. On August 27, 2001, the Regional Administrator consulted with representatives of the Council, WDFW, and ODFW by conference call. Information related to catch to date, the chinook and coho catch rates, and effort data indicated that it was unlikely that either quota would be reached prior to the September 30 closing date. As a result, the WDFW and ODFW recommended, and the Regional Administrator concurred, that the open period be modified for the recreational fishery from Queets River to Leadbetter Pt., WA to open 7 days per week, effective Friday, September 7, 2001. All other restrictions that apply to this fishery remain in effect as announced in the 2001 annual management measures and subsequent inseason actions.

**Inseason Adjustment From Queets River, WA to Cape Falcon, OR**

The Regional Administrator modified the open period and limited retention regulations for the commercial fishery from Queets River, WA to Cape Falcon, OR. The fishery reopened Friday, August 31 and will continue through the earliest of September 30 or the attainment of the overall chinook quota of 7,600 chinook or the 53,700 overall marked coho quota, with the limited retention regulations suspended until further notice. The preseason guidelines for the fishery of 6,000 chinook and 63,000 marked coho were modified by earlier inseason transfers and/or allocation adjustments (see following text). Modification of fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i). Modification of the species that may be caught and landed during specific seasons and the establishment or modification of limited retention regulations is authorized by regulations at 50 CFR 660.409 (b)(1)(ii).

In the 2001 annual management measures for ocean salmon fisheries (66 FR 23185, May 8, 2001), NMFS announced that the commercial fishery for all salmon in the area from Queets River, WA to Cape Falcon, OR would open the earlier of the day following closure of the U.S.-Canada Border to Leadbetter Pt. WA. July troll fishery or July 28, but not before July 20, through the earliest of September 30 or the attainment of the overall chinook quota (preseason 6,000-chinook guideline) or a 63,000 marked coho guideline. The fishery was scheduled to run continuously until 75 percent of either guideline was caught; it would then revert to a cycle of 4 days open/3 days closed. NMFS would then institute or adjust inseason trip limits, gear restrictions, and guidelines.

The U.S.-Canada Border to Leadbetter Pt., WA July troll fishery closed on July 9, 2001, at 2359 hours l.t.(66 FR 38573, July 25, 2001). Therefore, the commercial fishery for all salmon from Queets River, WA to Cape Falcon, OR started July 20, 2001.

Because of a higher than expected chinook/coho catch ratio, the commercial fishery from Queets River, WA to Cape Falcon, OR began July 20 under a cycle of 4 days open/3 days closed, and a limit of 65 chinook per open period per boat (66 FR 45634, August 29, 2001). The modifications to the season were adopted to avoid closing the fishery early due to premature achievement of the chinook quota, thus precluding the opportunity to catch available marked hatchery coho salmon.

Evaluation of the catch rates during the first open period indicated that no further season modifications were necessary for the second 4-day opening (July 27–30).

Because the availability of coho salmon was increasing, the next opening was lengthened to 10 days, reopening August 3 and closing at midnight on August 12, with a limit of 100 chinook for the open period per boat (66 FR 46403, September 5, 2001).

The Regional Administrator reopened the commercial fishery from Queets River, WA to Cape Falcon, OR for 11 days, starting August 17 and closing at midnight on August 27, with a limit of 150 chinook for this open period per boat (66 FR 49322, September 27, 2001). The chinook/coho catch rates and effort data indicated that the availability of coho was increasing in the area while the availability of chinook was decreasing.

On August 29, after the fourth open period, the Regional Administrator consulted with representatives of the Council, WDFW, and ODFW by conference call. Information related to catch to date, the chinook and coho catch rates, and effort data indicated that it was unlikely that either quota would be reached prior to the September 30 closing date. The WDFW and ODFW recommended, and the Regional Administrator concurred, that the season reopen Friday, August 31 and continue through the earliest of September 30 or the attainment of the overall chinook quota of 7,600 chinook or the 53,700 marked coho quota. All other restrictions that apply to this fishery remain in effect as announced in the 2001 annual management measures and subsequent inseason actions.

**Inseason Adjustment for the Columbia River Area Recreational Fishery**

The Regional Administrator modified the sub-areas opened for the recreational salmon fishing area from Leadbetter Pt., WA to Cape Falcon, OR (Columbia River Area) to include the sub-area from Leadbetter Pt. to Klipsan Beach, WA (46°28′12″ N. lat.) effective Friday,

September 7, 2001. Modification of boundaries and establishment of closed areas are authorized by regulations at 50 CFR 660.409 (b)(1)(v).

In the 2001 annual management measures for ocean salmon fisheries (66 FR 23185, May 8, 2001), NMFS announced that the recreational fishery for the Columbia River Area would open September 4 through the earlier of September 30 or the attainment of the overall subarea quota of 112,500 coho (10,000 set-aside), with only the area from Tillamook Head, OR to the North Head Lighthouse, WA (46°18′00″ N. Lat.) open to fishing (Note: The first inseason action described in this document that transferred 20,000 marked coho to the Columbia River Area effectively makes the overall subarea quota 132,500 marked coho).

The primary purpose of only having the area off the mouth of the Columbia River open, with the areas to the north and south closed during this late season, was to limit impacts to Oregon coastal natural coho and target hatchery coho that usually stage in this location before migrating to their hatchery of origin in the lower Columbia River. In addition, the states planned on evaluating their assumptions about stock composition in the area by sampling the catch. During preseason planning, the area to the north of the North Head Lighthouse, WA was closed to minimize complications related to the catch sampling program.

On September 5, the Regional Administrator consulted with representatives of the Council, WDFW, and ODFW by conference call. The WDFW indicated that opening the additional area at the northern end of the Columbia River Area would not interfere with data collection efforts and, given the expected catch rates, would not likely increase catches to the degree that quotas for chinook and coho would be met early. The WDFW recommended, and the Regional Administrator concurred, that the area from Leadbetter Pt., WA to Klipsan Beach, WA (46°28′12″ N. lat.) be added to the areas open to fishing, and that it be effective Friday, September 7, 2001.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and catch and effort projections, supported the above inseason actions recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described actions were given prior to the effective dates by telephone hotline number 206–526–6667 and 800-662-9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

## Classification

The Assistant Administrator for Fisheries, NOAA, finds that good cause exists for issuing this notification without affording a prior opportunity for public comment under 5 U.S.C. 553 (b)(3)(B). Such notification is impracticable and contrary to the public interest. As previously noted, actual notice of these actions was provided to fishermen through telephone hotline and radio notification. Notice and the opportunity for public comment is impracticable because NMFS, in concert with the state agencies, needs to take immediate action after collecting the fishery catch and effort data in order to comply with the requirements of the annual management measures for ocean salmon fisheries (66 FR 23185, May 8, 2001) and the West Coast Salmon Plan. Moreover, such prior notice and the opportunity for public comment is contrary to the public interest because it does not allow commercial and recreational fishermen appropriately controlled access to the available fish at the time they are available. The 30-day delay in effectiveness required under U.S.C. 553(d)is also hereby waived as the inseason actions described in this document either increase quotas or fishing times, or open areas previously closed to fishing, and thus relieve restrictions.

These actions do not apply to other fisheries that may be operating in other areas.

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

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

Dated: October 9, 2001.

**Bruce C. Morehead,**

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

[FR Doc. 01–25722 Filed 10–11–01; 8:45 am]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 66, No. 198
Friday, October 12, 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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

**[Docket No. PRM–50–73]**

### Robert H. Leyse; Receipt of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; notice of receipt.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated September 4, 2001, which was filed with the Commission by Robert H. Leyse. The petition was docketed by the NRC on September 4, 2001, and has been assigned Docket No. PRM–50–73. The petitioner requests that the NRC amend its regulations on the acceptance criteria for emergency core cooling systems for light-water nuclear power reactors to address the impact of crud on cooling capability during a fast-moving, large-break, loss-of-coolant accident (LOCA).

**DATES:** Submit comments by December 26, 2001. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. Federal workdays.

For a copy of the petition, write to Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website at *http://ruleforum.llnl.gov.* This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, 301–415–5905 (e-mail: cag@nrc.gov).

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room,11555 Rockville Pike, Public File Area O1F21, Rockville, Maryland. Copies of comments received are also available through the NRC's 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, 301–415–4737or by e-mail to *pdr@nrc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7163 or Toll Free: 800–368–5642.

**SUPPLEMENTARY INFORMATION:**

#### The Petitioners Request

The petitioner requests that the NRC amend § 50.46(a)(1)(i) and Appendix K to Part 50 to address the impact of crud on cooling capability during a fast-moving (large-break), LOCA.

#### Background

The petitioner states that § 50.46 and Appendix K to part 50 do not address the impact of crud on coolability during a fast-moving (large-break) LOCA. The petitioner states that a certain licensed power reactor has operated with unusually heavy crud deposits on many of the fuel pins. These crud deposits were identified and partially classified during a refueling outage. The petitioner states that if a fast-moving (large-break) LOCA had occurred before the shutdown for refueling, extensive blockage of the flow channels within the fuel bundles would have developed. The petitioner further states that, during blowdown, the redistribution of crud into any or all of the several restricted channels would result in the substantial flow blockage. The petitioner states that these restricted flow channels include at least the following items within the fuel bundles: the spacer grids, the mixing vanes attached to spacer grids, and the regions of ballooned and burst fuel cladding. The petitioner states that the consequent degradation of coolability would have resulted in a rapid deterioration of defense in depth. Under these conditions, the unusually heavy crud deposits on the fuel pins would have threatened the integrity of all of the barriers that in total comprise defense in depth.

The petitioner believes that it could be argued that significant crud deposits would lead to an extensive amount of fuel failure during operation at [full] power. The petitioner believes that the amount of failed fuel would then lead to a decision to shut down the reactor as the inventory of radioactive material in the reactor coolant reached the limits that are allowed by the Technical Specifications. According to the petitioner, operating experience reveals that it is possible to operate a light-water reactor within the applicable Technical Specifications even though unusually heavy crud deposits are present on the fuel pins.

#### The Petitioner's Conclusions

The petitioner believes that the deficiencies in Part 50 must be corrected to retain defense in depth. Accordingly, elements in § 50.46 concerning comparisons to applicable experimental data must be revised to include the impact of crud on deposits on fuel pins.

Also, the following paragraphs in Appendix K to part 50, should be revised to include the impact of crud deposits on fuel pins:

I.B. Swelling and Rupture of the Cladding and Fuel Rod Thermal Parameters;
I.C.2 Frictional Pressure Drops;
I.C.4 Critical Heat Flux;
I.C.5 Post-CHF Heat Transfer Correlations;
I.C.7 Core Flow Distribution During Blowdown;
I.D.3 Calculation of Reflood Rate for Pressurized Water Reactors;
I.D.6 Convective Heat Transfer Coefficients for Boiling Water

Reactor Fuel Rods Under Spray Cooling; and

I.D.7 The Boiling-Water Reactor Channel Box Under Spray Cooling.

II.1.a The documentation requirements in this paragraph should include a description of each evaluation model used for estimation of the effects of crud deposits on fuel pins.

Dated at Rockville, Maryland, this 5th day of October, 2001.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 01–25672 Filed 10–11–01; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–154–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes. This proposal would require repetitive inspections for foreign objects between the slider and the girt bar attachment fittings of the emergency escape slides, and corrective actions, if necessary. This proposal also would eventually require a one-time inspection to determine whether the release mechanism of the emergency escape slides and girt bar attachment fittings are adjusted correctly, which would terminate the repetitive inspections for foreign objects between the slider and the girt bar attachment fittings; a one-time test to ensure that the girt bar extends through the sliders correctly; and corrective action, if necessary. This action is necessary to prevent failure of an emergency escape slide, which could delay evacuation in an emergency and result in injury to passengers or crew. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 13, 2001.

**ADDRESSES:**

Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–154–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–154–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–154–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–154–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that, during escape slide deployment tests on a Model A330 series airplane, the girt bar of the emergency escape slide became detached from the airplane when the escape slide was deployed. Such detachment of the girt bar has been attributed to various factors, including a foreign object between the slider and girt bar attachment fitting, incorrect adjustment of the escape slide release mechanism, and incorrect installation of both girt bar attachment fittings. This condition, if not corrected, could result in failure of an emergency escape slide, which could delay evacuation in an emergency and result in injury to passengers or crew.

The girt bar installation on certain Model A340 series airplanes is identical to that on the affected Model A330 series airplanes. Therefore, those Model A340 series airplanes may be subject to the same unsafe condition revealed on the Model A330 series airplanes.

### Explanation of Relevant Service Information

Airbus has issued Service Bulletins A330–52–3064 and A340–52–4076, both dated April 4, 2001. Those service bulletins describe procedures for the following:

- Repetitive visual inspections for foreign objects between the slider and the girt bar attachment fittings of the emergency escape slides, removal of any

foreign object, and determination that the girt bar attachment fittings are clean.

• A one-time inspection to determine whether the release mechanism of the emergency escape slides and girt bar attachment fittings are adjusted correctly, which eliminates the need for the repetitive inspections for foreign objects between the slider and the girt bar attachment fittings, and adjustment of the release mechanism or girt bar attachment fittings, if necessary.

• A one-time test to ensure that the girt bar extends through the sliders correctly, and rework or replacement of the girt bar, if necessary.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 2001–190(B) and 2001–191(B), both dated May 16, 2001, in order to assure the continued airworthiness of these airplanes in France.

**FAA's Conclusions**

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the applicable service bulletin described previously, except as discussed below.

**Difference Between Service Bulletins and This Proposed AD**

The service bulletins refer to the three inspections that would be required by this proposed AD as a ''visual inspection,'' an ''inspection,'' and a ''check,'' respectively. The FAA finds that all three inspections should be described as ''general visual'' inspections. Note 2 has been included in this proposed AD to define this type of inspection.

**Cost Impact**

The FAA estimates that 5 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the proposed inspection for foreign objects between the slider and the girt bar attachment fittings of the emergency escape slide, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $600, or $120 per airplane, per inspection cycle.

It would take approximately 4 work hours per airplane to accomplish the proposed inspection to determine whether the release mechanism for the emergency escape slide and girt bar attachment fittings are adjusted correctly, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $1,200, or $240 per airplane.

It would take approximately 4 work hours per airplane to accomplish the proposed inspection to determine whether the girt bar of the emergency escape slide extends through the sliders correctly, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $1,200, or $240 per airplane.

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

**Regulatory Impact**

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Airbus Industrie:** Docket 2001–NM–154–AD.

*Applicability:* Model A330 series airplanes, as listed in Airbus Service Bulletin A330–52–3064, dated April 4, 2001; and Model A340 series airplanes, as listed in Airbus Service Bulletin A340–52–4076, dated April 4, 2001; certificated in any category.

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

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the emergency escape slide, which could delay evacuation in an emergency and result in injury to passengers or crew, accomplish the following:

**Repetitive Inspections for Foreign Objects**

(a) For all passenger/crew doors (Type A) and emergency exit doors (Type A and Type 1): Within 550 flight hours after the effective date of this AD, perform a general visual inspection for foreign objects between the slider and the girt bar attachment fittings of the emergency escape slide, according to Airbus Service Bulletin A330–52–3064 or A340–52–4076, both dated April 4, 2001, as applicable. Repeat the inspection at least every 7 days until paragraph (b) of this AD is done. If any foreign object is found during any inspection per this paragraph, before further flight, remove the object and ensure that the girt bar attachment fittings are clean, according to the applicable service bulletin.

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

**One-Time Inspection of Slide Release Mechanism and Girt Bar Attachment Fittings**

(b) For all passenger/crew doors (Type A) and emergency exit doors (Type A and Type 1): Within 18 months after the effective date of this AD, perform a one-time general visual inspection to determine whether the release mechanism for the emergency escape slide and girt bar attachment fittings are adjusted correctly, according to Airbus Service Bulletin A330–52–3064 or A340–52–4076, both dated April 4, 2001, as applicable. If the slide mechanism or girt bar attachment fittings are not adjusted correctly, before further flight, adjust them correctly, according to the applicable service bulletin. This inspection terminates the repetitive inspections required by paragraph (a) of this AD.

**One-Time Inspection of Girt Bar Attachment Fittings**

(c) For all passenger/crew doors (Type A) and emergency exit doors (Type A ONLY): Within 18 months after the effective date of this AD, perform a one-time general visual inspection to determine whether the girt bar of the emergency escape slide extends through the sliders correctly, according to Airbus Service Bulletin A330–52–3064 or A340–52–4076, both dated April 4, 2001, as applicable. If the girt bar does not extend correctly, before further flight, rework or replace the girt bar, according to the applicable service bulletin.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**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.

**Note 4:** The subject of this AD is addressed in French airworthiness directives 2001–190(B) and 2001–191(B), both dated May 16, 2001.

Issued in Renton, Washington, on October 4, 2001.

**Vi L. Lipski,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 01–25619 Filed 10–11–01; 8:45 am]

**BILLING CODE 4910–13–U**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–153–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A330 and A340 series airplanes. This proposal would require repetitive inspections and operational checks of the spring function of the emergency exit door slider mechanism, and corrective action if necessary. This action is necessary to prevent failure of the spring locking function of the slider mechanism due to corrosion, which could result in the escape slide detaching from the airplane in an emergency evacuation. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 13, 2001.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–153–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001-NM–153–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket 2001-NM–153–AD.'' The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2001–NM–153–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A330 and A340 series airplanes. The DGAC advises that a deployment test of an escape slide revealed that a component of the emergency exit door was not operating correctly. Specifically, the spring function of a slide release mechanism (slider) was inoperative due to corrosion or a missing spring function. The two sliders installed on each end of the girt bar attach the escape slide either to the door (when disarmed) or to the fuselage (when armed). Without the proper spring function of the slider, the girt bar will not be correctly attached to the fuselage. This condition, if not corrected, could result in the escape slide detaching from the airplane in an emergency evacuation.

**Explanation of Relevant Service Information**

Airbus has issued All Operators Telexes (AOTs) A330–52A3063 and A340–52A4075, both dated August 2, 2000. Revision 01 of each AOT was issued January 3, 2001. The AOTs describe procedures for repetitive inspections and operational checks of the spring function of the emergency exit door slider mechanism, and corrective action, if necessary. The DGAC classified the AOTs as mandatory and issued French airworthiness directives 2001–053(B) and 2001–052(B), both dated February 7, 2001, to ensure the continued airworthiness of these airplanes in France.

**FAA's Conclusions**

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the AOTs described previously.

**Cost Impact**

The FAA estimates that 9 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,620, or $180 per airplane, per inspection cycle.

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

**Regulatory Impact**

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Airbus Industrie:** Docket 2001–NM–153–AD.

*Applicability:* All Model A330 and A340 series airplanes, certificated in any category.

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

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the spring locking function of the slider due to corrosion, which could result in the escape slide detaching from the airplane in an emergency evacuation, accomplish the following:

**Inspection**

(a) Within 18 months since date of manufacture, or within 550 flight hours after the effective date of this AD, whichever occurs later: Perform a detailed visual inspection and an operational check of the spring function of the emergency exit door slider mechanism, in accordance with Airbus All Operators Telex (AOT) A330–52A3063 (for Model A330 series airplanes) or A340–52A4075 (for Model A340 series airplanes), as applicable, both Revision 01, both dated January 3, 2001.

**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 all sliders lock properly: Apply corrosion inhibitor to the sliders, in accordance with the applicable AOT. Thereafter, repeat the inspection and operational check at least every 18 months.

(2) If any slider does not lock properly: Repair the slider or replace it with a new part, and apply corrosion inhibitor to the sliders; in accordance with the applicable AOT. Thereafter, repeat the inspection and operational check at least every 18 months.

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(c) Special flight permits may be issued in accordance with §§ 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.

**Note 4:** The subject of this AD is addressed in French airworthiness directives 2001–053(B) and 2001–052(B), both dated February 7, 2001.

Issued in Renton, Washington, on October 4, 2001.

**Vi L. Lipski,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 01–25618 Filed 10–11–01; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–199–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 Series Airplanes and Avro 146–RJ Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain BAE Systems (Operations) Limited Model BAe 146 series airplanes and Avro 146-RJ series airplanes. This proposal would require replacement of the standby generator with a new, improved standby generator. This action is prompted by mandatory continuing airworthiness information from a foreign airworthiness authority. This action is necessary to prevent loss of the standby generator, which in the event of an emergency involving the principal generator, could result in the loss of electrical power to the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 13, 2001.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2001–NM–199–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket Number 2001-NM–199–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tamra Elkins, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2669; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

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

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–199–AD.'' The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2001–NM–199–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain BAE Systems (Operations) Limited Model BAe 146 series airplanes and Avro 146–RJ series airplanes. The CAA advises that testing has revealed that the armature banding rings on standby generators manufactured by Vickers have been found to delaminate after prolonged operation at high temperature. Vickers has introduced a replacement standby generator with armature banding rings made of titanium rather than of the original composite material. Delamination of the armature banding rings, if not corrected, could result in loss of the standby generator, which in the event of an emergency involving the principal generator, could result in loss of electrical power to the airplane.

**Explanation of Relevant Service Information**

BAE Systems (Operations) Limited has issued Modification Service Bulletin SB.24–137–01691A, dated April 12, 2001, which describes procedures for replacement of the standby generator with a new, improved standby generator. The new unit has armature banding rings made from titanium in place of composite armature banding rings used in the original units. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 004–04–2001, dated May 22, 2001, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

**FAA's Conclusions**

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Proposed Rule**

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

**Cost Impact**

The FAA estimates that 40 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed replacement of the standby generator with a new, improved standby generator, and that the average labor rate is $60 per work hour. There is no charge for required parts. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $7,200, or $180 per airplane.

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

**Regulatory Impact**

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**BAE Systems (Operations) Limited** (Formerly British Aerospace Regional Aircraft): Docket 2001–NM–199–AD.

*Applicability:* Model BAe 146 series airplanes and Avro 146–RJ series airplanes, certificated in any category, having BAe Modification HCM01059A (installation of a standby generator and control system manufactured by Vickers) embodied.

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

*Compliance:* Required as indicated, unless accomplished previously.

To prevent loss of the standby generator, which in the event of an emergency involving the principal generator could result in the loss of electrical power to the airplane; accomplish the following:

**Replacement**

(a) Within 43 months after the effective date of this AD: Replace the Vickers standby generator having part number (P/N) 520829 with a new, improved Vickers standby generator having P/N 3022049–000, in accordance with BAE Systems (Operations) Limited Modification Service Bulletin SB.24–137–01691A, dated April 12, 2001.

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(c) Special flight permits may be issued in accordance with §§ 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.

**Note 3:** The subject of this AD is addressed in British airworthiness directive 004–04–2001, dated May 22, 2001.

Issued in Renton, Washington, on October 4, 2001.

**Vi L. Lipski,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 01–25620 Filed 10–11–01; 8:45 am]

**BILLING CODE 4910–13–U**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–SW–21–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bell Helicopter Textron Canada Model 430 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 430 helicopters. This proposal would require changes to the electrical power distribution system. This proposal is prompted by design deficiencies in the electrical systems. The actions specified by the proposed AD are intended to prevent failure of both generators, loss of primary electrical power, and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before December 11, 2001.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–21–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Robert McCallister, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5121, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–21–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–21–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

### Discussion

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on BHTC Model 430 helicopters. Transport Canada advises that the electrical system has a potential for single fault multiple system failures and does not comply with regulatory requirements for Instrument Flight Rules (IFR) or for Category A design. Transport Canada issued AD No. CF–2000–32R1, dated May 28, 2001, that mandated certain revisions to the Rotorcraft Flight Manual (RFM) to safely cope with this type of electrical failure.

BHTC has issued Alert Service Bulletin (ASB) No. 430–01–19, dated February 22, 2001, which specifies certain modifications to improve the electrical system for BHTC Model 430 helicopters, serial numbers (S/N) 49001 through 49069.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to this bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

We have identified an unsafe condition that is likely to exist or develop on other BHTC Model 430 helicopters of the same type design registered in the United States. Therefore, the proposed AD would require, before further flight after March 31, 2002, accomplishing the electrical power distribution system changes in accordance with BHTC ASB No. 430–01–19, dated February 22, 2001, which is terminating action for the requirements of this AD.

The FAA estimates that this proposed AD would affect 33 helicopters of U.S. registry. The FAA estimates that that it would take approximately 48 work hours per helicopter to accomplish the changes to the electrical system. The average labor rate is $60 per work hour. The manufacturer states in the ASB that the parts will be provided at no cost before March 31, 2002. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $95,040.

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

would not have federalism implications under Executive Order 13132.

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Bell Helicopter Textron Canada:** Docket No. 2001–SW–21–AD.

*Applicability:* Model 430 helicopters, serial numbers 49002 through 49071, certificated in any category.

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

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of both generators, loss of primary electrical power, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight after March 31, 2002, perform the Accomplishment Instructions, paragraphs 1 through 124, of Bell Helicopter Textron Canada Alert Service Bulletin No 430–01–19, dated February 22, 2001, which is terminating action for the requirements of this AD.

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

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

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

**Note 3:** The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–2000–32R1, dated May 28, 2001.

Issued in Fort Worth, Texas, on October 3, 2001.

**Mark R. Schilling,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 01–25695 Filed 10–11–01; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–SW–46–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Sikorsky Aircraft Corporation Model S–76A Helicopter

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes superseding an existing airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–76A helicopters. That AD currently requires a service life limit on certain landing gear parts based on hours time-in-service (TIS). This action would add another method of calculating the life limit for certain landing gear parts based on cycles and would require the operator to choose and record the method of calculating the service life of each part in the rotorcraft history or equivalent record. This action would also require replacing the part based upon either the maximum hours TIS or the maximum cycles but not both. This proposal is prompted by the need to add flight cycles as a method of calculating the life limit for certain landing gear parts based on fatigue analyses. The actions required by the proposed AD are intended to add or revise the retirement life for certain landing gear parts to prevent fatigue failure of the landing gear and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before December 11, 2001.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–46–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Richard Noll, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7160, fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–SW–

46–AD.'' The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–46–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**Discussion**

On April 23, 1986, the FAA issued AD 86–09–11, Amendment 39–5298 (51 FR 17009, May 8, 1986), to require placing a service life limit on certain landing gear parts on Sikorsky Model S–76A helicopters based on hours TIS. That action was prompted by safety considerations and landing gear fatigue analysis. The requirements of that AD are intended to prevent fatigue failure of landing gear parts and landing gear.

Since the issuance of that AD, Sikorsky has issued a revision and a Supplement No.1 to the Airworthiness Limitations Section, Chapter 4, of the Sikorsky Maintenance Manual SA 4047–76–2–1. Replacing the parts in accordance with the revisions dated May 9, 1997 (page 1), and March 2, 1999 (page 2), constitutes compliance with this AD when applied to helicopters that have not been modified by Supplemental Type Certificate (STC) SH568NE. Replacing the parts in accordance with Supplement No. 1, dated May 21, 1997, revised pages 2 and 3 dated March 2, 1999, constitutes compliance with this AD when applied to helicopters that have been modified by STC SH568NE. The change and supplement specify replacing parts installed in the Sikorsky Model S–76A helicopter at the expiration of a specified number of cycles.

The life limit in AD 86–09–11 is based on hours TIS, and the life limit in the airworthiness limitations section of the maintenance manual is based on cycles. The proposed AD would supersede AD 86–09–11, retaining a life limit based on hours TIS but also allowing the life limit to be based on cycles for certain landing gear parts. The proposed AD would also require recording the method selected for calculating the life limit of the landing gear parts in the rotorcraft history or equivalent records and using only that method throughout the life of the part. A cycle is defined as one takeoff to a hover or other mode of flight and one landing.

The FAA estimates that 87 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per helicopter to determine the number of cycles, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $10,440.

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Amendment 39–5298 (51 FR 17009, May 8, 1986), and by adding a new airworthiness directive (AD), to read as follows:

**Sikorsky Aircraft Corporation:** Docket No. 2000–SW–46–AD. Supersedes AD 86–09–11, Amendment 39–5298, Docket No. 86–ASW–12.

*Applicability:* Model S–76A helicopters, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if 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 fatigue failures of the main and nose landing gear parts and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service (TIS), determine either the hours TIS or cycles accumulated on each part listed in Table 1 or Table 2 of this AD, as applicable. A cycle is a takeoff to a hover or other mode of flight and a landing.

(1) If neither the hours TIS nor cycles are known for an affected part, assume the rotorcraft's total hours TIS are the hours TIS for that part.

(2) If only one history is known for the part (either hours TIS or cycles), use that method for tracking the remaining life of that part.

(3) Thereafter, record in the rotorcraft history or equivalent record the selected method of calculating the life limit for each landing gear part, and record either the accumulated hours TIS or cycles for the selected method.

(b) Before further flight, remove from service each part listed in the following Table 1 of this AD on or before reaching the applicable life limit:

TABLE 1

| Component | Part No. | Life limit hours TIS | Life limit cycles |
|---|---|---|---|
| (1) Main Landing Gear: | | | |
| (i) Cylinder | 1945E2 | 30,300 | 136,350 |
| (ii) Axle Support Fitting | 1945C12 | 9,600 | 43,200 |

TABLE 1—Continued

| Component | Part No. | Life limit hours TIS | Life limit cycles |
|---|---|---|---|
| (iii) Pin, Universal to Cylinder | 1945C29 | 23,800 | 107,100 |
| (iv) Drag Brace Rod End | 1945E35 | 38,200 | 171,900 |
| (v) Upper Torque Arm | 1945E46 | 37,900 | 170,550 |
| (vi) Lower Torque Arm | 1945C47 | 16,200 | 72,900 |
| (vii) Axle | 195E85 | 23,380 | 105,210 |
| (viii) Rod End, Positioning Rod | 1945E235 | 19,100 | 85,950 |
| (ix) Retraction Actuator: | | | |
| (A) Outer Cylinder | 1945E302, 1945F302 | 7,100 | 31,950 |
| (B) Piston | 1945E314 | 33,300 | 148,500 |
| (C) Piston Rod End | 01–747–061 | 8,000 | 36,000 |
| (2) Nose Landing Gear: | | | |
| (i) Fork | 1944E60 | 42,500 | 191,250 |
| (ii) Cylinder | 1944C2, 1944E2 | 18,500 | 83,250 |
| (iii) Drag Brace Actuator: | | | |
| (A) Cylinder Terminal | 1944D201 | 28,800 | 129,600 |
| (B) Piston Rod | 1944E204 | 22,000 | 99,000 |

(c) For helicopters modified by Supplemental Type Certificate (STC) SH568NE, before further flight, remove from service each part listed in the following Table 2 of this AD on or before reaching the applicable life limit:

TABLE 2

| Component | Part No. | Life limit hours TIS | Life limit cycles |
|---|---|---|---|
| (1) Main Landing Gear: | | | |
| (i) Cylinder | 1945E2, 2071–2 | 24,000 | 108,000 |
| (ii) Piston | 1945E4, 2071–4 | 28,600 | 128,700 |
| (iii) Axle Support Fitting | 1945C12, 2071–12 | 7,400 | 33,300 |
| (iv) Pin, Universal to Cylinder | 1945C29, 2071–29 | 16,000 | 72,000 |
| (v) Pin, Positioning Rod to Upper Torque Arm | 1945A32, 2071–32 | 25,000 | 112,500 |
| (vi) Drag Brace Rod End | 1945E35, 2071–35 | 23,864 | 107,388 |
| (vii) Upper Torque Arm | 1945E46, 2071–46 | 26,829 | 120,730 |
| (viii) Lower Torque Arm | 1945C47, 2071–47 | 11,928 | 53,676 |
| (ix) Lower Drag Brace | 1945E74, 2071–74 | 46,000 | 207,000 |
| (x) Retraction Brace | 1945E76A11, 1945E76A12, 2071–76–11, 2071–76–12 | 41,000 | 184,500 |
| (xi) Axle | 1945E85, 2071–85 | 23,380 | 105,210 |
| (xii) Rod End, Positioning Rod | 1945E235, 2071–235 | 13,600 | 61,200 |
| (xiii) Retraction Actuator: | | | |
| (A) Outer Cylinder | 1945E302, 1945F302 | 7,100 | 31,950 |
| (B) Piston | 1945E314 | 33,000 | 148,500 |
| (C) Piston Rod End | 01–747–061 | 8,000 | 36,000 |
| (2) Nose Landing Gear: | | | |
| (i) Axle | 1944B85, 2070–85 | 49,833 | 224,248 |
| (ii) Fork | 1944E60, 2070–60 | 32,000 | 144,000 |
| (iii) Piston | 1944E4, 2070–4 | 35,878 | 161,451 |
| (iv) Cylinder | 1944C2, 1944E2, 2070–2 | 13,500 | 60,750 |
| (v) Drag Brace Actuator: | | | |
| (A) Cylinder Terminal | 1944D201, 2070–201 | 23,000 | 103,500 |
| (B) Piston Terminal | 1944E212B, 2070–212 | 40,000 | 180,000 |
| (C) Piston Rod | 1944E204 | 22,000 | 99,000 |

(d) This AD revises the Limitations section of the maintenance manual by establishing or revising the retirement lives for the affected parts shown in Tables 1 and 2 of this AD and establishing cycle counting as an additional method to determine retirement for the affected parts. Installing STC SH568NE affects the retirement life of certain parts.

(e) 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, Boston Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on October 3, 2001.

**Mark R. Schilling,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 01–25696 Filed 10–11–01; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 01–ASO–13]**

## Proposed Amendment of Class E Airspace; Dayton, TN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to amend Class E airspace at Dayton, TN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Bradley Memorial Hospital, Cleveland, TN. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP. This action proposes to amend the Class E5 airspace for Dayton, TN, to the south, in order to include the point in space approach serving Bradley Memorial Hospital.

**EFFECTIVE DATES:** Comments must be received on or before November 13, 2001.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 01–ASO–13, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320. The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

**FOR FURTHER INFORMATION CONTACT:** Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 20210; telephone (40) 305–5627.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental,and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 01–ASO–13.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Dayton, TN. A GPS SIAP, helicopter point in space approach, has been developed for Bradley Memorial Hospital, Cleveland, TN. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 feet or More Above the Surface of the Earth.*

* * * * *

**ASO TN E5 Dayton, TN [REVISED]**

Dayton, Mark Anton Airport, TN
(Lat. 35°29′08″ N, long. 84°55′54″ W)
Hardwick Field Airport
(Lat. 35°13′12″ N, long. 84°49′57″ W)
Bledsoe County Hospital, Pikeville, TN
Point In Space Coordinates
(Lat. 35°37′34″ N, long. 85°10′38″ W)

Bradley Memorial Hospital, Cleveland, TN
Point In Space Coordinates
(Lat. 35°10′52″ N, long. 84°52′56″ W)

That airspace extending upward from 700 feet or more above the surface within a 12.5-mile radius of Mark Anton Airport, and that airspace within a 6.5-mile radius of Hardwick Field Airport, and that airspace within a 6-mile radius of the point in space (Lat. 35°37′34″ N, long. 85°10′38″ W) serving Bledsoe County Hospital, Pikeville, TN, and that airspace within a 6-mile radius of the point in space (Lat. 35°10′52″ N, long. 84°52′56″ W) serving Bradley Memorial Hospital, Cleveland, TN, excluding that airspace within the Athens, TN, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on October 4, 2001.

**Wade T. Carpenter,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 01–25755 Filed 10–11–01; 8:45 am]

**BILLING CODE 4910–13–M**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

**[MO 0136–1136; FRL–7078–9]**

### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Emissions From Hospital/Medical/Infectious Waste Incinerators (HMIWIs); State of Missouri

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve a revision to the state of Missouri's section 111(d) plan for controlling emissions from existing HMIWIs.

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 November 13, 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: September 27, 2001.

**William W. Rice,**

*Acting Regional Administrator, Region 7.*

[FR Doc. 01–25584 Filed 10–11–01; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Parts 20 and 21

**RIN 1018–AI07**

### Migratory Bird Hunting and Permits; Regulations for Managing Harvest of Light Goose Populations

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** Various populations of light geese (greater and lesser snow geese and Ross' geese) have undergone rapid growth during the past 30 years, and have become seriously injurious to their habitat, habitat important to other migratory birds, and agricultural interests. The U.S. Fish and Wildlife Service (Service or ''we'') believes that several of these populations have exceeded the long-term carrying capacity of their breeding and/or migration habitats and must be reduced. This rule would authorize new methods of take for light goose hunting. In addition, the rule would revise the regulations for the management of overabundant light goose populations and modifies the conservation order that will increase take of such populations.

**DATES:** Comments on this proposed rule must be received by December 11, 2001.

**ADDRESSES:**

1. Comments should be mailed to Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, DC 20240. Alternatively, comments may be submitted electronically to the following address: *white_goose_eis@fws.gov.* In order to be considered, electronic submissions must include your name and postal mailing address; we will not consider anonymous comments. All comments received, including names and addresses, will become part of the public record.

2. The public may inspect comments during normal business hours in Room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

3. You may obtain copies of the draft environmental impact statement from the above address, or by downloading it from our Web site at *http://migratorybirds.fws.gov/issues/snowgse/tblcont.html.*

**FOR FURTHER INFORMATION CONTACT:** Jon Andrew, Chief, Division of Migratory Bird Management, (703) 358–1714; or James Kelley (612) 713–5409.

**SUPPLEMENTARY INFORMATION:** We regulate the taking of migratory birds under the four bilateral migratory bird treaties the United States entered into with Great Britain (for Canada), Mexico, Japan, and Russia. Regulations allowing the take of migratory birds are authorized by the Migratory Bird Treaty Act (16 U.S.C. 703–711), and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712). The Acts authorize and direct the Secretary of the Interior to allow hunting, taking, killing, etc. of migratory birds subject to the provisions of, and in order to carry out the purposes of, the four migratory bird treaties.

The 1916 treaty with Great Britain was amended in 1999 by the governments of Canada and the U.S. Article II of the amended U.S.-Canada migratory bird treaty (Treaty) states that, in order to ensure the long-term conservation of migratory birds, migratory bird populations shall be managed in accord with conservation principles that include (among others): To manage migratory birds internationally; to sustain healthy migratory bird populations for harvesting needs; and to provide for and protect habitat necessary for the conservation of migratory birds. Article III of the Treaty states that the governments should meet regularly to review progress in implementing the Treaty. The review shall address issues important to the conservation of migratory birds, including the status of migratory bird populations, the status of important migratory bird habitats, and the effectiveness of management and regulatory systems. The governments agree to work cooperatively to resolve identified problems in a manner consistent with the principles of the

Treaty and, if the need arises, to conclude special arrangements to conserve and protect species of concern. Article IV of the Treaty states that each government shall use its authority to take appropriate measures to preserve and enhance the environment of migratory birds. In particular, the governments shall, within their constitutional authority, seek means to prevent damage to such birds and their environments and pursue cooperative arrangements to conserve habitats essential to migratory bird populations. Article VII of the Treaty authorizes permitting the take, kill, etc., of migratory birds that, under extraordinary conditions, become seriously injurious to agricultural or other interests.

**Geographic Distribution of Species**

Greater snow geese (*Chen caerulescens atlantica*) breed in the eastern Arctic of Canada and migrate southward through Quebec, New York, and New England to their wintering grounds in the mid-Atlantic United States (Reed et al. 1998). Lesser snow geese (*Chen c. caerulescens*) breed throughout much of the Arctic region of North America (Mowbray et al. 2000). Additionally, a population that breeds on Wrangel Island, Russia, migrates through Alaska, western Canada, and several western States. The wintering range of lesser snow geese is broad, with birds nesting in the western Arctic tending to winter in the Pacific Flyway, and birds nesting in the central and eastern Arctic wintering primarily in the Central and Mississippi Flyways. Small numbers of lesser snow geese winter in the Atlantic Flyway.

Approximately 95% of Ross' geese (*Chen rossii*) breed in the Queen Maud Gulf region of the central Arctic (Kerbes 1994). Small numbers of Ross' geese also breed on Banks Island in the western Arctic, along western and southern Hudson Bay, and Southampton and Baffin Islands in the eastern Arctic. Prior to the 1960s, most Ross' geese migrated to wintering areas in California. This species has dramatically expanded its range eastward in recent decades (Ryder and Alisauskas 1995). A large proportion of Ross' geese winters in the Central Valley of California. Smaller numbers of Ross' geese winter in the southwest portion of the Central Flyway, and in Arkansas and Louisiana.

Greater snow geese, lesser snow geese, and Ross' geese are referred to as ''light'' geese due to the light coloration of the white-phase plumage morph, as opposed to true ''dark'' geese such as the white-fronted or Canada goose. We include both plumage variations of lesser snow geese (white, or ''snow'' and dark, or ''blue'') under the designation light geese. Dark phase Ross' geese exist but are uncommon.

**Population Delineation**

Waterfowl management activities frequently are based on delineation of populations that are the target of management. In most instances, populations are delineated according to where they winter, whereas others are delineated based on location of their breeding grounds. For management purposes, populations can comprise one or more species of geese. For example, lesser snow geese and Ross' geese in the central portion of North America are frequently found in the same breeding, migration, and wintering areas. Due to these similarities, the term ''light goose population'' is used to refer to various populations comprising both lesser snow geese and Ross' geese, as described below. In descriptions of geographic areas, eastern Arctic refers to the area east of approximately longitude 95° W; the central Arctic refers to the area between 95° W and approximately 115° W; and the western Arctic refers to the area west of 115° W. Administrative flyway boundaries also are used to describe population ranges.

*Greater snow geese*—A single population of greater snow geese is recognized in North America. The population is relatively isolated from other light goose populations, except for potential mixing with small groups of lesser snow geese in the central portion of the Atlantic Flyway.

*Mid-Continent Population (MCP) of light geese*—This term is used to describe light geese (lesser snow and Ross' geese) that migrate primarily through North Dakota, South Dakota, Nebraska, Kansas, Iowa, and Missouri, and winter in Arkansas, Louisiana, Mississippi, and eastern, central, and southern Texas. MCP birds nest in colonies along the southern and western shores of Hudson Bay and on Southampton and Baffin Islands in the eastern Arctic, and in the Queen Maud Gulf region of the central Arctic. Field studies conducted in Texas during winter indicate that surveyed MCP light geese comprise approximately 94% lesser snow geese and 6% Ross' geese (Texas Parks and Wildlife Department, unpublished data). Similar studies conducted in Louisiana indicate that MCP flocks in sampled areas comprise approximately 98% lesser snow geese and 2% Ross' geese (Helm 2001).

*Western Central Flyway Population (WCFP) of light geese*—WCFP light geese winter in southern Colorado, northwestern Texas, New Mexico, and the northern Highlands of Mexico (Hines et al. 1999). WCFP light geese nest primarily in the central and western Canadian Arctic, with nesting colonies on Banks Island (mostly lesser snow geese, with some Ross' geese) and Queen Maud Gulf (mostly Ross' geese, with some lesser snow geese). Observations of birds marked with neck collars indicate that 17% of lesser snow geese from the central Arctic (Kerbes et al. 1999), and 24% of lesser snow geese from the western Arctic (Armstrong et al. 1999), migrate to WCFP wintering areas. Neck collar data are not available for Ross' geese. Overall, the WCFP comprises approximately 79% lesser snow geese and 21% Ross' geese (Thorpe 1999).

In our previous Environmental Assessment on light goose management (U.S. Fish and Wildlife Service 1999), we used the term Mid-Continent light geese (MCLG) to refer to birds that migrated and wintered in the Central and Mississippi Flyways. We defined MCLG as the combination of MCP and WCFP, as described above. However, confusion arose over the use of the terms MCLG and the Mid-Continent Population of light geese. Therefore, we have discontinued the use of the term MCLG. In our current EIS on light goose management, we refer to the combination of MCP and WCFP birds as Central/Mississippi Flyway (CMF) light geese.

*Western Population of Ross' geese (WPRG)*—We have chosen this designation for Ross' geese that migrate to the Pacific Flyway; primarily to the Central Valley of California. The WPRG nests mainly in the Queen Maud Gulf region of the central Arctic, although an increasing number of birds nest in the eastern Arctic. Smaller numbers of birds nest on Banks Island in the western Arctic. The WPRG comprises the largest percentage of wintering Ross' geese in the United States. However, the percent of central Arctic Ross' geese that are recovered by hunters in the Pacific Flyway has declined from nearly 100% in the 1950s and 1960s, to 60% during 1990–98.

*Pacific Flyway Population of lesser snow geese (PFSG)*—PFSG birds winter in the Pacific Flyway and nest primarily on Banks Island, and coastal river deltas on the mainland at Anderson River and Kendall Island in the western Arctic. Neck collar observations indicate that approximately 76% of lesser snow geese that nest in the western Arctic migrate to PFSG wintering areas (Hines et al. 1999). Very few lesser snow geese banded in the central and eastern Arctic are recovered in the Pacific Flyway.

*Wrangel Island Population of lesser snow geese*—This population nests on Wrangel Island off the north coast of Russia, and winters in southern British Columbia, the Puget Sound area of Washington, and in northern California.

**Population Surveys**

The status of light goose populations in North America is monitored using a combination of aerial surveys conducted on breeding, migration, and wintering areas. The breeding population of greater snow geese is estimated each spring when the entire population is staging in the St. Lawrence River Valley during northward migration (Reed et al. 1998). Due to the difficulty of conducting surveys throughout the vast arctic region, lesser snow and Ross' goose breeding colonies are monitored on a 5-year rotating basis using low-level aerial photography (Kerbes *et al.* 1999). Therefore, estimates of the number of breeding birds at each colony are not available every year. Surveys of breeding colonies provide estimates of the number of nesting birds, but not the number of non-breeding birds (primarily 1- and 2-year olds). Consequently, the total population size in spring is higher than estimates derived from photo surveys of breeding colonies. On the average, snow goose populations are considered to have 25–35% non-breeders in spring (Kerbes *et al.* 1999). Therefore, on average, the total population size may be 30% greater than breeding colony estimates indicate.

Winter waterfowl surveys are conducted each year throughout the entire lower 48 States. These surveys began in some areas as early as the 1930s; however, consistent survey coverage began in 1955. Biologists did not begin separate inventories of MCP and WCFP light geese until the winter of 1969–70. Therefore, during 1955–1969, the light goose count in the Central and Mississippi Flyways could not be separated into MCP and WCFP components.

Because not all areas in each State are surveyed, the winter survey does not provide a complete population count for light geese. Instead, the survey provides an index to the winter population of geese, which should not be confused with the size of the breeding population. Past photographic inventories of eastern arctic nesting colonies suggested that winter indices averaged about half of the actual spring population estimate (Kerbes 1975). Boyd *et al.* (1982) used a correction factor of 1.6 to apply to winter indices to estimate the approximate breeding population size in spring. By maintaining similar survey methods from year to year, the winter index is utilized to monitor the relative size of the various populations each year. Because winter index data are available every year for most light goose populations (versus every 5 years for arctic breeding colony data), the winter index is utilized to annually monitor populations and aid in making many management decisions.

**Population Status—Spring Surveys**

Estimation of the spring population of greater snow geese is straightforward, because most birds are encountered during the photo survey conducted in the St. Lawrence River Valley in Quebec. However, determination of the number of breeding lesser snow and Ross' geese for various populations is problematic because delineation of most populations is based on wintering ground affiliation. For example, MCP light geese comprise birds that breed in the eastern and central Arctic. WCFP light geese comprise birds that breed in the central and western Arctic. Because photo surveys of breeding colonies for a particular region are conducted every 5 years, simultaneous estimates from 2 different portions of a population's breeding range may be lacking. Therefore, we present breeding population estimates for lesser snow and Ross' geese for the eastern, central, and western arctic regions, rather than providing spring estimates for populations that are delineated based on wintering ground affiliation.

*Greater snow geese*—The spring population estimate of greater snow geese increased from approximately 25,400 birds in 1965, to 813,900 birds in 2000 (Reed *et al.* 1998, Reed et al. 2000). The population growth rate during 1965–2000 was 8.8 % per year. At the current rate of growth, the greater snow goose population will reach 1 million by 2002, and over 2 million by 2010.

*Light geese in the eastern Arctic*—The number of breeding lesser snow geese on surveyed colonies in 1973 was approximately 1,057,400 birds (Kerbes 1975). During 1973–97, the number of breeding lesser snow geese increased at an annual rate of 4.7%, to approximately 3,010,200 birds (Canadian Wildlife Service, unpublished data). Including an additional 30% for non-breeding birds, the total number of lesser snow geese in the eastern Arctic was nearly 4 million birds in 1997. Assuming a 4.7% annual growth rate since 1997, we project the total number of lesser snow geese in the eastern Arctic will be approximately 4.7 million in spring 2001. Due to expansion of its breeding range, the number of Ross' geese in the eastern Arctic has increased from approximately 2,000 birds in 1990, to 52,000 birds in 1998 (Canadian Wildlife Service, unpublished data). A reliable estimate of the annual growth rate of Ross' geese in the eastern Arctic is not available; therefore, we cannot project the number of Ross' geese for spring 2001.

*Light geese in the central Arctic*—In 1966, the numbers of breeding lesser snow and Ross' geese on surveyed colonies in the central Arctic were 10,300 and 34,000 birds, respectively (Kerbes 1994). During the period 1966–98, the number of breeding lesser snow geese in the central Arctic increased at an annual rate of 14.6%, to the latest estimate of 816,100 birds (Canadian Wildlife Service, unpublished data). During the same period, the number of breeding Ross' geese increased at an annual rate of 9.0%, to the latest estimate of 567,100 birds (Canadian Wildlife Service, unpublished data). Including an additional 30% to account for non-breeding birds, the total number of lesser snow and Ross' geese in the central Arctic during spring 1998 was approximately 1,061,000 and 737,000 birds, respectively. Population estimates following the 1998 photo surveys are not available at this time. However, assuming the same growth rates for each species cited above, the total number of lesser snow and Ross' geese in the central Arctic in spring 2001 will be approximately 1,572,000 and 955,000 birds, respectively.

*Light geese in the western Arctic*—The number of breeding lesser snow geese on surveyed colonies in 1976 was estimated to be 169,600 birds (Kerbes *et al.* 1999). During the period 1976–95, the number of breeding lesser snow geese increased at an annual rate of 5.3% to 486,000 birds (Kerbes *et al.* 1999). Including an additional 30% for non-breeding birds, the total number of lesser snow geese in the western Arctic was approximately 632,000 birds in 1995. The annual rate of population growth increased to 6.3% during 1981–95 (Kerbes et al. 1999); therefore, the number of lesser snow geese in spring 2001 likely will approach 912,000 birds. Ross' geese are not commonly found on breeding colonies in the western Arctic; however small numbers of birds are found on Banks Island.

*Wrangel Island Population of lesser snow geese*—The total population (breeders and non-breeders) of lesser snow geese on Wrangel Island declined from approximately 150,000 birds in 1970 to 56,000 birds in 1975, due to four consecutive years of poor reproductive success (Kerbes et al. 1999). The population increased during the 1980s to nearly 100,000 birds, but averaged

only about 65,000 birds in the mid-1990s. The 2000 population estimate was approximately 95,000 birds (U.S. Fish and Wildlife Service 2000).

**Population Status—Winter Surveys**

We use operational surveys conducted annually on wintering grounds to derive winter indices to light goose populations. Winter indices represent a certain proportion of the total wintering population, and thus are smaller than the true population size. However, by assuming that the same proportion of the population is counted each winter, we are able to monitor the trend of the overall population. Aerial surveys do not distinguish between lesser snow and Ross' geese; therefore, winter indices for each species are not generated. Species composition information derived from flock sampling on the ground can be used to approximate the number of lesser snow and Ross' geese in winter indices.

*Greater snow geese*—The winter index of greater snow geese has increased from approximately 46,000 birds in 1955, to approximately 465,000 birds in 2000 (Serie and Raftovich 2000). The winter survey is a useful tool for providing information on the winter distribution of snow geese in the Atlantic Flyway. However, the winter survey counts a smaller proportion of the population than does the spring survey.

*Mid-Continent Population (MCP) of light geese*—The winter index of MCP light geese has increased from approximately 777,000 birds in 1970, to nearly 2.4 million birds in 2000 (Sharp and Moser 2000). During 1970–2000, the MCP winter index increased 3.3% per year, although the rate of increase has elevated to 4.2% per year in the past 10 years. Using the average of species composition data obtained in Texas and Louisiana cited earlier, we estimate that the numbers of lesser snow and Ross' geese in the 2000 MCP winter index were 2,291,000 and 99,200 birds, respectively.

*Western Central Flyway Population (WCFP) of light geese*—The winter index of WCFP light geese has increased from approximately 42,000 birds in 1970 to approximately 256,000 birds in 2000 (Sharp and Moser 2000). During 1970–2000, the WCFP winter index increased 6.2% per year. Lesser snow geese and Ross' geese comprise approximately 79% and 21%, respectively, of WCFP light geese (Thorpe 1999). Using these proportions, the lesser snow and Ross' goose components of WCFP light geese in winter 2000 were approximately 202,200 and 53,600 birds, respectively.

*Western Population of Ross' geese (WPRG)*—Consistent, long-term surveys have not been in place to provide annual winter indices for WPRG. Special surveys conducted during the winters of 1988 and 1989 produced estimates of over 200,000 Ross' geese in California (Pacific Flyway Council 1992). Species composition surveys conducted in the Central Valley during the winter of 1992 resulted in an index of 221,300 birds (Mensik and Silveira 1993). The survey also was completed in December, 2000, resulting in an estimate of 256,000 Ross' geese (U.S. Fish and Wildlife Service, unpublished data).

*Pacific Flyway Population of lesser snow geese (PFSG)*—Annual winter indices are not available for PFSG. Species composition surveys conducted in 1992 indicated that 63% of light geese wintering in California were lesser snow geese (Mensik and Silveira 1993). The species composition survey conducted in California during December, 2000, yielded an estimate of 409,000 lesser snow geese (U.S. Fish and Wildlife Service, unpublished data).

*Wrangel Island Population of lesser snow geese*—Winter indices are not available for Wrangel Island lesser snow geese.

**Population Goals**

Population goals for various light goose populations are outlined in the North American Waterfowl Management Plan (NAWMP; U.S. Department of the Interior *et al.* 1998). In addition, Flyway Councils have set population goals for light geese they manage within their geographic boundaries. We compare current population levels to NAWMP population goals to demonstrate that most light goose populations have increased substantially over what is considered to be a healthy population level. We are not suggesting that light goose populations be reduced for the sole purpose of meeting NAWMP population goals.

*Greater snow geese*—The Atlantic Flyway Council population objective, as well as the NAWMP spring population goal for greater snow geese, is 500,000 birds. Therefore, the greater snow goose population currently is 63% higher than the Atlantic Flyway Council and NAWMP goals. The Arctic Goose Habitat Working Group of the Arctic Goose Joint Venture has recommended a management goal of stabilizing the greater snow goose population at between 800,000 to 1 million birds (Giroux *et al.* 1998a). However, the Working Group recommended a reduction of the population below this level if natural habitats continue to deteriorate, or if measures taken to reduce crop depredation do not achieve desired results (Giroux et al. 1998a).

*Lesser snow geese*—The NAWMP winter index goal for MCP lesser snow geese is 1 million birds. The Central and Mississippi Flyway Councils have set an upper management threshold (winter index) of 1.5 million for MCP lesser snow geese, but have not set a threshold for WCFP lesser snow geese. The 2000 winter index of MCP lesser snow geese is 129% higher than the NAWMP goal, and 53% higher than the management threshold adopted by the Flyway Councils. The 2000 winter index of WCFP lesser snow geese is 84% higher than the NAWMP winter index goal of 110,000 birds.

In 1997, the Arctic Goose Habitat Working Group of the AGJV recommended a management goal of reducing the number of light geese in the mid-continent region (primarily MCP and WCFP birds) by 50% (Arctic Goose Habitat Working Group 1997). This suggests a reduction of the combined winter index of MCP and WCFP light geese from the winter 1996/1997 value of 3.1 million to approximately 1.6 million birds.

The NAWMP does not contain a winter index goal for lesser snow geese in the Pacific Flyway (PFSG), but does contain a goal of 200,000 birds for breeding lesser snow geese in the western Arctic. Approximately 76% of lesser snow geese that nest in the western Arctic migrate to PFSG wintering areas (Hines et al. 1999). The 1995 photo survey estimate of 486,000 breeding lesser snow geese in the western Arctic (Kerbes *et al.* 1999) is 143% higher than the NAWMP goal. Hines *et al.* (1999) suggested a proactive approach to management of western Arctic lesser snow geese by stabilizing the population at its current level before it escapes control via normal harvest.

*Ross' geese*—The NAWMP does not contain separate population goals for MCP and WCFP Ross' geese. However, the NAWMP and Pacific Flyway Council (Pacific Flyway Council 1992) utilize a total continental goal of 100,000 breeding Ross' geese. The estimate of 619,100 breeding Ross' geese in the central and eastern Arctic in 1998 is 519% higher than the NAWMP and Pacific Flyway goal.

The Pacific Flyway Council also has adopted a continental winter index goal of 150,000 Ross' geese (Pacific Flyway Council 1992). The combined winter index total of 408,750 Ross' geese in the MCP, WCFP, and WPRG geographic ranges is 172% higher than the Pacific Flyway Council goal.

**Potential Causes of Population Growth**

The rapid rise of light goose populations has been influenced heavily by human activities (Abraham and Jefferies 1997, Filion *et al.* 1998, Reed *et al.* 1998, Sparrowe 1998). The greatest attributable factors likely include:

(1) A decline in harvest rate (percent of population removed by hunting);

(2) an increase in adult survival rates;

(3) the expansion of agricultural areas in the United States and prairie Canada that provide abundant food resources during migration and winter; and

(4) the establishment of sanctuaries along the Flyways.

We have attempted to curb the growth of light goose populations by increasing bag and possession limits and extending the open hunting season length for light geese to 107 days, the maximum allowed by the Treaty. Despite liberalizations in regular-season regulations, the harvest rate (the percentage of the population that is harvested) for light goose populations traditionally has been low. Low hunting mortality has contributed to population growth, which further reduces the harvest rate. The decline in harvest rate indicates that past harvest management strategies have not been sufficient to stabilize or reduce population growth rates.

Expansion of agriculture in light goose migration and wintering areas has contributed to population growth by providing a food subsidy (Ankney and MacInnes 1978; Abraham and Jefferies 1997, Giroux *et al.* 1998b). Light geese exploit corn, soybean, rice, wheat, barley, oats and rye during migration and winter. Food subsidies contribute to higher survival rates of geese and provide birds with additional nutrients during spring migration that allow them to arrive on the breeding grounds in prime condition to breed and have higher breeding success.

**Foraging Behavior of Geese**

Light geese have a profound effect on habitat through their feeding actions, and have developed several modes of feeding on plant material for meeting their energy needs (Goodman and Fisher 1962, Bolen and Rylander 1978). Where spring thawing has occurred, and above-ground plant growth has not begun, snow geese dig into and break open the turf (grubbing), consuming the highly nutritious below-ground portions (e.g., roots, rhizomes) of plants. Grubbing continues into late spring. Snow geese also engage in shoot-pulling where birds pull the shoots of large sedges, consume the highly nutritious basal portion, and discard the remainder of the plant. A third feeding strategy utilized by all light goose species is grazing of above-ground plant material by clipping action of the bill. The amount of time in which Ross' geese utilize grubbing and shoot-pulling is not well documented. However, Ross' geese are known to grub for below-ground roots of sedges and grasses in early spring (Ryder and Alisauskas 1995). Due to their smaller bill size, Ross' geese are able to graze shorter stands of vegetation, which could prevent or slow vegetation recovery in damaged areas (Didiuk *et al.* 2001). In addition, Ross' geese cause considerable damage to vegetation by pulling up plants during nest-building activities (Didiuk *et al.* 2001).

**Habitat Impacts**

We have described the impact of light geese on natural and agricultural systems for various breeding, migration, and wintering areas in our draft EIS on light goose management. Due to the volume of technical information, we refer the reader to the draft EIS for specific details. Procedures for obtaining a copy of the draft EIS are described in the **ADDRESSES** section of this document. A synopsis of ecosystem impacts follows.

*Greater snow geese*—Studies conducted on Bylot Island, where 15% of the greater snow goose population nests, indicate that goose grazing levels are high, but there are as yet no indications of damage to the vegetation in terms of absence of re-growth following grazing (Giroux *et al.* 1998b). However, monitoring of fenced and un-fenced study plots has shown that composition of the plant community is modified by geese, and that annual plant productivity is reduced in heavily-grazed areas. Long-term, intense grazing by geese leads to a low-level production equilibrium between geese and plants. When grazing is experimentally stopped, via exclosure fences, plant biomass increases rapidly within a few years (Giroux *et al.* 1998b). Measurements of food availability on Bylot Island suggest that the short-term ability of habitat to support geese has not been exceeded. However, given the rate of increase of greater snow goose numbers, it is highly probable that the intensity of grazing will increase and that the capacity of plants to recover will be exceeded (Masse *et al.* 2001).

The St. Lawrence River Valley is an important spring and fall staging area for greater snow geese. Vegetation studies in bulrush marshes indicate that plant stem density in some marshes declined by 40% during 1971–96 (Giroux and Bedard 1987). Repeated measures of below-ground plant biomass suggested that geese had maintained the marsh system in a low-level steady state during the 1980s. However, decreased number of use-days by geese, declining productivity of bulrush habitats at some sites, changes in plant species composition, and erosion of marshes indicate that the carrying capacity of bulrush marshes may have been reached and that marshes can no longer accommodate the increasing number of snow geese (Giroux *et al.* 1998b). Until the 1960s, migrating greater snow geese staged in their traditional bulrush marshes of the upper St. Lawrence River estuary. However, birds gradually began field-feeding behavior during spring in the late 1960s and early 1970s, when the population level approached 100,000 (Filion *et al.* 1998). Crop damage in Quebec has prompted implementation of a compensation fund to cover 80% of farmers' losses. Bedard and LaPointe (1991) predicted that rapid goose population growth would soon lead to unacceptable crop damage. In some areas, compensation has not been sufficient for farmers who experience losses and the Quebec Farmers Union has asked for a control of the snow goose population (Filion *et al.* 1998). With recent shifts of geese toward the upper St. Lawrence estuary and their later departure from these regions, damage to forage production could increase and additional crops, such as winter cereals, could be affected (Filion *et al.* 1998).

Prior to the 1960s, the impact of greater snow geese on coastal marshes of the U.S. mid-Atlantic coast appeared to be relatively small. Goose impacts on marshes became more apparent as the population grew during the 1970s and 1980s. From New Jersey to North Carolina, areas of denuded marsh, or ''eat-outs,'' were created by foraging geese (Giroux *et al.* 1998b). Marshes that have experienced eat-outs may be able to recover relatively quickly if sufficient below-ground biomass remains to resume vegetative growth (Smith and Odum 1981). However, areas that are grazed by geese year after year may be maintained as mudflats (Young 1985). Snow goose grazing has impacted natural marshes at several sites throughout the mid-Atlantic coast, although impacts to coastal marshes appear to have been reduced in areas where birds have adapted to feeding in agricultural habitats. The nutritional subsidy that agricultural foods provide to birds has likely contributed to the increase in the goose population. Increased damage to coastal marshes during the last 5–10 years has occurred

in areas where agricultural foods are less available or where large increases in goose numbers have rapidly occurred (Giroux *et al.* 1998b).

The use of agricultural lands by greater snow geese in the mid-Atlantic region is a relatively recent development. Agricultural depredations by geese in the mid-Atlantic were first reported during the winter of 1971–72. A 1998 poll of agency personnel in 6 mid-Atlantic States indicated, on average, an annual total of fewer than 35 crop damage complaints (Giroux *et al.* 1998b). However, goose damage was reported to be on the increase in Pennsylvania, Maryland, and Delaware, and stable in New Jersey, Virginia, North Carolina, and New York (Giroux *et al.* 1998b). Crop damage assessment surveys were conducted in Delaware during 1998 and 1999 (Delaware Div. of Fish and Wildlife 2000). In 1998, a total of $500,000 in crop damage affecting 12,000 acres was documented; primarily in wheat, barley, and rye crops. In 1999, the number of acres affected had declined to 3,800 acres, with damage amounts of $180,300 resulting. Although similar numbers of snow geese were present in both years, modification of hunting season opening dates for snow geese is believed to be responsible for the decline in crop damage. It is likely that crop damage reports underestimate actual losses. U.S. farmers are not traditionally compensated for wildlife damage and thus have little incentive to report damage to agencies. As snow goose populations continue to grow, it is expected that agricultural depredations will increase.

*Lesser snow and Ross' geese*—Under certain levels of goose grazing intensity, some salt-marsh plants in the Arctic show enhanced shoot growth following defoliation (Abraham and Jefferies 1997). However, other plant species show only limited shoot growth or no growth following defoliation (Zellmer *et al.* 1993). At high levels of grazing intensity, plant communities are unable to rebound from constant feeding pressures. Once lesser snow geese graze an area to the point where they can no longer obtain sufficient food, they will leave to exploit other areas. Normally, this would allow plant communities to rebound from grazing. However, Ross' geese can further impact areas after snow geese leave because they can graze on shorter stands of plants. The potential for plant recovery is further reduced by the short growing season in arctic and sub-arctic habitats.

Accelerated habitat degradation results from a negative feedback loop between light geese and the plant communities they utilize. Removal of above-ground plant cover reduces the thickness of the vegetative mat that insulates underlying sediments from the air. This causes an increase in the rate of evaporation from surface sediments and greater concentration of salts from marine clays. Grubbing by geese further exposes the soil substrate. Most of the impacts by light geese on breeding habitats have been documented in the eastern and central arctic region. For example, the Hudson Bay Lowlands salt-marsh ecosystem consists of a 1,200-mile strip of coastline along west Hudson and James Bays, Canada. Vast areas of desertification, characterized by high soil salinity and little or no vegetation, have been documented extensively throughout the Hudson Bay Lowlands (Abraham and Jefferies 1997). Of the 135,000 acres of salt-marsh habitat in the Hudson Bay Lowlands, 35% is considered to be destroyed, 30% is damaged, and 35% is overgrazed (Abraham and Jefferies 1997). The rate of vegetation decline at La Perouse Bay during 1984–93 was approximately 159 acres/year (calculated from data in Jano *et al.* 1998). Habitats currently categorized as ''damaged'' or ''overgrazed'' are being further impacted and will be classified as ''destroyed'' if goose populations continue to expand. Experts fear that many destroyed habitats will not recover (Abraham and Jefferies 1997). For example, in a badly degraded area, less than 20% of the vegetation within an exclosure (fenced in area where geese cannot feed) has recovered after 15 years of protection from light geese (Abraham and Jefferies 1997). Recovery rates of degraded areas are further slowed by the short tundra growing season and the high salinity levels in the exposed and unprotected soil.

The Hudson Bay Lowlands have undergone isostatic uplift following retreat of the last glacial episode. Upon being released from the weight of glaciers, the coastline has undergone a slow rate of elevation increase (Hik *et al.* 1992). The gradual uplift causes modification to the soil environment and leads to a shift in communities of plants that tolerate drier conditions. It has been suggested that isostatic uplift, not the feeding actions of geese, is responsible for habitat damage at breeding colony sites. This theory is disproved by studies that utilize fencing to exclude geese from feeding in study plots. Vegetation in adjacent study plots that are exposed to goose grazing is removed, whereas vegetation in fenced plots is unaffected. If isostatic uplift was responsible for vegetation damage, vegetation in fenced areas also should have been affected.

Satellite imagery has been used to demonstrate habitat damage at other sites in the Arctic. For example, lesser snow and Ross' goose population growth at Karrak Lake (approximately 750 miles north of La Perouse Bay) in the Queen Maude Gulf Migratory Bird Sanctuary has negatively affected habitat (Alisauskas 1998, Didiuk *et al.* 2001). By 1989, 52% of plant communities within the areas occupied by nesting light geese at Karrak Lake were converted to exposed peat, and a further 7% had eroded to bare mineral soils (Alisauskas 1998). Loss of vegetation at colony sites may eventually lead to desertification (Alisauskas 1998). Abraham and Jefferies (1997) described indications of habitat impacts by geese at other sites, such as: Akimiski Island; west coast of James Bay; Cape Henrietta Maria; Hudson Bay coast of Ontario; Hudson Bay coast of Manitoba; Knife and Seal Rivers; Manitoba; Tha-Anne River to the Maguse River (west coast of Hudson Bay); Southampton Island; and Southwestern Baffin Island. As of yet, extensive damage to vegetation has not been reported on breeding areas in the western arctic; however, field studies have not been in place to document whether or not any significant impacts have occurred (Kerbes *et al.* 1999). Recent photographs from Banks Island indicate possible vegetation changes as a result of goose grazing (Abraham and Jefferies 1997). As population size and bird density increases, geese may begin to impact western arctic breeding habitats in a manner similar to birds in the eastern and central Arctic.

In contrast to the greater snow goose situation, less attention has been paid to the impacts of lesser snow and Ross' geese on migration and wintering habitats. As of yet, increasing light goose populations in the mid-continent region have not caused a widespread crop depredation problem. A search of the crop damage reporting system of the U.S. Department of Agriculture indicated losses of $28,000 in Louisiana during January 1994 through November 2000 (U.S. Dept. Agr., unpublished data). Losses totaling $39,000 were reported in Texas from October 1993 to September 2000. Although many farmers may incur crop damage, they often do not report such losses because there is no compensation program in place. Although light geese create eat-outs in natural marsh systems on the Gulf Coast, there are no indications that such occurrences are serious enough to warrant management action.

**Impacts on Other Species**

Habitat damage will not only affect light geese themselves, but will also affect habitat that other species rely upon. Rockwell *et al.* (1997b) observed the decline of local populations of more than 30 avian species in the La Pérouse Bay area due to severe habitat degradation. Documentation of specific declines in bird nesting activity has been accomplished by repeated visits to study plots. For example, local nesting populations of semi-palmated sandpipers and red-necked phalaropes at La Pérouse Bay, Manitoba, were periodically sampled on study areas during 1983–99 (Gratto-Trevor 1994; Rockwell 1999). In 1983, more than 120 semi-palmated sandpiper and 46 red-necked phalarope nests were documented (Gratto-Trevor 1994). When the study area was sampled in 1999, only 4 sandpiper and 1 phalarope nests were found (Rockwell 1999). Results from these studies indicate declines in local populations of species in areas damaged by light geese. These results are not presented here to indicate continental declines in populations of any species. However, if light goose populations continue to grow at current rates, and geese continue to exploit and destroy habitats in new areas, it is possible that regional and continental declines in populations of other avian species may occur.

Avian cholera is a highly contagious and deadly disease, caused by the bacterium *Pasteurella multocida*, and is one of the most important diseases of North American waterfowl (Friend 1999). Although much remains to be learned about the mechanism of transmission, there is increasing evidence that lesser snow and Ross' geese act as reservoirs for the bacterium that causes cholera (Friend 1999, Samuel *et al.* 1997, Samuel *et al.* 1999a). The movement of cholera from major focal points of the disease follows the well-defined pathways of waterfowl migration, and is associated with movements of lesser snow and Ross' geese (Brand 1984; Samuel *et al.* 1999a). Over 100 species of waterbirds and raptors are susceptible to avian cholera (Botzler 1991). The threat of avian cholera to endangered and threatened bird species is continually increasing because of increasing numbers of cholera outbreaks and the expanding geographic distribution of the disease (Friend 1999). Potentially-affected species include whooping cranes and bald eagles. Various populations of sandhill cranes migrate, stage, and winter with light geese and potentially could be affected by cholera outbreaks.

The potential for massive outbreaks of avian cholera in light geese and other waterfowl is illustrated by several documented die-offs. On Banks Island, avian cholera caused the death of at least 30,000 and 20,000 lesser snow geese in 1995 and 1996, respectively (Samuel *et al.* 1999a). Over 72,000 waterbirds died of cholera in the Rainwater Basin of Nebraska during 1980 (Brand 1984). We believe that the increasing number and expanding geographic distribution of cholera outbreaks represents a serious threat to waterfowl and other bird populations that are susceptible to the disease. This threat is heightened due to the rapid increase of light goose populations that are known carriers of the disease. Transmission of avian cholera is enhanced by the gregarious nature of most waterfowl species and by high densities of birds that result from habitat limitations, especially in winter and spring (Friend 1999). The likelihood of cholera outbreaks may be reduced when waterfowl occur in lower densities (Samuel *et al.* 1999b). Therefore, we believe that a reduction of light goose populations will reduce the risk of avian cholera outbreaks and associated impacts to other species in the future.

**Environmental Consequences of Taking No Action**

We fully analyzed the No Action alternative with regard to light goose management in our draft EIS, to which we refer the reader (U.S. Fish and Wildlife Service 2001). In summary, most light goose populations will continue to increase at rates anywhere from 5–15% per year, depending on the population. We expect breeding colonies to expand as habitat becomes destroyed in core areas. Birds will begin to exploit new areas and repeat the pattern of habitat destruction and colony expansion. In the case of greater snow geese, we expect the population to exceed the ability of migration habitats to support them. Concurrently, we expect goose damage to agricultural crops to increase.

Even if natural causes result in declines of goose populations, it will take habitats a prolonged time period to recover, especially in the Arctic. A variety of other bird species will be negatively impacted as the habitats they depend on become destroyed by light geese. As population densities increase, the incidence of avian cholera among light geese and other species is likely to increase. Significant losses of other species, such as pintails, white-fronted geese, sandhill cranes, and whooping cranes, from avian cholera may occur. This may result in reduced hunting, birdwatching, and other recreational opportunities.

Habitat damage in the Arctic will eventually trigger density-dependent regulation of the population which likely will result in increased gosling mortality and may cause the population to decline precipitously. Impacts such as physiological stress, malnutrition, and disease in goslings have been documented and observations of such impacts are increasing. However, it is not clear when natural population regulation will occur and what habitat, if any, will remain to support the survivors. Such a decline may result in a population too low to permit any hunting, effectively closing light goose hunting seasons. The length of the closures will largely depend on the recovery rate of the breeding habitat, which likely will take decades.

In the near term, existing light goose hunting seasons would continue under the No Action Alternative. We have attempted to curb the growth of light goose populations by increasing bag and possession limits and extending the open hunting season length for light geese to 107 days, the maximum allowed by the Migratory Bird Treaty. However, due to the rapid rise in light goose numbers, the harvest rate (the percentage of the population that is harvested), has declined even though the actual number of geese harvested has increased (Martin and Padding 2000). The decline in harvest rate indicates that traditional harvest management strategies, which would continue under the No Action Alternative, are not sufficient to reduce population growth rates.

**Environmental Consequences of Proposed Action**

We fully analyzed our proposed action in the draft EIS on light goose management, to which we refer the reader for specific details (U.S. Fish and Wildlife Service 2001). In summary, implementation of regulations to increase harvest of light geese will reduce various light goose populations to levels we believe are more compatible with the ability of habitats to support them. Furthermore, habitats upon which other species depend will be preserved.

The greater snow goose population will be reduced from the spring 2000 level of 813,900 birds to the management goal of 500,000 birds. The number of light geese in the Central and Mississippi Flyways (primarily MCP and WCFP light geese) will be reduced by 50%. This suggests a reduction of the combined winter index of MCP and WCFP light geese from 3.1 million in

1997 (the year the management objective was established) to slightly less than 1.6 million. Because the winter index does not represent the entire population, the true population size will be much higher than 1.6 million following a reduction program. Using an adjustment factor of 1.6 (Boyd *et al.* 1982), we estimate that a winter index of 1.6 million corresponds to nearly 2.6 million breeding birds in spring. Adding 30% for non-breeding birds brings the total population to a minimum of 3.3 million birds following a population reduction program. We believe a population level of 3.3 million birds is more than adequate to ensure the long-term health of MCP and WCFP light goose populations.

We do not anticipate population reduction actions for either Pacific Flyway lesser snow geese, or the Western Population of Ross' geese over the next several years. However, Hines *et al.* (1999) have suggested a proactive approach to management of lesser snow geese that breed in the western Arctic by stabilizing the population at its current level before it escapes control via normal harvest. Future actions may be taken to control either of these populations if it becomes evident that (1) additional harvest pressure is needed to control light geese that breed in the central Arctic, and/or (2) light goose damage to habitats in the western Arctic necessitates control of light geese that breed there. We would propose to authorize the Pacific Flyway to implement special light goose regulations under the above circumstances because a large proportion of central arctic light geese, especially Ross' geese, and the majority of western arctic light geese winter in the Pacific Flyway. If necessary, a proposal to include the Pacific Flyway would be published in the **Federal Register** for public comment. Any population control actions for light geese in the Pacific Flyway should be designed to minimize negative impacts to Wrangel Island lesser snow geese, which historically have not fared as well as other light goose populations.

Although our intention is to significantly reduce some light goose populations in order to relieve pressures on breeding and/or migration habitats, we feel that these efforts will not threaten the long-term status of these populations. We will carefully analyze and assess the status of light goose populations on an annual basis, using the winter index, periodic photo surveys in the Arctic, banding data, and other surveys, to ensure that the populations are not over-harvested.

Experts feel that breaking or removing eggs from nests, and other non-lethal techniques, would be ineffective at significantly reducing the populations within a reasonable timeframe to preserve and protect habitat (Batt 1997). We prefer to implement alternative regulatory strategies designed to increase light goose harvest afforded by the Migratory Bird Treaty and avoid the use of more drastic population control measures.

We believe that a reduction of certain light goose populations will relieve negative habitat pressures on other migratory bird populations that occur on light goose breeding and wintering grounds and other areas along migration routes. By arresting habitat damage by light geese, other species will not be forced to seek habitats elsewhere, thus avoiding potential decreases in their reproductive success. Further, we expect that by decreasing the numbers of light geese on wintering and migration stopover areas, the risk of transmission of avian cholera to other species will be reduced.

**Special Light Goose Regulations**

This proposed rule would make permanent regulations that are very similar to those in effect by reason of the Arctic Tundra Habitat Emergency Conservation Act. The differences are that we now would include the Atlantic Flyway States as being eligible to implement special light goose regulations to manage the population of greater snow geese. Pacific Flyway States may be eligible in the future if habitat damage becomes evident in the western Arctic, or if additional harvest pressure is needed on central Arctic light geese. We also have provided further guidance to States as to what type of information should be collected and reported with regard to harvest resulting from implementation of the conservation order. Such information will further refine our ability to evaluate the impacts of such regulations on light goose populations. Finally, we have revised terminology with regard to baiting that incorporate changes we made to baiting regulations on June 3, 1999 (64 FR 29799).

These proposed regulations address two areas. The first would authorize the use of new hunting methods (e.g., electronic calls and unplugged shotguns) to harvest light geese during normal hunting season frameworks. New methods of take would be allowed only during periods when all waterfowl (except light goose) and crane hunting seasons, excluding falconry, are closed. Authorization of new methods of take during light-goose-only seasons would be allowed only during normal hunting season framework dates (September 1 to March 10), except as provided in Part 21 described below. Individual States would determine the exact dates when such changes would be authorized. Persons utilizing new methods of take during light goose hunting seasons would be required to possess a Federal migratory bird hunting stamp, be registered under the Harvest Information Program, and be in compliance with any additional State license and stamp requirements pertaining to hunting waterfowl.

The second would revise subpart E of 50 CFR part 21 for the management of overabundant light goose populations. Under this subpart, we propose to establish a conservation order specifically for the control and management of light geese. Under the authority of this rule, States could initiate aggressive harvest management strategies with the intent to increase light goose harvest without having to obtain an individual permit, which will significantly reduce the administrative burden on State and Federal governments. This rule would enable States, as a management tool, to use hunters to harvest light geese, by shooting in a hunting manner, inside or outside of the regular migratory bird hunting season framework dates of September 1 and March 10. Although a conservation order could be implemented at any time, we believe the greatest value of this rule would be the provision of a mechanism to increase harvest of light geese beyond March 10, the latest possible closing date for traditional migratory bird hunting seasons. This provision would be especially effective in increasing harvest in mid-latitude and northern States during spring migration. The conservation order is not a hunting season, and implementation of such regulations should not be construed as opening, re-opening, or extending any open hunting season contrary to any regulations promulgated under Section 3 of the Migratory Bird Treaty Act.

Conditions under the conservation order would require that participating States inform participants acting under the authority of the conservation order of the conditions that apply to the amendment. In order to minimize or avoid take of non-target species, States may implement this action only when all waterfowl (including light goose) and crane hunting seasons, excluding falconry, are closed. In addition to authorizing new methods of take (i.e., electronic calls and unplugged shotguns), the conservation order would not impose daily bag limits for light

geese and would allow shooting hours for light geese to end one-half hour after sunset. Because it is not a hunting season, conservation order participants would not be required by Federal law to possess a valid migratory bird hunting stamp or be registered in the Harvest Information Program, unless otherwise required by an individual State. States may impose additional requirements on participants.

Initially, we restrict the scope of this proposed rule to the light geese in the U.S. portions of the Atlantic, Mississippi, and Central Flyways. However, we would propose to include the Pacific Flyway in the future if it becomes evident that (1) additional harvest pressure is needed to control light geese that breed in the central Arctic, and/or (2) light goose damage to habitats in the western Arctic necessitates control of light geese that breed there. The Pacific Flyway would be allowed to implement special light goose regulations under the above circumstances because a large proportion of central Arctic light geese, especially Ross' geese, and the majority of western Arctic light geese, winter in the Pacific Flyway.

We acquired experience with the proposed regulatory changes in the Central and Mississippi Flyways during 1999–2001 after we implemented such regulations on February 16, 1999 (64 FR 7507; 64 FR 7517). We withdrew the new light goose regulations on June 17, 1999 (64 FR 32778) to end existing litigation and initiate development of the environmental impact statement. However, Congress passed the Arctic Tundra Habitat Emergency Conservation Act (Pub. L. 106–108) in November, 1999, which reinstated the regulations. We published a notice of this reinstatement on December 20, 1999 (64 FR 71236). Our most recent estimate indicates that implementation of new light goose regulations increased harvest of light geese in the Central and Mississippi Flyways by 69% during 1999/00 (U.S. Fish and Wildlife Service 2001). The 1999/2000 total U.S. harvest of over 1.3 million light geese in the Central and Mississippi Flyways is nearly equal to the annual harvest of 1.4 million that is required to reduce the number of birds by 50% (Rockwell and Ankney 2000). We estimate that the greater snow goose population can be reduced to 500,000 birds by 2004 if implementation of new light goose regulations in the Atlantic Flyway increases harvest by 69% (U.S. Fish and Wildlife Service 2001).

We will annually monitor the status of light goose populations in North America. The amendments to 50 CFR Parts 20 and 21 will be suspended in the Atlantic Flyway if the greater snow goose population is reduced to the goal of 500,000 birds. The amendments will be suspended in the Central and Mississippi Flyways if the winter index is reduced to the management goal of approximately 1.6 million birds (primarily MCP and WCFP light geese). However, in the event that any light goose population resumes population growth above management goals, it may become necessary to re-implement additional methods of take (Part 20) and/or the conservation order (Part 21) in an attempt to return the population to the desired level. Furthermore, if electronic calls and unplugged shotguns are shown to be no longer effective in increasing harvest of light geese, we will propose to supplement them by authorizing additional methods of take. Any proposed changes to light goose regulations will be published in the **Federal Register** for public comment.

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### NEPA Considerations

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we prepared a draft Environmental Impact Statement (DEIS) in August 2001. The DEIS is available to the public at the location indicated under the **ADDRESSES** caption.

### Endangered Species Act Consideration

Section 7(a)(2) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884) provides that ''Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *.'' We have initiated Section 7 consultation under the ESA for this proposed rule. The result of our consultation under Section 7 of the ESA will be available to the public at the location indicated under the **ADDRESSES** caption.

### Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations, or governmental jurisdictions. The economic impacts of this proposed rulemaking will fall primarily on small businesses because of the structure of the waterfowl hunting-related industries. The rule benefits small businesses by avoiding failure of an ecosystem that produces migratory bird resources important to American citizens. Hunting seasons for all goose

species produce a total annual economic impact of $608 million (U.S. Department of the Interior 1997). Light geese represent approximately 24% of all geese taken in the U.S. The distribution of light goose harvest among Flyways is as follows: Atlantic Flyway 5%; Mississippi Flyway 36%, Central Flyway 53%; Pacific Flyway 6%. Allocating the economic impact of light goose hunting in each Flyway by these proportions, the economic impact of light goose hunting is $7.5 million in the Atlantic Flyway, $52.5 million in the Mississippi Flyway, $76.7 million in the Central Flyway, and $9.3 million in the Pacific Flyway. The proposed rule is expected to preserve this economic impact and generate additional output by providing opportunity to increase take of light geese beyond March 10 in the three easternmost Flyways. Data are not available to estimate the number of small entities affected, but it is unlikely to be a substantial number on a national scale. In 1999, we estimated that implementation of new light goose regulations would avert a population crash, thus avoiding the closure of normal light goose hunting seasons due to low populations in the Central and Mississippi Flyways, and avoiding a $70 million loss in economic output associated with such seasons. Implementation of light goose regulations would also help reduce agricultural losses caused by geese. Our proposed action is to implement special regulations to increase harvest of light geese. If the proposed alternative is implemented, populations would be reduced to levels that habitats can support and agricultural damages will be reduced. We have determined that a Regulatory Flexibility Act analysis is not required.

**Executive Order 12866**

This rule was reviewed by the Office of Management and Budget and deemed non-significant under E.O. 12866. This rule will not have an annual economic effect of $100 million or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. Therefore, a cost-benefit economic analysis is not required. The rule will affect regional economic benefits in two ways. First, it may prevent a die-off of light geese and other ill-effects of overpopulation. People derive pleasure from both hunting and watching light geese. The improvement in public welfare is difficult to measure but, given the number of people involved and time committed, it is less than $100 million. By preventing a crash in light goose populations, the rule benefits hunters and birdwatchers by ensuring the populations remain at usable levels and ensures the future of a $146 million industry associated with light goose hunting in the U.S. Second, the rule would generate about $21 million in added local output associated with increased number of days to take light geese during conservation orders in the Atlantic, Mississippi, and Central Flyways. Information on the economic benefit to non-consumptive uses of light geese is not available. Finally, control of light goose populations will reduce the probability of avian disease spreading to other species, curb further damage to natural habitats, and reduce agricultural losses to goose depredations. This rule will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. Federal agencies most interested in this rulemaking are primarily other Department of the Interior bureaus (e.g., Biological Resources Division of the U.S. Geological Survey). The action proposed is consistent with the policies and guidelines of other Interior bureaus. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule will not raise novel legal or policy issues because we have previously managed the harvest of light geese under the Migratory Bird Treaty Act. Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? (6) What else could the Service do to make the rule easier to understand?

**Small Business Regulatory Enforcement Fairness Act**

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not have an annual effect on the economy of $100 million or more; nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

**Paperwork Reduction Act and Information Collection**

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d). Under the Act, information collections must be approved by the Office of Management and Budget (OMB). Agencies 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. We expect a maximum of 39 State wildlife agencies will participate under the authority of the conservation order each year it is available, requiring an average of 24 hours to collect the information from participants. Therefore, the burden assumed by the State participants would be 936 hours or less. Any suggestions on how to reduce this burden should be sent to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 1849 C Street, NW., Washington, DC 20204. We will use the record-keeping and reporting requirements imposed under regulations established in 50 CFR part 21, subpart E to administer this program, particularly in the assessment of impacts that alternative regulatory strategies may have on light geese and other migratory bird populations. We will require the information collected to authorize State and Tribal governments responsible for migratory bird management to take light geese within our guidelines. Specifically, OMB has approved the information collection requirements of this action and assigned clearance number 1018–0103 (expires 01/31/2002).

**Unfunded Mandates Reform Act**

We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

**Civil Justice Reform—Executive Order 12988**

We, in promulgating this rule, have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988. Specifically, this rule has

been reviewed to eliminate errors and ambiguity, has been written to minimize litigation, provides a clear legal standard for affected conduct, and specifies in clear language the effect on existing Federal law or regulation. It is not anticipated that this rule will require any additional involvement of the justice system beyond enforcement of provisions of the Migratory Bird Treaty Act of 1918 that have already been implemented through previous rulemakings.

**Takings Implication Assessment**

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, will not have significant takings implications and will not affect any constitutionally protected property rights. The rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, the proposed rule would allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

**Federalism Effects**

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Government-to-Government Relationship With Tribes**

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have determined that this rule has no effects on Federally-recognized Indian tribes. Specifically, Tribes were sent copies of our May 13, 1999, Notice of Intent (64 FR 26268) that outlined the proposed action in the Draft Environmental Impact Statement on Light Goose Management. In addition, Tribes were sent our August 30, 1999, Notice of Meetings (64 FR 47332), which provided the public additional opportunity to comment on the DEIS process.

**Energy Effects—Executive Order 13211**

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under Executive Order 12866 and is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

**List of Subjects in 50 CFR Parts 20 and 21**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we hereby propose to amend parts 20 and 21, of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

**Authority:** 16 U.S.C. 703–712; and 16 U.S.C 742a–j.

2. Revise paragraphs (b) and (g) of § 20.21 to read as follows:

### § 20.21 What hunting methods are illegal?

* * * * *

(b) With a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells. This restriction does not apply during a light-goose-only season (greater and lesser snow geese and Ross' geese) when all other waterfowl and crane hunting seasons, excluding falconry, are closed while hunting light geese in Atlantic, Central, and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

* * * * *

(g) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds. This restriction does not apply during a light-goose-only season (greater and lesser snow geese and Ross' geese) when all other waterfowl and crane hunting seasons, excluding falconry, are closed while hunting light geese in Atlantic, Central, and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

* * * * *

3. Revise § 20.22 to read as follows:

### § 20.22 Closed seasons.

No person shall take migratory game birds during the closed season except as provided in part 21.

4. Revise § 20.23 to read as follows:

### § 20.23 Shooting hours.

No person shall take migratory game birds except during the hours open to shooting as prescribed in subpart K of this part and subpart E of part 21.

## PART 21—[AMENDED]

5. The authority citation for part 21 continues to read as follows:

**Authority:** Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)).

6. Subpart E, consisting of § 21.60, is revised to read as follows:

## Subpart E—Control of Overabundant Migratory Bird Populations

### § 21.60 Conservation order for light geese.

(a) What is a conservation order? A conservation order is a special management action that is needed to control certain wildlife populations when traditional management programs are unsuccessful in preventing overabundance of the population. We are implementing a conservation order under the authority of the Migratory Bird Treaty Act to reduce and stabilize various light goose populations. The conservation order allows additional methods of taking light geese, allows shooting hours for light geese to extend to one-half hour after sunset, and removes daily bag limits for light geese inside or outside the migratory bird

hunting season frameworks as described below.

(b) Which waterfowl species are covered by the order? The conservation order addresses management of greater snow (*Chen caerulescens atlantica*), lesser snow (*Chen c. caerulescens*) and Ross' (*Chen rossii*) geese that breed, migrate, and winter in North America. Populations in the Atlantic, Central and Mississippi Flyways are the primary focus of concern.

(c) In what areas can the conservation order be implemented? (1) The following States, or portions of States, that are contained within the boundaries of the Atlantic, Mississippi, and Central Flyways: Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

(2) Tribal lands within the geographic boundaries in paragraph (b) (1) above.

(d) What is required in order for State/Tribal governments to participate in the conservation order? Any State or Tribal government responsible for the management of wildlife and migratory birds may, without permit, kill or cause to be killed under its general supervision, light geese under the following conditions:

(1) Activities conducted under the conservation order may not affect endangered or threatened species as designated under the Endangered Species Act.

(2) Control activities must be conducted clearly as such and are intended to relieve pressures on migratory birds and habitat essential to migratory bird populations only and are not to be construed as opening, re-opening, or extending any open hunting season contrary to any regulations promulgated under Section 3 of the Migratory Bird Treaty Act.

(3) Control activities may be conducted only when all waterfowl (including light goose) and crane hunting seasons, excluding falconry, are closed.

(4) Control measures employed through this section may be implemented only between the hours of one-half hour before sunrise to one-half hour after sunset.

(5) Nothing in the conservation order may limit or initiate management actions on Federal land without concurrence of the Federal agency with jurisdiction.

(6) States and Tribes must designate participants who must operate under the conditions of the conservation order.

(7) States and Tribes must inform participants of the requirements/conditions of the conservation order that apply.

(8) States and Tribes must keep annual records of activities carried out under the authority of the conservation order. Specifically, information must be collected on:

(i) The number of individuals participating in the conservation order;

(ii) The number of days individuals participated in the conservation order;

(iii) The number of individuals who pursued light geese with the aid of a shotgun capable of holding more than three shells;

(iv) The number of individuals who pursued light geese with the aid of an electronic call;

(v) The number of individuals who pursued light geese during the period one-half hour after sunset;

(vi) The total number of light geese shot and retrieved during the conservation order;

(vii) The number of light geese taken with the aid of an electronic call;

(viii) The number of light geese taken with the fourth, fifth, or sixth shotgun shell;

(ix) The number of light geese taken during the period one-half hour after sunset; and

(x) The number of light geese shot but not retrieved. Information from Tribes may be incorporated in State reports. The States and Tribes must submit an annual report summarizing activities conducted under the conservation order on or before September 15 of each year, to the Chief, Division of Migratory Bird Management, 4401 N. Fairfax Dr., Suite 634, Arlington, Virginia 22203.

(e) What is required for individuals to participate in the conservation order? Individual participants in State or Tribal programs covered by the conservation order must comply with the following requirements:

(1) Participants must comply with all applicable State or Tribal laws or regulations including possession of whatever permit(s) or other authorization(s) may be required by the State or Tribal government concerned.

(2) Participants who take light geese under the conservation order may not sell or offer for sale those birds or their plumage, but may possess, transport, and otherwise properly use them.

(3) Participants must permit at all reasonable times including during actual operations, any Federal or State game or deputy game agent, warden, protector, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted and must promptly furnish whatever information an officer requires concerning the operation.

(4) Participants may take light geese by any method except those prohibited as follows:

(i) With a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance.

(ii) From or by means, aid, or use of a sinkbox or any other type of low-floating device, having a depression affording the person a means of concealment beneath the surface of the water.

(iii) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind, except that paraplegics and persons missing one or both legs may take from any stationary motor vehicle or stationary motor-driven land conveyance.

(iv) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off and the sails furled, and its progress has ceased. A craft under power may be used only to retrieve dead or crippled birds; however, the craft may not be used under power to shoot any crippled birds.

(v) By the use or aid of live birds as decoys. No person may take light geese on an area where tame or captive live geese are present unless such birds are, and have been for a period of 10 consecutive days before the taking, confined within an enclosure that substantially reduces the audibility of their calls and totally conceals the birds from the sight of light geese.

(vi) By means or aid of any motor-driven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of light geese.

(vii) By the aid of baiting, or on or over any baited area, where a person knows or reasonably should know that the area is or has been baited as described in § 20.11(j–k). Light geese may not be taken on or over lands or areas that are baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown, or solely as the result of a normal agricultural operation as described in

§ 20.11(h and l). However, nothing in this paragraph prohibits the taking of light geese on or over the following lands or areas that are not otherwise baited areas:

(A) Standing crops or flooded standing crops (including aquatics); standing, flooded, or manipulated natural vegetation; flooded harvested croplands; or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice as described in § 20.11(g, i, l, and m);

(B) From a blind or other place of concealment camouflaged with natural vegetation;

(C) From a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing, or scattering of grain or other feed; or

(D) Standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys, or retrieving downed birds.

(viii) Participants may not possess shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, bismuth-tin, tungsten-iron, tungsten-polymer, tungsten-matrix, tungsten-nickel-iron, or other shots that are authorized in § 20.21(j).

(f) Under what conditions would the conservation order be suspended? We will annually assess the overall impact and effectiveness of the conservation order on each light goose population to ensure compatibility with long-term conservation of this resource. If at any time evidence is presented that clearly demonstrates that an individual light goose population no longer presents a serious threat of injury to the area or areas involved, we will initiate action to suspend the conservation order for the specific light goose population in question. However, resumption of growth by the light goose population in question may warrant reinstatement of such regulations to control the population. Depending on the status of individual light goose populations, it is possible that a conservation order may be in effect for one or more light goose populations, but not others.

(g) Will information concerning the conservation order be collected? The information collection requirements of the conservation order have been approved by OMB and assigned clearance number 1018–0103. Agencies 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 recordkeeping and reporting requirements imposed under § 21.60 will be utilized to administer this program, particularly in the assessment of impacts that alternative regulatory strategies may have on light geese and other migratory bird populations. The information collected will be required to authorize State and Tribal governments responsible for migratory bird management to take light geese within the guidelines provided by the Service.

Dated: October 5, 2001.

**Joseph E. Doddridge,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 01–25612 Filed 10–11–01; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 010823213–1213–01; I.D. 071701C]**

**RIN 0648–AK70**

## Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 54 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Amendment 54 to the FMP for Groundfish of the Gulf of Alaska (collectively, Amendments 54/54). These amendments would make three changes in the Individual Fishing Quota (IFQ) Program: (1) allow a quota share (QS) holder's indirect ownership of a vessel, through corporate or other collective ties, to substitute for vessel ownership in the QS holder's own name for purposes of hiring a skipper to fish the QS holder's IFQ; (2) revise the definition of ''a change in the corporation or partnership'' to include language specific to estates; and (3) revise sablefish use limits to be expressed in QS units rather than as percentages of the QS pool. These proposed amendments are intended to improve the effectiveness of the IFQ Program and are necessary to promote the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982 (Halibut Act) with respect to the IFQ fisheries.

**DATES:** Comments on the proposed rule must be received by November 26, 2001.

**ADDRESSES:** Comments must be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendments 54/54 and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for the amendments are available from NMFS at the above address.

**FOR FURTHER INFORMATION CONTACT:** John Lepore, 907-586-7228 or email at john.lepore.noaa.gov.

**SUPPLEMENTARY INFORMATION:**

### Background

The groundfish fisheries in the Exclusive Economic Zone (3 to 200 nautical miles offshore) of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) are managed under their respective FMPs. Both FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act, Public Law 94–265, 16 U.S.C. 1801. The GOA and BSAI FMPs were approved by NMFS and became effective in 1978 and 1982, respectively. The IFQ Program, a limited access management system for the fixed gear Pacific halibut and sablefish fisheries off Alaska, was approved by NMFS in January 1993, and fully implemented beginning in March 1995. The IFQ Program for the sablefish fishery is implemented by the FMPs and Federal regulations under 50 CFR part 679, Fisheries of the Exclusive Economic Zone Off Alaska, under authority of the Magnuson-Stevens Act. The IFQ Program for the halibut fishery is implemented by Federal regulations promulgated under the authority of the Halibut Act.

### Indirect Vessel Ownership

The IFQ Program contains a number of provisions designed to promote an owner-operator IFQ fishing fleet. For example, one exception to the owner-onboard provisions of the IFQ Program allows initial recipients of QS in

categories B, C, or D (catcher vessel QS) to employ hired skippers to fish their IFQ, provided that the QS holder owns the vessel on which the IFQ species are being fished. This exception was created to allow IFQ fishermen who had operated their fishing businesses in this manner before implementation of the IFQ Program to continue such business practices. While the IFQ Program prohibits leasing of IFQ derived from catcher vessel QS, this exception allows initial recipients of catcher vessel QS to remain ashore while having their IFQ harvested by a hired skipper. Corporations, partnerships, and other collective entities that hold initial allocations of QS must designate a hired skipper, the individual who will actually fish the IFQ derived from the collective's QS.

Since implementing the IFQ Program in 1995, NMFS has broadly interpreted the regulations' vessel ownership provision to allow a person holding an initial allocation of QS to hire a skipper to fish the QS holder's IFQ on a vessel owned by another ''person,'' provided that the QS holder can show an association to the owner of the vessel through corporate or other collective ties. For example, the QS holder may be a shareholder or partner in the corporation or partnership that owns the vessel or a collective QS holder may have the individual owner of the vessel as a shareholder or partner in the collective.

At the beginning of the 1997 IFQ season, NMFS announced to the IFQ fleet that this policy of broadly interpreting the hired skipper provision's vessel ownership requirement would continue in effect for the 1997 season, or until the Council determined whether the policy comports with its original intention. In September 1997, the Council requested an analysis of alternatives for this issue and, in October 1998, recommended that the regulations be revised to provide explicitly for this policy. This proposed action would allow a QS holder's association to a collective entity to substitute for the QS holder's vessel ownership in his or her own name for purposes of hiring a skipper to fish the QS holder's IFQ.

The hired skipper provisions define ''vessel ownership'' as a minimum of 20 percent interest in the vessel to prevent persons from acquiring minimal or nominal vessel ownership interest simply to exploit the hired skipper provision in ways not intended by the Council (see 64 FR 24960, May 10, 1999). To maintain the intent of the requirement for minimum ownership interest in a vessel, a QS holder would have to hold the same 20 percent minimum interest in the collective that he or she otherwise would have to hold in a vessel to hire a skipper to fish his or her IFQ. For example, an individual wishing to hire a skipper to fish his or her IFQ on a vessel owned by a corporation in which he or she is a shareholder must hold a minimum of 20 percent interest in the corporation. Likewise, a corporation may hire a skipper to fish its collectively held IFQ on a vessel owned by a shareholder in the corporation only if that shareholder holds a minimum of 20 percent interest in the vessel, either indirectly through an interest in the corporation or through direct ownership of the vessel or through a combination of both indirect and direct ownership of the vessel.

**Revising the Definition of a Change in Corporation or Partnership**

To prevent excessive consolidation of QS and promote an owner-operator IFQ fleet, the IFQ Program provides a means for determining corporations, partnerships, and other collective entities to be qualified to hold catcher vessel QS. The regulations pertaining to collective QS holdings provide that upon any ''change'' in a collective entity, any collectively held QS will cease to generate annual IFQ for harvesting IFQ species until the QS is transferred to a qualified individual. The regulations define a ''change'' in the collective entity to mean the addition of a shareholder or partner to the collective entity. By thus defining such a ''change,'' the Council clearly expressed its intent to prevent collective entities from holding catcher vessel QS and using the resulting IFQ indefinitely.

The current IFQ regulations do not address changes in estates holding QS. Under the current rules, an estate may be issued an initial allocation of catcher vessel QS based on the qualifications of a deceased fisherman. However, because an estate is not a ''collective'' with the potential to acquire additional members, the present definition of a ''change in the corporation or partnership'' provides no way of determining at which point an estate's QS holdings will cease to generate annual IFQ. This allows an estate to hold QS and fish the resulting IFQ indefinitely.

To assure that catcher vessel QS held by estates eventually transfer into the possession of qualified individuals, these proposed amendments would revise the definition of ''a change in the corporation or partnership'' to state that for estates holding QS a ''change'' occurs upon a legal order for final distribution of the estate. At the point that an estate's holdings are legally distributed, the estate is effectively dissolved. Allowing an estate to continue holding catcher vessel QS and fishing the resulting IFQ beyond that point would compromise the Council's intent to ensure that catcher vessel QS eventually transfer to qualified individuals. Therefore, when an estate ''changes'' in this manner, its QS would be restricted from generating annual IFQ until the QS is transferred to a qualified individual. This requirement would prevent estates from holding QS and fishing the resulting IFQ indefinitely. Upon a legal order for the final distribution of an estate, the estate's QS holdings would become restricted in the same way QS held by a corporation or partnership becomes restricted when the corporation or partnership adds a shareholder or partner.

**Sablefish Use Limits**

The IFQ Program limits the amount of QS an individual may use to harvest IFQ species. Such use limits were created to address the concern that an unrestricted market for QS could result in a few powerful interests controlling most of the landings. They were also created to address the possibility of excessive decreases in the number and demographic distribution of vessels and fishermen participating in the IFQ Program. In the original implementing regulations for the IFQ Program (58 FR 59375, November 9, 1993), use limits are expressed as percentages of the QS pool, the total amount of QS available in a given year.

In 1997, in an action that increased the halibut use limits in IFQ regulatory area 4, all halibut use limits were revised to be expressed in numbers of QS units based on the 1996 QS pool (62 FR 7947, February 21, 1997). A use limit expressed as a percentage of the QS pool provides a variable use limit, because the size of the QS pool may vary from year to year. Consequently, a fisherman's QS holdings that have reached the limit in one year may actually exceed the limit in a subsequent year without the fisherman having acquired any additional QS. To allow QS holders the means to gauge more accurately the position of their holdings in relation to the use limits and thus to manage their fishing businesses in a more rational manner, NMFS, in consultation with the Council, revised the halibut use limits to provide a fixed limit that does not change according to the size of the QS pool. This revision of the halibut use limits was accomplished with a regulatory amendment, because the halibut provisions of the IFQ Program are implemented under authority of the

Halibut Act, and no halibut fishery management plan exists.

The sablefish use limits are set in the FMPs and can be revised only through the FMP amendment process specified at section 304 of the Magnuson-Stevens Act. If approved, proposed Amendments 54/54 would standarize the application of use limits for halibut and sablefish by providing sablefish QS holders with the same benefit of a stable use limit by which to manage their fishing businesses more rationally.

Current regulations at 50 CFR 679.42 (e) restrict sablefish QS use, so that (1) no person, individually or collectively, may use an amount of sablefish QS greater than 1 percent of the combined total sablefish QS for the GOA and BSAI IFQ regulatory areas, unless the amount in excess of 1 percent was received in the initial allocation of QS; and (2) in the IFQ regulatory area east of 140° W. long., no person, individually or collectively, may use more than 1 percent of the total amount of QS for this area, unless the amount in excess of 1 percent was received in the initial allocation of QS. This action would revise the sablefish use limit percentages to 3,229,721 units of sablefish QS; and (2) for the IFQ regulatory area 2C: 688,485 units of sablefish QS.

The 1996 regulatory amendment that changed halibut use limits to QS units based the limit on that year's QS pool (62 FR 7947, February 21, 1997). In that action, NMFS implied that sablefish use limits would be similarly changed. For the sake of consistency and to meet expectations raised by NMFS in the former action, the sablefish use limits would be based also on the 1996 QS pool. NMFS is particularly interested in receiving public comments on this aspect of the proposed amendments.

This alternative would not change the amount of QS that an individual could use. It simply proposes to set those limits in QS units, instead of as a percentage of the QS pool.

**Classification**

At this time, NMFS has not determined that the FMP amendments that this proposed rule would implement are consistent with the national standards of the Magnuson-Stevens Act and the provisions of the Halibut Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

This action proposes to make changes to the IFQ program that are necessary to ensure the program continues to be managed in a manner intended by the Council. The proposed changes would: (1) Specify the vessel ownership level for purposes of hiring a skipper, (2) clarify when estates must distribute QS being held, and (3) revise sablefish QS limit to be expressed as a specific number rather than as a percentage.

The proposed rule would allow a QS holder's indirect ownership of a vessel, through corporate or other ties, to substitute for vessel ownership in the QS holder's own name for purposes of hiring a skipper to fish the QS holder's QS. This action merely modifies NMFS' regulations to more explicitly reflect current NMFS' policy of allowing QS holders to substitute a corporate link to vessel ownership for purposes of hiring a skipper.

Another alternative considered was to prohibit a corporation or partnership from hiring a skipper to fish its collectively held QS on a vessel owned by an individual, even if that individual is a member of the corporation or partnership. Under such an alternative, an individual would not be allowed to hire a skipper to fish his or her individually held QS on a vessel owned by a corporation or partnership, even if that individual is a shareholder or partner in the collective that owns the vessel. This could result in considerable disruptions to small entities, as it would deviate from current NMFS practice and could prevent collective entities from fishing the QS of their shareholders or partners. Such collective entities would suffer considerable adverse impacts if they were unable to use their vessels to catch IFQ fish.

Although the proposed action may cause individual partners or shareholders to incur costs associated with meeting the proposed ownership requirements, this proposed action is unlikely to have adverse effects on the small entities themselves, as corporations or partnerships will not incur significant new costs and their net values will remain unchanged.

The proposed rule would also revise the definition of a ''change in corporation or partnership'' to include language specific to estates. NMFS proposes that upon a legal order for final distribution of the estate the estate would lose its eligibility to hold QS. Upon such legal order for the final distribution, the estate's QS holdings would become restricted in the same way QS held by a corporation or partnership becomes restricted when the corporation or partnership adds a shareholder or partner and would accordingly be required to transfer any estate-held QS to a qualified individual. It is the intent of the IFQ Program to promote an owner-operator fleet in the fixed gear fisheries for Pacific halibut and sablefish.

This alternative should make more QS available on the open market for qualified individuals. Market prices for QS could go down, thereby making it easier for qualified small entities to acquire and use QS. Under the other alternative, keeping the status quo, QS held by an estate does not automatically transfer. Such estates could continue to receive annual allocations of QS, thereby limiting the supply of QS available. This could raise the price of such shares such that it could prevent others who desire to fish and are otherwise qualified from purchasing those shares. Such an occurrence would frustrate the intent of the IFQ Program to promote an owner-operator fleet.

The proposed rule would revise sablefish use limits to be expressed in QS units, rather than as a percentage of the QS pool. In 1996, the Council recommended that halibut use limits be expressed as fixed numbers of QS units, rather than percentage. This change was implemented by NMFS and provided halibut QS holders with a more stable reference for measuring their halibut QS holdings against area use limits. Amendment 54/54 would change the calculation of sablefish use limits to a fixed number of QS units, based on the 1996 QS pools, for consistency with the halibut fishery and eliminate operational problems resulting from differing QS systems in the IFQ fishery.

This proposed rule would eliminate year-to-year fluctuations in the user limit and facilitate the ability of sablefish IFQ fishermen to stay within the user limit for sablefish QS. Under the no action alternative to the proposed action, sablefish fishing capacity, measured in terms of QS, may fluctuate each year as the TAC changes. This uncertainty may impose a burden on fishermen close to, or at, the user limit. They may be forced to adjust their holdings each year to stay within the user limit for sablefish. As individual fishermen are likely to catch the same amount of sablefish under either system, the proposed action mostly likely reduces impacts on small entities as it eases compliance with sablefish user limits and sablefish fixed gear fishermen, who also catch halibut, would no longer have to operate under two different use limit systems. Because the halibut fixed gear fishery is operating successfully under the fixed QS number system, the most feasible alternative is to use the fixed number

QS system for sablefish, rather than devise a completely different system for both fisheries.

At the end of 2000, NMFS determined that 4,546 entities hold QS (3,649 unique persons hold halibut QS and 897 unique persons hold sablefish QS). Given the average price levels for halibut and sablefish and the maximum amount of QS for both species that could be held by any unique entity, the maximum amount of annual revenue would not exceed 3 million dollars (implied maximum of $1,400,000). Therefore, all these entities would be treated as small entities for purposes of the Regulatory Flexibility Act (RFA). However, this likely overestimates the number of small entities that may be affected by this action because it does not take into account income these entities may derive from other fisheries and assumes that all QS holders would be affected by these changes.

No additional recordkeeping and reporting requirements are associated with this action, nor is NMFS aware of any other Federal rules that would duplicate, overlap, or conflict with this proposed action. At present, the data necessary to determine the full extent of impact to small entities is not available to NMFS (i.e., operational cost data). Therefore, NMFS is unable to conclude that this action has no impact on small entities as defined by the RFA. A copy of the IRFA is available from NMFS (see **ADDRESSES**). NMFS specifically requests comments on any additional alternatives to these proposed actions that may achieve the stated goals and reduce impacts to small entities.

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: October 5, 2001.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq*, 1801 *et seq*., and 3631 *et seq.*

2. In § 679.42, paragraphs (e), (j)(2), and (j)(3) are revised, and paragraphs (i)(3) and (j)(6) are added to read as follows.

### § 679.42 Limitations on use of QS and IFQ.

* * * * *

(e) *Sablefish QS use.* (1) No person, individually or collectively, may use more than 3,229,721 units of sablefish QS, except if the amount of a person's initial allocation of sablefish QS is greater than 3,229,721 units, in which case that person may not use more than the amount of the initial allocation.

(2) In the IFQ regulatory area east of 140° W. long., no person, individually or collectively, may use more than 688,485 units of sablefish QS for this area, except if the amount of a person's initial allocation of sablefish QS is greater than 688,485 units, in which case that person may not use more than the amount of the initial allocation.

* * * * *

(i) * * *

(3) The exemption provided in paragraph (i)(1) of this section may be exercised by an individual on a vessel owned by a corporation, partnership, or other entity in which the individual is a shareholder, partner, or member with a minimum of 20 percent interest, provided that the corporation, partnership, or other entity owns a minimum of 20 percent interest in the vessel.

* * * * *

(j) * * *

(2) For purposes of this paragraph (j), ''a change'' means:

(i) For corporations and partnerships, the addition of any new shareholder(s) or partner(s), except that a court appointed trustee to act on behalf of a shareholder or partner who becomes incapacitated is not a change in the corporation or partnership; or

(ii) For estates, the final or summary distribution of the estate.

(3) The Regional Administrator must be notified of a change in the corporation, partnership, or other entity as defined in this paragraph (j) within 15 days of the effective date of the change. The effective date of change, for purposes of this paragraph (j), is the date on which the new shareholder(s) or partner(s) may realize any corporate liabilities or benefits of the corporation or partnership or, for estates, the date of the determination of a legal heir to the estate.

* * * * *

(6) The exemption provided in paragraph (j) of this section may be exercised by a corporation, partnership, or other entity on a vessel owned by a person who holds a minimum of 20 percent interest in the corporation, partnership, or other entity, provided that the person who owns the vessel possesses a minimum of 20 percent interest in the vessel.

* * * * *

[FR Doc. 01–25716 Filed 10–11–01; 8:45 am]

BILLING CODE 3510–22–S

# Notices

Federal Register
Vol. 66, No. 198
Friday, October 12, 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

### Forest Service

### Giant Sequoia National Monument Scientific Advisory Board

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Giant Sequoia National Monument Scientific Advisory Board (Scientific Advisory Board) will meet at the Visalia Convention Center in Visalia, California, October 31 and November 1, 2001. The purpose of the meeting is to hear comments from the public; affirm advisories drafted at the September meeting; review issues from the Giant Sequoia National Monument planning team; and consider the planning process to date.

**DATES:** The meeting will be held October 31 and November 1, from 8 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the Visalia Convention Center, 303 E. Acequia Avenue, Visalia, California, in room San Joaquin D.

**FOR FURTHER INFORMATION CONTACT:** To receive further information, contact Arthur L. Gaffrey, 559–784–1500.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. If you are planning to attend, please contact Arthur L. Gaffrey to ensure adequate seating. Guidelines for the public participation portion of the Scientific Advisory Board's meeting are as follows: The public will be allowed to address the Scientific Advisory Board during the first 30 minutes of the meeting on October 31; when registering, participants must provide 9 written copies of their presentation, one copy for each member of the Board and one copy to be included the meeting minutes; oral presentations may be no more than 5 minutes in length, depending on the number of people wishing to address the Scientific Advisory Board; priority for presentations will be given to persons who did not make a presentation at a previous meeting; and all presentations must be related to the science surrounding the development of the Management Plan for the Giant Sequoia National Monument. Some members of the Scientific Advisory Board may participate in the meeting via telephone. In that event, arrangements will be made to enable the public to listen to all the members participating in the meeting.

A portion of the meeting will be for the Scientific Advisory Board to receive information from speakers who specialize in the human dimensions of natural resource planning. The informational portion of the meeting is not subject to the Federal Advisory Committee Act, is open to the public, and is subject to the same procedures as the rest of the meeting.

Written comments for the Scientific Advisory Board may be submitted to Forest Supervisor Arthur L. Gaffrey, Sequoia National Forest, 900 West Grand Avenue, Porterville, California 93257.

A final agenda can be obtained by contacting Arthur L. Gaffrey or by visiting the Giant Sequoia National Monument web site at www.r5.fs.fed.us/giant_sequoia.

Dated: October 5, 2001.

**Juliet B. Allen,**

*Acting Forest Supervisor, Sequoia National Forest.*

[FR Doc. 01–25661 Filed 10–11–01; 8:45 am]

BILLING CODE 3410–11–M

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from Procurement List.

**SUMMARY:** The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** November 12, 2001.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Sheryl D. Kennerly (703) 630ndash;7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

### Additions

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

**Services**

*Janitorial/Custodial*

Naval and Marine Corps Reserve Centers, Alameda, California
NPA: ARC—Alameda County, Oakland, California

Government Agency: Naval Facilities Engineering Command
Mailroom Operation, At the following Locations:
GSA Washington, 18th and F Streets NW, Washington, DC
GSA Arlington, Crystal Mall #3, 1931 Jefferson Davis Highway, Arlington, Virginia
GSA Regional Office Building, 7th and D Streets, SW, Washington, DC
NPA: Didlake, Inc., Manassas, Virginia
Government Agency: General Services Administration, Public Buildings Service

**Deletions**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

The following commodities are proposed for deletion from the Procurement List:

**Commodities**

Skin Protectant, Plus
6505–01–474–7724
Skin Protectant Plus, Effective Prevention
6505–01–474–7707
6505–01–474–7343
Box, Storage, Magnetic Tape
8115–00–432–6729
8115–00–432–6730
Suspension Assembly, Liner, Helmet
8470–00–880–8814

**Sheryl D. Kennerly,**

*Director, Information Management.*

[FR Doc. 01–25704 Filed 10–11–01; 8:45 am]

BILLING CODE 6353–01–P

## DEPARTMENT OF COMMERCE

**[I.D. 100901A]**

### 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*: Swordfish Import Certificate of Eligibility.

*Form Number(s)*: None.

*OMB Approval Number*: 0648–0363.

*Type of Request*: Regular submission.

*Burden Hours*: 5,700.

*Number of Respondents*: 204.

*Average Hours Per Response*: 1 hour.

*Needs and Uses*: In order to support recommendations of the International Commission for the Conservation of Atlantic Tunas, imports of swordfish have to be accompanied by a certificate of eligibility for lawful entry into the customs territory of the United States. The objective is to ensure that all imports of Atlantic swordfish meet the same minimum size standards as apply to landings by U.S. vessels.

*Affected Public*: Business and other for-profit organizations.

*Frequency*: On occasion.

*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: October 4, 2001.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 01–25718 Filed 10–11–01; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

**[I.D. 100901B]**

### 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*: Cooperative Charting Programs.

*Form Number(s)*: NOAA Forms 77–4 and 77–5.

*OMB Approval Number*: 0648–0022.

*Type of Request*: Regular submission.

*Burden Hours*: 45,000.

*Number of Respondents*: 3,000.

*Average Hours Per Response*: 3 hours.

*Needs and Uses*: NOAA's National Ocean Service (NOS) produces the official nautical charts of the United States. Forms are provided to members of U.S. Power Squadrons and the U.S. Coast Guard Auxiliary to report observations of changes that require additions, corrections, or revisions to the nautical charts. The information provided is used by NOS cartographers to maintain and prepare new additions of nautical charts that are used nationwide by commercial and recreational navigators.

*Affected Public*: Individuals or households, not-for-profit institutions.

*Frequency*: On occasion.

*Respondent's Obligation*: Voluntary.

*OMB Desk Officer*: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing 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: October 4, 2001.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 01–25719 Filed 10–11–01; 8:45 am]

BILLING CODE 3510–JT–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–122–822]**

### Certain Corrosion-Resistant Carbon Steel Flat Products From Canada; Notice of Amended Final Results of Administrative Review in Accordance With North American Free Trade Agreement Panel Decision

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of amended final results of Administrative Review in accordance with North American Free Trade Agreement Panel Decision on Certain Corrosion-Resistant Carbon Steel Flat

Products from Canada. USA–CDA–98–1904–01.

**SUMMARY:** On August 24, 2001, the North American Free Trade Agreement (NAFTA) Panel affirmed the Department of Commerce's final remand results of the antidumping duty administrative review of certain corrosion-resistant carbon steel flat products from Canada. As there is now a final and conclusive NAFTA Panel decision in this action, we are amending our final results.

**EFFECTIVE DATE:** October 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mark Hoadley at (202) 482–0666 or Julio Fernandez at (202) 482–0190, Office of AD/CVD Enforcement VII, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations set forth at 19 CFR part 351 (2000).

**Background**

On March 16, 1998, the Department of Commerce (the Department) published its final results for the administrative review of certain corrosion-resistant carbon steel flat products from Canada for the period August 1, 1995 through July 31, 1996. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 12725 (March 16, 1998) (*Final Results*). One of the respondents in this review was Stelco Inc. (Stelco).

In the **Final Results,** with respect to Stelco's cost of producing the subject merchandise, the Department explained that, in accordance with its standard practice for valuing major inputs supplied by affiliated companies, it had valued coating services and painting services supplied by Baycoat Partnership (Baycoat) and Z-Line Company (Z-Line), respectively, pursuant to the major input rule and the transactions disregarded rule, at the highest of three valuations: The transfer price between the affiliated parties; the market price between unaffiliated parties (which, in this case, was inapplicable, as there were no unaffiliated transactions to indicate market price); and the affiliated supplier's cost of producing the input. *See* **Final Results,** at 63 FR 18464.

In responding to the Department's questionnaire, Stelco only supplied Z-Line's ''actual cost of the operation in a manner consistent with other Hilton Works operating units,'' and Baycoat's transfer price adjusted for profit remitted to Stelco. In the *Final Results,* the Department increased the reported cost of coating and painting by the weighted average difference between invoice (i.e. transfer price) values from the sample invoices of the respective services to Stelco, obtained at verification, and the values reported by Stelco. The Department determined that these transfer prices were above the affiliated supplier's cost of producing these inputs. Therefore, for the final results of review, the Department used the transfer prices to value such inputs when calculating Stelco's cost of production (COP) and constructed value (CV). *See Final Results.*

With regard to the Department's calculation of imputed credit expenses, in the *Final Results* the Department applied the Federal Reserve rate in its calculations of Stelco's imputed credit expenses in the United States for each transaction during the period of review (POR). Furthermore, to calculate imputed credit expenses for sales in which payment was not received by the time Stelco submitted its response to the agency, the Department applied the date of its final results as the surrogate payment date.

On March 20, 2001, the NAFTA Panel remanded the above-referenced proceeding to the Department with instructions to: (1) Recalculate Stelco's costs of production, taking account of the year-end return of profits by Baycoat and Z-Line to Stelco; provide the Panel with the method by which the Department recalculates COP in light of such return of profits; and explain the Department's methodology in light of the statutory requirements and attendant legislation as interpreted by this Panel; (2) to reevaluate the application of section 773(f)(3) of the Act in light of the requirement that the Department adjust the transfer price in accordance with the recalculation set out under (1) immediately above; and (3) to correct any errors on the imputed credit expense and payment date issues, in light of Stelco's complaint. *See Article 1904 Panel Review Pursuant to the North American Free Trade Agreement: Panel Determination and Remand,* Stelco, Inc. v. United States Department of Commerce, USA–CDA–98–1904–01 (March 20, 2001) (*Panel Decision*).

Pursuant to its receipt of the NAFTA Panel's remand instructions, the Department issued a supplemental questionnaire to Stelco. On June 25, 2001, Stelco submitted its response to this questionnaire (*Supplemental Response*). On July 6, 2001, the Department issued its draft remand results and requested comments from interested parties. *See Draft Results of Redetermination: North American Free Trade Agreement,* Article 1904 Panel Review, USA–CDA–98–1904–01 (July 6, 2001) (*Draft Remand Results*). In the *Draft Remand Results,* we reconsidered our methodology in accordance with the *Panel Decision.* On July 11, 2001, respondent filed comments on the *Draft Remand Results.* No party filed rebuttal comments.

On July 20, 2001, the Department issued its final remand results, which are discussed in detail below. *See Final Remand Determination: North American Free Trade Agreement,* Article 1904 Panel Review, USA–CDA–98–1904–01 (July 20, 2001) (*Final Remand Results*).

Pursuant to the order of the Panel, the Department recalculated Stelco's COP by taking into account year-end return of profits to Stelco from Baycoat and Z-Line, as reported in Stelco's *Supplemental Response. See Final Remand Results.* The methodologies adopted for recalculating Stelco's COP, by accounting for profits returned to Baycoat and Z-Line, were used in light of the Panel's interpretation of the relevant statutory provisions and their legislative history, including those provisions set forth in subsections 773(f)(2) and (f)(3).

Specifically, the Panel found that the Department failed to reasonably comply with the requirement to establish that the amount, which in the instant case the Panel found to be the invoice prices less profits returned from Baycoat, ''did not fairly reflect'' the amount usually reflected in sales. The NAFTA Panel further found that even if the Department were entitled to rely on the invoice prices paid by Stelco, rather than the invoice price adjusted for profit remittances, the Department has not established that it has taken due account of all material factors in arriving at a reasonable calculation of costs.

In light of the Panel's statement that it has remanded the case for the Department to compare Baycoat's transfer price without profits to the COP, we interpreted the Panel's ruling to mean that, pursuant to the major input rule, the Department is to ensure that the value of the major inputs used

to calculate Stelco's COP are not below the cost of producing such inputs. In the *Final Remand Results,* we recalculated Stelco's COP for the subject merchandise based upon the adjusted transfer price. Where the Department found that the adjusted transfer price value was less than Baycoat and Z-Line's respective costs of producing such inputs, the Department used the COP for such inputs, pursuant to the major input rule.

We note that the NAFTA Panel's ruling does not establish binding precedent and that the Department believes its interpretation of these statutory rules is reasonable and consistent with the intent of Congress. We also note that, in future reviews, the Department intends to pursue an examination of market price more fully to ensure appropriate application of the test, consistent with subsections 773(f)(2) and (f)(3) of the Act.

The Department also reconsidered the calculation of Stelco's imputed credit expense in the United States during the POR and its choice of surrogate payment dates where payment was not remitted at the time of submission. In addition, we corrected a clerical error, as alleged by respondent in its comment on the *Draft Remand Results. See Final Remand Results.*

On August 24, 2001, the Panel affirmed the Department's *Final Remand Results.* As this case is now final and conclusive, we are amending the *Final Results* of review. As a result of our recalculations, based upon the changes set forth above, we have revised the dumping margin for respondent.

**Amendment to Final Results of Review**

Because no further appeals have been filed and there is now a final and conclusive decision in the *Panel Decision* proceeding, effective as of the publication date of this notice, we are amending the *Final Results,* and establishing the following revised weight-averaged dumping margin:

| Company | Amended final results 1995–1996 (percent) |
|---|---|
| Stelco Ltd ..... | 0.00 |

Dated: October 5, 2001.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 01–25705 Filed 10–11–01; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–812]**

### Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of Antidumping Duty Administrative Review.

**SUMMARY:** On June 7, 2001, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on dynamic random access memory semiconductors of one megabit or above (DRAMs) from the Republic of Korea. The merchandise covered by this order is DRAMs from the Republic of Korea. The review covers two manufacturers, Hyundai Electronics Industries Co., Ltd. and Hyundai Electronics America (collectively Hyundai), and LG Semicon Co., Ltd. and LG Semicon America (collectively LG), and six resellers of subject merchandise to the United States. The period of review (POR) is May 1, 1999, through December 31, 1999. Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of the Review.''

**EFFECTIVE DATE:** October 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Paige Rivas or Ron Trentham, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–0651 or 482–6320, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

**Background**

The antidumping duty order for DRAMs from Korea was revoked, pursuant to the sunset procedures established by statute, effective January 1, 2000. *See Dynamic Random Access Memory Semiconductors (DRAMs) of One Megabit and Above From the Republic of Korea; Final Results of Full Sunset Review and Revocation of Order,* 65 FR 1471366 (October 5, 2000). Therefore, we are conducting this review of exports of the subject merchandise to the United States by Hyundai Electronics Industries Co., Ltd. and LG Semicon Co., Ltd. (LG) for the 8-month period from May 1, 1999 through December 31, 1999.

On June 7, 2001, the Department published the preliminary results of administrative review of the antidumping duty order on DRAMs from Korea. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Order in Part*, 66 FR 30688 (June 7, 2001) (*Preliminary Results*). As stated in the *Preliminary Results*, we are collapsing Hyundai and LG into one entity for the purposes of in this administrative review (collectively Hyundai). *See Preliminary Results*, 66 FR at 30690. We invited parties to comment on our preliminary results of review. On July 9, 2001, we received case briefs from Micron Technology, Inc. (Micron), the petitioner, and Hyundai. On July 13, 2001, we received rebuttal briefs from Micron and Hyundai. The petitioner requested a public hearing on July 12, 2001, and a public hearing was held on July 17, 2001. The Department has conducted this administrative review in accordance with section 751 of the Act.

**Scope of Review**

Imports covered by the review are shipments of DRAMs from Korea. Included in the scope are assembled and unassembled DRAMs. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die, and cut die. Processed wafers produced in Korea, but packaged or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope.

The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (SIPs),

single in-line memory modules (SIMMs), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (VGA) boards and cards, are not included in the scope. The scope of this review also includes video random access memory semiconductors (VRAMS), as well as any future packaging and assembling of DRAMs; and, removable memory modules placed on motherboards, with or without a central processing unit (CPU), unless the importer of motherboards certifies with the Customs Service that neither it nor a party related to it or under contract to it will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMS and modules subject to this review are currently classifiable under subheadings 8471.50.0085, 8471.91.8085, 8542.11.0024, 8542.11.8026, 8542.13.8034, 8471.50.4000, 8473.30.1000, 8542.11.0026, 8542.11.8034, 8471.50.8095, 8473.30.4000, 8542.11.0034, 8542.13.8005, 8471.91.0090, 8473.30.8000, 8542.11.8001, 8542.13.8024, 8471.91.4000, 8542.11.0001, 8542.11.8024 and 8542.13.8026 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this review remains dispositive.

**Facts Available (FA)**

In accordance with section 776(a) of the Act, we have determined that the use of adverse FA is warranted for G5 Corporation (G5), Kim's Marketing, Jewon Trading (Jewon), Wooyang Industry Co., Ltd. (Wooyang), Jae Won Microelectronics (Jae Won), and Techsan Electronics (Techsan) for these final results of review.

*1. Application of FA*

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. In this review, as described in detail below, the above-referenced companies failed to provide the necessary information in the form and manner requested and, in some instances, the submitted information could not be verified. Thus, pursuant to section 776(a) of the Act, the Department is required to apply, subject to section 782(d), facts otherwise available.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Pursuant to section 782(e) of the Act, notwithstanding the Department's determination that the submitted information is ''deficient'' under section 782(d) of the Act, the Department shall not decline to consider such information if all of the following requirements are satisfied: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

The Department has concluded that, because G5, Kim's Marketing, Jewon, Jae Won, Techsan, and Wooyang failed to respond to the Department's questionnaire, a determination based on a total FA is warranted for these companies. *See* the Preliminary Results for a detailed discussion of this analysis.

*2. Selection of FA*

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 62 FR 53808, 53819–20 (October 16, 1997). In the Preliminary Results, the Department determined that by not responding to the Department's questionnaire, each of these six companies did not act to the best of its respective abilities, and therefore an adverse inference is warranted in applying facts available for these companies.

For the final results, no interested party comments were submitted regarding this issue and we continue to find that the failure of G5, Kim's Marketing, Jewon, Jae Won, Techsan, and Wooyang to respond to the Department's questionnaire in this review demonstrates that these entities failed to cooperate by not acting to the best of their ability. Thus, consistent with the Department's practice in cases where a respondent fails to respond to the Department's questionnaire, in selecting FA for G5, Kim's Marketing, Jewon, Jae Won, Techsan, and Wooyang in this review, an adverse inference is warranted. *See Static Random Access Memory Semiconductors From Taiwan; Final Determination of Sales at Less Than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). Therefore, we are assigning G5, Kim's Marketing, Jewon, Jae Won, Techsan, and Wooyang an adverse FA rate of 10.44 percent, the rate calculated for Hyundai in a previous review and the highest margin from any segment of the proceeding related to DRAMS from Korea.

Information from prior segments of the proceeding, such as involved here, constitutes ''secondary information'' under section 776(c) of the Act. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for FA by reviewing independent sources reasonably at its disposal. The SAA provides that to ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (*TRBs*), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of

information, such as input costs or selling expenses, there are no independent sources from which the Department can derive calculated dumping margins; the only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse FA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period.

As to the relevance of the margin used for adverse FA, the Department stated in TRBs that it will ''consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse FA, the Department will disregard the margin and determine an appropriate margin.'' *Id.; see also Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 49567 (February 22, 1996), where we disregarded the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin.

As stated above, the highest rate determined in any prior segment of the proceeding is 10.44 percent, a calculated rate from the fifth administrative review. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Order in Part*, 64 FR 69694 (December 14, 1999). In the absence of information on the administrative record that application of the 10.44 percent rate to G5, Kim's Marketing, Jewon, Jae Won, Techsan, and Wooyang would be inappropriate as an adverse FA rate in the instant review, that the margin is not relevant, or that leads us to re-examine this rate as adverse facts available in the instant review, we have applied, as FA, the 10.44 percent margin from a prior administrative review of this order, and have satisfied the corroboration requirements under section 776(c) of the Act.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Bernard T. Carreau, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated October 5, 2001, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/summary/list.htm*. The paper copy and electronic version of the Decision Memorandum are identical in content.

**Changes Since the Preliminary Results**

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are listed below and discussed in the relevant sections of the Decision Memorandum.

1. We corrected an error in the CEP offset calculation, see Comment 8.
2. We corrected two errors in the margin part of the program, see Comment 9.
3. We recalculated HM credit expense, see Comment 10.
4. We recalculated CEP profit ratio, see Comment 11.
5. We recalculated U.S. credit expense, see Comment 12.

**Final Results of Review**

We determine that the following percentage weighted-average margins exist for the period May 1, 1999 through, December 31, 1999:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Hyundai | 2.92 |
| G5 | 10.44 |
| Wooyang | 10.44 |
| Jae Won | 10.44 |
| Jewon | 10.44 |
| Techsan | 10.44 |
| Kim's Marketing | 10.44 |

**Assessment**

The Department will not issue cash deposit instructions to Customs based on the results of this review. Since the order was revoked effective January 1, 2000, current and future imports of DRAMs from Korea shall be entered into the United States without regard to antidumping duties. We have already instructed Customs to liquidate all entries on or after January 1, 2000, without regard to antidumping duties.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries during the POR. The Department will issue appraisement instructions directly to the Customs Service. Where the importer-specific assessment rate is above *de minimis,* we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise.

These final results of review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review. For duty-assessment purposes with respect to Hyundai, we calculated importer-specific assessment rates by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total estimated entered value reported for those sales. Hyundai, in accordance with the Department's questionnaire, estimated the entered value of these sales by calculating the average of the entered value of each control number for the POR. For all other respondents, we based the assessment rate on the facts available margin percentage.

**Notification**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 5, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

## Appendix—Issues in Decision Memorandum

**Comments and Responses**

1. Offset to Foreign Currency Translation Losses
2. Research and Development (R&D)
3. Cross-Fertilization of R&D
4. Use of Cost of Goods Sold (COGS) to Calculate R&D Ratio
5. Increase in Useful Lives
6. U.S. Antidumping Statute and World Trade Organization (WTO) Antidumping Agreement
7. Post-POR Sales of Subject Merchandise Entered During the POR
8. Offset for CEP Sales
9. Recalculation of Expenses in Margin Program
10. Calculation of Home Market Credit Expense
11. CEP Profit Ratio—Calculation of Total Profit
12. U.S. Credit Expense

[FR Doc. 01–25711 Filed 10–11–01; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–848]**

### Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) in response to requests from the Crawfish Processors Alliance (petitioner) and the Louisiana Department of Agriculture & Forestry and Bob Odom, Commissioner; from respondents Fujian Pelagic Fishery Group Co., Qingdao Zhengri Seafood Company, Ltd., and Yancheng Yaou Seafood Co., Ltd.; and from importers Bo Asia, Inc. and Hontex Enterprises, Inc. (d/b/a Louisiana Packing Company). The period of review is from September 1, 1999 through August 31, 2000.

We preliminarily determine that sales have been made below normal value (NV). The preliminary results are listed below in the section titled ''Preliminary Results of Review.'' If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) or constructed export price (CEP), as applicable, and NV. Interested parties are invited to comment on these preliminary results. (*See* the ''Preliminary Results of Review'' section of this notice.)

**EFFECTIVE DATE:** October 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Doug Campau or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1395 or (202) 482–3020, respectively.

### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

### Background

On September 15, 1997, the Department published in the **Federal Register** an antidumping duty order on freshwater crawfish tail meat from the PRC. *See Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat From the People's Republic of China,* 62 FR 48218 (September 15, 1997). On September 26, 2000, in accordance with 19 CFR 351.213(b)(3), the Department received a request from importer Bo Asia, Inc. to conduct an administrative review of Huaiyin Foreign Trade Corporation, Huaiyin Foreign Trade Corporation ı30 (Huaiyin 30), and Yan Cheng Foreign Trade (YFT).

On September 29, 2000, in accordance with 19 CFR 351.213(b)(1), the Department received a request from the petitioner to conduct an administrative review of Anhui Chaohu Daxin Meat Poultry Co, Ltd.; Anhui Cereals, Oils & Foodstuffs; Anhui Provincial Aquatic Co.; Baoluu Waterstuff Co., Ltd.; Baoying Freezing Plant; Baoying County Freezing Plant; Beijing Farenco; Ever Concord; Feidong Freezing Plant; Fubao Aquatic Foodstuff Co., Ltd;. Fujian Hualong Aquatic Trade Development Co. Lianjian Seafood Processing Plant; Fujian Pelagic Fishery Group Co. (Fujian Pelagic); Fujian Hualong Aquatic Trade Development; Funing County Frozen Food; Guangzhou Xinye Plastic Products, Hengji Trading Co., Ltd.; Hexing Foodstuff Co., Ltd.; Hongze County Laoshan Danxian Freezing Factory; Hongze Lake Green Food Co., Ltd.; Hongze County Aquatic Freezing Factory; Hua Yin; Huai Yin; Huaiyin County Freezing Factory; Huaiyin Foreign Economic Relations and Trade Committee; Huaiyin Foreign Trade Corp. Shunda Branch; Huaiyin Foreign Trade Corporation; Huaiyin Foreign Trading; Huaiyin Foreign Trade Corporation (3); Huaiyin Foreign Trade Corporation (5) (Huaiyin 5); Huaiyin Foreign Trade Corporation (30) (Huaiyin 30); Huaiyin Foreign Trade; Huaiyin Luky Trade Corp.; Huaiyin Shunda Economic and Technology Trading Co.; JAS Forwarding; Jiangsu Zhenfeng Group Foodstuff; Jiangsu Zhenfeng Group; Jiangsu Lukang Foodstuffs; Jin Hu Foreign Trading; Jinghu Aquatic Foodstuff Processing Plant; Jinpeng Agriculture and By-Product Development Co.; Laoshan Brother Freezing Plant; Mr. Edward Lee; Lianyungang Haiwang Aquatic Products Co., Ltd.; Liaoning Limeng Exports & Imports; Mr. Lin Zhong Nan; Mr. Ma Guo Zhong; Nantong Shengfa Frozen Food Co., Ltd. (Nantong Shengfa); Nantong Delu Aquatic Food Co., Ltd.; Neptune International; Ningbo Nanlian Frozen Foods Co., Ltd. (Ningbo Nanlian); Pacific Coast Fisheries Corp.; Panwin Logistics; Qidong Baoluu Aquatic Food Co., Ltd.; Qingdao Rirong Foodstuff Co., Ltd. aka Qingdao Rirong Foodstuffs (Qingdao Rirong); Qingdao Shun Hang Forwarding; Qingdao Zhengri Seafood Co., Ltd., aka Qingdao Zhengri Seafoods (Qingdao Zhengri); Qingshan Foodstuff Co., Ltd.; Rich Shipping; Seatrade International, aka Seatrade Enter.; Shanghai Guangxum Trading; Shanghai Zhongjian International Trading; Shantou SEZ Yangfeng Marine Products Co. (Yangfeng Marine); Suqian Foreign Trade Corp., aka Suqian Foreign Trading (Suqian FTC); Suyang Shuangyu Foodstuff Co., Ltd.; Toyo Warehouse, aka TKK Toyo; Mr. Wei Wei, aka Philip Wei; Mr. Wei Zhang; Weishan Fukang Foodstuffs Co., Ltd.; Weishan Jinmuan Foodstuff; Weishan Hongfa Lake Foodstuff Co., Ltd., aka Weishan Fongfa Lake Foodstuff; Y & Z International, aka Y & Z International Trading; Yancheng Baolong Biochemical Products, Co., Ltd.; Yancheng Foreign Trade Corp., aka Yancheng Foreign Trading, aka Yang Chen Foreign Trading; Yancheng Fubao Aquatic Food Co., Ltd.; Yancheng Haibao Foods; Yancheng Haiteng

Aquatic Products & Foods Co., Ltd. (Yancheng Haiteng); Yancheng Yao Seafoods (Yancheng Seafood); Mr. Yang Yi Xiang; Yangzhou Foreign Trading; Yangzhou Lakebest Foods Co., Ltd. (Yangzhou Lakebest); Yiaxian No. 2 Freezing Factory; Yundong Aquatic Products Processing Factory; Yundong Waterstuff Processing Plant; Zegao Daxin Foodstuff Freezing Plant; Mr. Zhang Wei; Zhenfeng Foodstuff Co. and Zhenfeng Group Food Co.

Also on September 29, 2000, in accordance with 19 CFR 351.213(b), the Department received a request for an administrative review of Nantong Delu Aquatic Food Co. Ltd. (Nantong Delu) from importer Ocean Harvest Wholesale Inc. (Ocean Harvest) and Nantong Delu; for an administrative review of Ningbo Nanlian from Hontex Enterprises, Inc. (d/b/a Louisiana Packing Company); and for an administrative review of Fujian Pelagic, Qingdao Zhengri, and Yancheng Yaou-exporters requesting review on their own behalf.

On October 30, 2000, the Department initiated an antidumping duty administrative review for this case. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Review,* 65 FR 64662 (October 30, 2000).

On June 1, 2001, the Department determined that it was not practicable to complete the preliminary results of this review within the statutory time limit. Consequently, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department extended the deadline for completion of the preliminary results of the administrative review 120 days, to October 1, 2001. *See Notice of Extension of Time Limits for Preliminary Results of Administrative Antidumping Review: Freshwater Crawfish Tail Meat from the People's Republic of China,* 66 FR 31204 (June 11, 2001).

**Preliminary Rescission of Administrative Review in Part**

On November 13, 2000, in accordance with 19 CFR 351.213(d)(1), the petitioner withdrew its request for administrative review of Anhui Chaohu Daxin Meat Poultry Co, Ltd.; Anhui Provincial Aquatic Co.; Baoluu Waterstuff Co., Ltd.; Baoying Freezing Plant; Baoying County Freezing Plant; Beijing Farenco; Ever Concord; Feidong Freezing Plant; Fubao Aquatic Foodstuff Co., Ltd.; Fujian Hualong Aquatic Trade Development Co. Lianjian Seafood Processing Plant; Fujian Pelagic Fishery Group Co.; Fujian Hualong Aquatic Trade Development; Funing County Frozen Food; Guangzhou Xinye Plastic Products; Hengji Trading Co., Ltd.; Hexing Foodstuff Co., Ltd.; Hongze County Laoshan Danxian Freezing Factory; Hongze Lake Green Food Co., Ltd.; Hongze County Aquatic Freezing Factory; Hua Yin; Huai Yin; Huaiyin County Freezing Factory; Huaiyin Foreign Economic Relations and Trade Committee; Huaiyin Foreign Trade Corp. Shunda Branch; Huaiyin Foreign Trade Corporation; Huaiyin Foreign Trading; Huaiyin Luky Trade Corp.; Huaiyin Shunda Economic and Technology Trading Co.; JAS Forwarding; Jiangsu Zhenfeng Group Foodstuff; Jiangsu Zhenfeng Group; Jiangsu Lukang Foodstuffs; Jin Hu Foreign Trading; Jinghu Aquatic Foodstuff Processing Plant; Jinpeng Agriculture and By-Product Development Co.; Laoshan Brother Freezing Plant; Liaoning Limeng Exports & Imports; Neptune International; Panwin Logistics; Qidong Baoluu Aquatic Food Co., Ltd.; Qingdao Shun Hang Forwarding; Qingshan Foodstuff Co., Ltd.; Rich Shipping; Seatrade International, aka Seatrade Enter.; Shanghai Guangxum Trading; Toyo Warehouse, aka TKK Toyo; Weishan Jinmuan Foodstuff; Y & Z International, aka Y & Z International Trading; Yancheng Baolong Biochemical Products, Co., Ltd.; Yancheng Haibao Foods; Mr. Yang Yi Xiang; Yangzhou Foreign Trading; Yiaxian No. 2 Freezing Factory; Yundong Aquatic Products Processing Factory; Yundong Waterstuff Processing Plant; Zegao Daxin Foodstuff Freezing Plant; Zegao Foodstuff Freezing Plant; Zhenfeng Foodstuff Co.; and Zhenfeng Group Food Co.

On January 22, 2001, in accordance with 19 CFR 351.213(d)(1), Ocean Harvest and Nantong Delu withdrew their requests for administrative review.

On January 29, 2001, in accordance with 19 CFR 351.213(d)(1), the petitioner withdrew its request for administrative review of Anhui Cereals, Oils & Foodstuffs; Fujian Hualong Aquatic Trade Development Co. Lianjian Seafood Processing Plant; Fujian Hualong Aquatic Trade Development; Funing County Frozen Food; Guangzhou Xinye Plastic Products, Huaiyin Foreign Trade Corporation (1); Huaiyin Foreign Trade Corporation (3); Mr. Edward Lee; Lianyungang Haiwang Aquatic Products Co., Ltd.; Mr. Lin Zhong Nan; Mr. Ma Guo Zhong; Pacific Coast Fisheries Corp.; Shanghai Zhongjian International Trading; Suyang Shuangyu Foodstuff Co., Ltd.; Mr. Wei Wei, aka Philip Wei; Mr. Wei Zhang, aka Zhang Wei; Weishan Hongfa Lake Foodstuff Co., Ltd., aka Weishan Fongfa Lake Foodstuff; Yancheng Fubao Aquatic Food Co., Ltd.; Yancheng Yao Seafoods; and Mr. Yang Yi Xiang.

The aforementioned withdrawals of requests for administrative review were all timely, in accordance with 19 CFR 351.213(d)(1). Furthermore, no other parties requested review of those companies. Consequently, we are preliminarily rescinding the administrative reviews of each company for which a request for administrative review was withdrawn.

An analysis of the responses submitted by Yancheng Foreign Trading (YFT) on June 12, 2001 and on August 21, 2001 indicates that all sales reported for the current period of review (POR) are identical to sales reported by YFT and reviewed by the Department in the previous POR (September 1, 1998 through August 31, 1999). *See* YFT's section C response of March 23, 2000, Exhibit C–1, and the supplemental response of July 7, 2000, Exhibit S–4, placed on the record of this review. A comparison of the data fields for the sales reported in this administrative review with certain sales documentation submitted in the responses cited above indicate that the sales are identical. The sales documentation submitted for the current review ties directly into the sales listing reported in the previous review. Therefore, evidence on the record demonstrates that the sales YFT reported for the current POR were already reported and reviewed by the Department during the previous POR. Furthermore, in its supplemental response of August 21, 2001, YFT confirms that the only sales covered by this POR are the ones it reported. Since the only sales YFT reported for the current POR were already reported and reviewed during the previous POR, we preliminarily conclude that no sales were made during the current POR. *See Memorandum to Barbara E. Tillman through Maureen Flannery from Elfi Blum: Freshwater Crawfish Tail Meat from the People's Republic of China (PRC); Yancheng Foreign Trade, Ltd. (YFT), formerly Yancheng Foreign Trade Corporation (YFTC): Intent to Rescind Administrative Review.*

The Department's regulations at 19 CFR 351.213(d)(3) provide that the Department may rescind a review with respect to a company if that company made no exports of subject merchandise during the POR. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, we are preliminarily rescinding our review of YFT.

Based on these preliminary rescissions, this administrative review

now covers the following companies: Huaiyin 30, Ningbo Nanlian/Huaiyin 5, Qingdao Rirong, Fujian Pelagic, Yancheng Seafood/Qingdao Zhengri, Yangfeng Marine, Suquian FTC, Nantong Shengfa, Yancheng Haiteng, and Yangzhou Lakebest.

**Scope of Review**

The product covered by these reviews is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10, 0306.19.00.10 and 0306.29.00.00. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

**Relationship Between Qingdao Zhengri and Yancheng Seafood**

We determine that Qingdao Zhengri and Yancheng Seafood should be treated as a single entity for purposes of this administrative review. Qingdao Zhengri and Yancheng Seafood's consolidated supplemental response states that Yancheng Seafood negotiates the price with U.S. customers on behalf of Qingdao Zhengri, and that Qingdao Zhengri receives payment for such sales. The sales for which Qingdao Zhengri produced the merchandise account for a significant portion of Qingdao Zhengri/Yancheng Seafood's reported U.S. sales. We also note that in their response to the Department's questionnaire, the total volume and value of sales for both Qingdao Zhengri and Yancheng Seafood were consolidated in Yancheng Seafood's section A response. Furthermore, the companies submitted a consolidated response to sections C and D of the Department's questionnaire, and to the Department's supplemental questionnaire for sections A, C, and D. For the reasons cited above, the Department is treating these two companies as a single entity for these preliminary results.

**Relationship Between Ningbo Nanlian and Huaiyin 5**

In the 1997/1998 administrative review, the Department determined that the export operations of Ningbo Nanlian and Huaiyin 5 were intertwined such that the two companies appeared to be under common control and should receive a single antidumping duty rate. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Administrative Antidumping Duty and New Shipper Reviews, and Final Recission of New Shipper Review*, 65 FR 20948 (April 19, 2000) (*Crawfish 1997/1998 Final*). Specifically, the Department found that the nature of the relationships between Huaiyin 5 and Ningbo Nanlian constituted a web of control relationships such that prices and exports were subject to significant manipulation. *See Memorandum from Edward C. Yang to Joseph A. Spetrini:* Relationship of Ningbo Nanlian Frozen Foods Company, Ltd. and Huaiyin Foreign Trade Corporation (5), dated April 7, 2000; and *Crawfish 1997/1998 Final* and accompanying *Issues and Decision Memorandum*, at Comments 13–17, both of which have been placed on the record of this review. Ningbo Nanlian and Huaiyin 5 were given a single rate in the 1998/1999 administrative review as well, as the Department was not provided with new information or evidence of circumstances in the 1998/1999 review that differed sufficiently from circumstances in the 1997/1998 review to warrant any reconsideration of the relationship between Ningbo Nanlian and Huaiyin 5.

*See Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Recission of Antidumping Duty Administrative Review*, 66 FR 20643 (April 24, 2001) (*Crawfish 1998/1999 Final*). On May 22, 2001, Huaiyin 5 submitted a letter to the Department stating, in part, that Huaiyin 5 ''is entitled to a separate rate.'' However, again the Department has not been provided with new information or evidence of circumstances in the current review that differ sufficiently from circumstances in the prior reviews to warrant any reconsideration of the relationship between Ningbo Nanlian and Huaiyin 5.

Furthermore, as noted in the verification report concerning these entities, while conducting verification, the Department found evidence of a continuing commercial relationship between Ningbo Nanlian and Huaiyin 5, as well as evidence of a continuing business relationship between Mr. Wei Wei and both Huaiyin 5 and Ningbo Nanlian (by virtue of Mr. Wei's dealings with Louisiana Packing Company, which is the U.S. owner in the Ningbo Nanlian joint-venture). *See* the business proprietary version of the memorandum entitled *Antidumping Review of Freshwater Crawfish Tail Meat (tail meat) from the People's Republic of China (PRC) (A–570–848):*
Sales and Factors Verification Report for Ningbo Nanlian Frozen Foods Co., Ltd. and Huaiyin 5, September 28, 2001; *see also* the *Memorandum from Edward C. Yang to Joseph A. Spetrini: Relationship of Ningbo Nanlian Frozen Foods Company, Ltd. and Huaiyin Foreign Trade Corporation (5)*, dated April 7, 2000. A public version of this memorandum is available in the Central Records Unit, Room B–099 of the Main Commerce Building. The report discusses Mr. Wei Wei's involvement with Ningbo Nanlian and Huaiyin 5, up to and including the 1997–1998 administrative review period, in detail. Accordingly, we continue to conclude that Ningbo Nanlian and Huaiyin 5 should receive a single antidumping duty rate for purposes of these preliminary results.

**Application of Facts Available**

Section 776(a)(2) of the Act provides that if any interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes an antidumping investigation; or (D) provides such information but the information cannot be verified, as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.

Yangfeng Marine failed to respond to sections C and D of the Department's questionnaire. As a result, we were unable to obtain the information necessary to conduct a review. Therefore, in accordance with section 776(a)(2)(A) of the Act, we are applying facts available to Yangfeng Marine. *See Silicon Metal from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 37850 (July 14, 1998); and *Silicon Metal From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 63 FR 37850 (July 14, 1998). Because Yangfeng Marine failed to provide sections C and D questionnaire responses on the record, section 782(d) does not apply. Further, absent these sections, the Department cannot calculate export price or normal value, and thus any remaining information cannot form the basis for this determination under section 782(e).

Therefore, in accordance with section 776(a)(2), we are applying facts available to Yangfeng Marine.

As noted above, we have determined that Qingdao Zhengri and Yancheng Seafood should be treated as a single entity. Since Qingdao Zhengri did not allow verification of its portion of the consolidated response, the Department considers the whole of the consolidated response to be unverifiable. *See* letter from Barbara E. Tillman to Yancheng Yaou Seafood Co., Ltd. a.k.a. Asia Europe and Qingdao Zhengri Seafood Co., Ltd., dated August 7, 2001. Therefore, in accordance with section 776(a)(2)(D) of the Act, we are applying facts available to Qingdao Zhengri/Yancheng Seafood.

Section 776(b) of the Act provides that the Department may apply adverse facts available to a respondent when that respondent fails to cooperate to the best of its ability. As noted above, in the instant administrative review, Yangfeng Marine and Qingdao Zhengri/Yancheng Seafood failed to provide complete and/or verifiable responses. With respect to Yangfeng Marine, this company failed to provide full section C and D questionnaire responses. These responses are necessary for the Department to calculate an accurate margin. Without section C and D information, the record is devoid of information concerning U.S. sales and factors of production. At no time did Yangfeng Marine indicate to the Department that it was having difficulties complying with the Department's requests for information, nor did it seek assistance from the Department. Therefore, we conclude that Yangfeng Marine has failed to cooperate in this review.

With respect to Qingdao Zhengri/Yancheng Seafood, after the Department received a letter from Qingdao Zhengri indicating that it would not submit to verification, the Department issued Qingdao Zhengri/Yancheng Seafood a letter indicating that it would not be possible for the Department to verify any part of the companies' consolidated response. The letter pointed out that if a company objects to verification, the Department will not conduct verification and may disregard any or all information submitted by the company in favor of the use of the facts available. Qingdao Zhengri/Yancheng Seafood never responded to the Department's letter, and made no subsequent efforts to contact or arrange verification with the Department. Therefore, we determine that these entities did not cooperate by acting to the best of their ability in complying with the Department's requests for information.

Based on these findings of lack of cooperation, we preliminarily determine that we should apply adverse facts available to Qingdao Zhengri/Yancheng Seafood and to Yangfeng Marine. Section 776(b) of the Act states that adverse facts available may include information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. As adverse facts available, we are treating these parties as part of the PRC-wide entity, and using the rate for Huaiyin 30, 217.09 percent, the highest rate in this segment of the proceeding, which is also the highest rate from any segment of the proceeding. As we did not rely upon secondary information, no corroboration was required under section 776(c) of the Act.

**Verification**

As provided in section 782(i) of the Act, we conducted a verification of the responses of Qingdao Rirong, Ningbo Nanlian, and Huaiyin 5. We used standard verification procedures, including on-site inspection of the manufacturers' facilities and the examination of relevant sales and financial records. Our verification results are outlined in the public versions of the verification reports, on file in Room B–099 of the Main Commerce Building.

**Separate Rates**

Ningbo Nanlian, Huaiyin5, Huaiyin30, Qingdao Rirong, Fujian Pelagic, Yancheng Seafood/Qingdao Zhengri, Yangfeng Marine, Yancheng Haiteng, Yancheng FTC, Yangzhou Lakebest, Suqian FTC, and Nantong Shengfa have requested separate, company-specific rates. In their questionnaire responses, the above companies state that they are independent legal entities. Ningbo Nanlian, Qingdao Zhengri, Yangzhou Lakebest, Yancheng Haiteng, and Nantong Shengfa have furthermore reported they are PRC-foreign joint ventures. Pursuant to our findings in the ''Application of Facts Available'' section above, Yancheng Seafood/Qingdao Zhengri and Yangfeng Marine are not entitled to separate rates.

To establish whether a company operating in a non-market-economy (NME) country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). Under this policy, exporters in NMEs are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes:
(1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

**De Jure Control**

With respect to the absence of *de jure* government control over the export activities of all the companies reviewed, evidence on the record indicates that Ningbo Nanlian/Huaiyin5, Huaiyin30, Qingdao Rirong, Fujian Pelagic, Yancheng Haiteng, Yangzhou Lakebest, Suqian FTC, and Nantong Shengfa are not controlled by the government. All of the above companies submitted evidence of their legal right to set prices independent of all government oversight. The business licenses of every company indicates that each is permitted to engage in the exportation of crawfish. We find no evidence of *de jure* government control restricting any of the reviewed companies from the exportation of crawfish.

In their responses, each of the above companies has stated that no export quotas apply to crawfish. Prior verifications have confirmed that there are no commodity specific export licenses required and no quotas for the seafood category ''Other,'' which includes crawfish, in *China's Tariff and Non-Tariff Handbook* for 1996. In addition, we have previously confirmed that crawfish is not on the list of commodities with planned quotas in the

1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled *Temporary Provisions for Administration of Export Commodities*. *See Freshwater Crawfish Tail Meat From The People's Republic of China; Preliminary Results of New Shipper Review,* 64 FR 8543 (February 22, 1999) and *Freshwater Crawfish Tail Meat From the People's Republic of China; Final Results of New Shipper Review,* 64 FR 27961 (May 24, 1999) (*Ningbo New Shipper Review*

The following laws, which have been placed on the record of this review, indicate a lack of *de jure* government control over companies owned by ''all the people'' and that control over these enterprises has been transferred from the government to the enterprises themselves. *The Administrative Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons (Legal Persons Law)*, issued on July 13, 1988 by the State Administration for Industry and Commerce of the PRC provide that, to qualify as legal persons, companies must have the ''ability to bear civil liability independently'' and the right to control and manage their businesses. These regulations also state that as an independent legal entity, a company is responsible for its own profits and losses. *See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China,* 60 FR 56046 (November 6, 1995). Ningbo Nanlian/Huaiyin5, Huiayin30, Fujian Pelagic, and Yangzhou Lakebest cited the *Legal Persons Law* in their responses.

Ningbo Nanlian/Huaiyin5 and Fujian Pelagic also submitted the *General Principles of the Civil Law of the People's Republic of China*, which establishes guidelines regarding the conduct of companies as legal entities. Huaiyin5, Huiayin30, and Fujian Pelagic, as independent companies under the jurisdiction of local or provincial governments, submitted copies of the *Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises* and the *Law of the People's Republic of China of Industrial Enterprises Owned by the Whole People*, which state that such enterprises will have autonomy in management and carry full responsibility for profits and losses.

Ningbo Nanlian/Huaiyin5, Huaiyin30, Fujian Pelagic, Qingdao Rirong, Yancheng Haiteng, Yangzhou Lakebest, and Suqian FTC provided copies of the *Foreign Trade Law of the PRC*, which identifies the rights and responsibilities of business enterprises with foreign investment, grants autonomy to foreign trade operators in management decisions, and establishes the foreign trade operator's accountability for profits and losses. Yancheng Haiteng placed on the record of this review *The Sino-Foreign Equity Joint Venture Law of the PRC*, which grants legal autonomy and export rights to Sino-foreign equity joint venture companies without additional approval from a government entity. Yangzhou Lakebest and Nantong Shengfa also cited this law in their responses. At verification, we saw that business licenses for Ningbo Nanlian/Huaiyin5 and Qingdao Rirong were established in accordance with the applicable laws. Therefore, with respect to the absence of *de jure* control over export activity, we determine that all of the above firms are independent legal entities.

**De Facto Control**

With respect to the absence of *de facto* control over export activities, the information presented indicates that the management of Ningbo Nanlian/Huaiyin5, Yancheng Haiteng, Huaiyin30, Fujian Pelagic, Yangzhou Lakebest, Suqian FTC, Qingdao Rirong, and Nantong Shengfa are responsible for all decisions such as the determination of export prices, profit distribution, marketing strategy, and contract negotiations. Our analysis indicates that there is no government involvement in the daily operations or the selection of management for any of these companies. In addition, we have found that these respondents' pricing and export strategy decisions are not subject to any outside entity's review or approval, and that there are no governmental policy directives that affect these decisions.

There are no restrictions on the use of respondents' revenues or profits, including export earnings. Each company's general manager has the right to negotiate and enter into contracts, and may delegate this authority to employees within the company. There is no evidence that this authority is subject to any level of governmental approval. Each company has stated that its management is selected by its board of directors and/or its employees and that there is no government involvement in the selection process. Lastly, decisions made by respondents concerning purchases of subject merchandise from other suppliers are not subject to government approval. Consequently, because evidence on the record, as supported by verification, indicates an absence of government control, both in law and in fact, over their export activities, we preliminarily determine that these exporters are entitled to separate rates.

**Huaiyin 5 Name Change**

While on verification, the team discovered that, effective January 10, 2001, Huaiyin 5's official name changed to Jiangsu Hilong International Trading Company, Ltd. However, throughout this notice, this company is referred to as Huaiyin 5—the name of this entity during the POR, and under which questionnaire responses were submitted.

**Normal Value Comparisons**

To determine whether respondents' sales of the subject merchandise to the United States were made at prices below NV, we compared their United States prices to NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice.

**United States Price**

For Ningbo Nanlian/Huaiyin 5 and Yancheng Haiteng, we based United States price on CEP in accordance with section 772(b) of the Act, because the first sales to unaffiliated purchasers were made after importation. We calculated CEP based on packed prices from the U.S. affiliate's warehouse to the first unaffiliated purchaser in the United States. We made the following deductions from the starting price (gross unit price), where applicable: Foreign inland freight, international (ocean) freight, U.S. customs duty, brokerage and handling expenses, the affiliated reseller's U.S. credit expenses, and the affiliated reseller's selling expenses. See sections 772(c) and (d) of the Act. Because U.S. customs duty, brokerage and handling expenses, credit expenses, and selling expenses are market-economy costs incurred in U.S. dollars, we used actual costs rather than surrogate values for these deductions to gross unit price.

For Fujian Pelagic, Huaiyin30, Qingdao Rirong, Suqian FTC, Yangzhou Lakebest, and Nantong Shengfa, we based United States price on EP in accordance with section 772(a) of the Act, because the first sales to unaffiliated purchasers were made prior to importation, and CEP was not otherwise warranted by the facts on the record. We calculated EP based on packed prices from the exporter to the first unaffiliated purchaser in the United States. Where applicable, we deducted foreign inland freight, inland insurance, and brokerage and handling expenses in the home market from the starting price (gross unit price) in accordance with section 772(c) of the Act.

The Department has preliminarily determined that Fujian Pelagic's sales to Pacific Coast Fishery Corporation (Pacific Coast) should be treated as EP sales because the first sales were made to unaffiliated purchasers prior to importation in accordance with 772(a) of the Act, and CEP was not otherwise warranted by the facts on the record. *See Memorandum from Matthew Renkey through Maureen Flannery to Barbara E. Tillman, Analysis of the Relationship between Fujian Pelagic Fishery Group Co. and Pacific Coast Fisheries,* dated October 1, 2001. A public version of this memorandum is available in the Central Records Unit, Room B–099 of the Main Commerce Building.

**Normal Value**

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the companies contested such treatment in these reviews. Accordingly, we have applied surrogate values to the factors of production to determine NV. *See Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Factor Values Memorandum,* October 1, 2001 (*Factor Values Memorandum*). We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the original investigation and prior administrative reviews of this order, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. With the exceptions of the crawfish input and by-product, we valued the factors of production using publicly available information from India. We adjusted the Indian import prices by adding freight expenses to make them delivered prices.

In the original LTFV investigation and in previous reviews of this order, for the raw crawfish input, we used Spanish import statistics for live freshwater crawfish imported from Portugal. *See Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat from the People's Republic of China,* 62 FR 41347 (August 1, 1997), and *Crawfish 1997/1998 Final.* However, Spanish imports of live freshwater crawfish from Portugal have declined drastically. From April 1999 through March 2000, the production period corresponding in part to the current review period, Spanish imports from Portugal were only 17 metric tons, in contrast to the 357 metric tons used during the investigation, and 160 metric tons used during the 1997–98 administrative review. This represents a decline of 95.2 percent since the period of the LTFV investigation. In addition, unlike in other years, Spanish imports from Portugal were heavily weighted towards one month. This one month accounted for 71 percent of the total volume of imports from Portugal for that year. Small import volumes as a whole, and one month accounting for the vast proportion of imports, indicate that live freshwater crawfish is no longer a product that is regularly traded between Portugal and Spain. Therefore, we searched for data reflecting a more substantial volume of trade. For these preliminary results, we have used Australian farm gate prices for whole, live freshwater crawfish. *See Factor Values Memorandum.* For a complete discussion of our choice of Australian farm gate prices, refer to *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty New Shipper Reviews,* 66 FR 45002 (August 27, 2001), and the accompanying memorandum (*September 1999—March 2000 Decision Memo*) at Comment 1. This memorandum is on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

We valued the factors of production as follows:

To value whole crawfish, we used the Australian farm gate price for freshwater crawfish as reported in *Freshwater Crawfish Tail Meat (crawfish) from the People's Republic of China (PRC): Meetings Regarding the Crawfish Industry in Western Australia,* July 31, 2001. For further details, refer to the *September 1999–March 2000 Decision Memo,* at Comment 1.

To value the by-product of shells, we used a September 1999 free-on-board (FOB) factory price quote for crab and shrimp shells from a Canadian seller of crustacean shells and incorporated a 30 percent wet/dry conversion factor, where shells were sold wet. For further details, *see Factors Value Memorandum.*

To value coal and electricity, we used data reported as the average Indian domestic prices within the categories of ''Steam Coal for Industry'' and ''Electricity for Industry,'' published in the International Energy Agency's publication, Energy Prices and Taxes, First Quarter, 2000. We adjusted the cost of coal to include an amount for transportation. For water, we relied upon public information from the October 1997 Second Water Utilities Data Book: Asian and Pacific Region, published by the Asian Development Bank.

To achieve comparability of energy and water prices to the factors reported for the crawfish processing periods applicable to the companies under review, we adjusted these factor values to reflect inflation to the applicable crawfish processing season during the POR using the Wholesale Price Index (WPI) for India, as published in the 2001 International Financial Statistics (IFS) by the International Monetary Fund (IMF).

To value packing materials (plastic bags, cardboard boxes and adhesive tape), we relied upon Indian import data from the April 1999 through September 1999 issues of Monthly Statistics of the Foreign Trade of India (Monthly Statistics). We adjusted these prices to reflect inflation to the crawfish processing season during the POR. We adjusted the values of packing materials to include freight costs incurred between the supplier and the factory. For transportation distances used in the calculation of freight expenses on packing materials, we added, to surrogate values from India, a surrogate freight cost using the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997) (*Roofing Nails*).

To value factory overhead, selling, general, and administrative expenses (SG&A) and profit, we calculated simple average rates using publicly available financial statements of four Indian seafood processing companies, and applied these rates to the calculated cost of manufacture. *See Factor Values Memorandum.*

For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2001. *See http://ia.ita.doc.gov/wages/.* Because of the variability of wage rates in countries with similar per capita

gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's Web site is the 2000 Year Book of Labour Statistics, International Labour Office (Geneva: 1998), Chapter 5: Wages in Manufacturing.

We valued movement expenses as follows:

To value truck freight expenses we used seventeen price quotes from six different Indian trucking companies which were used in the *Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China,* 65 FR 33805 (May 25, 2000). For transportation of the subject merchandise, we adjusted the rates to reflect inflation to the month of sale of the finished product using the WPI for India from the IFS. For transportation of production inputs, we adjusted the rate to reflect inflation to the period of production.

To value brokerage and handling in the home market, we used public information reported in the antidumping administrative review of *Certain Stainless Steel Wire Rod From India; Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews,* 63 FR 48184 (September 9, 1998) (*Stainless Steel Wire Rod from India*), and also used in the *Crawfish 1998/1999 Final.* We adjusted the rates to reflect inflation to the month of sale using the WPI for India from the IFS.

We used the average of the foreign brokerage and handling expenses reported in the U.S. sales listing of the public questionnaire response submitted in the antidumping review of Viraj Group, Ltd. in *Stainless Steel Wire Rod from India.* Charges were reported on a per metric ton basis. We adjusted these values to reflect inflation to the month of sale using the WPI for India from the IFS. For further discussion, *see Factor Values Memorandum.*

**Currency Conversion**

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank. (See *ia.ita.doc.gov/exchange/index.html.*)

**Preliminary Results of Review**

We preliminarily determine that the following dumping margins exist:

| Manufacturer/exporter | Time period | Margin (percent) |
|---|---|---|
| Ningbo Nanlian/Huaiyin5 (a.k.a. Jiangsu Hilong International Trading Company, Ltd.) | 9/1/99–8/31/00 | 62.18 |
| Yancheng Haiteng | 9/1/99–8/31/00 | 102.82 |
| Huaiyin30 | 9/1/99–8/31/00 | 217.09 |
| Fujian Pelagic | 9/1/99–8/31/00 | 173.60 |
| Yangzhou Lakebest | 9/1/99–8/31/00 | 28.88 |
| Suqian FTC | 9/1/99–8/31/00 | 26.75 |
| Qingdao Rirong | 9/1/99–8/31/00 | 9.40 |
| Nantong Shengfa | 9/1/99–8/31/00 | 45.64 |
| PRC-Wide Rate | 9/1/99–8/31/00 | 217.09 |

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication in accordance with 19 CFR 351.310(c). Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(ii). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 5 days after the due date for submission of case briefs. Parties who submit arguments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. Any hearing would normally be held two days after the deadline for rebuttal briefs, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in the briefs, within 120 days from the date of publication of these preliminary results.

Upon completion of this administrative review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service upon completion of this review. For assessment purposes, we calculated importer-specific assessment rates for freshwater crawfish tail meat from the PRC. We divided the total dumping margins (calculated as the difference between NV and EP) for each importer by the total quantity of subject merchandise sold to that importer during the POR. Upon the completion of this review, we will direct Customs to assess the resulting quantity-based rates against the weight in kilograms of each entry of the subject merchandise by the importer during the POR. (*See Memorandum to Barbara E. Tillman through Maureen Flannery, from Mark Hoadley: Collection of Cash Deposits and Assessment of Duties on Freshwater Crawfish from the PRC,* dated August 27, 2001). A public version of this memorandum is available in th Central Records Unit, Room B–099 of the Main Commerce Building.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For exporters with separate rates listed above, we will establish a per kilogram cash deposit rate which will be equivalent to the company-specific cash deposit established in this review (*see Memorandum to Barbara E. Tillman*

*through Maureen Flannery, from Mark Hoadley: Collection of Cash Deposits and Assessment of Duties on Freshwater Crawfish from the PRC,* dated August 27, 2001); (2) for previously reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the rate will be the current PRC-wide rate, 217.09 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with section 751(a)(1) of the Act, and sections 351.213 and 351.221 of the Department's regulations.

Dated: October 1, 2001.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 01–25709 Filed 10–11–01; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–810]**

### Mechanical Transfer Presses From Japan: Extension of Time Limit for Preliminary Results of Antidumping Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limit For preliminary results of Administrative Review.

**EFFECTIVE DATE:** October 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mark Hoadley, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202)482–0666.

**The Applicable Statute**

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930 (the Act), as amended. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000).

**Background**

On February 28, 2001, the Department of Commerce (the Department) received requests from Komatsu, Ltd., Hitachi Zosen Corp. (HZC), and Hitachi Zosen Fukui Corp. (HZFC) for an administrative review of the antidumping duty order on mechanical transfer presses (MTPs) from Japan. On March 22, 2001, the Department published a notice of initiation of this administrative review covering the period of February 1, 2000 through January 31, 2001 (66 FR 16037). Because of an inadvertent omission in the March initiation notice, the review of HZFC was not initiated until May 23, 2001 (66 FR 28421).

**Extension of Time Limits for Preliminary Results**

Because of a number of complexities in this case, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act. Depending on our analysis of home market sales information provided by the respondents, our basis for determining normal value, which has in past administrative reviews been based on constructed value because of the difficulties involved in comparing MTPs, might need to be reconsidered. Even if the Department determines again not to use home market sales for calculating normal value, contemporaneous home market sales must be used for calculating constructed value profit, and, thus, in either case, we will have to determine the proper sales dates and the contemporaneity window for home market sales.

Furthermore, Komatsu has requested that the order be partially revoked, as it applies to its sales, and HZC and HZFC have not participated in recent reviews. Therefore, verification of the sales and cost information of all three respondents might need to be conducted. While HZC claims that it did not have any entries during the period of review or contemporaneous home market sales, resolution of these claims will depend on our analysis of the date-of-sale issue and the establishment of the contemporaneity window.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the preliminary results of this review by 120 days, until no later than February 28, 2002. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: October 2, 2001.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary, AD/CVD Enforcement Group III.*

[FR Doc. 01–25706 Filed 10–11–01; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–833]**

### Certain Polyester Staple Fiber From Taiwan: Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of rescission of the first antidumping duty administrative review.

**SUMMARY:** In response to a May 29, 2001 request made by Far Eastern Textile, Ltd., a producer/exporter of certain polyester staple fiber in Taiwan, and a May 30, 2001 request made by Arteva Specialities S.a.r.l. d/b/a/ KoSa and Wellman Inc., the petitioners, the Department of Commerce published the initiation of an administrative review of the antidumping duty order on certain polyester staple fiber from Taiwan for Far Eastern Textile, Ltd (covering the period March 30, 2000 to April 30, 2001) and Nan Ya Plastics Corporation, Ltd. (covering the period April 27, 2000 to April 30, 2001). *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 66 FR 32934 (June 19, 2001). This review has now been rescinded as a result of the withdrawal of the requests for review by Far Eastern Textile, Ltd. and Arteva Specialities S.a.r.l., d/b/a/ KoSa and Wellman Inc.

**EFFECTIVE DATE:** October 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Suresh Maniam, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0176.

**SUPPLEMENTARY INFORMATION:**

**Applicable Statute**

Unless otherwise indicated, all citations to the statute are references to

the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the ''Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (''Department'') regulations refer to 19 CFR part 351 (2001).

**Background**

On May 25, 2000, the Department published an antidumping duty order on certain polyester staple fiber from Taiwan. *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan,* 65 FR 33807. On May 29, 2001, Far Eastern Textile, Ltd. (''FETL''), a producer/exporter of certain polyester staple fiber in Taiwan, requested an administrative review of the antidumping duty order on certain polyester staple fiber from Taiwan covering the period March 30, 2000 to April 30, 2001. On May 30, 2001, Arteva Specialities S.a.r.l. d/b/a/ KoSa and Wellman Inc. (''the petitioners''), requested an administrative review of the antidumping duty order on certain polyester staple fiber from Taiwan for Nan Ya Plastics Corporation, Ltd. (''Nan Ya''), a producer/exporter of certain polyester staple fiber in Taiwan, covering the period April 27, 2000 to April 30, 2001. In accordance with 19 CFR 351.221(c)(1)(i), we published the initiation of the review on June 19, 2001. *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 66 FR 32934. On September 4, 2001, FETL withdrew its request for review. On September 20, 2001, the petitioners withdrew their request for review for Nan Ya.

**Rescission of Review**

The Department's regulations provide that the Department will rescind an administrative review if a party that requested a review withdraws the request within ninety days of the date of publication of the notice of initiation of the requested review. 19 CFR 351.213(d)(1). The Department's regulations also allow the Secretary to extend this time limit if it is reasonable to do so. *Id.* FETL's request for review was withdrawn within the ninety-day deadline. The petitioners' request for review for Nan Ya was withdrawn ninety-three days after the initiation was published. However, because Nan Ya received an extension to file its response to section A of the Department's questionnaire in this administrative review until three days before the ninety-day deadline, we find it reasonable that the petitioners would need some time to examine at least the information in that response before making a determination to withdraw their request for review. Therefore, we have accepted the petitioners' withdrawal of their request for review despite it being filed after the ninety-day deadline.

As a result of the withdrawals of the requests for review and because the Department received no other request for review, the Department is rescinding this administrative review.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: October 4, 2001.

**Richard W. Moreland,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 01–25708 Filed 10–11–01; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[Case Number: A–533–824, A–583–837]**

### Polyethylene Terephthalate Film, Sheet, and Strip From India and Taiwan: Notice of Postponement of Preliminary Antidumping Duty Determinations

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of postponement of preliminary antidumping duty determinations in antidumping duty investigations.

**SUMMARY:** The Department of Commerce is postponing the preliminary determinations in the antidumping duty investigations on polyethylene terephthalate film, sheet, and strip (PET film) from India and Taiwan from October 24, 2001, until December 13, 2001. This postponement is made pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

**EFFECTIVE DATE:** October 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Howard Smith, Ronald Trentham or Timothy Finn at (202) 482–5193, (202) 482–6320, or (202) 482–0065, respectively; Office 4, Group 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (2001).

**Background**

On June 13, 2001, the Department initiated the above-referenced investigations. *See Notice of Initiation of Antidumping Duty Investigations: Polyethylene Terephthalate Film, Sheet, and Strip from India and Taiwan,* 66 FR 31888 (June 13, 2001).

**Postponement of Preliminary Determination**

Currently, the preliminary determinations are due no later than October 24, 2001. However, pursuant to section 733(c)(1)(B) of the Act, we have determined that these investigations are ''extraordinarily complicated'' and are therefore postponing the preliminary determinations by 50 days to December 13, 2001. Under section 733(c)(1)(B) of the Act, the Department can extend the period for reaching a preliminary determination until not later than the 190th day after the date on which the administering authority initiates an investigation if:

(B) The administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the transactions to be investigated or adjustments to be considered;

(II) the novelty of the issues presented; or

(III) the number of firms whose activities must be investigated; and

(ii) additional time is necessary to make the preliminary determination.

The parties concerned are cooperating in these investigations. Additional time is necessary, however, to complete the preliminary determinations due to the number and complexity of the transactions to be investigated and adjustments to be considered, and the novelty of issues presented.

With respect to India, the Department needs to consider a number of complex sales, cost, and affiliation issues associated with two companies. In regard to Taiwan, on September 19 and September 26, 2001 the Department received allegations that sales were made below the cost of production during the period of investigation. We reviewed those allegations and initiated investigations of sales below cost. Therefore, for both investigations, additional time is required to review the issues and the cost information for purposes of the preliminary determinations. Therefore, pursuant to section 733(c)(1)(B) of the Act, we are postponing the preliminary determinations in these investigations until December 13, 2001. This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f).

Dated: October 4, 2001.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 01–25712 Filed 10–11–01; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–810]**

### Stainless Steel Bar From India; Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limit.

**SUMMARY:** The Department of Commerce is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on stainless steel bar from India. The period of review is February 1, 2000 through January 31, 2001. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

**EFFECTIVE DATE:** October 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Melanie Brown or Annika O'Hara in Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; at telephone (202) 482–4987 and 482–3798, respectively.

**Applicable Statute**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act and all citations to the regulations are to 19 CFR part 351 (2000).

**Statutory Time Limits**

Section 751(a)(3)(A) of the Act requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

**Background**

On March 22, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on stainless steel bar from India., covering the period February 1, 2000 through January 31, 2001 (66 FR 16037). The preliminary results for the antidumping duty administrative review of stainless steel bar from India are currently due no later than October 31, 2001.

**Extension of Time Limits for Preliminary Results**

Due to the complexity of the issues raised by the revocation requests that have been made by two respondents, it is not practicable to complete this review within the originally anticipated time limit (*i.e.,* October 31, 2001). Therefore, the Department of Commerce is extending the time limit for completion of the preliminary results to no later than February 28, 2002, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 5, 2001.

**Richard W. Moreland,**

*Deputy Assistant Secretary for AD/CVD Enforcement.*

[FR Doc. 01–25707 Filed 10–11–01; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–854]**

### Certain Tin Mill Products From Japan: Final Results of Changed Circumstances Review

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**ACTION:** Final results of changed circumstances review.

**SUMMARY:** On May 29, 2001, the Department of Commerce (''the Department'') published a notice of initiation of a changed circumstances review for a partial revocation of the antidumping duty order on tin mill products from Japan with respect to the merchandise described below at the request of Weirton Steel and the Independent Steelworkers Union, interested parties in this proceeding. *See Certain Tin Mill Products from Japan: Notice of Initiation of Changed Circumstances Review of the Antidumping Duty Order,* 66 FR 29086 (May 29, 2001). On August 8, 2001, the Department published the preliminary results of the changed circumstances review and preliminarily determined that several interested parties are interested in the maintenance of the order with respect to the merchandise described below, and that there was no reasonable basis to believe that changed circumstances sufficient to warrant revocation exist. *See Certain Tin Mill Products from Japan: Preliminary Results of Changed Circumstances Review,* 66 FR 41550 (August 8, 2001). In our preliminary results we gave interested parties an opportunity to comment; however, we did not receive any comments. We are unable to determine that producers accounting for substantially all of the production of the domestic like product have expressed lack of interest in the product in question. Thus we determine that changed circumstances do not exist to warrant revocation of the order in part.

**EFFECTIVE DATE:** October 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Michael Ferrier or Steve Bezirganian, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and

Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1394 or (202) 482–1131, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations at 19 CFR part 351 (2001).

**Background**

On April 6, 2001, Weirton Steel and the Independent Steelworkers Union, petitioners in this proceeding, requested that the Department revoke in part the antidumping duty order on certain tin mill products from Japan. On May 3, 2001, petitioners submitted a change in the definition of the product for which they requested a changed circumstances review. Specifically, petitioners requested that the Department revoke the order with respect to imports of merchandise meeting the following specifications: double reduced (CADR8 temper) electrolytically chromium coated steel with chromium oxide at a level of 1.6 mg/sq. ft. (#0.9), having a base box weight of 60 pounds (nominal thickness of 0.0066 inch (#5% tolerance)), and a surface with a 7C stone finish, lubricated with butyl stearate oil (BSO) or dioctyl sebacate oil (DOS) with the level ranging from 0.22 to 0.32 gm/base box. The material is 31½ inches in actual width −0/+1/16 inch width tolerance) and made from fully deoxidized (killed) continuous cast and continuous annealed steel that is free of detrimental non-metallic inclusions (*i.e.*, clean steel) with earring hazard minimized. The maximum edge wave is ⅛ inch, with crossbow controllable to less than 2 inches per sheet. The maximum camber per three feet is 0.020 inch, the maximum burr is 0.001 inch, and the maximum pinholes per coil is 0.2%. The maximum coil weight is 25,000 pounds, with an interior coil diameter of 16 inches to 16½ inches, and an exterior coil diameter of 36 inches to 60 inches. When loaded for shipment, the coil is placed on the pallet with the eye of the coil standing vertical, with each side of the pallet being 60 inches having 4 x 4 runners, and outside runners placed a minimum of 37 inches apart.

The merchandise subject to this changed circumstances review is classified in the HTSUS under subheading 7210.50.0000 of non-alloy steel, and under HTSUS subheading 7225.99.0090 if of alloy steel. Although the subheadings are provided for convenience, our written description of the scope is dispositive.

On June 18, 2001, National Steel Corporation (''National''), a producer of tin mill products, stated that it objects to the partial revocation of the antidumping order on certain tin mill products from Japan as proposed by Weirton Steel and the Independent Steelworkers Union. On June 15, 2001, USS-Posco Industries (''UPI''), a domestic producer of tin mill products stated that UPI can produce and has produced the 60-pound double-reduced tin-free steel products and therefore has an interest in maintaining the antidumping order on tin mill products from Japan. Information on the record indicates that both interested parties opposed to the partial revocation accounted for over 15 percent of the domestic production of tin mill products in year 2000.

**Scope of Changed Circumstances Review**

The merchandise covered by this changed circumstances review is certain double reduced (CADR8 temper) electrolytically chromium coated steel with chromium oxide at a level of 1.6 mg/sq. ft. (#0.9), having a base box weight of 60 pounds (nominal thickness of 0.0066 inch (#5% tolerance)), and a surface with a 7C stone finish, lubricated with butyl stearate oil (BSO) or dioctyl sebacate oil (DOS) with the level ranging from 0.22 to 0.32 gm/base box. The material is 31½ inches in actual width (−0/+1/16 inch width tolerance) and made from fully deoxidized (killed) continuous cast and continuous annealed steel that is free of detrimental non-metallic inclusions (*i.e.*, clean steel) with earring hazard minimized. The maximum edge wave is ⅛ inch, with crossbow controllable to less than 2 inches per sheet. The maximum camber per three feet is 0.020 inch, the maximum burr is 0.001 inch, and the maximum pinholes per coil is 0.2%. The maximum coil weight is 25,000 pounds, with an interior coil diameter of 16 inches to 16½ inches, and an exterior coil diameter of 36 inches to 60 inches. When loaded for shipment, the coil is placed on the pallet with the eye of the coil standing vertical, with each side of the pallet being 60 inches having 4 x 4 runners, and outside runners placed a minimum of 37 inches apart.

**Final Results of Changed Circumstances Review**

Pursuant to section 751(d) of the Act, the Department may partially revoke an antidumping duty order based on a review under section 751(b) of the Act. Section 782(h)(2) of the Act and section 351.222(g)(1)(i) of the Department's regulations provide that the Secretary may revoke an order, in whole or in part, based on changed circumstances if ''(p)roducers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) * * * pertains have expressed a lack of interest in the order, in whole or in part. * * *'' In this context, the Department has interpreted ''substantially all'' production normally to mean at least 85 percent of domestic production of the like product (see Oil Country Tubular Goods From Mexico: Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, 64 FR 14213, 14214 (March 24, 1999)).

In order to determine whether ''substantially all'' of the domestic producers supported revocation of the order with respect to the merchandise in question, the Department solicited comments from all parties (see Initiation of Changed Circumstances Review, 66 FR at 29088). Weirton Steel and the Independent Steelworkers Union have not provided evidence that they account for 85 percent of domestic production. The Department received comments from UPI and from National Steel. In fact, information on the record demonstrates that interested parties opposed to the partial revocation collectively account for over 15 percent of the domestic production of tin mill products in 2000. More specifically, National's production of tin mill products for year 2000 exceeds 15 percent. Therefore the Department is maintaining the order on tin mill products from Japan and is continuing to include the product which meets the specifications detailed above in the order on tin mill products from Japan, in accordance with sections 751(b) and (d) of the Act and 19 CFR 351.216.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations

and terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and section 351.216 of the Department's regulations.

Dated: October 2, 2001.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 01–25710 Filed 10–11–01; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Export Trade Certificate of Review

**ACTION:** Notice of issuance of an amended export trade certificate of review, Application No. 84–12A12.

**SUMMARY:** The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to Northwest Fruit Exporters (''NFE'') on June 11, 1984. Notice of issuance of the Certificate was published in the **Federal Register** on June 14, 1984 (49 FR 24581).

**FOR FURTHER INFORMATION CONTACT:** Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at oetca@ita.doc.gov.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2000).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certification in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

**Description of Amended Certificate**

Export Trade Certificate of Review No. 84–00012, was issued to NFE on June 11, 1984 (49 FR 24581, June 14, 1984) and previously amended on May 2, 1988 (53 FR 16306, May 6, 1988); September 21, 1988 (53 FR 37628, September 27, 1988); September 20, 1989 (54 FR 39454, September 26, 1989); November 19, 1992 (57 FR 55510, November 25, 1992); August 16, 1994 (59 FR 43093, August 22, 1994); November 4, 1996 (61 FR 57850, November 8, 1996); October 22, 1997 (62 FR 55783, October 28, 1997); November 2, 1998 (63 FR 60304, November 9, 1998); October 20, 1999 (64 FR 57438, October 25, 1999); and October 16, 2000 (65 FR 63567, October 24, 2000).

NFE's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Bertha's Marketing, Inc., Wenatchee, Washington; Crane & Crane, Inc., Brewster, Washington; Garrett Ranches Packing, Wilder, Idaho; Sun Fresh International, LLC, Wenatchee, Washington; and Valicoff Fruit Company, Wapato, Washington;

2. Delete the following companies as ''Members'' of the Certificate: Beebe Orchard Company, Chelan, Washington; Cashmere Fruit Exchange, Cashmere, Washington; Custom Fruit Packers, Wenatchee, Washington; Chief Tonasket Growers, Tonasket, Washington; and Wells & Wade Fruit Co., Wenatchee, Washington; and

3. Change the listing of the following Members: ''Custom Apple Packers, Inc., Brewster and Quincy, Washington'' to the new listing ''Custom Apple Packers, Inc., Brewster, Quincy & Wenatchee, Washington''; ''Columbia Reach Pack, Yakima, Washington'' to ''Chiawana, Inc. dba Columbia Reach Pack, Yakima, Washington''; and ''Double Diamond Fruit, Quincy, Washington'' to ''Morgan's of Washington dba Double Diamond Fruit, Quincy, Washington''.

The effective date of the amended certificate is July 9, 2001. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: October 9, 2001.

**Vanessa M. Bachman,**

*Acting Director, Office of Export Trading, Company Affairs.*

[FR Doc. 01–25713 Filed 10–11–01; 8:45 am]

**BILLING CODE 3510–DR–U**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Notice of Completion of Panel Review.

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of completion of panel review of the final remand determination made by the U.S. International Trade Administration, in the matter of Carbon Steel Flat Products from Canada, Secretariat File No. USA–98–1904–01.

**SUMMARY:** Pursuant to the Order of the Binational Panel dated August 24, 2001, affirming the final remand determination described above was completed on September 4, 2001.

**FOR FURTHER INFORMATION CONTACT:** Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

**SUPPLEMENTARY INFORMATION:** On August 24, 2001, the Binational Panel issued an order which affirmed the final remand determination of the United States International Trade Administration (''ITA'') concerning Carbon Steel Flat Products from Canada. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules,* the Panel Review was completed and the panelists discharged from their duties effective October 5, 2001.

October 5, 2001.

**Caratina L. Alston,**

*United States Secretary NAFTA Secretariat.*

[FR Doc. 01–25678 Filed 10–11–01; 8:45 am]

**BILLING CODE 3510–GT–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

**[Docket No.: 010910225–1225–01]**

### Notice of Intent To Modernize the Existing FORTRAN Content Management System of the ACerS–NIST Phase Equilibria for Ceramics Database.

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice and request for comments.

**SUMMARY:** The National Institute of Standards and Technology announces its intent to provide technical assistance to the American Ceramic Society Inc. (ACerS) to update the current FORTRAN Content Management System (CMS) system that provides users with access to the NIST–ACerS Phase Equilibria for Ceramics database. The updated CMS system will provide users with improved access to the database. Interested parties are invited to submit comments to the address below. Work on the project will not begin until after the comment period ends.

**DATES:** Comments must be received by November 13, 2001.

**ADDRESSES:** Comments should be sent to the attention of Stephen Freiman at the National Institute of Standards and Technology, Mail Stop 8520, 100 Bureau Drive, Gaithersburg, MD, 20899–8520.

**FOR FURTHER INFORMATION CONTACT:** Stephen Freiman by writing to the above address or by e-mail at *stephen.freiman@nist.gov* or by telephone at (301) 975–6119.

**SUPPLEMENTARY INFORMATION:** As part of its responsibilities under Title 15 U.S.C. 290 to collect, evaluate and publish high quality Standard Reference Data (SRD), NIST creates and maintains SRD databases. NIST intends to work with the American Ceramic Society, Inc. in their effort to modernize AcerS software that delivers critically evaluated phase equilibrium data for ceramic and other inorganic materials. NIST will provide technical assistance to identify appropriate scientific, mathematical, analytical and display algorithms for implementation in the new AcerS software. NIST will also provide documentation on existing related NIST algorithms and will verify proposed new algorithms for scientific and computational correctness and accuracy. All work done by NIST scientists will be on NIST premises. Interested parties are invited to submit comments.

Dated: October 5, 2001.

**Karen H. Brown,**

*Deputy Director.*

[FR Doc. 01–25745 Filed 10–11–01; 8:45 am]

**BILLING CODE 3510–13–M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration Office of Oceanic and Atmospheric Research (OAR) National See Grant Review Panel

**AGENCY:** Notice of Solicitation for Sea Grant Review Panelists.

**SUMMARY:** This notice responds to the National Sea Grant College Program Act, at 33 U.S.C. 1128, which requires the Secretary of Commerce to solicit nominations at least once a year for membership on the Sea Grant Review Panel. This advisory committee provides advice on the implementation of the National Sea Grant College Program.

**DATES:** Resumes should be sent to the address specified and must be received by November 13, 2001.

**ADDRESSES:** Dr. Ronald C. Baird, Director; National Sea Grant College Program; 1315 East-West Highway, Room 11716; Silver Spring, Maryland 20910.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ronald Baird of the National Sea Grant College Program at the address given above; telephone (301) 713–2448 or fax number (301) 713–1031.

**SUPPLEMENTARY INFORMATION:** Section 209 of the Act establishes a Sea Grant Review Panel to advise the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, and the Director of the National Sea Grant College Program on the implementation of the Sea Grant Program. The Panel provides advice on such matters as:

(a) the Sea Grant Fellowship Program;

(b) applications or proposals for, and performance under, grants and contracts awarded under the Sea Grant Program Improvement Act of 12976, as amended at 33 U.S.C. 1124;

(c) the designation and operation of sea grant colleges and sea grant institutes; and the operation of the sea grant program;

(d) the formulation and application of the planning guidelines and priorities under 33 U.S.C. 1123(a) and (c)(1); and

(e) such other matters as the Secretary refers to the panel for review and advice.

The Panel is to consist of 15 voting members composed as follows: Not less than eight of voting members of the panel should be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields included in marine science. The other voting members shall be individuals who by reason of knowledge, experience, or training, are especially qualified in, or representative of, education, extension service, state government, industry, economics, planning, or any other activity which is appropriate to, and important for, any effort to enhance the understanding, assessment, development, utilization, or conservation of ocean and coastal resources. No individual is eligible to be a voting members of the panel if the individual is (a) the director of a sea grant college, sea grant regional consortium, or sea grant program, (b) and applicant for or beneficiary (as determined by the Secretary) of any grant or contract under 33 U.S.C. 1124 or (c) a full-time officer or employee of the United States. The Director of the National See Grant College Program and one Director of a Sea Grant Program also serve as non-voting members. Panel members are appointed for a 3-year term.

**Louisa Koch,**

*Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research.*

[FR Doc. 01–25635 Filed 10–11–01; 8:45 am]

**BILLING CODE 3510–KA–M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### National Estuarine Research Reserve System: Sediment Retention System in Goat Canyon Creek and Watershed at Tijuana National Estuarine Research Reserve

**AGENCY:** Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

**ACTION:** Notice of availability of a draft Environmental Impact Statement/ Environmental Impact Report on a proposed sediment retention system in the Goat Canyon Creek and watershed at the Tijuana River National Estuarine Research Reserve, Imperial Beach, California; and notice of public hearings on this project.

**SUMMARY:** Pursuant to the National Environmental Policy Act and the California Environmental Quality Act, the National Ocean Service (NOS), in cooperation with California State Parks, has completed the preparation of a joint Draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) addressing the potential effects on the human and natural environment that may result from construction of sedimentation, flood control and other facilities within and adjacent to Goat Canyon, and the elevation and/or realignment of Monument Road through Border Field State Park lands. The purpose of these proposed facilities is to enhance the existing Goat Canyon Creek and its natural habitat communities, including the Tijuana River Estuary, through the management of sediment within the canyon and on the adjacent alluvial fan.

The proposed project is in conformance with the Final Goat Canyon/*Cañon de los Laureles* Enhancement Plan prepared by the Southwest Wetlands Interpretive Association (SWIA). As a result of the construction of sedimentation basins, it is anticipated that Goat Canyon Creek, its watershed, and the Tijuana River Estuary will be enhanced.

The draft EIS/EIR is available for public review and comment. All comments received, including names and addresses, will become part of the administrative record and be made available to the public.

NOS will hold a public hearing from 1:30 p.m. to 3:30 p.m. on November 7, 2001, at the City of Imperial Beach City Hall Community Room, 825 Imperial Beach Boulevard, Imperial Beach, California 91932. The views of interested persons and organizations on the adequacy of the joint Draft EIS/EIR are solicited, and may be expressed orally and/or in written statements. Presentations by the public will be scheduled on a first-come, first-heard basis, and may be limited to a maximum of five (5) minutes. The time allotment may be extended before the hearing after the number of speakers has been determined. All comments received at the hearing will be considered in the preparation of the Final EIS/EIR.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mayda Winter, Goat Canyon Enhancement Project, Southwest Wetlands Interpretive Association, 925 Seacoast Drive, Imperial Beach, California, 91932, tel. 619–575–0550.

**DATES:** The comment period for the draft joint EIS/EIR will end on Monday, November 26, 2001. All written comments received by this deadline will be considered in the preparation of the FEIS/FEIR.

**ADDRESSES:** Written comments on the joint Draft EIS/EIR should be sent to Nina Garfield, NOAA, Estuarine Reserves Division,SSMC–4, 11th Floor, 1305 East-West Highway, Silver Spring, Maryland, 20910–3281.

**FOR FURTHER INFORMATION CONTACT:** Mayda Winter, Goat Canyon Enhancement Project, Southwest Wetlands Interpretive Association, 925 Seacoast Drive, Imperial Beach, California, 91932, tel. (619) 575–0550.

**SUPPLEMENTARY INFORMATION:** Goat Canyon Creek is located in the far western portion of the greater Tijuana River Watershed. The watershed is characterized by steep slopes, sandy soils with cobbles, pockets of native coastal sage scrub, riparian vegetation, and a high level of human-induced disturbance, especially during the last 20 to 30 years. A prominent result of changes in the watershed has been a significant increase in sediment yield in response to higher volumes of runoff and an increased sediment supply throughout the watershed. Increased sedimentation has adversely affected the local habitat communities of Goat Canyon and downstream within the Tijuana River Estuary. By the mid-1980s, it was estimated that erosion and sedimentation had resulted in the loss of 30 acres of intertidal wetland area in the Tijuana River Estuary. The composition and distribution of native habitat communities along the creek and on the alluvial fan have been altered, as has the morphology of the creek. Further, during storm events, sediment is deposited on Monument Road, which in turn blocks public access to Border Field State Park and impedes the U.S. Border Patrol.

On August 10, 2000, the National Ocean Service published in the **Federal Register** a Notice of Intent to prepare a joint Environmental Impact Statement/ Environmental Impact Report [Vol. 65 No. 155, 48971–48972]. The stated intent of the proposed project was to enhance the existing Goat Canyon Creek and its natural habitat communities, including the Tijuana River Estuary, through the management of sediment within the canyon and on the adjacent alluvial fan.

The draft EIS/EIR examines the potential effects of the No Project Alternative and four project alternatives for construction of a sedimentation retention system within Goat Canyon and the alluvial fan. NOS has identified Alternative D as the Preferred Alternative based on an evaluation of the impacts and comparison between the alternatives. Alternative D features an in-canyon diversion structure and sedimentation basin system consisting of two basins in series to capture the flow in Goat Canyon Creek. The system has been designed to contain the full 100-year flood event. The Preferred Alternative also involves construction of access roads around the basins, staging areas adjacent to the basins, a visual berm located between the basins and Monument Road, options for improvements to Monument Road and a multi-purpose trail, and creation of wetland habitat. The preferred option for the road and trail has not been determined at this time. The Preferred Alternative would be the most efficient at capturing sediment and would result in the least impacts to sensitive wetland habitats and endangered species.

**Document Availability**

Copies of the draft EIS/EIR are available for review at the California State Parks, San Diego Coast District Office, 9609 Waples, Suite 200, San Diego, California, 92108, (858) 642–4200, the Tijuana River National Estuarine Research Reserve at 301 Caspian Way, Imperial Beach, California 91932, (619) 575–3613, and at the Imperial Beach Public Library, 810 Imperial Beach Boulevard, Imperial Beach, 91932, (619) 424–6981.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves

Dated: October 5, 2001.

**Jamison S. Hawkins,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 01–25657 Filed 10–11–01; 8:45 am]

**BILLING CODE 3510–08–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### National Sea Grant Review Panel

**AGENCY:** Notice of public meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, education and extension, science and technology programs, and other matters as described below:

**DATES:** The announced meeting is scheduled during two days: Thursday, November 8, 8:30 a.m. to 5:30 p.m.; Friday, November 9, 8:30 a.m. to 12:30 noon.

**ADDRESSES:** National Oceanic and Atmospheric Administration, Silver Spring Metro Center III, 1315 East-West Highway, Room 4527, Silver Spring, Maryland 20910.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ronald C. Baird, Director, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11716, Silver Spring, Maryland 20910, (301) 713–2448.

**SUPPLEMENTARY INFORMATION:** The Panel, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (P.L. 94–461, 33 U.S.C. 1128). The Panel advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice. The agenda for the meeting is as follows:

*Thursday, November 8, 2001*

8:30 a.m.—Welcoming and Opening Formalities
8:45 a.m.—Executive Committee Report
9:00 a.m.—State of Sea Grant Presentation
9:20 a.m.—Sea Grant Association Presentation
10:15 a.m.—Break
10:30 a.m.—Program Evaluation Committee Report
12:00 p.m.—Lunch
1:00 p.m.—Program Evaluation Committee Report (continued)
3:00 p.m.—Break
3:15 p.m.—Review of the National Sea Grant Office Status Report
3:45 p.m.—National Extension Review Update
4:00 p.m.—National Sea Grant Panel Procedures Manual
5:00 p.m.—Maine and New Hampshire Sea Grant Programs
5:40 p.m.—Adjourn

*Friday, November 9, 2001*

8:30 a.m.—Panel Business; Election of Officers, Committee Assignments, Panel Meeting Dates
9:00 a.m.—Congressional Update
9:45 a.m.—Commission on Ocean Policy Report
10:30 a.m.—Break
10:45 a.m.—NOAA Update
11:30 a.m.—National Sea Grant Office Update
12:15 p.m.—Wrap-up
12:30 p.m.—Adjourn

This meeting will be open to the public.

**Louisa Koch,**

*Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research.*

[FR Doc. 01–25636 Filed 10–11–01; 8:45 am]

**BILLING CODE 3510–KA–M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 100101D]**

### Pacific Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Pacific Fishery Management Council (Council) and its advisory bodies will hold public meetings.

**DATES:** The Council and its advisory bodies will meet October 28, 2001–November 2, 2001. The Council meeting will begin on Monday, October 29, 2001, at 3 p.m., reconvening each day at 8 a.m. through Friday. All meetings are open to the public, except a closed session will be held at 4 p.m. on Monday, October 29, 2001, to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

**ADDRESSES:** The meetings will be held at the Clarion Hotel San Francisco Airport, 401 East Millbrae Avenue, Millbrae, CA 94030; telephone: 650–692–6363.

*Council address*: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220.

**FOR FURTHER INFORMATION CONTACT:** Dr. Donald O. McIsaac, Executive Director; telephone: 503–326–6352.

**SUPPLEMENTARY INFORMATION:** The following items are on the Council agenda, but not necessarily in this order. All items listed are subject to potential Council action.

**A. Call to Order**

1. Opening Remarks, Introductions
2. Council Member Appointments
3. Roll Call
4. Executive Director's Report
5. Approve Agenda
6. Approve September 2001 Minutes

**B. Pacific Halibut Management**

Proposed Changes to the Recreational Catch Sharing Plan and Annual Regulations for 2002

**C. Groundfish Management**

1. NMFS Report
2. Marine Recreational Fisheries Statistics Survey Update
3. Final Harvest Levels for 2002
4. Management Measures for 2002 and Environmental Assessment
5. Groundfish Strategic Plan Implementation
6. Rebuilding Plans
7. Groundfish Fishery Management Plan Environmental Impact Statement
8. Exempted Fishing Permits (EFP)
9. Status of Fisheries and Inseason Adjustments

**D. Salmon Management**

1. NMFS Report
2. Update of Ongoing Fisheries
3. Salmon Option Hearing Sites
4. Sacramento Winter Run Chinook Management
5. Results of Scientific and Statistical Committee (SSC) Methodology Review
6. Queets River Coho Status Review

**E. Habitat Issues**

Essential Fish Habitat Issues

**F. Marine Reserves**

1. Status of Marine Reserves Proposals for Channel Island National Marine Sanctuary

**G. Highly Migratory Species Management**

1. NMFS Report
2. Draft Highly Migratory Species Fishery Management Plan (FMP)
3. Draft FMP Public Hearing Schedule and Sites

**H. Coastal Pelagic Species Management**

1. NMFS Report
2. Amendment 10 to the Coastal Pelagic Species FMP
3. Pacific Sardine Harvest Guideline for 2002

**I. Administrative and Other Matters**

1. Status of Legislation
2. Elections and Appointments
3. Report of the Budget Committee
4. Council Staff Work Load Priorities
5. March 2002 Council Meeting Draft Agenda

**Schedule of Ancillary Meetings**

The following ancillary meetings are scheduled in addition to the Council general sessions.

*Sunday, October 28, 2001*

Groundfish Management Team, 2 p.m.

*Monday, October 29, 2001*

Groundfish Advisory Subpanel, 8 a.m.
Groundfish Management Team, 8 a.m.
Scientific and Statistical Committee, 8 a.m.
Habitat Steering Group, 8 a.m.
Budget Committee, 10 a.m.

*Tuesday, October 30, 2001*

California State Delegation, 7 a.m.
Oregon State Delegation, 7 a.m.
Washington State Delegation, 7 a.m.
Groundfish Advisory Subpanel, 8 a.m.
Groundfish Management Team, 8 a.m.
Scientific and Statistical Committee, 8 a.m.
Enforcement Consultants, immediately following Council session.

*Wednesday, October 31, 2001*

California State Delegation, 7 a.m.
Oregon State Delegation, 7 a.m.
Washington State Delegation, 7 a.m.
Groundfish Advisory Subpanel, 8 a.m.
Highly Migratory Species Advisory Subpanel, 8 a.m.
Coastal Pelagic Species Advisory Subpanel, 10 a.m.
Groundfish Management Team, as necessary
Enforcement Consultants, as necessary

*Thursday, November 1, 2001*

California State Delegation, 7 a.m.
Oregon State Delegation, 7 a.m.
Washington State Delegation, 7 a.m.
Groundfish Advisory Subpanel, 8 a.m.
Groundfish Management Team, as necessary.
Enforcement Consultants, as necessary.

*Friday, November 2, 2001*

California State Delegation, 7 a.m.
Oregon State Delegation, 7 a.m.
Washington State Delegation, 7 a.m.
Enforcement Consultants, as necessary.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: October 5, 2001.

**Richard W. Surdi,**

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

[FR Doc. 01–25717 Filed 10–11–01; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 092401B]**

### Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Pacific Fishery Management Council's (Council) Salmon Advisory Subpanel (SAS) will hold a work session by telephone conference, which is open to the public.

**DATES:** The telephone conference will be held Friday, October 26, 2001, from 9 a.m. to noon.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** for the locations of the listening stations.

*Council address*: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council: (503) 326–6352.

**SUPPLEMENTARY INFORMATION:** Three listening stations will be available at the following locations:

1. California Department of Fish and Game
1528–A Healdsburg Avenue
Healdsburg, CA 95448
*Contact*: Mr. Allen Grover; (707) 431–2860

2. Pacific Fishery Management Council
East Conference Room
7700 NE Ambassador Place, Suite 200
Portland, OR 97220–1384
*Contact*: Mr. Chuck Tracy; (503) 326–6352

3. NMFS Northwest Region
Director's Conference Room
7600 Sand Point Way NE, Building 1
Seattle, WA 98115
*Contact*: Mr. Chris Wright; (206) 526–4323

*Note*: The NMFS listening station in Seattle is on Federal property, and due to heightened security concerns, photo identification will be required to enter the building, and vehicle inspections may be necessary to park on the facility grounds.

The purpose of the work session is to review information in the Council briefing book related to salmon and pacific halibut management and to develop comments and recommendations for consideration at the October-November Council meeting.

Although non-emergency issues not contained in the meeting agenda may come before the SAS for discussion, those issues may not be the subject of formal SAS action during this meeting. SAS action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the SAS's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: October 5, 2001.

**Richard W Sutdi,**

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

[FR Doc. 01–25720 Filed 10–11–01; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 100401D]**

### Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Council) Highly Migratory Species Plan Development Team (HMSPDT) will hold a work session, which is open to the public.

**DATES:** The HMSPDT will meet on Wednesday, November 7, 2001 and Thursday, November 8, 2001, from 8:30

a.m. to 5 p.m., and on Friday, November 9, 2001, from 8:30 a.m. until business for the day is completed.

**ADDRESSES:** The work session will be held at the Hubbs-Sea World Research Institute, East Conference Room, 2595 Ingraham Street, San Diego, CA 92109, telephone: 619–226–3870.

*Council address*: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

**FOR FURTHER INFORMATION CONTACT:** Dan Waldeck, Pacific Fishery Management Council, telephone: 503–326–6352.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to incorporate Council guidance stemming from the November Council meeting into a public review draft of the fishery management plan (FMP) for West Coast-based highly migratory species (HMS) fisheries. Following completion of the HMSPDT's work, the draft FMP will be made available for public review. The Council is scheduled to consider final adoption of the HMS FMP at the Council's March 2002 meeting. Please note, the HMSPDT meeting is a work session devoted to finalizing the draft FMP for public review. Public hearings will be scheduled at the November Council meeting. Dates and locations of these hearings will be published in subsequent **Federal Register** notices.

Although non-emergency issues not contained in the HMSPDT meeting agenda may come before the HMSPDT for discussion, those issues may not be the subject of formal HMSPDT action during this meeting. HMSPDT action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the HMSPDT's intent to take final action to address the emergency.

### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: October 5, 2001.

**Richard W. Surdi,**

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

[FR Doc. 01–25721 Filed 10–11–01; 8:45 am]

**BILLING CODE 3510–22–S**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

*Agency Holding the Meeting:* Commodity Futures Trading Commission.

*Time and Date:* 2 p.m., Tuesday, October 30, 2001.

*Place:* 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

*Status:* Closed.

*Matters To Be Considered:* Rule Enforcement Review.

*Contact Person For More Information:* Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 01–25913 Filed 10–10–01; 3:18 pm]

**BILLING CODE 6351–01–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Office of Management and Budget had previously approved this information collection requirement for use through September 30, 2001.

**DATES:** Consideration will be given to all comments received by November 13, 2001.

*Title, Form Number, and OMB Number:* Application for an Appointment as a Reserve of the Air Force or USAF Without Component; AF Form 24; OMB Number 0701–0096.

*Type of Request:* Reinstatement.

*Number of Respondents:* 5,899.

*Responses per Respondent:* 1.

*Annual Responses:* 5,899.

*Average Burden per Response:* 20 minutes.

*Annual Burden Hours:* 1,966.

*Needs And Uses:* The information collection requirement is necessary to provide information to determine if an applicant meets the qualifications established for appointment in the Reserves of the Air Force or the Air Force without component and entry into active duty.

The information contained on AF Form 24 supports the Air Force as it applies to direct appointment (procurement) programs for civilian and military applicants. It provides necessary information to determine if an applicant meets qualifications established for appointment to fill authorized ANGUS and USAFR position vacancies and active duty requirements. Eligibility requirements are outlined in Air Force Instruction 36–2005.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 4, 2001.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 01–25667 Filed 10–11–01; 8:45 am]

**BILLING CODE 5001–08–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Office of Management and Budget had previously approved this information collection requirement for use through September 30, 2001.

**DATES:** Consideration will be given to all comments received by November 13, 2001.

*Title, Form Number, and OMB Number:* Application for Former Spouse Payments from Retired Pay; DD Form 2293; OMB Number 0730–0008.

*Type of Request:* Reinstatement.

*Number of Respondents:* 20,520.

*Responses per Respondent:* 1.

*Annual Responses:* 20,520.

*Average Burden per Response:* 15 minutes.

*Annual Burden Hours:* 5,064.

*Needs And Uses:* Under 10 U.S.C. 1408, state courts may divide military retired pay as property or order alimony and child support payment from that retired pay. The former spouse may apply to the Defense Finance and Accounting Service (DFAS) for direct payment of these monies by using DD Form 2293. This information collection is needed to provide DFAS the basic data needed to process the request. The respondents of this information collection are spouses or former spouses of military members. The DD Form 2293 was devised to standardize applications for payment under 10 U.S.C. 1408. Information on the form is also used to determine the applicant's current status and contains statutory required certifications the applicant/former spouse must make when applying for payments.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 4, 2001.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 01–25668 Filed 10–11–01; 8:45 am]

**BILLING CODE 5001–08–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the Advisory Council on Dependents' Education

**AGENCY:** Department of Defense Education Activity (DoDEA).

**ACTION:** Meeting postponement notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Appendix 2 of title 5, United States Code, Public Law 92–463, a notice published on August 28, 2001, (66 FR 45285), announcing meeting of the Advisory Council on Dependents' Education (ACDE) scheduled to be held on October 4, 2001, from 8 a.m. to 5 p.m. has been postponed. A new meeting date will be announced. For further information contact Ms. Marsha Jacobson, at 703–696–4235, extension 1990.

Dated: October 4, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, DoD.*

[FR Doc. 01–25670 Filed 10–11–01; 8:45 am]

**BILLING CODE 5001–08–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board

**AGENCY:** Department of Defense.

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Defense Science Board (DSB) Task Force on Aircraft Carriers of the Future will meet in closed session on October 22–23, 2001; November 5–7, 2001; November 15–16, 2001; December 11–12, 2001; January 16–17, 2002; February 21–22, 2002; and March 13–14, 2002. All meetings will be held at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA 22201, with the exception of the November 5–7 and November 15–16 meetings, which will be held in San Diego, CA. The Task Force will assess how aircraft carriers should serve the nation's defense needs in the 21st Century and beyond.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will examine the expected naval environment and the role of the Navy for the next 20–50 years; the role of the carrier and the carrier battle group in a joint environment in which technology has progressed at an appropriate pace for both the U.S. and its potential adversaries; the effects of Unmanned Combat Air Vehicles on the role of the carrier and the carrier battle group; how the carrier should evolve or be transformed to best meet mission requirements in a joint environment; how the role of the aircraft carrier might change and the characteristics that might affect the change; and the technology improvement barriers that need to be overcome to significantly improve the ability of the carrier to execute its missions.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1), and that accordingly these meetings will be closed to the public.

Dated: October 5, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 01–25666 Filed 10–11–01; 8:45 am]

**BILLING CODE 5001–08–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Strategic Environmental Research and Development Program, Scientific Advisory Board

**ACTION:** Notice.

**SUMMARY:** In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meetings.

**DATES:** October 16, 2001 from 1230 p.m. to 1815 p.m., October 17, 2001 from 0830 a.m. to 1735 p.m., and October 18, 2001 from 0830 a.m. to 1245 p.m.

**ADDRESSES:** National Rural Electric Cooperative Association (NRECA), 4301 Wilson Boulevard, Conference Center Room 1, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA, or by telephone at (703) 696–2119.

**SUPPLEMENTARY INFORMATION:**

*Matters to be Considered:* Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

Dated: October 3, 2001.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 01–25669 Filed 10–11–01; 8:45 am]

**BILLING CODE 5001–08–M**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Grant Partially Exclusive License; ALS Technologies, Inc.

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Navy gives notice of its intent to grant ALS Technologies, Inc., a revocable, nonassignable, partially exclusive license, with exclusive fields of use in less than lethal weaponry for humans, less than lethal weaponry for animals, in the United States to practice the Government-owned invention, U.S. Patent Application Serial Number 09/649,607 entitled ''Bola Launcher.''

**DATES:** Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than October 31, 2001.

**ADDRESSES:** Written objections are to be filed with Indian Head Division, Naval Surface Warfare Center, Code OC4, 101 Strauss Avenue, Indian Head, MD 20640–5035.

**FOR FURTHER INFORMATION CONTACT:** Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center Indian Head Division, Code 05T, 101 Strauss Avenue, Indian Head, MD 20640–5035, telephone (301) 744–6111.

Dated: September 1, 2001.

**Robert E. Vincent II,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 01–25680 Filed 10–11–01; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Grant Partially Exclusive License; CG Industries, Inc.

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Navy gives notice of its intent to grant CG Industries, Inc., a revocable, nonassignable partially exclusive license, with exclusive fields of use in dimensional measurement, threaded measurement, in the United States to practice the Government-owned invention, U.S. Patent Application Serial Number 09/907,879 entitled ''Automated Contact Gage System Using Three-Axis Contact Comparator.''

**DATES:** Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than October 31, 2001.

**ADDRESSES:** Written objections are to be filed with Indian Head Division, Naval Surface Warfare Center, Code OC4, 101 Strauss Avenue, Indian Head, MD 20640–5035.

**FOR FURTHER INFORMATION CONTACT:** Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center Indian Head Division, Code 05T, 101 Strauss Avenue, Indian Head, MD 20640–5035, telephone (301) 744–6111.

Dated: September 28, 2001.

**Robert E. Vincent II,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 01–25682 Filed 10–11–01; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Grant Nonexclusive Patent License; Shock Tube Systems, Inc.

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Navy gives notice of its intent to grant Shock Tube Systems, Inc., a revocable, nonassignable, nonexclusive license in fields of use in demolition, commercial blasting, special effects, display fireworks, in the United States to practice the Government-owned invention, U.S. Patent Application Serial Number 09/678,302 entitled ''Ignitor Apparatus.''

**DATES:** Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than October 31, 2001.

**ADDRESSES:** Written objections are to be filed with Indian Head Division, Naval Surface Warfare Center, Code OC4, 101 Strauss Avenue, Indian Head, MD 20640–5035.

**FOR FURTHER INFORMATION CONTACT:** Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center Indian Head Division, Code 05T, 101 Strauss Avenue, Indian Head, MD 20640–5035, telephone (301) 744–6111.

Dated: September 28, 2001.

**Robert E. Vincent II,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 01–25681 Filed 10–11–01; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 13, 2001.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 5, 2001.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

**Office of Elementary and Secondary Education**

*Type of Review:* Reinstatement, with change, of a previously approved collection for which approval has expired.

*Title:* Annual Report of Children in State Agency and Locally Operated Institutions for Neglected and Delinquent Children (KA).

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs (primary).

*Reporting and Recordkeeping Hour Burden:*

Responses: 3052

Burden Hours: 4224.

*Abstract:* An annual survey is conducted to collect data on (1) the number of children enrolled in educational programs of State-operated institutions for neglected or delinquent (N or D) children, community day programs for N or D children; and adult correctional institutions and (2) the October caseload of N or D children in local institutions.

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, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742. 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. 01–25637 Filed 10–4–01; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### National Advisory Committee on Institutional Quality and Integrity (National Advisory Committee); Meeting

**AGENCY:** National Advisory Committee on Institutional Quality and Integrity, Department of Education.

**What Is the Purpose of This Notice?**

The purpose of this notice is to announce the public meeting of the National Advisory Committee and invite third-party oral presentations before the Committee. This notice also presents the proposed agenda and informs the public of its opportunity to attend this meeting. The notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

**When and Where Will the Meeting Take Place?**

We will hold the public meeting on December 10, 2001 from 1 p.m. until 5:30 p.m., and on December 11, 2001 from 8:30 a.m. until 4 p.m. at the Swissôtel Washington (The Watergate), 2650 Virginia Avenue, NW., Washington, DC 20037. You may call the hotel at (202) 965–2300 or fax the hotel at (202) 965–1173 to inquire about rooms.

**What Assistance Will Be Provided to Individuals With Disabilities?**

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

**Who Is the Contact Person for the Meeting?**

Please contact Ms. Bonnie LeBold, the Executive Director of the National Advisory Committee on Institutional Quality and Integrity, if you have questions about the meeting. You may contact her at the U.S. Department of Education, room 7007, MS 7592, 1990 K St., NW., Washington, DC 20006, telephone: (202) 219–7009, fax: (202) 219–7008, e-mail: *Bonnie.LeBold@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

**What Is the Authority for the National Advisory Committee?**

The National Advisory Committee on Institutional Quality and Integrity is established under Section 114 of the Higher Education Act (HEA) as amended, 20 U.S.C. 1011c.

**What Are the Functions of the National Advisory Committee?**

The Committee advises the Secretary of Education about:

- The establishment and enforcement of the criteria for recognition of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The development of standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies in order to establish the interim eligibility of those institutions to participate in Federally funded programs.
- The relationship between: (1) Accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

**What Items Will Be on the Agenda for Discussion at the Meeting?**

Agenda topics will include the review of agencies that have submitted petitions for initial recognition or renewal of recognition or request for an expansion of scope.

**What Agencies Will the Advisory Committee Review at the Meeting?**

The Advisory Committee will review the following agencies during its December 10–11, 2001 meeting.

**Nationally Recognized Accrediting Agencies**

*Petition for Initial Recognition*

1. Commission on Massage Therapy Accreditation (Requested scope of recognition: the accreditation of institutions and programs that award postsecondary certificates, diplomas, and degrees in the practice of massage therapy.)

*Petitions for Renewal of Recognition*

1. Accrediting Association of Bible Colleges, Commission on Accreditation (Current scope of recognition: the accreditation and preaccreditation

(''Candidate for Accreditation'') of Bible colleges and institutes offering undergraduate programs.)

2. American Academy for Liberal Education (Current scope of recognition: the accreditation and preaccreditation (''Candidate for Accreditation'') of institutions of higher education and programs within institutions of higher education that offer liberal arts degrees at the baccalaureate level or a documented equivalency.)

3. American Physical Therapy Association, Commission on Accreditation in Physical Therapy Education (Current scope of recognition: the accreditation and preaccreditation (''Candidate for Accreditation'' status) of programs for the preparation of physical therapists and physical therapist assistants. Requested scope of recognition: The accreditation and preaccreditation (''Candidate for Accreditation') of physical therapist education programs leading to the first professional degree at the master's or doctoral level and physical therapist assistant education programs at the associate degree level, including the use of distance education.)

4. American Veterinary Medical Association, Council on Education (Current scope of recognition: the accreditation and preaccreditation (''Reasonable Assurance'') of programs leading to professional degrees (D.V.M. or D.M.V.) in veterinary medicine.)

5. Association for Clinical Pastoral Education, Inc., Accreditation Commission (Current scope of recognition: the accreditation of clinical pastoral education (CPE) centers and CPE and supervisory CPE programs.)

6. Commission on Collegiate Nursing Education (Current scope of recognition: the accreditation of nursing education programs at the baccalaureate and graduate degree levels.)

7. Distance Education and Training Council, Accrediting Commission (Current scope of recognition: the accreditation of private and non-private distance education institutions offering non-degree and associate, baccalaureate, and master's degree programs primarily through the distance learning method. Requested scope of recognition: the accreditation of private and non-private distance education institutions offering non-degree and associate, baccalaureate, master's, and first professional degree programs primarily through the distance learning method.)

8. National League for Nursing Accrediting Commission (Current scope of recognition: the accreditation of programs in practical nursing, and diploma, associate, baccalaureate and higher degree nurse education programs.)

*Petition for an Expansion of Scope*

1. Accrediting Council for Continuing Education and Training (Current scope of recognition: the accreditation of institutions of higher education that offer non-collegiate continuing education programs. Requested scope of recognition: the accreditation of institutions of higher education that offer non-collegiate continuing education programs and occupational associate degrees (Associate in Occupational Studies (A.O.S) and Associate in Applied Science (A.A.S.))

*Who Can Make Third-Party Oral Presentations at This Meeting?*

We invite you to make a third-party oral presentation before the National Advisory Committee concerning the recognition of any agency published in this notice.

*How Do I Request To Make an Oral Presentation?*

You must submit a written request to make an oral presentation concerning an agency listed in this notice to the contact person *so that the request is received no later than November 16, 2001.* Your request (*no more than 6 pages maximum*) should include:

- The names, addresses, phone numbers, and fax numbers of all persons seeking an appearance,
- The organization they represent, and
- A brief summary of the principal points to be made during the oral presentation.

If you wish, you may attach documents illustrating the main points of your oral testimony. Please keep in mind, however, that *any attachments are included in the 6-page limit.*

Please do not send materials directly to Committee members. Only materials submitted by the deadline to the contact person listed in this notice and in accordance with these instructions become part of the official record and are considered by the Committee in its deliberations. Documents received after the November 16, 2001 deadline will not be distributed to the Advisory Committee for their consideration. Individuals making oral presentations may not distribute written materials at the meeting.

*If I Cannot Attend the Meeting, Can I Submit Written Comments Regarding an Accrediting Agency in Lieu of Making an Oral Presentation?*

This notice requests third-party oral testimony, not written comment. A request for written comments on agencies that are being reviewed during this meeting was published in the **Federal Register** on July 13, 2001. The Advisory Committee will receive and consider only written comments submitted by the deadline specified in that **Federal Register** notice.

*How Do I Request To Present Comments Regarding General Issues Rather Than Specific Accrediting Agencies?*

At the conclusion of the meeting, the Committee, at its discretion, may invite attendees to address the Committee briefly on issues pertaining to the functions of the Committee, which are listed earlier in this notice. If you are interested in making such comments, you should inform Ms. LeBold before or during the meeting.

*How May I Obtain Access to the Records of the Meeting?*

We will record the meeting and make a transcript available for public inspection at the U.S. Department of Education, 1990 K St., NW., Washington, DC 20006 between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. It is preferred that an appointment be made in advance of such inspection.

*How May I Obtain Electronic Access to This Document?*

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

**Authority:** 5 U.S.C. Appendix 2.

Dated: October 5, 2001.

**Maureen McLaughlin,**

*Deputy Assistant Secretary for Policy, Planning and Innovation Office of Postsecondary Education.*

[FR Doc. 01–25665 Filed 10–11–01; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. EC01–156–000 and ER01–3154–000]**

### Alliant Energy Corporate Services, Inc., MidAmerican Energy Company, Xcel Energy Services, Inc., TRANSLink Transmission Company, LLC.; Notice of Filing

October 5, 2001.

Take notice that on September 28, 2001, Alliant Energy Corporate Services, et al. (Applicants), tendered for filing a Joint Application for Authorization to Transfer and Consolidate Transmission Assets To and In an Independent Transmission Company, a pro forma Lease Agreement, a pro forma Private Power Participant Operating Agreement, a pro forma Public and Cooperative Power Participant Operating Agreement, and a pro forma Asset Contribution Agreement and an open access transmission tariff (TRANSLink Tariff).

Applicants submitted an application, pursuant to Section 203 of the Federal Power Act (FPA), 16 U.S.C. 824b, for authorization to transfer control and, potentially, ownership, of certain transmission facilities to TRANSLink for the purpose of providing open access transmission service on an unbundled basis over these interconnected transmission facilities. To the extent necessary, the Applicants are also seeking authorization under Section 203 to consolidate in TRANSLink the operation of certain of the Private Power Participants' transmission facilities with those of Public Power Participants and the Cooperative Power Participant, including the planned consolidation of the Applicants' systems into a single electrical control area.

Applicants also submitted several filings under Section 205 of the FPA, 16 U.S.C. 824d. The first of these is a proposed open access transmission tariff, pursuant to which TRANSLink will provide transmission service over the interconnected transmission facilities of the Applicants within the Midwest ISO region. The proposed TRANSLink Tariff includes all ancillary service schedules included in the Order No. 888 pro forma tariff. The proposed TRANSLink Tariff includes cost of service formula rates for the recovery of TRANSLink's costs of providing transmission service, including its costs of owning, operating and maintaining those transmission facilities that are transferred to it by the Applicants as well as the management fees of the TRANSLink Corporate Manager.

Applicants have also submitted under Section 205 of the FPA a pro forma Asset Contribution Agreement, a pro forma Lease Agreement, and a pro forma Private Power Participant Agreement for the transfer of ownership or functional responsibility to TRANSLink of transmission facilities by jurisdictional public utilities. The pro forma agreements include cost of service formula rates for the calculation of the contribution fee, rental fee, or operating fee TRANSLink will pay to the respective Participant. Amounts payable under the agreement will be reflected in TRANSLink's transmission rates under the TRANSLink Tariff.

In addition, filings were made under Section 205 of the FPA by TRANSLink, as contracts affecting TRANSLink's jurisdictional rates, of a pro forma Public and Cooperative Power Participant Operating Agreement. The agreement allows transfer to TRANSLink of functional responsibility for the transmission facilities of Public Power Participants and Cooperative Power Participants that are not jurisdictional ''public utilities.'' The pro forma Public and Cooperative Power Participant Operating Agreement is similar to the pro forma Private Power Participant Operating Agreement, but contains provisions appropriate to recognize the special requirements and limitations applicable to non-jurisdictional Participants. It includes formulas for the recovery of the transmission revenue requirements of each such Participant. In addition to the generic form of this pro forma agreement that TRANSLink intends to make available to additional public and cooperative power participants, a second version, tailored to address the unique limitations to which public power entities in Nebraska are subject as a result of restrictions in financing arrangements and state law, was also filed.

Applicants request that the TRANSLink Tariff and the pro forma Lease Agreement, pro forma Private Power Participant Operating Agreement, pro forma Public and Cooperative Power Participant Operating Agreement, and pro forma Asset Contribution Agreement be accepted for filing effective on the date for initial commercial operations of TRANSLink, which is expected to be in the fourth quarter of 2002. The TRANSLink Participants respectfully request the Commission issue an order provisionally approving the TRANSLink rate schedules and transactions by December 31, 2001, so the transactions may be completed and TRANSLink may begin operations on the earliest possible date.

The Applicants state that this filing has been served upon all customers taking service under an existing open access transmission tariff of one of its participants.

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 and protests should be filed on or before October 29, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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 ''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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 01–25625 Filed 10–11–01; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER01–1107–000]**

### American Transmission Company; Notice of Settlement Conference

October 5, 2001.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 1:00 pm on Monday, October 15, 2001, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, for the purpose of discussing the possible settlement of the above-referenced dockets.

This proceeding involves the resolution of network facility credit issues regarding an unexecuted Network Integration Transmission Service Agreement (NITSA) between American Transmission Company LLC (ATCLLC) and Dairyland Power Cooperative

(DPC). Resolution of the proceeding could result in the recalculation of load ratio shares in the WPL rate zone effective January 1, 2001. Resolution of the proceeding could also involve the payment of transmission facility credits to DPC, which would affect the WPL rate zone immediately and the other ATCLLC rate zones either immediately or after the conclusion of the rate phase-in. FERC Staff and ATCLLC invite interested customers to attend.

Any person wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Joseph H. Long at (202) 208–2149.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 01–25628 Filed 10–11–01; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ES00–28–002]**

### Consumers Energy Company; Notice of Application

October 5, 2001.

Take notice that on October 2, 2001, Consumers Energy Company submitted an amendment to its original application in this proceeding, pursuant to section 204 of the Federal Power Act. The amendment seeks authorization to issue up to an additional $1 billion of long-term securities (up to an additional $500 million for general corporate purposes and up to an additional $500 million of first mortgage bonds to be issued solely as security for other long-term issuances).

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 and protests should be filed on or before October 26, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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 Internet at *http://www.ferc.fed.us/online/rims.htm* (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 at *http://www.ferc.fed.us/efi/doorbell.htm.*

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 01–25629 Filed 10–11–01; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER98–4159–002]**

### Duquesne Light Company; Notice of Filing

October 5, 2001.

Take notice that on October 2, 2001, Duquesne Light Company (Duquesne), tendered for filing with the Federal Energy Regulatory Commission (Commission) an updated market power study in support of Duquesne's market-based rate tariff, Rate Schedule FERC No. 3 and a report of changes in status.

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 and protests should be filed on or before October 23, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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 Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

**Linwood A. Watson, Jr.**

*Acting Secretary.*

[FR Doc. 01–25626 Filed 10–11–01; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER01–1530–000]**

### Entergy Services, Inc.; Notice of Filing

October 5, 2001.

Take notice that on October 2, 2001, Entergy Services, Inc. (ESI), tendered for filing with the Federal Energy Regulatory Commission (Commission), that Arkansas Electric Cooperative Corporation (AECC) requests that its July 2, 2001 protest be held in abeyance until November 30, 2001.

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 and protests should be filed on or before October 23, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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 Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 01–25627 Filed 10–11–01; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC01–141–001]**

### Progress Energy, Inc.; Notice of Filing

October 5, 2001.

Take notice that on October 3, 2001, Progress Energy, Inc., on behalf of Carolina Power & Light Company, Progress Genco Ventures, LLC, Progress Energy Ventures, Inc., Richmond County Power, LLC, Monroe Power

Company, Effingham County Power, LLC, MPC Generating, LLC, Newco, and Rowan County Power, LLC (collectively, Applicants) tendered for filing an amendment to an application requesting all necessary authorizations under Section 203 of the Federal Power Act, 16 U.S.C. § 824b (1996), to engage in a corporate reorganization.

Applicants request that the Commission approve the application by October 31, 2001.

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 and protests should be filed on or before October 15, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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 ''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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 01–25624 Filed 10–11–01; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–513–008]**

## Questar Pipeline Company; Notice of Tariff Filing

October 5, 2001.

Take notice that on October 1, 2001, pursuant to 18 CFR 154.7 and 154.203, and as provided by Section 30 (Negotiated Rates) to the General Terms and Conditions of Part 1 of Questar Pipeline Company's (Questar) FERC Gas Tariff, Questar filed a tariff filing to implement a negotiated-rate contract as authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, et al. The Commission approved Questar's request to implement a negotiated-rate option for Rate Schedules T–1, NNT, T–2, PKS, FSS and ISS shippers. Questar submitted its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95–6–000 and RM96–7–000 (Policy Statement) issued January 31, 1996.

Ninth Revised Sheet No. 7
Second Revised Sheet No. 7A
First Revised Volume No. 1

Questar requested waiver of 18 CFR 154.207 so that Ninth Revised Sheet No. 7 and Second Revised Sheet No. 7A to First Revised Volume No. 1 of its FERC Gas Tariff may become effective October 1, 2001.

A copy of this filing has been served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 01–25632 Filed 10–11–01; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER01–651–001 and ER01–2970–000]**

## Southwestern Electric Power Company; Notice of Filing

October 5, 2001.

Take notice that on September 13, 2001, Southwestern Electric Power Company (SWEPCO), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Restated and Amended Power Supply Agreement between SWEPCO and Rayburn Country Electric Cooperative, Inc (Rayburn Country).

SWEPCO has served copies to this notice on Rayburn Country, and the Public Utilities Commission of Texas and all parties to this docket.

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 and protests should be filed on or before October 17, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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 Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 01–25634 Filed 10–11–01; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–255–034]**

## TransColorado Gas Transmission Company; Notice of Tariff Filing

October 5, 2001.

Take notice that on October 1, 2001, pursuant to 18 CFR 154.7 and 154.203, and in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000, TransColorado Gas Transmission Company (TransColorado) tendered for filing and acceptance Thirty-Fourth Revised Sheet No. 21 and Seventh Revised Sheet No. 22A to Original

Volume No. 1 of its FERC Gas Tariff to be effective October 1, 2001.

Thirty-Fourth Revised Sheet No. 21
Seventh Revised Sheet No. 22A

The tendered tariff sheets propose to revise TransColorado's Tariff to reflect two amended and one deleted negotiated-rate contracts. TransColorado requested waiver of 18 CFR 154.207 so that the tendered tariff sheets may become effective October 1, 2001.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 01–25631 Filed 10–11–01; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP88–391–026 and RP93–162–011]**

### Transcontinental Gas Pipe Line Corporation; Notice of Cash-Out Report

October 5, 2001.

Take notice that on September 28, 2001 Transcontinental Gas Pipe Line Corporation (Transco) filed its annual cash-out report for the period August 1, 2000 through July 31, 2001. The report was filed to comply with the cash-out provisions in Section 15 of the General Terms and Conditions of Transco's FERC Gas Tariff.

Transco states that the report shows that for the annual cash-out period ending July 31, 2000, Transco received revenues in excess of costs incurred. Therefore, in accordance with Section 15 of the General Terms and Conditions Transco has refunded excess revenues in the amount of $2,319,365 to firm and interruptible transportation customers on a pro rata basis in accordance with the transportation quantities delivered during the annual period ending July 31, 2001.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 12, 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 proceedings. 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 01–25622 Filed 10–11–01; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP01–388–000]**

### Transcontinental Gas Pipe Line Company; Notice of Route and Site Review

October 5, 2001.

On October 22 and continuing through October 26, 2001, the staff of the Office of Energy Projects (OEP) will conduct a route and site review of the proposed Momentum Expansion Project. The Momentum Expansion Project facilities are proposed for construction by Transcontinental Gas Pipe Line Company (Transco). Representatives of Transco will accompany the OEP staff. The following list specifies the time and location to meet staff at each project facility.

*Monday, October 22, 2001:*
*Compressor Station 160:* 9:00 am, 4300 NC Highway 65, southwest of Reidsville, North Carolina.
*Tuesday, October 23, 2001:*
*Bowman Loop:* 9:00 am, at Compressor Station 130, 117 Winns Lake Road, Comer, Geogia.
*Wednesday, October 24, 2001:*
*Kellyton Loop and Compressor Station 105:* 9:00 am, 232 Highway 22 East, Rockford, Alabama.
*Thursday, October 25, 2001:*
*Jones Loop and Compressor Stations 90 & 100:* 9:00 am, at Compressor Station 100, 642 Country Road 62, Billingsly, Alabama.
3:00 pm, at Compressor Station 90, 18491 Alabama Highway 69, southwest of Myrtlewood, Alabama.
*Friday, October 26, 2001:*
*Hale and Magnolia Loops:* 8:00 am, parking lot First United Methodist Church, 203 Franklin Street, Quitman, Mississippi.
3:00 pm, at MTS Grocery, southeast corner of Highway 48 and I–55 in Magnolia, Mississippi.

Anyone interested in attending the route and site review or obtaining further information may contact the Commission's Office of External Affairs at (202) 208–1088. Attendees must provide their own transportation.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 01–25623 Filed 10–11–01; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. RP01–245–000 and RP01–253–000]**

### Transcontinental Gas Pipe Line Corporation; Notice of Informal Settlement Conference

October 5, 2001.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 12:00 Noon on Thursday, October 18, 2001 at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to

attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

**FOR FURTHER INFORMATION, CONTACT:** William J. Collins at (202) 208–0248 or Irene Szopo at (202) 208–1602.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 01–25633 Filed 10–11–01; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER01–2688–001, et al.]**

## Gilroy Energy Center, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

October 5, 2001.

Take notice that the following filings have been made with the Commission:

### 1. Gilroy Energy Center, LLC

[Docket No. ER01–2688–001]

Take notice that on October 2, 2001, Gilroy Energy Center, LLC (the Applicant), submitted for filing with the Federal Energy Regulatory Commission (Commission) a first Substitute Sheet Nos. 2 and 3 to its FERC Electric Tariff No. 1, in compliance with the Commission Staff Letter issued in this Docket on September 21, 2001.

*Comment date:* October 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

### 2. San Diego Gas & Electric Company

[Docket No. ER01–3093–000]

Take notice that on October 2, 2001, San Diego Gas & Electric Company (SDG&E) tendered for filing with the Federal Energy Regulatory Commission (FERC or Commission), its Service Agreements numbers 9 and 10 to its FERC Electric Tariff, First Revised Volume No. 6, two interconnection agreements. Both agreements relate to the interconnection of a new generation plant to be owned by CalPeak Power -Enterprise, LLC (CalPeak Enterprise). The plant, with a capacity of 49 MW, is being constructed on an expedited basis to meet potential shortfalls in the Western states' electric supplies. It will be located near the City of Escondido in San Diego County, California, and is expected to begin service on or about September 24, 2001.

Service Agreement No. 9 is an Expedited Interconnection Facilities Agreement dated September 21, 2001 between SDG&E and CalPeak Enterprise, under which SDG&E will construct, operate and maintain the proposed interconnection facilities. Service Agreement No. 10, the Interconnection Agreement between SDG&E and CalPeak Enterprise dated September 21, 2001, establishes interconnection and operating responsibilities and associated communications procedures between the parties.

SDG&E requests an effective date of September 21, 2001 for both agreements. SDG&E states that copies of the amended filing have been served on CalPeak Enterprise and on the California Public Utilities Commission.

*Comment date:* October 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

### 3. Southern Energy Retail Trading and Marketing, Inc.

[Docket No. ER02–1–000]

Take notice that on October 1, 2001, Southern Energy Retail Trading and Marketing, Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation pursuant to 18 CFR 35.15 (2001), in order to reflect the cancellation of its Market Rate Tariff, designated as Rate Schedule FERC No. 1, originally accepted for filing in Docket No. ER98–1149–000.

*Comment date:* October 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

### 4. New England Power Pool

[Docket No. ER02–2–000]

Take notice that on October 1, 2001, the New England Power Pool (NEPOOL) Participants Committee filed with the Federal Energy Regulatory Commission (Commission) for acceptance materials (1) to permit NEPOOL to expand its membership to include AES Londonderry, L.L.C. (AESL), Long Island Lighting Company d/b/a LIPA (LIPA), and New Hampshire Office of Consumer Advocate (NHOCA); and (2) to terminate the membership of Merchant Energy Group of Americas, Inc. (MEGA).

The Participants Committee requests an effective date of October 1, 2001 for commencement of participation in NEPOOL by LIPA, December 1, 2001 for commencement of participation in NEPOOL by AESL and NHOCA, and August 21, 2001 for the termination of MEGA.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

*Comment date:* October 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

### 5. MidAmerican Energy Company

[Docket No. ER02–3–000]

Take notice that on October 1, 2001, MidAmerican Energy Company (MidAmerican), filed with the Federal Energy Regulatory Commission (Commission), a Master Energy Sales Agreement (Agreement) dated September 1, 2001, entered into with Peoples Energy Services Corporation (Peoples), pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff (Tariff), Original Volume No. 5. The Agreement constitutes a 1st revised Service Agreement No. 57, under the Tariff, between MidAmerican and Peoples.

MidAmerican requests a September 1, 2001 effective date for the Master Energy Sales Agreement and seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the compliance filing on Peoples Energy Services Corporation, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

*Comment date:* October 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

### 6. Pacific Gas and Electric Company

[Docket No. ER02–4–000]

Take notice that on October 1, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of the PG&E First Revised Rate Schedule FERC No. 215 (Must-Run Service Agreement between Pacific Gas and Electric Company and the California Independent System Operator Corporation for the FMC Synchronous Condenser/Emergency Gas Turbine).

Copies of this filing have been served upon the California System Operator Corporation (ISO) and the California Public Utilities Commission.

*Comment date:* October 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

### 7. Southern Company Services, Inc.

[Docket No. ER02–5–000]

Take notice that on October 1, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company (APC), Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies), filed with the Federal

Energy Regulatory Commission (Commission), a Service Agreement for Conditional and Experimental Firm Point-to-Point Transmission Service Between SCS, as agent for Southern Companies, and Coral Power, L.L.C. Regarding OASIS request 1717624, under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5). Under this agreement, Coral will be provided monthly transmission service on a firm basis except for when providing such service could cause or potentially cause a stability-related problem that has been identified in the Southwest Quadrant of Southern Companies' transmission system.

*Comment date:* October 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

**8. Avista Corporation**

[Docket No. ER02–6–000]

Take notice that on October 1, 2001, Avista Corporation (Avista) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Service Agreement for Firm Point-To-Point Transmission Service under Avista's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8 with Consolidated Irrigation District No. 19. The Service Agreement replaces an existing agreement that terminates on October 1, 2001.

Avista requests a waiver of the Commission's notice requirements to allow the Service Agreement to become effective on October 1, 2001.

*Comment date:* October 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

**9. Great Bay Power Corporation**

[Docket No. ER02–7–000]

Take notice that on October 1, 2001, Great Bay Power Corporation (Great Bay) tendered for filing with the Federal Energy Regulatory Commission (Commission) a service agreement between Constellation Power Source, Inc. and Great Bay for service under Great Bay's revised Market-Based Rate Power Sales Tariff Volume No. 2 (Tariff). This Tariff was accepted for filing by the Commission on May 31, 2000, in Docket No. ER00–2211–000. The service agreement is proposed to be effective September 25, 2001.

*Comment date:* October 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

**10. Xcel Energy Services Inc.**

[Docket No. ER02–8–000]

Take notice that on October 1, 2001, Xcel Energy Services, Inc. (XES), on behalf of Public Service Company of Colorado (Public Service), submitted for filing with the Federal Energy Regulatory Commission (Commission) a Second Amendment to the Power Purchase Agreement dated May 14, 1998 between Public Service and Holy Cross Energy. XES requests that this agreement become effective on October 1, 2001.

*Comment date:* October 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

**11. Southern Company Services, Inc.**

[Docket No. ER02–9–000]

Take notice that on October 1, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies), filed with the Federal Energy Regulatory Commission (Commission) one agreement for network integration transmission service between Southern Companies and Generation Energy Marketing, a Department of SCS, as agent for Mississippi Power Company, under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5). Under this agreement, power will be delivered to the South Mississippi Electric Power Association's Coast EPA Lizana Delivery Point. This agreement is being filed in conjunction with a power sale by SCS, as agent for Mississippi Power Company, to the South Mississippi Electric Power Association under Southern Companies' Market-Based Rate Power Sales Tariff, as was approved in FERC Docket No. ER01–1284–000.

*Comment date:* October 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

**12. Duke Energy Oakland, LLC and Duke Energy South Bay, LLC**

[Docket No. ER02–10–000]

Take notice that on October 1, 2001, Duke Energy Oakland, L.L.C. (DEO) and Duke Energy South Bay, L.L.C. (DESB) made an informational filing with the Federal Energy Regulatory Commission (Commission) detailing and supporting their Annual Fixed Revenue Requirements and their Variable O&M Rates as required by Schedule F of the reliability Must Run Agreement with the California Independent System Operator (CAISO). Copies of the filing have been served upon the CAISO both in hard copy and electronic format.

DEO and DESB request an effective date of January 2, 2002.

*Comment date:* October 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

**13. Pacific Gas and Electric Company**

[Docket No. ER02–11–000]

Take notice that on October 1, 2001, Pacific Gas and Electric Company (PG&E) made an informational filing with the Federal Energy Regulatory Commission (Commission), for proposed revisions, to become effective January 1, 2002, to its Reliability Must-Run Service Agreements (RMR Agreements) with the California Independent System Operator Corporation (ISO) for Helms Power Plant (Helms), PG&E First Revised Rate Schedule FERC No. 207, Humboldt Bay Power Plant (Humboldt Bay), PG&E First Revised Rate Schedule FERC No 208, Hunters Point Power Plant (Hunters Point), PG&E First Revised Rate Schedule FERC No. 209, and San Joaquin Power Plant (San Joaquin), PG&E First Revised Rate Schedule FERC No. 211. This filing proposes revisions to portions of the listed Rate Schedules to adjust the applicable rates as required under the currently-effective RMR Agreement.

Copies of PG&E's filing have been served upon the ISO, the California Electricity Oversight Board, and the California Public Utilities Commission.

*Comment date:* October 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

**14. New England Power Pool**

[Docket No. ER02–12–000]

Take notice that on October 1, 2001, the New England Power Pool (NEPOOL) Participants Committee tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement for Long-Term Firm In Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the Commission's regulations. Acceptance of this Service Agreement will recognize the provision of Long-Term Firm In Service to Morgan Stanley Capital Group, Inc., in accordance with the provisions of the NEPOOL Open Access Transmission Tariff, as amended and supplemented, and the Commission's order issued July 16, 2001 in *New England Power Pool,* 96 FERC ¶ 61,087 (2001). An effective date of September 1, 2001 for commencement of transmission service has been requested.

Copies of this filing were sent to the NEPOOL Participants, the New England state governors and regulatory commissions, and all parties to the transaction.

*Comment date:* October 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

**15. Southwest Power Pool, Inc.**

[Docket No. ER02–13–000]

Take notice that on October 1, 2001, Southwest Power Pool, Inc. (SPP) submitted for filing with the Federal Energy Regulatory Commission (Commission) a service agreement for Firm Point-to-Point Transmission Service with OG+E Energy Resources, Inc. (Transmission Customer). A copy of this filing was served on the Transmission Customer.

SPP requests an effective date of September 1, 2001 for this service agreement.

*Comment date:* October 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

**16. West Texas Utilities Company**

[Docket No. ER02–14–000]

Take notice that on October 1, 2001, West Texas Utilities Company (WTU) filed with the Federal Energy Regulatory Commission (Commission) a Restated and Amended Power Supply Agreement (Restated PSA) between WTU and the City of Weatherford, Texas (Weatherford) for the period July 17, 2001 through December 31, 2001 and a restated service agreement (Restated Service Agreement) between WTU and Weatherford under WTU's Market-Based Rate Tariff for the period on and after January 1, 2002. The only substantive change to the two documents is the addition of a new point of receipt to Exhibit A of each agreement.

WTU seeks an effective date of July 17, 2001 for the Restated PSA and an effective date of January 1, 2002 for the Restated Service Agreement and, accordingly, seeks waiver of the Commission's notice requirements to the extent necessary. Copies of the filing have been served on Weatherford and on the Public Utility Commission of Texas.

*Comment date:* October 22, 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 ''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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 01–25664 Filed 10–11–01; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER01–2613–001, et al.]**

## PECO Energy Company, et al.; Electric Rate and Corporate Regulation Filings

October 4, 2001.

Take notice that the following filings have been made with the Commission:

**1. PECO Energy Company**

[Docket No. ER01–2613–001]

Take notice that on October 2, 2001, PECO Energy Company (PECO) resubmitted a Construction Agreement with the Federal Energy Regulatory Commission (Commission), between PECO and Old Dominion Electric Cooperative (Old Dominion) in the format required by the Commission's Order No. 614. The Construction Agreement has been designated as Service Agreement No. 612 under PJM Interconnection L.L.C.'s (PJM) open access transmission tariff. The filing was made in compliance with the Commission's Letter Order dated September 13, 2001 in Docket No. ER01–2613–000, which accepted the Construction Agreement for filing on the requested effective date, conditioned upon this compliance filing. Except for the new designation and pagination, the Construction Agreement is not changed.

A copy of the compliance filing has been served on ODEC and PJM.

*Comment date:* October 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

**2. Old Dominion Electric Cooperative**

[Docket No. ER01–2982–001]

Take notice that on October 1, 2001, Old Dominion Electric Cooperative (Applicant) tendered for filing with the Federal Energy Regulatory Commission (Commission) a substitute Service Agreement Between Old Dominion Electric Cooperative and Northern Virginia Electric Cooperative for Market Rate Electric Power and Rate Schedule NOVEC1–OD with proper designations, as well as redesignated Rate Schedule NOVEC1–OD Load Control Addendum and Rate Schedule NOVEC2–OD. Pursuant to instructions from Commission staff, this filing provides a substitute, correctly designated version of the Service Agreement and Rate Schedule NOVEC1–OD originally accepted for filing in Docket No. ER00–1512–000, and correctly designated versions of Rate Schedule NOVEC1–OD Load Control Addendum and Rate Schedule NOVEC2–OD. The terms of the rate schedule are not otherwise modified by this filing.

*Comment date:* October 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

**3. Somerset Windpower LLC**

[Docket No. ER01–2139–002]

Take notice that on October 2, 2001, Somerset Windpower LLC (Somerset) tendered an amendment with the Federal Energy Regulatory Commission (Commission) Revision to Somerset's application for order authorizing market-based rates to its compliance filing of August 2, 2001 as requested by commission staff.

*Comment date:* October 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

**4. Carr Street Generating Station, L.P.**

[Docket No. ER98–4095–001]

Take notice that on October 1, 2001, Carr Street Generating Station, L.P. submitted for filing with the Federal Energy Regulatory Commission (Commission), an updated market analysis as required by the Commission's condition granting it authorization to sell wholesale power and market-based rates.

*Comment date:* October 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

**5. UtiliCorp United Inc.**

[Docket No. ES01–43–000]

Take notice that on September 27, 2001, UtiliCorp United Inc. (UtiliCorp) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue corporate

guarantees in an amount not to exceed $1 billion an any one time in support of long-term debt and related obligations to be issued by one or more UtiliCorp subsidiaries in connection with investments in, acquisitions of assets of, or continuing ownership of gas and/or electric utility assets outside of the United States.

UtiliCorp also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

*Comment date:* October 24, 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 ''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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 01–25621 Filed 10–11–01; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 6132–006]**

### Facilitators Improving Fish Habitat; Notice of Availability of Environmental Assessment

October 5, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Energy Projects has reviewed the application dated July 11, 2001, requesting the Commission's approval to surrender the Exemption and removal of a dam at the John C. Jones Project, located on the Marsh Stream, a tributary of the Penobscot River, near the towns of Winterport and Frankfort, in Waldo County, Maine, and has prepared an Environmental Assessment (EA) for the proposed and alternative actions.

Copies of the EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. Copies of this filing are on file with the Commission and are available for public inspection. This document 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).

Any comments on the EA should be filed within 30 days from the date of this notice and should be addressed to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426. Please affix ''John C. Jones Project No. 6132–006'' to the first page of your comments. All timely filed comments will be considered in the Commission order addressing the proposed surrender of exemption and dam removal. 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.

For further information, please contact Jack Hannula at (202) 219–0116.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 01–25630 Filed 10–11–01; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FR1–7082–2]**

### Proposed Settlement Agreement, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed settlement agreement; request for pubic 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 Settlement Agreement, to address a lawsuit (the ''lawsuit'') filed by four environmental groups, consisting of Louisiana Environmental Action Network, North Baton Rouge Environmental Association, Save Our Lakes and Ducks, and Southern University Environmental Law Society, represented by Tulane Environmental Law Clinic (collectively, ''LEAN''). LEAN petitioned for judicial review of a final rule (''the Rule'') promulgated by the United States Environmental Protection Agency (''EPA'') on July 2, 1999, published at 64 FR 35930, approving the revised Post-1996 Rate-of-Progress (''ROP''), Attainment Demonstration, and Contingency Measures State Implementation Plans for the Baton Rouge ozone nonattainment area. *Louisiana Environmental Action Network, et al.,* v. *United States Environmental Protection Agency*, No. 99–60570 (5th Cir.). These State Implementation Plan (''SIP'') revisions were submitted by the State of Louisiana, through its Department of Environmental Quality (''LDEQ''), pursuant to the Act.

**DATES:** Written comments on the proposed Settlement Agreement must be received by November 13, 2001.

**ADDRESSES:** Written comments should be sent to Jonathan Weisberg, Office of Regional Counsel (6 RC–M), Region 6, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Copies of the proposed Settlement Agreement are available from Jonathan Weisberg, (214) 665–2180.

**SUPPLEMENTARY INFORMATION:** In September 1996, the State of Louisiana, through LDEQ, proposed a revised State Implementation Plan (the ''revised SIP'') for the attainment of the National Ambient Air Quality Standard (''NAAQS'') for ozone for the Baton Rouge ozone nonattainment area. On July 2, 1999, EPA approved the revised SIP. LEAN objected to EPA's approval of the revised SIP, alleging that the revised SIP must provide for more reductions in VOC emissions, that the contingency plan in the revised SIP was inadequate, and that Louisiana did not demonstrate attainment of the NAAQS for ozone by November 15, 1999.

Under the revised SIP, Louisiana elected to develop a contingency measure plan using Emission Reduction Credits (''ERCs'') held in escrow in the Louisiana Emission Reduction Credit Bank (the ''Louisiana ERC Bank''), established pursuant to Louisiana's banking rule, set forth in Title 33 of the Louisiana Administrative Code, Chapter 6. LEAN alleged the ERCs held in escrow in the Louisiana ERC Bank were

not adequate to meet requirements for contingency measures.

Subsequent to the initiation of the lawsuit, EPA learned that LDEQ did not interpret the Act to require emission reductions to be discounted to reflect all emission reductions required under the Act, at time of their use, and that LDEQ did not discount ERCs in the Louisiana ERC Bank at time of their use. In part, based on this new information, on October 6, 2000, the parties to the lawsuit filed a joint motion for a partial voluntary remand of EPA's approval of Louisiana's contingency measure plan for the Baton Rouge ozone nonattainment area, and for a stay of all proceedings of the lawsuit (the ''joint motion''). On October 19, 2000, the Court granted the joint motion.

Louisiana has been working to develop a new State Implementation Plan (the ''new SIP'') for the Baton Rouge ozone nonattainment area. The minimum requirements for SIP submissions are described in 40 CFR part 51. As part of the new SIP, EPA expects Louisiana to submit a new ozone attainment demonstration for the Baton Rouge ozone nonattainment area. The ozone attainment demonstration must document the photochemical modeling procedure used to determine the impacts of both local and regional control measures, must document modeling results, and, to the extent necessary to attain the ozone standard, must document additional control measures that Louisiana has selected. Any additional control measures must be reflected through adopted emission control regulations.

The Settlement Agreement provides that: (1) Tulane Environmental Law Clinic (on behalf of LEAN) will file a motion to dismiss the lawsuit in its entirety, with prejudice to its refiling, within five (5) days after the Settlement Agreement becomes effective; (2) EPA and LDEQ has met and/or will meet with representatives from LEAN to discuss the proper modeling and attainment protocols to calculate and assess the attainment demonstration in the new SIP for the Baton Rouge ozone nonattainment area; and (3) the United States will reimburse LEAN $34,000 in full satisfaction of any claim for attorney's fees and costs that was or could have been asserted in connection with the lawsuit.

LDEQ published notice of the Settlement Agreement in the Louisiana Register (0106Pot2) on June 20, 2001. The notice specified that, to be considered, comments had to be received by July 13, 2001. LDEQ did not receive substantial adverse comment, and LDEQ has opted to proceed with the Settlement Agreement.

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 Settlement Agreement 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 Settlement Agreement 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 Settlement Agreement will be final.

Dated: October 1, 2001.

**Alan W. Eckert,**

*Associate General Counsel.*

[FR Doc. 01–25737 Filed 10–11–01; 8:45 am]

**BILLING CODE 6560–50–M**

## ENVIRONMENTAL PROTECTION AGENCY

**[CO–001–0066; FRL–7082–3]**

## Adequacy Status of the Denver, Colorado $PM_{10}$ Maintenance Plan for Transportation Conformity Purposes

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of adequacy.

**SUMMARY:** In this document, EPA is notifying the public that we have found that the motor vehicle emissions budgets in the Denver particulate matter of 10 micrograms in size or smaller ($PM_{10}$) maintenance plan submitted on July 30, 2001, are adequate for conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the Denver Regional Council of Governments, the Colorado Department of Transportation and the U.S. Department of Transportation are required to use the motor vehicle emissions budgets from this submitted maintenance plan for future conformity determinations.

**DATES:** This finding is effective October 29, 2001.

**FOR FURTHER INFORMATION CONTACT:** Kerri Fiedler, Air & Radiation Program (8P–AR), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6493.

The letter documenting our finding is available at EPA's conformity website: http://www.epa.gov/oms/transp/conform/adequacy.htm.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean EPA.

This action is simply an announcement of a finding that we have already made. We sent a letter to the Colorado Air Pollution Control Division on September 20, 2001 stating that the motor vehicle emissions budgets in the submitted Denver $PM_{10}$ maintenance plan are adequate. This finding has also been announced on our conformity Web site at *http://www.epa.gov/oms/transp/conform/adequacy.htm.*

Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from our completeness review, and it also should not be used to prejudge our ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved, and vice versa.

We've described our process for determining the adequacy of submitted SIP budgets in a memo entitled, ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision,'' dated May 14, 1999. We followed this guidance in making our adequacy determination.

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

Dated: October 4, 2001.

**Andrew M. Gaydosh,**

*Acting Regional Administrator, Region VIII.*

[FR Doc. 01–25739 Filed 10–11–01; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6622–6]**

### Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *www.epa.gov/ocea/ofa*

Weekly receipt of Environmental Impact Statements Filed October 1, 2001 Through October 5, 2001

Pursuant to 40 CFR 1506.9.

*EIS No. 010372, Draft EIS, AFS, ID*, Garnet Stars and Sands Project, To Test and Develop Future Recreational Garnet, Idaho Panhandle National Forests, St. Joe Ranger District, Latah, Shoshone and Benewah Counties, ID, Comment Period Ends: November 26, 2001, Contact: Tracy Gravelle (208) 765–7223. This document is available on the Internet at: http://www.ferc.fed.us/online/htm.

*EIS No. 010373, Draft EIS, AFS, AZ*, Buck Springs Range Allotment Rangeland Management, Implementation, Blue Ridge Coconino National Forest, Coconino County, AZ, Comment Period Ends: November 26, 2001, Contact: Larry G. Sears (928) 477–2255.

*EIS No. 010374, Final EIS, NPS, MN*, Voyageurs National Park General Management, Visitor Use and Facilities Plans, Implementation, Koochiching and St. Louis Counties, MN, Wait Period Ends: November 13, 2001, Contact: Michael Madell (608) 441–5600.

*EIS No. 010375, Draft EIS, NPS, AZ*, Sunset Crater Volcano National Monument, General Management Plan, Implementation, Flagstaff Area, Coconina County, AZ, Comment Period Ends: November 26, 2001, Contact: Sam Henderson (520) 526–1157.

*EIS No. 010376, Draft EIS, NPS, AZ*, Wupatki National Monument, General Management Plan, Implementation, Flagstaff Area, Coconina County, AZ, Comment Period Ends: November 26, 2001, Contact: Sam Henderson (520) 526–1157.

*EIS No. 010377, Draft EIS, NPS, AZ*, Walnut Canyon National Monument, General Management Plan, Implementation, Flagstaff Area, Coconina County, AZ, Comment Period Ends: November 26, 2001, Contact: Sam Henderson (520) 526–1157.

*EIS No. 010378, Final EIS, AFS, CO*, Forest Development Trail (FDT) 1135 (Arapho Ridge Trail), Forest Development Road (FDR) 711.1 and FDR 711.1A Motorized or Non-Motorized Determination and Trailhead Parking Areas Creation at both ends of the Trail, Routt National Forest, Jackson County, CO, Wait Period Ends: November 13, 2001, Contact: Melissa Martin (307) 745–2371.

*EIS No. 010379, Final EIS, FRC, PA, NJ, NY*, Millennium Pipeline Project, Construct and Operate an Interstate Natural Gas Pipeline from United States to Canada, including PA, NY and NJ, Wait Period Ends: November 13, 2001, Contact: Paul McKee (202) 208–1611.

*EIS No. 010380, Final EIS, AFS, NM*, Santa Fe National Forest, Santa Fe Municipal Watershed Project, Servere Crown Fire Reduction and Sustainable Forest and Watershed Conditions Restoration, Implementation, Pecos Wilderness to Cochitti Lake, Santa Fe National Forest, Santa Fe County, NM, Wait Period Ends: November 13, 2001, Contact: John Bruin (505) 438–7872.

*EIS No. 010381, Draft Supplement, COE, FL*, Cape Sable Seaside Sparrow Protection, Interim Operating Plan (IOP), Updated Information on a New Alternative 7 for Emergency Sparrow Protection Actions, Implementation, Everglades National Park, Miami-Dade County, FL, Comment Period Ends: November 26, 2001, Contact: Jon Moulding (904) 232–2286.

*EIS No. 010382, Final EIS, AFS, OR*, Deep Vegetation Management Project, Implementation, Ochoco National Forest, Paulina Ranger District, Crook and Wheeler Counties, OR , Wait Period Ends: November 13, 2001, Contact: Lori Blackburn (541) 477–6900.

*EIS No. 010383, Draft EIS, NOA, CA*, Goat Canyon Watershed Enhancement Project, Design, Construction Operation and Long-Term Maintenance, Tijuana River Estuary, City and County of San Diego, CA, Comment Period Ends: November 26, 2001, Contact: Steve Kokkinakis (202) 482–5181.

*EIS No. 010384, Final EIS, FAA, KY*, Cincinnati/Northern Kentucky International Airport, Construction and Operation of a New 8,000-foot Runway 17/35 (Future 18R/36L); 2,000-foot Extension of Runway 9/27, Funding and Airport Layout Plan, (ALP) Boone County, KY , Wait Period Ends: November 13, 2001, Contact: Peggy S. Kelly (901) 544–3495.

**Amended Notices**

*EIS No. 010305, Draft Supplement, FAA, MN*, Flying Cloud Airport, Substantive Changes to Alternatives and New Information, Extension of the Runways 9R/27L and 9L/27R, Long-Term Comprehensive Development, In the City of Eden Prairie, Hennepin County, MN, Comment Period Ends: October 9, 2001, Contact: Glen Orcutt (612) 713–4354. Revision of FR Notice Published on 8/24/2001: CEQ Comment Period Ending 10/9/2001 has been extended to 11/5/2001.

*EIS No. 010354, Final EIS, FHW, VA*, Coalfields Expressway Location Study, Improvements from Route 23 near Pound, VA to the WV State Line east of Slate, VA, Funding and COE Section 404 Permit, Wise, Dickerson and Buchanan Counties, VA, Comment Period Ends: November 5, 2001, Contact: Roberto Fonseca-Martinez (804) 775–3320. Revision of FR notice published on 09/28/2001: CEQ Comment Period Ending 10/29/2001 has been Corrected to 11/5/2001.

*EIS No. 010366, Draft EIS, AFS, OR*, Umpqua National Forest, Land and Resource Management Plan, Implementation, Lane, Douglas and Jackson Counties, OR, Comment Period Ends: November 19, 2001, Contact: Patrick S. William (541) 498–2531. Revision of FR notice published on 10/5/2001: CEQ Due Date Corrected from 11/19/2001 to 11/26/2001.

Dated: October 9, 2001.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 01–25714 Filed 10–11–01; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6622–7]**

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated May 18, 2001 (97 FR 27647).

**Draft EISs**

*ERP No. D–DOE–L08055–WA Rating EO2,* Kangley—Echo Lake Transmission

Line Project, Construct a New 500-kilovolt (kV) Transmission Line, COE Section 10 and 404 Permits, (DOE/EIS–0317), King County, WA.

**Summary**

EPA expressed objections regarding the project's potential impacts to the Cedar River watershed and to endangered species. EPA requested that the final EIS provide information to fully evaluate these impacts, that it consider a broader range of alternatives, and that it discuss compliance with the Clean Water Act's antidegradation requirement.

*ERP No. D–DOE–L09815–00 Rating LO,* Fish and Wildlife Implementation Plan, To Implement and Fund a Policy Directions for Fish and Wildlife Mitigation and Recovery, Pacific Northwest, AZ, CA, ID, MT, NV, NM, OR, UT, WY and British Columbia.

**Summary**

EPA has no objections to the draft EIS. It provides a framework for deciding policy directions, rather than describing the impacts of a particular action or set of actions that will result from the document. Agencies with jurisdiction in the Columbia River Basin will, however, have to individually address Fish and Wildlife recovery plans in stand alone NEPA documents in order to comply with the 2000 Biological Opinion for the Federal Columbia River Power System.

**Final EISs**

*ERP No. F–FHW–H59000–NB,* Antelope Valley Study, Implementation of Stormwater Management, Transportation Improvements and Community Revitalization, Major Investment Study, City of Lincoln, Lancaster County, NB.

**Summary**

No formal comment letter was sent to the preparing agency.

*ERP No. F–USA–D11031–MD,* Fort George G. Meade Future Development and Operations of a New Administrative and Support Buildings, Anne Arundel and Howard Counties, MD.

**Summary**

No formal comment letter was sent to preparing agency.

*ERP No. FS–JUS–G11010–00,* Programmatic—Final Supplemental EIS US Naturalization Service (INS) and US Joint Task Force-Six (JTF–6) Activities Along the US/Mexico Border from Brownsville Texas to San Diego, California.

**Summary**

EPA offered additional comments on the Final Programmatic EIS to strengthen the NEPA document. EPA asked that its concerns be addressed in the Record of Decision Document or in any subsequent NEPA documents that are tiered to the Programmatic EIS.

Dated: October 9, 2001.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 01–25715 Filed 10–11–01; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–00746; FRL–6806–8]**

## Association of American Pesticide Control Officials/State FIFRA Issues Research and Evaluation Group Working Committee on Pesticide Operations and Management

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Association of American Pesticide Control Officials (AAPC0)/the State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Pesticide Operations and Management (WC/POM) will hold a 2–day meeting, beginning on November 5, 2001 and ending November 6, 2001. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

**DATES:** The meeting will be held on Monday, November 5, 2001, from 8:30 a.m. to 5 p.m. and Tuesday, November 6, 2001, from 8:30 a.m. to 12 noon.

**ADDRESS:** This meeting will be held at the Double Tree Hotel, 300 Army Navy Drive, Arlington, VA, 22202.

Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00746 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249; telephone number: (802) 472–6956; fax (802) 472–6957; e-mail address: *aapco@plainfield.bypass.com.*

Georgia A. McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: mcduffie.georgia@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 all parties interested in SFIREG's information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process are invited and encourage to attend the meetings and participate as appropriate. 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/.*

2. *In person.* The Agency has established an official record for this action under docket control number OPP–00746. 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.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00746 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00746. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. Tentative Agenda:**

The tentative agenda items idenified by the AAPCO and SFIREG follows:

1. Section 24(c) denials for organophosphates (OP)s.

2. Cross contamination.

3. Spray drift.

4. Mosquito control update/West Nile Virus.

5. Wood treaters and the chromated copper arsenate (CCA) issues.

6. CAPRM (Environmental Performance Measures) update.

7. Cooperative agreements/$25 million enforcement grants update.

8. Field data plan update.

9. Insecticidal chalk enforcement issues.

10. Supplemental labeling electronic distribution.

11. Inspector credentials.

12. Chlorine swimming pool products.

13. Surf day results.

14. North American Free Trade Agreement (NAFTA) labeling review.

15. POM working committee workgroups/updates.

16. EPA update/briefing:

a. Office of Pesticide Programs update.

b. Office Enforcement Compliance Assurance update.

**List of Subjects**

Environmental protection.

Dated: October 4, 2001.

**Jay Ellenberger,**

*Acting Director, Field and External Affairs Division, Office of Pesticide Programs.*

[FR Doc. 01–25743 Filed 10–11–01; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–66295; FRL–6805–3]**

## Benomyl; Receipt of Request for Registration Cancellations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by American Mushroom Institute, Amvac Chemical Corp., Pursell Industries, Inc., the Scotts Company, Value Garden Supply LLC, and Voluntary Purchasing Groups, Inc., to cancel the registrations for all of their products containing methyl 1-(butylcarbamoyl)-2-benzimidazole carbamate, or benomyl. No other registrants hold registrations for benomyl. Prior to acting on these request, EPA is providing a 30–day period for public comment.

**DATES:** Comments on the requested cancellation of product and use registrations must be submitted to the address provided below by November 13, 2001.

**FOR FURTHER INFORMATION CONTACT:** By mail: Demson Fuller, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8062; fax number: (703) 308–7042; e-mail address: *fuller.demson@epamail.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 persons who produce or use pesticides, 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 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 homepage at *http://www.epa.gov.* To access this document, on the homepage 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** listing at *http://www.epa.gov/fedrgstr/.*

2. *In person.* The Agency has established an official record for this action under docket control number OPP–66295. 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.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–66295 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *opp-docket@epa.gov,* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–66295. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. What Action is the Agency Taking**

This notice announces receipt by the Agency of requests from the American Mushroom Institute, Amvac Chemical Corp., Pursell Industries Inc., the Scotts Company, Value Garden Supply LLC, and Voluntary Purchasing Groups Inc., to cancel all pesticide products registered under sections 3 and 24(c) of FIFRA. These registrations are listed in the following table.

*A. Background Information*

Benomyl, is a benzimidazole carbamate and systemic foliar fungicide registered for use on apples, apricots, bean vine, blueberries, caneberries (raspberries, blackberries, boysenberries, loganberries, and dewberries), celery, cherries, citrus, cucurbits (cucumber, melons, pumpkins, and squash) mangoes, mushrooms, nectarines, peaches, and tomatoes.

The technical registrant, E.I. du Pont de Nemours & Company met with the Agency on April 18, 2001, and requested a voluntary cancellation of all their registrations for products containing benomyl, to be effective December 31, 2001. Dupont stated that this decision was based on business reasons. The 6(f)(1) comment period announcing the request for voluntary cancellation of Dupont benomyl registrations opened on May 23, 2001 and ended on June 22, 2001. Seven public comments were received and addressed. The cancellation order was published in the **Federal Register** and became effective on August 8, 2001.

The Agency has also received letters from the following registrants requesting voluntary cancellation of all their products containing benomyl: American Mushroom Institute, Amvac Chemical Corp., Pursell Industries, Inc., the Scotts Company, Value Garden Supply LLC, and Voluntary Purchasing Groups, Inc.

In their letters, Pursell and Amvac stated that they no longer manufactured or distributed end-use products that contained benomyl and therefore, no end-use products should be in the channels of trade. Likewise, in their letter, Value Garden Supply noted that their end-use products that contain

benomyl are no longer being sold. Value Garden Supply is not aware of any stocks of the products in the channels of trade. The American Mushroom Institute requested cancellation of its 24(c) registration. The reason was due to the effective cancellation of all Dupont registrations that contain benomyl on August 8, 2001. The Scotts Company and Voluntary Purchasing Group had end-use products that were suspended on April 13, 1994 and May 20, 1998, respectively. Both registrants failed to comply with a data call-in that was issued on June 16, 1992. The Agency, contacted both Scotts and Voluntary Purchasing to notify them that Dupont canceled all registrations for benomyl. Both registrants submitted letters stating that they would voluntarily cancel their registrations.

*B. Requests for Voluntary Cancellation*

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless the registrants request a waiver of the comment period, or the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. The registrants have requested that EPA waive the 180–day comment period. EPA is granting the registrants' request to waive the 180–day comment period. Therefore, EPA will provide a 30–day comment period on the proposed requests. EPA anticipates granting the cancellation request shortly after the end of the 30–day comment period for this notice. The registrations for which cancellations were requested are identified below.

REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

| Company | Reg. No. | Product |
|---|---|---|
| Pursell Industries Inc. | 8660–75 | VertaGreen Systemic Disease Control |
| Voluntary Purchasing Groups Inc. | 7401–225 | Fertilome® Systemic Fungicide with Benomyl |
| Voluntary Purchasing Groups Inc. | 7401–407 | American Brand® Benomyl Systemic Fungicide |
| Amvac Chemical Corp. | 5481–138 | ALCO® Systemic Fungicide |
| The Scotts Company | 538–66 | Scotts Proturf 28–0–7 Fertilizer Plus Fungicide DSB |
| The Scotts Company | 538–132 | Scotts Proturf DSB Fungicide |
| Value Garden Supply LLC | 769–874 | Pratt Benomyl 50W Systemic Fungicide |
| Value Garden Supply LLC | 769–921 | Science Benomyl 50W Systemic Fungicide |
| American Mushroom Institute | PA–97000200 | Dupont Benlate® SP Fungicide |

## III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA section 6(f)(1) further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**, make reasonable efforts to inform persons who rely on the pesticide for minor agricultural uses, and provide a 30–day period in which the public may comment. Thereafter, the Administrator may approve such a request.

## IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

## V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, the Agency intends to permit existing stocks already in the hands of dealers or users to be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

## VI. Future Tolerance Revocations

EPA anticipates drafting a future **Federal Register** notice proposing revocation of tolerances on commodities, which no longer have registered uses of benomyl. In this notice, EPA seeks comment as to whether any individuals or groups want to support continuation of these tolerances.

**List of Subjects**

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: October 2, 2001.

**Lois A. Rossi,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 01–25742 Filed 10–11–01; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7081–8 ; CWA–HQ–2001–6001; EPCRA–HQ–2001–6001; CAA–HQ–2001–6001]**

## Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity To Comment Regarding WorldCom, Inc.; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** On June 8, 2001, EPA published in the **Federal Register**, (66 FR 30923) information concerning a proposed settlement with WorldCom, Inc. (''WorldCom'') The purpose of this correction is to provide additional information about this settlement and to offer interested parties the opportunity to comment on all aspects of this consent agreement and proposed final order. EPA has entered into a consent agreement with WorldCom to resolve violations of the Clean Water Act (''CWA''), Clean Air Act (''CAA''), and Emergency Planning and Community Right-to-Know Act (''EPCRA'') and their implementing regulations.

The Administrator, as required by CWA section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C), is hereby providing public notice of, and an opportunity for interested persons to comment on, this consent agreement and proposed final order. EPA is also providing public notice of, and opportunity for interested parties to comment on, the CAA and EPCRA portions of this consent agreement.

WorldCom failed to prepare Spill Prevention Control and Countermeasure (''SPCC'') plans for seventy-five facilities where they stored diesel oil in above ground tanks. EPA, as authorized by CWA section 311(b)(6), 33 U.S.C. 1321(b)(6), has assessed a civil penalty for these violations. WorldCom failed to obtain the appropriate operating permits or exemptions at one hundred and six facilities in violation of CAA section 110, 42 U.S.C. 7410, and various state implementation plan (''SIP'') requirements for emergency generators. EPA, as authorized by CAA section 113(d)(1), 42 U.S.C. 7413(d)(1), has assessed a civil penalty for these violations. WorldCom failed to file an emergency planning notification with the State Emergency Response Commission (''SERC'') and to provide the name of an emergency contact to the Local Emergency Planning Committee (''LEPC''). WorldCom failed to submit Material Safety Data Sheets (''MSDS'') or a list of chemicals to the LEPC, the SERC, and the fire department with jurisdiction over each facility for three hundred and ninety-four facilities in violation of EPCRA section 311, 42 U.S.C. 11021. At the same facilities, WorldCom failed to submit and Emergency and Hazardous Chemical Inventory form to the LEPC, the SERC, and the fire department with jurisdiction over each facility in violation of EPCRA section 312, 42 U.S.C. 11022. EPA, as authorized by EPCRA section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations.

**DATES:** Comments are due on or before November 13, 2001.

**ADDRESSES:** Mail written comments to the Enforcement & Compliance Docket and Information Center (2201A), Docket Number EC–2001–005, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 2201A, Washington, DC 20460. (Comments may be submitted on disk in WordPerfect 8.0 or earlier versions.) Written comments may be delivered in person to: Enforcement and Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW., Washington, DC. Submit comments electronically to *docket.oeca@epa.gov.* Electronic comments may be filed online at many Federal Depository Libraries.

The consent agreement, the proposed final order, and public comments, if any, may be reviewed at the Enforcement and Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW., Washington, DC. Persons interested in reviewing these materials must make arrangements in advance by calling the docket clerk at 202–564–2614. A reasonable fee may be charged by EPA for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** Beth Cavalier, Multimedia Enforcement Division (2248–A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460; telephone (202) 564–3271; fax: (202) 564–9001; e-mail: *cavalier.beth@epa.gov.*

**SUPPLEMENTARY INFORMATION:** *Electronic Copies:* Electronic copies of this document are available from the EPA Home Page under the link ''Laws and Regulations'' at the **Federal Register**—Environmental Documents entry (*http://www.epa.gov/fedrgstr*).

### I. Background

WorldCom, Inc., a telecommunications company incorporated in the State of Georgia and located at 500 Clinton Center Drive, Clinton, Mississippi 39056, disclosed, pursuant to the EPA ''Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations'' (''Audit Policy''), 65 FR 19618 (April 11, 2000), that they failed to prepare SPCC plans for seventy-five facilities where they stored diesel oil in above ground storage tanks, in violation of the CWA section 311(b)(3) and 40 CFR Part 112. WorldCom disclosed that for one hundred and six facilities they had failed to obtain operating permits or exemptions in violation of CAA section 110, 42 U.S.C. 7410, and various SIP requirements for emergency generators. WorldCom disclosed that at three hundred and ninety-four facilities they had: (1) Failed to file emergency planning notifications with the SERC and failed to provide the name of an emergency contact to the LEPC, in violation of EPCRA sections 302–303, 42 U.S.C. 7413(a)(1); (2) failed to submit MSDS' or a list of chemicals to the LEPC, SERC, and the fire departments with jurisdiction over the facilities, in violation of EPCRA section 311, 42 U.S.C. 11021; and (3) failed to submit an Emergency and Hazardous Chemical Inventory to the LEPC, SERC, and fire departments with jurisdiction over the facilities, in violation of EPCRA section 312, 42 U.S.C. 11022.

EPA determined that WorldCom met the criteria set out in the Audit Policy for a 100% waiver of the gravity component of the penalty. As a result, EPA waived the gravity based penalty ($3,888,207) and proposed a settlement penalty amount of one hundred and forty-three thousand, five hundred and twenty dollars ($143,520). This is the amount of the economic benefit gained by WorldCom, attributable to their delayed compliance with the SPCC, CAA and EPCRA regulations. WorldCom, Inc. has agreed to pay this amount. EPA and WorldCom negotiated and signed an administrative consent

agreement, following the Consolidated Rules of Practice, 40 CFR section 22.13(b), on June 1, 2001 (*In Re: WorldCom, Inc.*, Docket No. CWA–HQ–2001–6001). This consent agreement is subject to public notice and comment under CWA section 311(b)(6), 33 U.S.C. section 1321(b)(6). EPA is expanding this opportunity for public comment to all other aspects of this consent agreement.

Under CWA section 311(b)(6)(A), 33 U.S.C. 1321 (b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of the CWA section 311 (b)(3), 33 U.S.C. 1321 (b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA section 311(j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to $137,500 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR Part 22.

Under CAA section 113(d), the Administrator may issue an administrative order assessing a civil penalty against any person who has violated an applicable implementation plan or any other requirement of the Act, including any rule, order, waiver, permit or plan. Proceedings under CAA section 113(d) are conducted in accordance with 40 CFR Part 22.

Under EPCRA section 325, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable emergency planning or right to know requirements, or any other requirement of the Act. Proceedings under EPCRA section 325 are conducted in accordance with 40 CFR Part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a Clean Water Act Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is November 13, 2001. All comments will be transferred to the Environmental Appeals Board (''EAB'') of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.4(a).

Pursuant to CWA section 311(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

**List of Subjects**

Environmental protection.

Dated: October 3, 2001.

**David A. Nielsen,**

*Director, Multimedia Enforcement Division, Office of Enforcement and Compliance Assurance.*

[FR Doc. 01–25741 Filed 10–11–01; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### SUNSHINE ACT MEETING

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Tuesday, October 9, 2001, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Director John M. Reich, and concurred in by Director John D. Hawke, Jr. (Comptrolelr of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could e considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(9)(B), and (c)(10)).

The meeting was held in the Boad Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: October 9, 2001.

Federal Deposit Insurance Corporation.

**James D. LaPierre,**

*Deputy Executive Secretary.*

[FR Doc. 01–25846 Filed 10–10–01; 11:45 am]

**BILLING CODE 6714–01–M**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center 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 October 25, 2001.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

*1. Lauderdale County Bancshares, Inc.*, Halls, Tennessee; to engage *de novo* through its subsidiary, Farmers Crop Insurance Agency, Halls, Tennessee, in insurance activities in a place not exceeding 5,000 in population, pursuant to § 225.28(b)(11)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, October 5, 2001.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 01–25642 Filed 10–11–01; 8:45 am]

**BILLING CODE 6210–01–S**

## GENERAL SERVICES ADMINISTRATION

### Office of Communications; Cancellation of an Optional Form by the Department of State

**AGENCY:** Office of Communications, GSA.

**ACTION:** Notice.

**SUMMARY:** The Department of State cancelled the following Optional Form because of low usage: OF 126, Foreign Service Residence and Dependency Report.

**DATES:** Effective October 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Cunningham, Department of State, (202) 312–9605.

Dated: October 2, 2001.

**Barbara M. Williams,**

*Deputy Standard and Optional Forms Management Officer, General Services Administration.*

[FR Doc. 01–25744 Filed 10–11–01; 8:45 am]

**BILLING CODE 6820–34–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Findings of Scientific Misconduct

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

*Steven F. Arnold, Ph.D., Tulane University:* Based on the report of an investigation conducted by Tulane University, dated July 16, 1999, and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Dr. Arnold, former Research Assistant Professor at the Center for Bioenvironmental Research at Tulane University Medical Center, engaged in scientific misconduct. Dr. Arnold committed scientific misconduct by intentionally falsifying the research results reported in Table 3 of a paper published in the journal *Science* [1] and by providing falsified and fabricated materials to investigating officials at Tulane University in response to a request for original data to support the research results and conclusions reported in the *Science* paper. In addition, PHS finds that there is no original data or other corroborating evidence to support the research results and conclusions reported in the *Science* paper as a whole.

Specifically, PHS finds that Dr. Arnold's research reported in the *Science* paper involved a finding that environmental chemicals, such as certain insecticides and hydroxylated polychlorinated biphenyls (PCBs), which have a weak estrogenic activity when acting alone, were up to 1000 times more potent in mimicking estrogen when tested in combination. These research results and conclusions were important to the public health because they suggested that the Environmental Protection Agency (EPA) may need to adjust its guidelines on exposure limits to such chemicals. The *Science* paper was withdrawn on July 25, 1997. See *Science* 277:462 (July 25, 1997).

This research formed the basis of National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), National Institutes of Health (NIH), grant application 1 R29 DK52420–01, ''Two Estrogen Binding Sites on the Estrogen Receptor.''

Dr. Arnold has entered into a Voluntary Exclusion Agreement (Agreement) with PHS in which he has voluntarily agreed for a period of five (5) years, beginning on September 20, 2001:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 C.F.R. Part 76 (Debarment Regulations);

(2) To exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

During discussions about the proposed Agreement, Dr. Arnold was cooperative with ORI and accepted responsibility for his actions, admitted to scientific misconduct, and conceded that there were no original data or other corroborating evidence to support the conclusions reported in the *Science* paper.

**FOR FURTHER INFORMATION CONTACT:** Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

**Chris B. Pascal,**

*Director, Office of Research Integrity.*

[FR Doc. 01–25608 Filed 10–11–01; 8:45 am]

**BILLING CODE 4150–31–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–R–238]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Inpatient Psychiatric Services for Individuals Under Age 21 and Supporting Regulations in 42 CFR 441.152; *Form No.:* CMS—(OMB# 0938–0754); Use: Certification requirements in section 441.152 are modified to require that the certification of need for inpatient psychiatric services include documented clinical evidence that serves as the basis for the certification of need for inpatient psychiatric care. Section 1905(h)(1)(B) requires physicians and other personnel qualified to make determinations with respect to mental health conditions and the treatment thereof certify the need for care which they have determined to be necessary on an inpatient basis; *Affected Public:* State, local, or tribal govt, Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 80,000; Total Annual Responses: 80,000; *Total Annual Hours:* 1.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services,

[1] Steven F. Arnold, Diane M. Klotz, Bridgette M. collins, Peter M. Vonier, Louis J. Guillette, Jr., John A. McLachlan. ''Synergistic Activation of Estrogen Receptor with Combinations of Environmental Chemicals.'' *Science* 272:1489–1492 (June 7, 1996) (hereafter referred to as the ''*Science* paper'').

Security and Standards Group, Division of CMS Enterprise Standards, Attention: Julie Brown CMS–R–238, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 4, 2001.

**John P. Burke III,**

*Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.*

[FR Doc. 01–25683 Filed 10–11–01; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–R–50]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare and Medicaid Services, HHS. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medical Records Review Under PPS and Supporting Regulations in 42 CFR 412.40–412.52; *Form No.:* CMS-R–0050 (OMB # 0938–0359); *Use:* Peer Review Organizations (PRO) are authorized to conduct medical review activities under the Prospective Payment System. In order to conduct the medical review activities we depend upon hospitals to make available medical records. PROs ensure that admissions are medically necessary, provided in the appropriate setting, and that they meet acceptable standards of quality; *Frequency:* When records are reviewed; *Affected Public:* Business or other for profit; *Number of Respondents:* 7,087; *Total Annual Responses:* 899,340; *Total Annual Hours:* 26,865.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Julie Brown, CMS–R–50, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 4, 2001.

**John P. Burke III,**

*Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards,*

[FR Doc. 01–25684 Filed 10–11–01; 8:45 am]

**BILLING CODE 4120–30–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–R–211]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Model Application Template for State Child Health Plan Under Title XXI of the Social Security Act, State Children's Health Insurance Program, and Model Application Template and Instructions; *Form No.:* CMS—(OMB# 0938–0707); *Use:* States are required to submit Title XXI plans and amendments for approval by the Secretary pursuant to section 2102 of the Social Security Act in order to receive funds for initiating and expanding health insurance coverage for uninsured children. The model application Template is used to assist States in submitting a State Child Health Plan and amendments to that plan; *Frequency:* Once; Affected Public: State, local, or tribal gov't; Number of Respondents: 42; Total Annual Responses: 42; Total Annual Hours: 3,360.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Julie Brown, CMS R 211, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 4, 2001.

**John P. Burke III,**

*Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.*

[FR Doc. 01–25685 Filed 10–11–01; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–R–131]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Advance Beneficiary Notice; *Form No.:* CMS–R–131 (OMB# 0938–0566); *Use:* Physicians, practitioners, suppliers, and providers furnishing Part A or Part B items or services may bill a patient for items or services denied by Medicare as not reasonable and necessary if they informed the patient, before furnishing the item or service, that Medicare was likely to deny payment for the items or services and the patient, after being informed, agreed to pay for the items or services; *Frequency:* On occasion; *Affected Public:* Businesses or other for-profit, Individuals or households, Not-for-profit institutions; *Number of Respondents;* 1,028,585; *Total Annual Responses:* 19,660,110; *Total Annual Hours:* 1,638,345.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access, CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Julie Brown, CMS–R–131, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 4, 2001.

**John P. Burke III,**

*Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.*

[FR Doc. 01–25686 Filed 10–11–01; 8:45 am]

**BILLING CODE 4120–03–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–2746 (formerly HCFA–2746)]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services ((CMS) formerly the Health Care Financing Administration), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* End Stage Renal Disease Death Notification; *Form No.:* CMS–2746 (OMB# 0938–0448); *Use:* This form is completed by all Medicare approved ESRD facilities upon death of an ESRD patient. The forms primary purpose is to collect fact and cause of death. Reports of deaths are used to show cause of death and demographic characteristics of these patients.; *Frequency:* On occasion; *Affected Public:* Business or other for-profit; Federal Gov't., Not-for-profit institutions; *Number of Respondents:* 4,000; *Total Annual Responses:* 56,258; *Total Annual Hours:* 9,564.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address and phone number, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 27, 2001.

**John P. Burke III,**

*CMS Reports Clearance Officer, CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.*

[FR Doc. 01–25687 Filed 10–11–01; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–10026]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of

the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired.

*Title of Information Collection:* Survey of Medicare Beneficiaries Who Involuntarily Disenroll from their Health Plan.

*Form No.:* CMS–10026 (OMB# 0938–0817).

*Use:* In January 2002, many managed care plans are expected to withdraw from Medicare or reduce their service area. This will continue a trend that began in January 1999. CMS wishes to survey approximately 3,600 affected beneficiaries in early 2002 to determine how they were impacted by the withdrawals and whether they received sufficient information about options for replacing their managed care coverage.

*Frequency:* Other: One-Time.

*Affected Public:* Individuals or Households.

*Number of Respondents:* 3,600.

*Total Annual Responses:* 3,600.

*Total Annual Hours:* 684.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address and phone number, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 25, 2001.

**John P. Burke III,**

*CMS Reports Clearance Officer, CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.*

[FR Doc. 01–25688 Filed 10–11–01; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 01N–0048]**

### Agency Information Collection Activities; Announcement of OMB Approval; Current Good Manufacturing Practice Regulations for Type A Medicated Articles

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Current Good Manufacturing Practice Regulations for Type A Medicated Articles,'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 15, 2001 (66 FR 32628), 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 0910–0154. The approval expires on September 30, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: October 5, 2001.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 01–25658 Filed 10–11–01; 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; Announcement of OMB Approval; 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 a collection of information entitled ''Good Laboratory Practices (GLP) Regulations for Nonclinical Laboratory Studies'' 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 July 20, 2001 (66 FR 37977), 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 0910–0119. The approval expires on September 30, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: October 5, 2001.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 01–25659 Filed 10–11–01; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 01N–0277]**

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Reports of Corrections and Removals

**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 November 13, 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:** 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 compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Reports of Corrections and Removals—21 CFR Part 806 (OMB Control No. 0910–0359)—Extension**

Section 519(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i(f)) directs FDA to issue regulations to require device manufacturers and importers to report promptly to FDA any correction or removal of a device undertaken by such manufacturers and importers if the correction or removal was undertaken to reduce a risk to health posed by the device or to remedy a violation of the act caused by the device which may present a risk to health. Under 21 CFR 806.10 and 806.20(a), FDA requires that each device manufacturer and importer shall submit a written report to FDA of any action initiated to correct or remove a device to reduce a risk to health posed by the device or to remedy a violation of the act caused by the device which may present a risk to health within 10 working days of initiating such correction or removal. In addition, each manufacturer and importer of a device who initiates a correction or removal of a device that is not required to be reported to FDA shall keep a record of such correction or removal.

The information collected in the reports of corrections and removals will be used by FDA to identify marketed devices that have serious problems and to ensure that dangerous and defective devices are removed from the market, assuring that FDA has current and complete information regarding these corrections and removals and whether recall action is adequate. Failure to collect this information prevents FDA from receiving timely information about devices that may have a serious effect on the health of the users of the devices.

Respondents to this information collection are businesses or other for-profit manufacturers or importers of medical devices who must remove or correct medical devices that cause public health risk to the general public.

In the **Federal Register** of July 6, 2001 (66 FR 35644), the agency requested comments on the proposed collection of information. 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 Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 806.10 | 880 | 1 | 880 | 10 | 8,800 |

[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 of Recordkeeping | Total Annual Records | Hours per Recordkeeper | Total Hours |
|---|---|---|---|---|---|
| 806.20(a) | 440 | 1 | 440 | 10 | 4,400 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The following is an explanation of the burden estimate:

*Reporting Burden*

FDA estimates that it would take 10 staff hours to prepare and assemble a written report. For the estimated 880 reports, FDA estimates that respondents will spend 8,800 hours to prepare, assemble, and send the reports.

*Recordkeeping Burden*

FDA estimates that it would take 10 staff hours to prepare a written record. For the estimated 440 records, the total recordkeeping burden is estimated at 4,400 hours per recordkeeper.

Dated: October 5, 2001.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 01–25660 Filed 10–11–01; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Transmissible Spongiform Encephalopathies Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

*Name of Committee*: Transmissible Spongiform Encephalopathies Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on October 25, 2001, from 8 a.m. to 3:30 p.m., and on October 26, 2001, from 8 a.m. to 4:30 p.m.

*Location*: Holiday Inn, Kennedy Ballroom, 8777 Georgia Ave., Silver Spring, MD.

*Contact*: William Freas, or Sheila D. Langford, Center for Biologics

Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12392. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: On October 25, 2001, the committee will discuss FDA's draft document entitled ''Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products'' (published in the **Federal Register** on August 29, 2001 (66 FR 45683), http://www.fda.gov/cber/gdlns/cjdvcjd.pdf). Later that morning the committee will discuss amino acid sourcing and production, and the theoretical risk of transmission of the BSE agent through their use in vaccines, other biologicals and human drugs. On October 26, 2001, the committee will discuss the risk of bovine brains and other neurological tissue for human use.

*Procedure*: On October 25, 2001, from 8 a.m. to 1:10 p.m. and from 1:40 p.m. to 3:30 p.m., and on October 26, 2001, from 8 a.m. to 4:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 18, 2001. Oral presentations from the public will be scheduled between approximately 9 a.m. to 9:30 a.m., and 1:40 p.m. to 2:10 p.m. on October 25, 2001; and between 1 p.m. to 1:30 p.m. on October 26, 2001. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 18, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

*Closed Committee Deliberations*: On October 25, 2001, from 1:10 p.m. to 1:40 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 4, 2001.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 01–25607 Filed 10–11–01; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

### Program Exclusions: September 2001

**AGENCY:** Office of Inspector General, HHS.

**ACTION:** Notice of program exclusions.

During the month of September 2001, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

| Subject City, State | Effective date |
|---|---|
| **PROGRAM-RELATED CONVICTIONS** | |
| Aragones, Concepcion N ..... Newmarket, NH | 10/18/2001 |
| Brocuglio, Steven J ..... Devens, MA | 10/18/2001 |
| Butt, Atiq Amad ..... Elizabeth, NJ | 10/18/2001 |
| Carlton, Edward D ..... Gainesville, VA | 10/18/2001 |
| Columbia Management Cos, Inc ..... Nashville, TN | 07/01/2001 |
| Connell, Debra A ..... Lancaster, OH | 10/18/2001 |
| Covone, Dominick ..... Fort Dix, NJ | 10/18/2001 |
| Cragen, Kenneth Russell ..... Los Angeles, CA | 10/18/2001 |
| Ekpo, Asuquo Eyo ..... Sugarland, TX | 10/18/2001 |
| Espinoza, Maria Aura ..... Southgate, CA | 10/18/2001 |
| Fenster, Robert H ..... Denver, CO | 10/18/2001 |
| Galstyan, Arutyun ..... Glendale, CA | 10/18/2001 |
| Gevorkyan, Arman ..... North Hollywood, CA | 10/18/2001 |
| Glass, Ted Alan ..... Fredericksburg, VA | 10/18/2001 |
| Griffin, Brian Michael ..... Shatleigh, ME | 10/18/2001 |
| Grigoryan, Manouk ..... Los Angeles, CA | 10/18/2001 |
| Grossman, Gary ..... Dix Hills, NY | 10/18/2001 |
| Guerrero, Marta ..... Miami, FL | 10/18/2001 |
| Gutierrez, Orlando ..... Southgate, CA | 10/18/2001 |
| Hardister, Earnest Richard ..... Boise, ID | 10/18/2001 |
| Hertz, Bradley ..... Miami, FL | 10/18/2001 |
| Hicks, Ingrid D ..... Union Grove, WI | 10/18/2001 |
| Johnson, Lucy Young ..... Maplewood, MN | 10/18/2001 |
| Keating, Janadean ..... Salt Lake City, UT | 10/18/2001 |
| Keo, Channy ..... Long Beach, CA | 10/18/2001 |
| Kessler, James M ..... Lutherville, MD | 10/18/2001 |
| Khozak, Elizabeth A ..... Manchester, NH | 10/18/2001 |
| Kuyumdzhyan, Armen ..... Los Angeles, CA | 10/18/2001 |
| Lagasse, Joy A ..... South Casco, ME | 10/18/2001 |
| Larson, Jeannine C ..... Portland, ME | 10/18/2001 |
| Leach, Debra ..... Danbury, CT | 10/18/2001 |
| Lee, Salvacion ..... Bell Canyon, CA | 10/18/2001 |
| Leiti, John ..... Roswell, GA | 10/18/2001 |
| Levias, Percy L ..... Starks, LA | 10/18/2001 |
| Linscott, Terry L ..... Alderson, WV | 10/18/2001 |
| Lovett, Gareth ..... Marietta, GA | 10/18/2001 |
| Lyall, Chelsea Damaris ..... Durango, CO | 10/18/2001 |
| Maury, Maricela ..... Surfside, FL | 10/18/2001 |
| McKeown, James Lee Jr ..... Clearwater, FL | 10/18/2001 |
| Men, Yen ..... Kent, WA | 10/18/2001 |
| Miller, Nival Rizk ..... Tuscaloosa, AL | 10/18/2001 |
| Mkhitaryan, Ashot ..... Van Nuys, CA | 10/18/2001 |
| Munguia, Carlos ..... Pinkerington, OH | 10/18/2001 |
| Nguyen, Ly Quang ..... Escondido, CA | 10/18/2001 |
| Oilschlager, Gerald Albert ..... Long Beach, CA | 10/18/2001 |
| Pacher, Catherine Jean ..... Gulfport, MS | 10/18/2001 |
| Pak, John Won Chai ..... Fresno, CA | 10/18/2001 |
| Pakhanyan, Hakob ..... | 10/18/2001 |

| Subject City, State | Effective date |
|---|---|
| Van Nuys, CA | |
| Paris, Allen Lee ..... Altanta, GA | 10/18/2001 |
| Peck, Christopher J ..... Kensington, CT | 10/18/2001 |
| Petrosyan, Karapet ..... Burbank, CA | 10/18/2001 |
| Pharmacare, Inc ..... Lutherville, MD | 10/18/2001 |
| Reddick, Labrenda Jacqueline Detriot, MI | 10/18/2001 |
| Reed, Tracy Lanell ..... Tulsa, OK | 10/18/2001 |
| Riverview Nursing Centre, Inc .. Baltimore, MD | 10/18/2001 |
| Rubin, Daniel ..... Warwick, NY | 10/18/2001 |
| Ruiz, Rolando Jose ..... Southgate, CA | 10/18/2001 |
| Sadatrafiei, Mohammad R ..... Brockton, MA | 10/18/2001 |
| Saing, Chhaylee Soy ..... Atwater, CA | 10/18/2001 |
| Shirley Mastic Pharmacy, Inc ... Shirley, NY | 10/18/2001 |
| Silbaugh, Theresa ..... Chicopee, MA | 10/18/2001 |
| Snyder, Alfred ..... Lawrence, NY | 10/18/2001 |
| Thetford, Nancy ..... Bryan, TX | 10/18/2001 |
| Thibodeau, Patrick ..... Ray Brook, NY | 10/18/2001 |
| Tibbitts, A Jeffrey ..... W Hartford, CT | 10/18/2001 |
| Torosian, Rouben ..... Los Angeles, CA | 10/18/2001 |
| Tyler, John W ..... Ray Brook, NY | 10/18/2001 |
| W Alan Racette, D D S, M S, PC ..... Lansing, MI | 10/18/2001 |
| Webster, Anthony F ..... Ray Brook, NY | 10/18/2001 |
| Wolfe, Dana L ..... Alderson, WV | 10/18/2001 |
| Wright, James B ..... Caryville, TN | 10/18/2001 |
| **FELONY CONVICTION FOR HEALTH CARE** | |
| Batchelder, Annette J ..... Loudon, NH | 10/18/2001 |
| Cantu, Estefana Maria ..... Mathis, TX | 10/18/2001 |
| Chasse, John P ..... Minersville, PA | 10/18/2001 |
| Donahoe, Donald R ..... Milford, CT | 10/18/2001 |
| Dubowski, Walter ..... Monterey, CA | 10/18/2001 |
| Glomah, Tabla Barbor ..... West Covina, CA | 10/18/2001 |
| Mestetsky, Ilya Gregory ..... Valley Village, CA | 10/18/2001 |
| Moore, Shomia Shautia ..... San Diego, CA | 10/18/2001 |
| Murray, Nichole M ..... Springfield, VT | 10/18/2001 |
| Racette, Wendall Alan ..... Lansing, MI | 10/18/2001 |
| Smith, Sabrina Anne ..... Detroit, MI | 10/18/2001 |
| Weisbrod, Earl Bruce ..... Paradise Valley, AZ | 10/18/2001 |
| **FELONY CONTROL SUBSTANCE CONVICTION** | |
| Corzine, Kendra S Childress .... Belknap, IL | 10/18/2001 |
| Courtney, Joan Fazio ..... Venetia, PA | 10/18/2001 |
| Davis, Royanna Mae ..... Cincinnati, OH | 10/18/2001 |
| Floyd, Thomas P ..... Plainfield, MI | 10/18/2001 |
| Gunnell, Shirley Ann ..... Drift, KY | 10/18/2001 |
| Poindexter, James Willie ..... Houston, TX | 10/18/2001 |
| Potter, Mark C ..... Lewisburg, PA | 10/18/2001 |
| Runnels, Ann Marie ..... Mamon, LA | 10/18/2001 |
| Stanton, Francis Xavier, JR ..... La Jolla, CA | 10/18/2001 |
| Thompson, Ricardo D ..... Oklahoma City, OK | 10/18/2001 |
| Weber, Carolyn J ..... Pittsburgh, PA | 10/18/2001 |
| **PATIENT ABUSE/NEGLECT CONVICTIONS** | |
| Ada, Dohnis I ..... Mt Pleasant, IA | 10/18/2001 |
| Allen, June ..... Victor, NY | 10/18/2001 |
| Alter, Robert John ..... St Louis, MI | 10/18/2001 |
| Ancino, Elena Buendia ..... Palmdale, CA | 10/18/2001 |
| Baker, Edith Renee ..... Richmond, VA | 10/18/2001 |
| Bangura, Fatima ..... Columbus, OH | 10/18/2001 |
| Bermudez, Janet ..... Newhall, CA | 10/18/2001 |
| Broussard, Ned E ..... Exeter, NH | 10/18/2001 |
| Burns, Katrina ..... Jackson, MS | 10/18/2001 |
| Charbonneau, Robert ..... Sioux Falls, SD | 10/18/2001 |
| Criger, Christina Ann ..... Denver, CO | 10/18/2001 |
| Cruz, Joyce ..... Kaplan, LA | 10/18/2001 |
| Dalton, Del B ..... San Diego, CA | 10/18/2001 |
| Dodson, William Henry ..... Charleston, WV | 10/18/2001 |
| Edwards, McKinsey Lee ..... Glenmora, LA | 10/18/2001 |
| Etherington, Woods Jr ..... Wilmington, DE | 10/18/2001 |
| Freeman, Katherine N ..... Waynesboro, PA | 10/18/2001 |
| Gabrinowicz, Adam James ..... Mesa, AZ | 10/18/2001 |
| Gilbert, Kristen H ..... Fort Worth, TX | 10/18/2001 |
| Hagger, Charles Ray ..... Cottonport, LA | 10/18/2001 |
| Harter, Charlynne S ..... Ilion, NY | 10/18/2001 |
| Johnson, Sadie ..... Alexandria, LA | 10/18/2001 |
| Joyner, Demetrius ..... Wilmington, DE | 10/18/2001 |
| Kemmer, Richard C ..... Sacramento, CA | 10/18/2001 |
| Klosterman, Michael Justin ..... Loveland, OH | 10/18/2001 |
| McGill, Jeri ..... Heidelberg, MS | 10/18/2001 |
| Merchant, David L ..... W Lebanon, NH | 10/18/2001 |
| Minks, Rebecca L ..... Phoenix, AZ | 10/18/2001 |
| Moore, Moses ..... Hutchinson, KS | 10/18/2001 |
| Morell, James A ..... Easton, PA | 10/18/2001 |
| Nielsen, Teresa Rae ..... Sterling, CO | 10/18/2001 |
| Olivas, Rafael A ..... Tucson, AZ | 10/18/2001 |
| Peak, Sun O ..... Olympia, WA | 10/18/2001 |
| Phillips, Patricia A ..... Baltimore, MD | 10/18/2001 |
| Reaster-Glover, Sharmane B ... Columbia, SC | 10/18/2001 |
| Rivera, Edgar Humberto Robles ..... W Valley City, UT | 10/18/2001 |
| Rodriguez, Julia ..... Muncy, PA | 10/18/2001 |
| Rominger, Kristina ..... Hattiesburg, MS | 10/18/2001 |
| Russell, Victoria Mayo ..... Miami, FL | 10/18/2001 |
| Scarbrough, Joyce Marie ..... Detroit, MI | 10/18/2001 |
| Shelton, Mary Lou ..... Apple Valley, CA | 10/18/2001 |
| Showalter, Anna Marie ..... Lorain, OH | 10/18/2001 |
| Spaulding, Paul E ..... Augusta, WV | 10/18/2001 |
| Thacker, Frances Conner ..... Amelia Courthouse, VA | 10/18/2001 |
| Ward, Adrian Darryl ..... Richmond, VA | 10/18/2001 |
| **CONVICTION FOR HEALTH CARE FRAUD** | |
| Everman, Keith Michael ..... Diamondhead, MS | 10/18/2001 |
| Phelps, Brenda Lee ..... Waverly, IA | 10/18/2001 |
| Reuther, Mary Elizabeth ..... Prescott, MI | 10/18/2001 |
| **CONTROLLED SUBSTANCE CONVICTIONS** | |
| Miller, Vicki Jean ..... Fort Wayne, IN | 10/18/2001 |
| Whipkey, Carla T ..... Murrysville, PA | 10/18/2001 |
| **LICENSE REVOCATION/SUSPENSION/ SURRENDERED** | |
| Alexander, William ..... Tiburon, CA | 10/18/2001 |
| Allen, Kristine M ..... | 10/18/2001 |

| Subject City, State | Effective date |
|---|---|
| Geneva, NY | |
| Andersen, Michelle ..... Salt Lake City, UT | 10/18/2001 |
| Avila, Diane M ..... Hill, NH | 10/18/2001 |
| Bacon, Marybeth ..... Robbinsdale, MN | 10/18/2001 |
| Bair, Holly ..... Richmond, UT | 10/18/2001 |
| Baker, Virgie ''Gemma'' ..... Louisville, CO | 10/18/2001 |
| Baker, Leon Lloyd ..... Waterloo, IA | 10/18/2001 |
| Baker, Denise ..... New Orleans, LA | 10/18/2001 |
| Ball, Teresa J ..... Aurora, CO | 10/18/2001 |
| Ball, Charles B ..... Redondo Beach, CA | 10/18/2001 |
| Bashier-Elahi, Abbas ..... Vienna, VA | 10/18/2001 |
| Bayard, Sara Elaine ..... Lewisville, TX | 10/18/2001 |
| Belliveau, Dana A ..... Killingsworth, CT | 10/18/2001 |
| Bennett, Paula Ann ..... Rockwall, TX | 10/18/2001 |
| Besack, Debra ..... Bristol, PA | 10/18/2001 |
| Billew, Sheila ..... New Orleans, LA | 10/18/2001 |
| Bobo, Susan A ..... Colorado Springs, CO | 10/18/2001 |
| Bogenschutz, Elizabeth A Rasp Louisville, KY | 10/18/2001 |
| Bourbonniere, Debra Kay ..... Duluth, MN | 10/18/2001 |
| Bowers, Elizabeth M ..... Taylors, SC | 10/18/2001 |
| Branch, Cheryl Jones ..... Philadelphia, PA | 10/18/2001 |
| Brooks, Cynthia Louise ..... Minneapolis, MN | 10/18/2001 |
| Brown, Floy Watkins ..... Dawson Springs, KY | 10/18/2001 |
| Bunton, Aprille Dawn ..... Charleston, SC | 10/18/2001 |
| Burch, Yvonne N Jarrett ..... Owensboro, KY | 10/18/2001 |
| Burgett-Clayton, Michelle ..... Surprise, AZ | 10/18/2001 |
| Byrd, Peggy S ..... San Angelo, TX | 10/18/2001 |
| Caldwell, Kathryn J ..... Tucson, AZ | 10/18/2001 |
| Carroll, Sandra Jean ..... St Paul, MN | 10/18/2001 |
| Caruthers, Christopher A ..... Victorville, CA | 10/18/2001 |
| Cast, Amy M ..... Frederickburg, VA | 10/18/2001 |
| Caulkins, Robert M ..... Shrewsbury, MA | 10/18/2001 |
| Cenac, Kellie ..... Bourg, LA | 10/18/2001 |
| Childers, Clarence David ..... Beggs, OK | 10/18/2001 |
| Christensen, Cynthia ..... Hazlet, NJ | 10/18/2001 |
| Christofferson, Terry Lyle ..... Chico, CA | 10/18/2001 |
| Christopherson, Janice Renee San Jose, CA | 10/18/2001 |
| Clairmont, Deborah A ..... Meeker, CO | 10/18/2001 |
| Cole, Sheila Marie ..... Oklahoma, OK | 10/18/2001 |
| Combs, Brenda K Cook ..... Ferguson, KY | 10/18/2001 |
| Connolly, Barbara Jean ..... Rochester, MN | 10/18/2001 |
| Constantino, Marie ..... Roselle, NJ | 10/18/2001 |
| Cowsar, Sheila ..... Benton, LA | 10/18/2001 |
| Craven, Carla Louise ..... Minnetonka, MN | 10/18/2001 |
| Crotts, Krystal A ..... Ft Dodge, IA | 10/18/2001 |
| Culp, Mary Gail ..... Fort Worth, TX | 10/18/2001 |
| Daley, Rita E ..... Watervliet, NY | 10/18/2001 |
| De Monterice, Anu ..... Cotati, CA | 10/18/2001 |
| Deal, Kim Gloria ..... Waterbury, CT | 10/18/2001 |
| Dean, Gayle J ..... Council Bluffs, IA | 10/18/2001 |
| Dearth, Donna Elaine ..... Newport, RI | 10/18/2001 |
| Del Pozzo, Phillip Vincent ..... San Francisco, CA | 10/20/2001 |
| Dinelli, Joseph ..... Scottsdale, AZ | 10/18/2001 |
| Dinville, Joanne M ..... Ankeny, IA | 10/18/2001 |
| Domingue, Carmen ..... Plaquemine, LA | 10/18/2001 |
| Drake, Susan E ..... Pilot Mound, IA | 10/18/2001 |
| Drennon, Catherine Claire ..... Cedar, MN | 10/18/2001 |
| Dyke, Barbara W ..... Orford, NH | 10/18/2001 |
| Eavens, Linda ..... Hamden, CT | 10/18/2001 |
| Eschle, Roseanne ..... Mendota Hgts, MN | 10/18/2001 |
| Fiegenschuh, William Harold .... Alliance, OH | 10/18/2001 |
| Fitzpatrick, Jennifer M ..... Manchester, NH | 10/18/2001 |
| Forni, Michael D ..... Ware, MA | 10/18/2001 |
| Foster, Heather M ..... Security, CO | 10/18/2001 |
| Foster, Craig Douglas ..... Sacramento, CA | 10/18/2001 |
| Fox, Bridget Carol Stubbs ..... Richmond, KY | 10/18/2001 |
| Fox, Nelda B ..... Orem, UT | 10/18/2001 |
| Frasier, Kelly L ..... Schenectady, NY | 10/18/2001 |
| Frost, Ronald George ..... El Paso, TX | 10/18/2001 |
| Garner, Lowell ..... Ithaca, NY | 10/18/2001 |
| Garver, Jo Ann Jorgenson ..... Tempe, AZ | 10/18/2001 |
| Gauthe, David ..... Jefferson, La | 10/18/2001 |
| Gerhardt, Nancy ..... Denville, NJ | 10/18/2001 |
| Gilpin, Patricia A ..... Miami, FL | 10/18/2001 |
| Giltz, Julie Jeanine ..... Appomattox, VA | 10/18/2001 |
| Goldstein, Lori L ..... E Northport, NY | 10/18/2001 |
| Grayson, Greta ..... Metairie, La | 10/18/2001 |
| Groll, Sherry L ..... Randolph, UT | 10/18/2001 |
| Hadley, Russell L ..... Amarillo, TX | 10/18/2001 |
| Hager, Leslie W ..... W Covina, CA | 10/18/2001 |
| Hall, Anna M ..... Wayne, NJ | 10/18/2001 |
| Hanson, Patricia Ann ..... Hayfield, MN | 10/18/2001 |
| Hauberg, Virginia Lynn ..... Blaine, MN | 10/18/2001 |
| Hawkins, Karen ..... Oakland, CA | 10/18/2001 |
| Hays, Peter M ..... Warren, VT | 10/18/2001 |
| Heming, Joyce Snyder ..... Boxwell, PA | 10/18/2001 |
| Hicks, James Thomas ..... Oakbrook Ter, IL | 10/18/2001 |
| Hingston, Elizabeth J ..... Beverly, MA | 10/18/2001 |
| Hirsch, Michael Alan ..... Davis, CA | 10/18/2001 |
| Holsey, Martha B ..... Denver, CO | 10/18/2001 |
| Hosey, Jennifer Garlick ..... Christiansburg, VA | 10/18/2001 |
| Hovland, James S ..... Waynesboro, VA | 10/18/2001 |
| Hrinchuk-Hurley, Diane M ..... Londonderry, NH | 10/18/2001 |
| Hull, Tyrone Leroy ..... Chicago, IL | 10/18/2001 |
| Irwin, Tiara M ..... Hibbing, MN | 10/18/2001 |
| Isaacson, Judy Lynn ..... Fort Myers, FL | 10/18/2001 |
| Jensen, Vicki Arlene ..... Pocatello, ID | 10/18/2001 |
| Johnson, Robert S ..... Palm Desert, CA | 10/18/2001 |
| Johnson, Sandra Marie ..... Grand Meadow, MN | 10/18/2001 |
| Johnson, Molly B ..... Spartanburg, SC | 10/18/2001 |
| Jones, Donald Earl ..... Dallas, TX | 10/18/2001 |
| Kahl, Russell Alan ..... Orono, ME | 10/18/2001 |
| Kahrhoff, Julie Ellen ..... East Greenwich, RI | 10/18/2001 |
| Kallina, Jacqueline C ..... Garwood, TX | 10/18/2001 |
| King, Deborah ..... Willingboro, NJ | 10/18/2001 |
| Klein, Barbara Jean ..... Clearwater, MN | 10/18/2001 |
| Knisley, Charles Gary ..... Phoenix, AZ | 10/18/2001 |
| Kotsias, Rita M ..... Caledonia, MN | 10/18/2001 |
| Labruzzo, Melissa ..... Haughton, LA | 10/18/2001 |
| Lange, Cynthia Gaye ..... Forest Lake, MN | 10/18/2001 |
| Leger, Patricia Elizabeth ..... Brookeland, TX | 10/18/2001 |
| Leveratto, Sandro ..... | 10/18/2001 |

| Subject City, State | Effective date |
|---|---|
| Corona, CA | |
| Lloyd, Ginger Louise ..... Wichita Falls, TX | 10/18/2001 |
| Lockett, Harvey O ..... Newport News, VA | 10/18/2001 |
| Long, Karen Sue ..... Luling, TX | 10/18/2001 |
| Loomis, Sandra D ..... New Virginia, IA | 10/18/2001 |
| Lopa, Patricia ..... Branford, CT | 10/18/2001 |
| Luzik, Michelle L ..... Crescent, PA | 10/18/2001 |
| Lynch, Michael J ..... Bethlehem, CT | 10/18/2001 |
| Macmaster, Duncan R ..... Woodbury, CT | 10/18/2001 |
| Madson, Melissa Mae ..... Faribault, MN | 10/18/2001 |
| Marshman, William Howard ..... Dallas, TX | 10/18/2001 |
| Martinez, Ramiro ..... Orange Cove, CA | 10/18/2001 |
| Matijevic, Ivo ..... Key Biscayne, FL | 10/18/2001 |
| Maultsby, Barbara Ann ..... Marble Falls, TX | 10/18/2001 |
| McAlister, John Edwards ..... Norman, OK | 10/18/2001 |
| McAllister, Donald John ..... Bristol, CT | 10/18/2001 |
| McAnulty, Kerry Renee ..... Mabelvale, AR | 10/18/2001 |
| McCaffrey, Celia ..... Bayville, NJ | 10/18/2001 |
| McCall, Scott Donald ..... San Juan Capistrano, CA | 10/18/2001 |
| McCarty, Teresia Dawnette ..... Austin, TX | 10/18/2001 |
| Melnyk, Hazel Ann ..... St Paul, MN | 10/18/2001 |
| Mercer, Michael Blaine ..... Phoenix, AZ | 10/18/2001 |
| Messenger, Beverly Ann ..... Irving, TX | 10/18/2001 |
| Miller, Phillip Duane ..... Springfield, IL | 10/18/2001 |
| Miller, Rebecca A ..... Groton, CT | 10/18/2001 |
| Miller, Trease Ann ..... San Antonio, TX | 10/18/2001 |
| Moody, Kelly Denise ..... Pocahontas, AR | 10/18/2001 |
| Mooney, Patricia Anne ..... Palmdale, CA | 10/18/2001 |
| Moore, Linda Louise ..... Joliet, IL | 10/18/2001 |
| Morgan-Carter, Constance J .... Phoenix, AZ | 10/18/2001 |
| Morsch, Charles T ..... Carterville, IL | 10/18/2001 |
| Moyer, Thomas Arthur II ..... Sharon, WI | 10/20/2001 |
| Murphy, Susanne Marie ..... Minneapolis, MN | 10/18/2001 |
| Nelson, Virginia Louise ..... Lincoln, IL | 10/18/2001 |
| Norton, Michelle L ..... Security, CO | 10/18/2001 |
| O'Donnell, Gloria J ..... Iowa City, IA | 10/18/2001 |
| Ogden, Sean M ..... Philadelphia, PA | 10/18/2001 |
| Orth, Debra C ..... Baltimore, MD | 10/18/2001 |
| Oum, Chul On ..... Northridge, CA | 10/18/2001 |
| Overstreet, Robert Edward ..... Westmoreland, TN | 10/18/2001 |
| Pachol, Lisa Anne ..... Corona, CA | 10/18/2001 |
| Park, Rin Andrew ..... Sunnyvale, CA | 10/18/2001 |
| Pathak, Arvind K ..... Cumberland, MD | 10/18/2001 |
| Patton, Michael John ..... El Cajon, CA | 10/18/2001 |
| Pedersen, Craig Alan ..... San Diego, CA | 10/18/2001 |
| Perez, Roman T ..... Denver, CO | 10/18/2001 |
| Perretta, Frank P ..... Clermont, FL | 10/18/2001 |
| Peter, David Charles ..... Vancouver, WA | 10/18/2001 |
| Peters, Barbara J ..... Clinton, IA | 10/18/2001 |
| Peterson, Lindsey Grady ..... Virginia Beach, VA | 10/18/2001 |
| Pineda, Francesca M ..... New City, NY | 10/18/2001 |
| Pinkney, Gregory W Sr ..... Richmond, VA | 10/18/2001 |
| Pino, Cynthia A ..... Pueblo, CO | 10/18/2001 |
| Plotts, Lisa ..... Oaklyn, NJ | 10/18/2001 |
| Ponce De Leon, Carlos J ..... Payson, AZ | 10/18/2001 |
| Quinlan, Kristel Dawn ..... Rantoul, IL | 10/18/2001 |
| Reach, Ralph Thomas ..... Christiansburg, VA | 10/18/2001 |
| Regan, Sheila A ..... Hudson, NH | 10/18/2001 |
| Reynolds, Julie Morgan ..... Greenville, TX | 10/18/2001 |
| Rice, James Lewis ..... Omaha, NE | 10/18/2001 |
| Rikard, Candace Noel ..... Wichita Falls, TX | 10/18/2001 |
| Rodriguez, Beatriz ..... Richland, NJ | 10/18/2001 |
| Rodriguez, David Michael ..... Portola, CA | 10/18/2001 |
| Roesch, Kris A ..... Troy, IL | 10/18/2001 |
| Roger, Kevin ..... Lafayette, LA | 10/18/2001 |
| Rogers, Shelia Lee ..... Conroe, TX | 10/18/2001 |
| Ronan, Kathleen ..... Sayreville, NJ | 10/18/2001 |
| Ruggiero, Paula E ..... Westville, NJ | 10/18/2001 |
| Salsbury Oxner, Doris ..... Alexandria, LA | 10/18/2001 |
| Sanderlin, Kathleen ..... Southampton, NJ | 10/18/2001 |
| Sands, Michelle L ..... Dallas, TX | 10/18/2001 |
| Scott, Glenn ..... Hackensack, NJ | 10/18/2001 |
| Scott, Jewel L ..... Washington, DC | 10/18/2001 |
| Shea, Ann M ..... Freehold, NJ | 10/18/2001 |
| Simon, Barbara Jean ..... Corpus Christi, TX | 10/18/2001 |
| Singh, Kuldeep ..... Macon, MO | 10/18/2001 |
| Slater, Barbara A ..... Toms River, NJ | 10/18/2001 |
| Smiddy, Denise Martinicky ..... Radcliff, KY | 10/18/2001 |
| Smith, Karen Sue ..... Channelview, TX | 10/18/2001 |
| Smith, Elizabeth Agnes ..... Orange, TX | 10/18/2001 |
| Smith, Lynne Shanley ..... Lexington, VA | 10/18/2001 |
| Smith, Jimmy Wayne ..... Hastings, OK | 10/18/2001 |
| Smith Wheeler, Sharron L ..... San Antonio, TX | 10/18/2001 |
| Steed, Katrine ..... Evanston, IL | 10/18/2001 |
| Stephens, Linda Denise ..... Big Spring, TX | 10/18/2001 |
| Stephens, Robin R ..... Ottawa, IL | 10/18/2001 |
| Streit, Howard Lee ..... Bartlett, IL | 10/18/2001 |
| Stull, Patricia J ..... Katy, TX | 10/18/2001 |
| Sykes, Sheila Ann ..... Maryville, TN | 10/18/2001 |
| Taylor, Marsha Lynne ..... Orem, UT | 10/18/2001 |
| Tedeton, Tina Louise ..... Pickens, SC | 10/18/2001 |
| Tellis, Roger Allen ..... San Francisco, CA | 10/18/2001 |
| Thibodeau, Richard J ..... Lewiston, ME | 10/18/2001 |
| Tom, Danny ..... Sunnyvale, CA | 10/18/2001 |
| Tortis, Christina Anne ..... Lincoln, RI | 10/18/2001 |
| Tosh, Cynthia Sue ..... E Alton, IL | 10/18/2001 |
| Varda, Anne Elizabeth ..... Chisholm, MN | 10/18/2001 |
| Varnado, Brenda ..... Mccomb, MS | 10/18/2001 |
| Verdin, Kathy ..... Tallulah, LA | 10/18/2001 |
| Vogel, Scott M ..... Glastonbury, CT | 10/18/2001 |
| Walker, Paul Anthony ..... Fresno, CA | 10/18/2001 |
| Wallis, Jodi ..... Forked River, NJ | 10/18/2001 |
| Ward, Helen Louise ..... Arlington, TX | 10/18/2001 |
| Waugh, Dianne L ..... Portland, ME | 10/18/2001 |
| Wheat, Carl C ..... San Antonio, TX | 10/18/2001 |
| Wilson, Roger Dale ..... Wichita Falls, TX | 10/18/2001 |
| Wilson, Herbert Clyde II ..... S Houston, TX | 10/18/2001 |
| Wilson, Patrick F ..... Schaumburg, IL | 10/18/2001 |
| Withers, David B ..... Woodstock, Ct | 10/18/2001 |
| Wood, Jerry Martin ..... Layton, UT | 10/18/2001 |
| Young, Kelly A ..... York, PA | 10/18/2001 |
| Youssef, Samir Michael ..... | 10/18/2001 |

| Subject City, State | Effective date |
|---|---|
| Pasadena, CA | |
| **FEDERAL/STATE EXCLUSION/ SUSPENSION** | |
| Violette, Jeffrey E ..... Bucksport, ME | 10/18/2001 |
| Voncanon, Carol ..... Stockton, MO | 10/18/2001 |
| **FRAUD/KICKBACKS** | |
| Bar-Av, Zeev ..... Madison, WI | 08/06/2001 |
| Klearman, Merrill ..... St Louis, MO | 04/30/2001 |
| Lancer Medical, Inc ..... Bala Cynwyd, PA | 04/30/2001 |
| Midwest Continuing Care, Inc .. St Louis, MO | 04/30/2001 |
| Midwest Medical Supply Co, Inc ..... St Louis, MO | 04/30/2001 |
| Morten, Daniel Joseph ..... Bruning, NE | 08/23/2001 |
| Native American Health Sup Inc ..... Rapid City, SD | 08/24/1999 |
| Native American Health Svc Inc Rapid City, SD | 08/24/1999 |
| Quigley, Michael A ..... Santa Rosa, CA | 08/07/2001 |
| **OWNED/CONTROLLED BY CONVICTED ENTITIES** | |
| General Cosmetic Dentistry ..... Glen Cove, NY | 10/18/2001 |
| Interim Healthcare of Hollywoo Miami, FL | 10/18/2001 |
| Livermore Chiropractic & Welln Livermore, CA | 10/18/2001 |
| PD Medical Supply ..... Los Angeles, CA | 10/18/2001 |
| Reason Chiropractic ..... Woodland Park, CO | 10/18/2001 |
| Summit Chiropractic ..... Redding, CA | 10/18/2001 |
| W G Clarks Counseling Center Detroit, MI | 10/18/2001 |
| Westfield Chiropractic Center ... Kansas City, KS | 10/18/2001 |
| Willow Counseling Center ..... Dayton, OH | 10/18/2001 |
| **DEFAULT ON HEAL LOAN** | |
| Agyeman, Kwabena O ..... Silver Spring, MD | 10/18/2001 |
| Agyepong, Eva Osahene ..... San Dimas, CA | 10/18/2001 |
| Albright, Elizabeth Sue ..... San Antonio, TX | 10/18/2001 |
| Asuan, Senen R ..... Chicago, IL | 10/18/2001 |
| Barry, Tracy L ..... New York, NY | 10/18/2001 |
| Bittenbender, Robert G ..... Wilkes-Barre, PA | 10/18/2001 |
| Calandros, Michael J ..... Point Pleasant, WV | 10/18/2001 |
| Campo, Stephen ..... Avon, NY | 10/18/2001 |
| Carlin, Susan L ..... San Antonio, TX | 10/18/2001 |
| Chase, Mathew J ..... Plover, WI | 10/18/2001 |
| Cho, David Kyu Won ..... Gilroy, CA | 10/18/2001 |
| Davidson, Philip R ..... Grand Prairie, TX | 10/18/2001 |
| Dinoff, Lee F ..... Griffin, GA | 10/18/2001 |
| Edgar, John D JR ..... New York, NY | 10/18/2001 |
| Fischer, Steven Anthony ..... Vallejo, CA | 10/18/2001 |
| Fitzgerald, Robert N ..... Dundee, NY | 10/18/2001 |
| Francis, Michael Jon ..... Jonesboro, GA | 10/18/2001 |
| Freson, Frank J ..... Tyler, TX | 10/18/2001 |
| Frye, Derrick O ..... University City, MO | 10/18/2001 |
| Fulton, William Christopher ..... Oakland, CA | 10/18/2001 |
| Galgot, Keith H ..... Waterbury, CT | 10/18/2001 |
| Gilroy, Anne F ..... Ardmore, PA | 09/05/2001 |
| Gray, Susan D ..... Portland, OR | 10/18/2001 |
| Greenwood, Kerry Lance JR .... Rockford, MI | 10/18/2001 |
| Hashemieh-Estes, Simin ..... Encino, CA | 10/18/2001 |
| Heim, Deborah M ..... Little Canada, MN | 10/18/2001 |
| Heinlein, Gary M ..... Chesterfield, MO | 10/18/2001 |
| Herbert, Robert F ..... Valencia, CA | 10/18/2001 |
| Hernandez, Agapito B JR ..... McAllen, TX | 10/18/2001 |
| Hiserodt, David William ..... Van Nuys, CA | 10/18/2001 |
| Holm, Richard Nathan ..... Hollister, CA | 10/18/2001 |
| Hunt, Samuel I ..... Deer Park, TX | 10/18/2001 |
| IP, Stephen Clement ..... Irving, TX | 10/18/2001 |
| Isaac, Herbert L II ..... Bloomfield Hills, MI | 10/18/2001 |
| Jepson, Douglas Trent ..... Colton, CA | 10/18/2001 |
| Johnson, Ricky ..... Chicago, IL | 10/18/2001 |
| Johnson, Samuel E ..... Forsyth, GA | 10/18/2001 |
| Kea, Rattana D ..... New York, NY | 10/18/2001 |
| Kilgore, William P ..... Joplin, MO | 10/18/2001 |
| Lamar, Fernando ..... Euclid, OH | 10/18/2001 |
| Lee, Stephen J ..... Langhorne, PA | 10/18/2001 |
| Leeper, Kenneth ..... Madison, WI | 10/18/2001 |
| Lescht, Ira C ..... Pismo Beach, CA | 10/18/2001 |
| Lund, Stevan Alan ..... Arlington, TX | 10/18/2001 |
| Manual, Leanna E ..... Dayton, OH | 10/18/2001 |
| Marrero, David R ..... Winter Haven, FL | 10/18/2001 |
| Martin, Ron R ..... El Dorado, CA | 10/18/2001 |
| Mathiak, Karen I ..... Griffin, GA | 10/18/2001 |
| Medina, Jacqueline ..... Grandada Hills, CA | 10/18/2001 |
| Mirrafati, Sayed Jalil ..... Irvine, CA | 10/18/2001 |
| Moussaed, Emile K ..... Livonia, MI | 09/05/2001 |
| Nguyen, Thomas A ..... Grove, OK | 10/18/2001 |
| Packard, Richard Vandyke ..... Riverside, CA | 10/18/2001 |
| Passler, Charles ..... Armonk, NY | 10/18/2001 |
| Peerenboom-Grenier, Paula J .. Viroqua, WI | 10/18/2001 |
| Peguero, Daniel Amaado ..... Weston, FL | 10/18/2001 |
| Perso, Anthony ..... Massapequa, NY | 10/18/2001 |
| Peterson, Jon B ..... Saint Cloud, MN | 10/18/2001 |
| Ramirez, Richard R ..... Houston, TX | 10/18/2001 |
| Reid, Stephanie Lynn ..... Georgetown, TX | 10/18/2001 |
| Rich, Kenneth E ..... Armonk, NY | 10/18/2001 |
| Rima, Mark Alan ..... Hot Sprngs Nat'l Pk, AR | 10/18/2001 |
| Robinson, Kalvin M ..... Houston, TX | 10/18/2001 |
| Robinson, Paul Michael ..... Venice, CA | 10/18/2001 |
| Rodrigues, Paul Jorge ..... Artesia, CA | 10/18/2001 |
| Roesler-Sirlin, Christina ..... Yonkers, NY | 10/18/2001 |
| Rogers, William Baird ..... Tulsa, OK | 10/18/2001 |
| Rothman, Laura Lee ..... Arroyo Grande, CA | 10/18/2001 |
| Sabatowicz, Peter Frank ..... Arlington, MA | 10/18/2001 |
| Salmon, Noreen A ..... Oak Lawn, IL | 10/18/2001 |
| Scow, Roger Dale Jr ..... Beaufort, SC | 10/18/2001 |
| Smith, Carol A ..... Memphis, TN | 10/18/2001 |
| Southerland, Rhonda K ..... Kirksville, MO | 10/18/2001 |
| Staples, Joyce A ..... Coos Bay, OR | 10/18/2001 |
| Tarango, Rosa M ..... Downey, CA | 10/18/2001 |
| Tchakalian, Leon Jay ..... Sherman Oaks, CA | 10/18/2001 |
| Thompson, Stephen P ..... Lansing, MI | 10/18/2001 |
| Trevino, James G ..... San Antonio, TX | 10/18/2001 |
| Veal, Ulanda Michelle ..... Oakland, CA | 10/18/2001 |
| Voigt, Eric E ..... Hood River, OR | 10/18/2001 |
| Walsh, Christopher J ..... W Chester, OH | 10/18/2001 |
| Warner, Rick A ..... W Los Angeles, CA | 10/18/2001 |
| White, Wanda M ..... | 10/18/2001 |

| Subject City, State | Effective date |
|---|---|
| Riverdale, GA | |
| Wiklinski, Stephen L ..... Old Tappan, NJ | 10/18/2001 |
| Williams, Ronald L ..... Toledo, OH | 10/18/2001 |
| Yearous, Mark Harold ..... Fort Morgan, CO | 10/18/2001 |
| Yi, Mison ..... Arlington Hgts, IL | 10/18/2001 |
| **OWNERS OF EXCLUDED ENTITIES** | |
| Pitts, Joseph Alexander ..... Detroit, MI | 10/18/2001 |
| **CIVIL MONEY PENALTY OR ASSESSMENT** | |
| Applewhite, Monica Janet ..... Williamsville, NY | 12/18/2000 |
| **PEER REVIEW ORGANIZATION CASES** | |
| Lehman, Thomas ..... Shreveport, LA | 10/17/2001 |

Dated: October 3, 2001.

**Calvin Anderson, Jr.,**

*Director, Health Care Administrative Sanctions, Office of Inspector General.*

[FR Doc. 01–25689 Filed 10–11–01; 8:45 am]

**BILLING CODE 4150–04–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4644–N–41]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** October 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 4, 2001.

**John D. Garrity,**

*Director, Office of Special Needs Assistance Programs.*

[FR Doc. 01–25456 Filed 10–11–01; 8:45 am]

**BILLING CODE 4210–29–M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Migratory Bird Hunting; Draft Environmental Impact Statement on Light Goose Management

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meetings.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) has prepared a Draft Environmental Impact Statement (DEIS) on light goose management which is available for public review. The DEIS analyzes the potential environmental impacts of several management alternatives for addressing problems associated with overabundant light goose populations. The Service is issuing this notice to invite further public participation in the review process, identify the location, date, and time of public hearings, and identify the Service official to whom questions and comments may be directed.

**DATES:** Written comments regarding the DEIS should be submitted by December 14, 2001, to the address below. Dates for eight public scoping meetings are identified in the **SUPPLEMENTARY INFORMATION** section.

**ADDRESSES:** Requests for copies of the DEIS should be mailed to Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, DC 20240. Copies of the DEIS can be downloaded from the Division of Migratory Bird Management Web site at *http://migratorybirds.fws.gov/issues/snowgse/tblcont.html.* Comments on the DEIS should be sent to the above address. Alternatively, comments may be submitted electronically to the following address: *white_goose_eis@fws.gov.* Locations for eight public hearings are identified in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Jon Andrew, Chief, Division of Migratory Bird Management, (703) 358–1714; or James Kelley (612) 713–5409.

**SUPPLEMENTARY INFORMATION:** On May 13, 1999, a notice was publish in the **Federal Register** (64 FR 26268) announcing that the Service intended to prepare an Environmental Impact Statement addressing problems associated with overabundant light goose populations. Comments were received and considered and are reflected in the DEIS. On October 5, 2001, we notified the public of the availability of the DEIS in the **Federal Register** (66 FR 51274). In our October 5, 2001 notice we indicated that the comment period would end on November 28, 2001. Due to the timing of public hearings, we have extended the comment period on the DEIS to December 14, 2001. This notice is provided pursuant to Fish and Wildlife Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6).

#### Public Scoping Meetings

Eight public hearings will be held on the following dates at the indicated locations and times:

1. November 13, 2001; Washington, DC at the Auditorium of the Department of the Interior Building, 1849 C Street NW., 9 a.m. to 11:30 a.m.

2. November 13, 2001; Dover, DE at the Richardson and Robbins Auditorium, Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, 7 p.m. to 9:30 p.m.

3. November 27, 2001; Bismarck, ND at the North Dakota Game and Fish Department Auditorium, 100 N. Bismarck Expressway, 7 p.m. to 9:30 p.m.

4. November 28, 2001; Bloomington, MN at the Minnesota Valley National Wildlife Refuge Visitors Center, 3815 East 80th Street, 7 p.m. to 9:30 p.m.

5. November 29, 2001; Egg Harbor Township, NJ at the Clarion Hotel and Convention Center, 6821 Black Horse Pike, 7 p.m. to 9:30 p.m.

6. December 5, 2001; Blue Springs, MO at the Auditorium of the Burr Oak Woods Nature Center, 1401 Northwest Park Road, 7 p.m. to 9:30 p.m.

7. December 12, 2001; Rosenberg, TX at the Texas Agricultural Extension Service Education Center, 1402 Band Road, 7:30 p.m. to 9:30 p.m.

8. December 13, 2001; Baton Rouge, LA at the Louisiana Room, First Floor,

Louisiana Department of Wildlife and Fisheries Building, 2000 Quail Drive, 7 p.m. to 9:30 p.m.

In order to be considered, electronic submission of comments must include your name and postal mailing address; we will not consider anonymous comments. All comments received, including names and addresses, will become part of the public record. The public may inspect comments during normal business hours in Room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's National Environmental Policy Act regulations [40 CFR 1506.6(f)]. Our practice is to make comments available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If a respondent wishes us to withhold his/her name and/or address, this must be stated prominently at the beginning of the comment.

The DEIS evaluates four management alternatives to address habitat destruction and agricultural depredations caused by light geese on various breeding, migration, and wintering areas: (1) No action or continue to manage light goose populations through existing wildlife management policies and practices (Alternative A); (2) modify harvest regulation options and refuge management (Alternative B) (PREFERRED); (3) implement direct agency control of light goose populations on migration and wintering areas in the United States (Alternative C); (4) seek direct light goose population control on breeding grounds in Canada (Alternative D). Our preferred alternative (Alternative B) modifies existing light goose hunting regulations to expand methods of take during normal hunting season frameworks. In addition, we propose to create a conservation order to allow take of light geese outside of normal hunting season frameworks, authorize new methods of take, and allow shooting hours until one-half hour after sunset. We would also modify management practices on certain National Wildlife Refuges to alter the availability of food and sanctuary to light geese.

Dated: October 1, 2001.

**Kevin Adams,**

*Director.*

[FR Doc. 01–25611 Filed 10–11–01; 8:45 am]

**BILLING CODE 4310–55–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WO–220–01–1020–JA–VEIS]**

## Notice of Intent To Prepare an Environmental Impact Statement for the Conservation and Restoration of Vegetation, Watershed, and Wildlife Habitat Treatments on Public Lands Administered by the Bureau of Land Management in the Western United States Including Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent to prepare a national, programmatic environmental impact statement (EIS).

**SUMMARY:** Pursuant to Section 102 (2) (C) of the National Environmental Policy Act of 1969 (NEPA), the BLM will prepare a national, programmatic EIS and conduct public scoping meetings on (1) management opportunities and treatment methods for noxious weeds and other invasive species, and (2) the conservation and restoration of native vegetation, watersheds, and wildlife habitat. The EIS will cover the public lands administered by BLM in eleven western States, including Alaska.

**DATES:** Written or e-mailed comments for this initial scoping phase will be accepted for 30 days following publication of this notice. In addition, BLM will hold public scoping meetings to focus on relevant issues and environmental concerns, identify possible alternatives, and help determine the scope of the EIS. Times and locations will be announced in a separate **Federal Register** notice and through local press releases and advertisements.

**ADDRESSES:** For further information, to provide written comments, or to be placed on the mailing list, contact Brian Amme, Acting Project Manager, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520–0006; e-mail brian_amme@nv.blm.gov ; telephone, (775) 861–6645. Comments will be available for public inspection at the Bureau of Land Management Nevada State Office, 1340 Financial Blvd., Reno, Nevada 89502.

Individual respondents may request confidentiality. If you wish your name and/or address withheld from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written or e-mailed comment. Such requests will be honored to the extent allowed by law. The BLM will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

**SUPPLEMENTARY INFORMATION:** This national, programmatic EIS will provide a comprehensive cumulative analysis of BLM conservation and restoration treatments involving vegetation communities, watersheds, and wildlife habitats. It will also consider State-specific reasonably foreseeable activities, including hazardous fuels reduction treatments. Restoration activities may include but are not limited to prescribed fire; riparian restoration; native plant community restoration; invasive plants and noxious weeds treatments; under-story thinning; forest health treatments; or other activities related to restoring fire-adapted ecosystems. The analysis area will include all surface estate public lands administered by the BLM in the following western States: Alaska, Arizona, California, Colorado, Idaho, Kansas, Montana, Nevada, North and South Dakota, New Mexico, Oklahoma, Oregon, Utah, Washington, and Wyoming. The EIS will update analyses that are contained in four existing BLM vegetation treatment and noxious weed management EIS's and analyze similar activities on public lands in Alaska, which were not included in the existing EIS's.

The BLM has initially identified the following issues for analysis in this programmatic EIS: hazardous fuels reduction and treatment including mechanical treatments; wildlife habitat improvement; restoration of ecosystem processes; protection of cultural resources; watershed and vegetative community health; new listings of threatened and endangered species and consideration of other sensitive and special status species; new chemical formulations for herbicides deemed to be more environmentally favorable; smoke management and air quality; emergency stabilization and restoration; and watershed and water quality improvement. The EIS will also provide human health risk assessments for a broad array of newly available chemical herbicides, and inert ingredients used in combination with chemical treatment activities.

Dated: September 14, 2001.

**Elena Daly,**

*Acting Assistant Director, Renewable Resources and Planning.*

[FR Doc. 01–25723 Filed 10–11–01; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–160–1430–ET; CACA 7682 and CACA 42632]**

### Public Land Order No. 7501; Partial Revocation of Executive Order Dated June 8, 1866, and Withdrawal of Public Land for Piedras Blancas Light Station; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order partially revokes an executive order insofar as it affects 19.9 acres of public land withdrawn for lighthouse purposes. The land is no longer needed by the United States Coast Guard for the purpose for which it was withdrawn. This order also withdraws the same land from surface entry, mining, mineral leasing, and mineral material sales for a period of 20 years for the Bureau of Land Management to assure long term protection and preservation of the historic Piedras Blancas Light Station and associated values.

**EFFECTIVE DATE:** October 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Duane Marti, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825–1886, 916–978–4675.

**SUPPLEMENTARY INFORMATION:** By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order, dated June 8, 1866, which withdrew public land for lighthouse purposes, is hereby revoked insofar as it affects the following described land (CACA 7682):

**Mount Diablo Meridian**

T. 26 S., R. 6 E.,
U.S. Lighthouse Reserve.

**The area described contains 19.90 acres in San Luis Obispo County.**

2. Subject to valid existing rights, the land described in Paragraph 1, is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws, 30 U.S.C. Ch. 2 (1994), mineral leasing laws, 30 U.S.C. 181 *et seq.* (1994), and mineral material sale laws, 30 U.S.C. 601–604 (1994), for the Bureau of Land Management to assure long term protection and preservation of the historic Piedras Blancas Light Station and associated values (CACA 42632).

4. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: September 21, 2001.

**J. Steven Griles,**

*Deputy Secretary.*

[FR Doc. 01–25690 Filed 10–11–01; 8:45 am]

**BILLING CODE 4310–40–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of land management

**[UTU–010–1232–ET–UT–17; UTU 27914]**

### Public Land Order No. 7500; Extension of Public Land Order No. 5984; Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order extends Public Land Order No. 5984 for an additional 20-year period. This extension is necessary to continue the protection of the Little Sahara Recreation Area. The lands have been and will remain open to mineral leasing.

**EFFECTIVE DATE:** September 9, 2001.

**FOR FURTHER INFORMATION CONTACT:** Field Office Manager, BLM Fillmore Field Office, 35 East 500 North, Fillmore, Utah 84631, 435–743–3100.

**SUPPLEMENTARY INFORMATION:** By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 5984, which withdrew public lands in Juab County, Utah, from surface entry and mining, is hereby extended for an additional 20-year period following its date of expiration.

2. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: September 7, 2001.

**J. Steven Griles,**

*Deputy Secretary.*

[FR Doc. 01–25639 Filed 10–11–01; 8:45 am]

**BILLING CODE 4310–DQ–P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Environmental Assessment for Proposed Eastern Gulf of Mexico Lease Sale 181

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Availability of the environmental assessment for proposed Eastern Gulf of Mexico Lease Sale 181.

**SUMMARY:** The Minerals Management Service (MMS) has prepared an environmental assessment (EA) on the Revised Proposal for Eastern Gulf of Mexico (GOM) Lease Sale 181. The EA was prepared to determine whether there are any new significant issues or environmental impacts that might occur as a result of offering a reduced-area configuration of proposed Eastern Gulf of Mexico OCS Oil and Gas Lease Sale 181, and whether a supplemental environmental impact statement (EIS) should be prepared. The EA implements the ''incorporation by reference'' process outlined in 40 CFR 1502.21, which encourages agencies to incorporate material by reference to ''cut down on the bulk without impeding agency and public review of the action.'' Because the recent Final EIS for Lease Sale 181 examined the potential environmental impacts of activities similar to those projected for the Revised Proposal, the EA incorporates much of the material of the Final EIS by reference. The EA, used in conjunction with the Gulf of Mexico OCS Oil and Gas Lease Sale 181 Final Environmental Impact Statement, can be used to compare the types, intensities, and areal extents of the impacts expected to be associated with the original proposed action analyzed in the Final EIS to the impacts expected to be associated with the Revised Proposal examined in the EA.

No new significant impacts were identified for the Revised Proposal that were not already assessed in the Final EIS for Lease Sale 181. The MMS determined that a supplemental EIS is not required and prepared a Finding of No New Significant Impact.

A copy of the EA is available to the public upon request from the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public

Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 or by calling 1–800–200–GULF.

**FOR FURTHER INFORMATION CONTACT:** Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Ms. Deborah Cranswick, telephone (504) 736–2744.

Dated: October 9, 2001.

**Carolita U. Kallaur,**

*Associate Director for Offshore Minerals Management.*

[FR Doc. 01–25747 Filed 10–11–01; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Notice on Outer Continental Shelf Oil and Gas Lease Sales

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** List of restricted joint bidders.

**SUMMARY:** Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period November 1, 2001, through April 30, 2002. The List of Restricted Joint Bidders published April 3, 2001,in the **Federal Register** at 66 FR 17731 covered the period May 1, 2001, through October 31, 2001.

*Group I:* Exxon Mobil Corporation, Mobil Oil Exploration and Producing Southeast Inc., Mobil Producing Texas and New Mexico, Mobil Oil Corporation, and Exxon Assets Holdings LLC

*Group II:* Shell Oil Company, Shell Offshore Inc., SWEPI LP, Shell Frontier Oil & Gas Inc., Shell Consolidated Energy Resources Inc., Shell Land & Energy Company Shell Onshore Ventures Inc., and Shell Offshore Properties and Capital II, Inc.

*Group III:* BP Exploration & Oil Inc., BP Exploration & Production Inc., BP Exploration (Alaska) Inc., Amoco Production Company, Vastar Offshore Inc., and Vastar Resources Inc.

*Group IV:* TotalFinaElf E&P USA Inc., Elf Aquitaine Oil Programs, Inc., TOTAL Exploration Production USA, Inc., and Fina E&P Inc.

*Group V:* Chevron Corporation and Chevron U.S.A. Inc.

Dated: October 9, 2001.

**Thomas R. Kitsos,**

*Acting Director, Minerals Management Service.*

[FR Doc. 01–25746 Filed 10–11–01; 8:45 am]

**BILLING CODE 4910–MR–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### 60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

**AGENCY:** Department of the Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** The National Park Service (NPS) is proposing in 2002 to conduct a survey of trail management partners, including individuals working for state and federal agencies and nonprofit organizations located in 14 states between Georgia and Maine. In the survey, partners will be asked about their satisfaction with the level of support provided by the National Park Service. This survey will measure performance in meeting goals as required by the 1995 Government Performance and Results Act (GPRA).

| | Estimated numbers of | |
|---|---|---|
| | Responses | Burden hours |
| Survey of Appalachian National Scenic Trail Management Partners | 100 | 25 |

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for gathering the information in the proposed surveys. The NPS also is asking for comments on the practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

The NPS goal in conducting this survey is to determine the satisfaction level of Appalachian National Scenic Trail management partners in response to level of support provided by the National Park Service.

**DATES:** Public comments will be accepted on or before 60 days from the date of publication in the **Federal Register.**

*Send Comments To:* Rita Hennessy, Outdoor Recreation Specialist, Appalachian National Scenic Trail, Harpers Ferry Center, Harpers Ferry, West Virginia 25425.

**FOR FURTHER INFORMATION CONTACT:** Rita Hennessy: Voice: (304) 535–6170, e-mail: *Rita_Hennessy@nps.gov*

**SUPPLEMENTARY INFORMATION:**

*Titles:* Survey of Appalachian National Scenic Trail Management Partners.

*Bureau Form Number:* None.

*OMB Number:* To be requested.

*Expiration Date:* To be requested.

*Type of request:* Request for new clearance.

*Description of need:* The National Park Service needs information to measure performance and to meet the requirements of the 1995 Government Performance and Results Act (GPRA).

*Automated data collection:* At the present time, there is not an automated way to gather this information because it includes asking respondents about their level of satisfaction with support provided by the National Park Service.

*Description of respondents:* Individuals working for State and Federal agencies and nonprofit organizations sharing responsibility for the management of the Appalachian National Scenic Trail.

*Estimated average number of respondents:* 100.

*Estimated average number of responses:* Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

*Estimated average burden hours per response:* 15 minutes.

*Frequency of Response:* 1 time per respondent.

*Estimated annual reporting burden:* 25 hours.

Dated: September 25, 2001.

**Betsy Chittenden,**

*Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.*

[FR Doc. 01–25644 Filed 10–11–01; 8:45 am]

**BILLING CODE 4310–70–M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Boundary Revision and Land Exchange: Catoctin Mountain Park

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of boundary revision and land exchange.

**SUMMARY:** Notice is hereby given that the National Park Service (NPS) is revising the boundary of Catoctin Mountain Park by including three additional tracts of land and deleting one tract of land. The addition of one tract and the deletion of one tract will be effected by means of a land exchange.

**FOR FURTHER INFORMATION CONTACT:** Chief, Land Resources Program Center, National Park Service, National Capitol Region, 1100 Ohio Drives, SW., Washington DC 20242, (202) 619–7034; or Superintendent, Catoctin Mountain Park, 6602 Foxville Road, Thurmont, Maryland 21788–1598, (301) 663–6751.

**SUPPLEMENTARY INFORMATION:** Executive Order 7496, dated November 14, 1936, authorizes the Secretary of the Interior (Secretary) through NPS to acquire real property or any interest therein to complete and administer Catoctin Mountain Park, formerly known as Catoctin Recreational Demonstration Area. Public Law 83–654, enacted August 24, 1954, authorizes the Secretary to obtain for the United States lands and interests in land held in private ownership within the established watersheds and boundaries of Catoctin Mountain Park in exchange for Federally owned land of approximately equal value. Section 7c(ii) of the Land and Water Conservation Fund Act, as amended by Section 814(b) of Public Law 104–333, authorizes minor boundary revisions of areas within the National Park System. Such boundary revisions may be made when necessary, after advising the appropriate Congressional Committees, and following publication of a revised boundary map, drawing or other boundary description in the **Federal Register**. In order to preserve and protect existing natural resources within the boundaries of Catoctin Mountain Park and to effect a technical adjustment to the boundary to rectify a previous survey error, it is necessary to revise the existing boundary of Catoctin Mountain Park to include three additional tracts of land comprising 39.64 acres of land and to delete one tract of land containing 1.65 acres. Tract Numbers 01–110 and 01–111 will be acquired by purchase. Tract Number 01–113 will be acquired in exchange for Tract Number 01–112 which is to be excluded from the boundary. The exclusion of Tract Number 01–112 will rectify a previous survey error.

Notice is hereby given that the boundary of Catoctin Mountain Park is hereby revised to include three additional tracts of land and to delete one tract of land as more particularly described as follows:

Tract Number 01–110, contains 18.3 acres of unimproved land and is more particularly identified as part of Parcel 49 on Frederick County, Maryland, Tax Map 12. Tract Number 01–111 contains 20.21 acres of unimproved land and is more particularly identified as Parcel 6 on Frederick County, Maryland, Tax Map 18. Tract Number 01–112 contains 1.65 acres of land improved with a wood-framed picnic pavilion and is more particularly identified as part of Parcel 105 on Frederick County, Maryland, Tax Map 18. Tract Number 01–113 contains 1.13 acres of unimproved land and is more particularly identified as part of Catoctin Mountain Park.

Detailed information concerning the above referenced properties in the form of maps, drawings and descriptions are available for inspection in the office of the Land Resources Program Center, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

Dated: August 14, 2001.

**Terry R. Carlstrom,**

*Regional Director, National Park Service, National Capital Region.*

[FR Doc. 01–25645 Filed 10–11–01; 8:45 am]

**BILLING CODE 4310–70–M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Apostle Islands National Lakeshore

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of intent to prepare a draft wilderness suitability study and draft environmental impact statement for Apostle Islands National Lakeshore, Wisconsin.

**SUMMARY:** The National Park Service (NPS) will prepare a wilderness suitability study to evaluate portions of Apostle Islands National Lakeshore for possible designation as wilderness, in accordance with the provisions of the Wilderness Act of 1964 and NPS Management Policies (2001). To facilitate sound analysis of environmental impacts, the NPS is gathering information necessary for the preparation of the wilderness suitability study and the associated environmental impact statement (EIS). Suggestions and information are being sought from other agencies, tribes, organizations, and the public on the scope of issues and range of alternatives to be addressed. Comments and participation in this scoping process are invited and encouraged. This notice is being furnished as required by National Environmental Policy Act regulations 40 CFR 1501.7.

A series of scoping sessions with local, county, state, and tribal governments, neighboring agencies, and the public is scheduled to be held in late July 2001. The purpose of these meetings will be to explain the wilderness suitability study process, and to provide an opportunity for governments, tribes, agencies, communities, and interested citizens to express the issues and concerns they believe the study should address. At least one public session will be held in Bayfield, Wisconsin. Notice of the dates, times, and locations of public scoping sessions will be advertised in local media outlets prior to the events. Persons wishing to receive direct mail notification of the public scoping sessions should contact the park's Management Assistant at the address or telephone number below. Up-to-date schedules, draft documents, current information regarding the wilderness suitability study and EIS, and an address for electronically transmitted comments can be found on the park's Web site at *http://www.nps.gov/apis/wstudy.htm.* Written comments may also be mailed to the park's Management Assistant at the address below.

**ADDRESSES:** General park information requests, or requests to be added to the project mailing list should be directed to: Superintendent, Apostle Islands National Lakeshore, Route 1, Box 4, Bayfield, Wisconsin 54814. Telephone: 715–779–3397. E-mail: apis_superintendent@nps.gov.

**FOR FURTHER INFORMATION CONTACT:** Written comments, and information concerning the scope of the EIS and other matters should be directed to: Management Assistant, Apostle Islands National Lakeshore, at the address above. Telephone: 715–779–3398

extension 102. e-mail: *apis_management_assistant@nps.gov.*

**SUPPLEMENTARY INFORMATION:** NPS Management Policies (2001) section 6.2.1 requires a wilderness suitability assessment as a prelude to a wilderness suitability study. This requirement was met by the 1989 General Management Plan (GMP) for Apostle Islands National Lakeshore. During the GMP planning process, it was determined that about 97% of the park's land base was potentially suitable for wilderness, and required further study. Since that time, in accordance with the GMP, these lands have been managed as though they were wilderness, so the conclusions of the assessment remain accurate and valid. Copies of the GMP are available at the address above.

The environmental review of the wilderness suitability study and EIS for the Lakeshore will be conducted in accordance with requirements of the NEPA (42 U.S.C. § 4371 *et seq.*), NEPA regulations (40 CFR 1500–1508), other appropriate Federal regulations, and National Park Service procedures and policies for compliance with those regulations.

Dated: May 14, 2001.

**William W. Schenk,**

*Regional Director.*

[FR Doc. 01–25643 Filed 10–11–01; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent To Prepare an Environmental Impact Statement for the Special Resource Study for the Battle of Homestead and Carrier Furnaces Sites in Western Pennsylvania

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement for the Special Resource Study for the Battle of Homestead and Carrie Furnaces in Western Pennsylvania.

**SUMMARY:** Under the provisions of the National Environmental Policy Act of 1969, the National Park Service is preparing an environmental impact statement (EIS) for the Special Resource Study for the Battle of Homestead and Carrier Furnaces Sites in Western Pennsylvania. The purpose of a Special Resource Study (SRS) is to determine the degree and kind of federal actions for the management and protection of an area considered to have potential for addition to the National Park System. This is a SRS of the former U.S. Steel Homestead Works including the Battle of Homestead site and adjacent town of Homestead and the related Carrie Furnace area. The study area includes the National Register Historic District in the town of Homestead, the landing site and pump house, the site of Carrier Furnaces number 6 and 7, and the Hot Metal Bridge. Additional sites in the Monongahela Valley will be considered as necessary during the study process. The study will address the significance of the site in the contexts of the history of steel making and labor history in the United States. All of the sites are located within the County of Allegheny in Pennsylvania adjacent to the Monongahela River.

The area is located within the boundaries of the Rivers of Steel National Heritage Area, which was designated by Congress in 1996. The National Park Service (NPS) does not own land or assume a management role in the region. Instead, conservation, interpretation and other activities are managed by partnerships among federal, state, and local governments and private nonprofit organizations. The national heritage area is managed by the Steel Industry Heritage Corporation (SIHC). The National Park Service has been authorized by Congress to provide technical and financial assistance for a limited period (up to 10 years from the time of their designation in 1996) to the SIHC.

The SRS/EIS will address a range of alternatives including potential roles for the NPS in preservation and interpretation of the labor history story associated with the study area. Alternatives to be considered include: no action. (continuation of existing partnerships among the SIHC, NPS and others) the establishment of a National Historic Site, or the establishment of a National Historic Trail, and other acts as may arise during the study process.

In summary, the SRS will present findings on five topics:

- Determination of the national significance of the sites and their resource values;
- Determination of the suitability for the sites to be included within the National Park System in relation to other sites of the same theme;
- Determination of feasibility for the NPS to own, manage or participate in conservation and interpretation in the study area;
- Determination of the need for NPS management of the sites,
- Identification of alternatives for any potential role for the NPS in the future.

The EIS will assess the impacts of the alternatives for NPS participation.

A scoping meeting will be scheduled and notice will be made of the meeting through a broad public mailing and publication in the local newspaper.

**FOR FURTHER INFORMATION CONTACT:** Peter Samuel, Project Leader, Philadelphia Support Office, National Park Service, US Custom House, 200 Chestnut Street, Philadelphia, PA 19106, *peter_samuel@nps.gov*, 215–597–1848.

If you correspond using the internet, please include you rename and return address in your e-mail message. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: June 7, 2001.

**Marie Rust,**

*Regional Director, Northeast Region.*

[FR Doc. 01–25646 Filed 10–11–01; 8:45 am]

**BILLING CODE 4310–30–M**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Notice of Proposed Information Collection

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for its Technical Evaluation customer surveys has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost. The OMB control number for this collection

of information is 1029–0114 and is on the forms along with the expiration date.

**DATES:** OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by November 13, 2001 in order to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to *jtreleas@osmre.gov.*

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval of the collection of information contained in a series of technical evaluation customer surveys. OSM is requesting a 3-year term of approval for the information collection activity.

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 number for this collection of information is 1029–0039.

As required under 5 CFR 1320.8(d), **Federal Register** notice soliciting comments on this collection of information was published on February 7, 2001 (66 FR 9357). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

*Title:* Technical Evaluations Series.

*OMB Control Number:* 1029–0114.

*Summary:* The series of surveys are needed to ensure that technical assistance activities, technology transfer activities and technical forums are useful for those who participate or receive the assistance. Specifically, representatives from State and Tribal regulatory and reclamation authorities, representatives of industry, environmental or citizen groups, or the public, are the recipients of the assistance or participants in these forums. These surveys will be the primary means through which OSM evaluates its performance in meeting the performance goals outlined in its annual plans developed pursuant to the Government Performance and Results Act.

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* 26 State and Tribal governments, industry organizations and individuals who request information or assistance.

*Total Annual Responses:* 750.

*Total Annual Burden Hours:* 125.

**ADDRESSES:** Office of Information and Regulatory Affairs, Office Of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210–SIB, Washington, DC 20240, or electronically to *jtreleas@osmre.gov.*

Dated: August 28, 2001.

**Richard G. Bryson,**

*Chief, Division of Regulatory Support.*

[FR Doc. 01–25647 Filed 10–12–01; 8:45 am]

**BILLING CODE 4310–05–M**

## DEPARTMENT OF LABOR

### Employment Standards Administration; Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing 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, N.W., 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*

None

*Volume II*

Delaware
DE10009 (Mar. 2, 2001)
Pennsylvania
PA010001 (Mar. 2, 2001)
PA010002 (Mar. 2, 2001)
PA010003 (Mar. 2, 2001)
PA010004 (Mar. 2, 2001)
PA010005 (Mar. 2, 2001)
PA010006 (Mar. 2, 2001)
PA010007 (Mar. 2, 2001)
PA010008 (Mar. 2, 2001)
PA010009 (Mar. 2, 2001)
PA010010 (Mar. 2, 2001)
PA010012 (Mar. 2, 2001)
PA010016 (Mar. 2, 2001)
PA010017 (Mar. 2, 2001)
PA010018 (Mar. 2, 2001)
PA010019 (Mar. 2, 2001)
PA010020 (Mar. 2, 2001)
PA010021 (Mar. 2, 2001)
PA010023 (Mar. 2, 2001)
PA010024 (Mar. 2, 2001)
PA010025 (Mar. 2, 2001)
PA010026 (Mar. 2, 2001)
PA010027 (Mar. 2, 2001)
PA010029 (Mar. 2, 2001)
PA010030 (Mar. 2, 2001)
PA010032 (Mar. 2, 2001)
PA010038 (Mar. 2, 2001)
PA010040 (Mar. 2, 2001)
PA010042 (Mar. 2, 2001)
PA010052 (Mar. 2, 2001)
PA010059 (Mar. 2, 2001)
PA010060 (Mar. 2, 2001)
PA010061 (Mar. 2, 2001)

*Volume III*

Florida
FL010001 (Mar. 2, 2001)
FL010009 (Mar. 2, 2001)
FL010013 (Mar. 2, 2001)
FL010014 (Mar. 2, 2001)
FL010017 (Mar. 2, 2001)
FL010032 (Mar. 2, 2001)
FL010045 (Mar. 2, 2001)
FL010046 (Mar. 2, 2001)
Georgia
GA010083 (Mar. 2, 2001)
North Carolina
NC010050 (Mar. 2, 2001)
South Carolina
SC010036 (Mar. 2, 2001)
Tennessee
TN010048 (Mar. 2, 2001)

*Volume IV*

Michigan
MI010013 (Mar. 2, 2001)
MI010019 (Mar. 2, 2001)
MI010047 (Mar. 2, 2001)
MI010049 (Mar. 2, 2001)
MI010062 (Mar. 2, 2001)
MI010063 (Mar. 2, 2001)
MI010106 (Mar. 2, 2001)

*Volume V*

Arkansas
AR010003 (Mar. 2, 2001)
AR010023 (Mar. 2, 2001)
Kansas
KS010007 (Mar. 2, 2001)
KS010008 (Mar. 2, 2001)
KS010013 (Mar. 2, 2001)
KS010016 (Mar. 2, 2001)
KS010018 (Mar. 2, 2001)
KS010019 (Mar. 2, 2001)
KS010020 (Mar. 2, 2001)
KS010021 (Mar. 2, 2001)
KS010022 (Mar. 2, 2001)
KS010023 (Mar. 2, 2001)
KS010069 (Mar. 2, 2001)
KS010070 (Mar. 2, 2001)
Nebraska
NE010001 (Mar. 2, 2001)
NE010003 (Mar. 2, 2001)
NE010005 (Mar. 2, 2001)
NE010011 (Mar. 2, 2001)
NE010019 (Mar. 2, 2001)
Texas
TX010002 (Mar. 2, 2001)
TX010005 (Mar. 2, 2001)
TX010010 (Mar. 2, 2001)
TX010054 (Mar. 2, 2001)

*Volume VI*

Colorado
CO010001 (Mar. 2, 2001)
CO010004 (Mar. 2, 2001)
CO010005 (Mar. 2, 2001)
CO010006 (Mar. 2, 2001)
CO010007 (Mar. 2, 2001)
CO010008 (Mar. 2, 2001)
CO010009 (Mar. 2, 2001)
CO010010 (Mar. 2, 2001)
CO010014 (Mar. 2, 2001)
CO010018 (Mar. 2, 2001)
CO010020 (Mar. 2, 2001)
CO010021 (Mar. 2, 2001)
CO010023 (Mar. 2, 2001)
CO010024 (Mar. 2, 2001)
CO010025 (Mar. 2, 2001)

*Volume VII*

California
CA010029 (Mar. 2, 2001)

**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.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 4th day of October 2001.

**John Frank,**

*Acting Chief, Branch of Construction Wage Determinations.*

[FR Doc. 01–25464 Filed 10–11–01; 8:45 am]

**BILLING CODE 4510–27–M**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

**1. A B & J Coal Company, Inc.**

[Docket No. M–2001–085–C]

A B & J Coal Company, Inc., PO Box 35, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.1710–1 (canopies or cabs; self-propelled diesel-powered and electric face equipment; installation requirements) to its Mine No. 2 (I.D. No. 44–06828) located in Buchanan County, Virginia. The petitioner proposes to operate self-propelled electric face equipment without cabs or canopies in seam heights of 48 inches or less. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners.

**2. McElroy Coal Company**

[Docket No. M–2001–086–C]

McElroy Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh,

Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its McElroy Mine (I.D. No. 46–01437) located in Marshall County, West Virginia. The petitioner proposes to use high-voltage (4,160-volt) cables inby the last open crosscut. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**3. Maple Creek Mining, Inc.**

[Docket No. M–2001–087–C]

Maple Creek Mining, Inc., 981 Route 917, Bentleyville, Pennsylvania 15314 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) to its High Quality Mine (I.D. No. 36–08375) located in Washington County, Pennsylvania. The petitioner proposes to use a high-voltage cable with an internal ground check conductor smaller than No. 10 AWG. The petitioner states that high-voltage cables would be SHD+CG cable, manufactured to ICEA Standard S–75–381 for Type SHD three-conductor cables (except that it would have an insulated flexible center ground check conductor having a cross-sectional area of not less than 1,800 circular mils), accepted by MSHA as flame-resistant, and with symmetrical 3/C, G/G and 1/GC construction; that all electrical personnel who perform maintenance on the longwall will receive training on installing and repairing the cables prior to implementation; and that a revised Part 48 training plan, specifying task training and review of the terms and conditions for the affected miners, would be submitted to the District Manager. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**4. Maple Creek Mining, Inc.**

[Docket No. M–2001–088–C]

Maple Creek Mining, Inc., 981 Route 917, Bentleyville, Pennsylvania 15314 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its High Quality Mine (I.D. No. 36–08375) located in Washington County, Pennsylvania. The petitioner proposes to use high-voltage (4,160-volt) cables inby the last open crosscut. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**5. Maple Creek Mining, Inc.**

[Docket No. M–2001–089–C]

Maple Creek Mining, Inc., 981 Route 917, Bentleyville, Pennsylvania 15314 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its High Quality Mine (I.D. No. 33–08375) located in Washington County, Pennsylvania. The petitioner proposes to plug and mine through oil and gas wells. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**6. Maple Creek Mining, Inc.**

[Docket No. M–2001–090–C]

Maple Creek Mining, Inc., 981 Route 917, Bentleyville, Pennsylvania 15314 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its High Quality Mine (I.D. No. 36–08375) located in Washington County, Pennsylvania. The petitioner requests a modification of the existing standard to allow belt air coursed through belt haulage entries to be used to ventilate active working places. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to course intake air to a working place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**7. Alex Energy, Inc.**

[Docket No. M–2001–091–C]

Alex Energy, Inc., P.O. Box 857, Summersville, West Virginia 26651 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Sugarcamp Mine (I.D. No. 46–08745) located in Nicholas County, West Virginia. The petitioner requests a modification of the existing standard to allow belt air coursed through belt haulage entries to be used to ventilate active working places. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to course intake air to a working place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**8. 3–D Management Service, Inc.**

[Docket No. M–2001–092–C]

3–D Management Service, Inc., PO Box 186, Madison, West Virginia 25130 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) and 18.41(f) (plug and receptacle-type connectors) to its Tiny Creek No. 2 Mine (I.D. No. 46–08835) located in Lincoln County, West Virginia. The petitioner proposes to use a threaded ring and a spring-loaded device instead of a padlock on mobile battery-powered machines to prevent the plug connector from accidentally disengaging while under load. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**9. Consolidation Coal Company**

[Docket No. M–2001–093–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (weekly examination) to its Shoemaker Mine (I.D. No. 46–01436) located in Marshall County, West Virginia. Due to deteriorating roof and rib conditions of the six seals in 1 South of the intake air course, traveling this areas would be unsafe. The petitioner proposes to establish designated check points and have a certified person examined these check points on a daily basis to monitor for methane and to ensure safe air passage. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**10. Bledsoe Coal Corporation**

[Docket No. M–2001–094–C]

Bledsoe Coal Corporation, 1374 Highway 192 East, London, Kentucky 40741 has filed a petition to modify the application of 30 CFR 75.1711–1 (sealing of shaft openings) to its Mine No. 60 (I.D. No. 15–12941) located in Leslie County, Kentucky. The petitioner proposes to use an alternative method to establish a more permanent resolution for sealing shaft openings that would protect the general public from vandalism or accidents at the Mine No. 60, and establish an alternative method for reclamation requirements from the Department of Reclamation and Enforcement, due to the remote location of the shaft and the unfeasibility of obtaining material to backfill the shaft. The petitioner states that the Mine No. 60 has ceased production and portals have been backfilled; that the shaft has been sealed with a 17-inch concrete cap that is equipped with a vent pipe of 2-inches in diameter, at a distance of 15 feet above the surface of the shaft; and

that the proposed alternative method would be sufficient to sustain the loads that occur from the reclamation material and any other possible load situations. The petitioner has provided with this petition 3-sets of drawings that detail how the 18-inch shaft will be permanently sealed. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**11. Leeco, Inc.**

[Docket No. M–2001–095–C]

Leeco, Inc., P.O. Box 309, Jeff, Kentucky 41751 has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its No. 68 Mine (I.D. No. 15–17497) located in Perry County, Kentucky; and its No. 78 Mine (I.D. No. 15–17816) located in Knott County, Kentucky. The petitioner proposes to a alternate method to meet the requirements of under-voltage protection. The petitioner proposes for under-voltage protection a maximum nominal voltage of the belt conveyor drive and water pump circuit(s) not to exceed 995 volts, nominal voltage of the belt conveyor drive control and water pump control circuit(s) not to exceed 120 volts, vacuum contactors built into or permanently affixed to the transformer enclosure and properly separated and isolated from the other components of the unit, and provide under-voltage protection for belt drive(s) and water pump motors that are greater than 5 horsepower for vacuum contactors that have associated protective relays. The petitioner has listed in this petition additional specific procedures that would be followed when its proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**12. Leeco, Inc.**

[Docket No. M–2001–096–C]

Leeco, Inc., PO Box 309, Jeff, Kentucky 41751 has filed a petition to modify the application of 30 CFR 77.214(a) (refuse piles; general) to its No. 64 Mine (I.D. No. 15–16353) located in Perry County, Kentucky. The petitioner proposes to place refuse over previously abandoned and reclaimed mines. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**13. American Energy Corporation**

[Docket No. M–2001–097–C]

American Energy Corporation, PO Box 5, Alledonia, Ohio 43902 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Century Mine (I.D. No. 33–01070) located in Belmont County, Ohio. The petitioner proposes to plug and mine through oil and gas wells at the Century Mine using the specific procedures outlined in this petition for modification. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**14. Kennecott Utah Copper Corporation**

[Docket No. M–2001–004–M]

Kennecott Utah Copper Corporation, 8362 West 10200 South, Bingham Canyon, Utah 84006–0351 has filed a petition to modify the application of 30 CFR 56.14109 (unguarded conveyors with adjacent travelways) to its Bingham Canyon Mine (I.D. No. 42–00149) located in Salt Lake County, Utah. The petitioner requests a modification of the existing standard to allow emergency stop devices in the form of a hand-held portable radio to be used at those portions of the Bingham Canyon Mine's Mine-Concentrator Conveyor where pull-cords or railings are not located, which when activated through a single push-button at any position along the beltway, will deactivate the conveyor motor and stop the belt. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**Request for Comments**

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov,'' or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 13, 2001. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 4th day of October 2001.

**David L. Meyer,**

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 01–25691 Filed 10–11–01; 8:45 am]

BILLING CODE 4510–43–P

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Meeting

October 9, 2001.

*Time and Date:* 10 a.m., Wednesday, October 17, 2001.

*Place:* Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

*Status:* Open.

*Matters to be Considered:* The Commission will consider and act upon the following:

1. *Secretary of Labor on behalf of Noakes* v. *Gabel Stone Co.,* Docket No. CENT 2000–75–DM (Issues include whether the judge erred in refusing to find that the discriminatee failed to mitigate his damages while enrolled in college).

*Time and Date:* The Commission meeting will commence following upon the conclusion of the Commission meeting in *Secretary of Labor on behalf of Noakes* v. *Gabel Stone Co.,* Docket No. CENT 2000–75–DM, which commences at 10:00 a.m. on Wednesday, October 17, 2001.

*Place:* Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

*Status:* Open.

*Matters to be Considered:* The Commission will consider and act upon the following:

1. *Secretary of Labor on behalf of Jackson* v. *Mountain Top Trucking Co.,* Docket No. KENT 613–D (Issues include whether the judge erred in concluding that the discriminatee failed to mitigate his damages while enrolled in college).

*Time and Date:* 10 a.m., Thursday, November 1, 2001.

*Place:* Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

*Status:* Open.

*Matters to be Considered:* The Commission will consider and act upon the following:

1. *American Coal Co.,* Docket Nos. LAKE 2000–111–R, etc. (Issues include whether tags required to be placed on all approved diesel engines under 30 CFR 7.90 must be supplied by the engine manufacturer).

*Time and Date:* The Commission meeting will commence following upon the conclusion of the Commission meeting in *American Coal Co.,* Docket Nos. LAKE 2000–111–R, etc., which commences at 10:00 a.m. on Thursday, November 1, 2001.

*Place:* Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

*Status:* Open.

*Matters to be Considered:* The Commission will consider and act upon the following:

1. *Freeman United Coal Mining Co.,* Docket Nos. LAKE 2000–12–R, etc.

(Issues include whether tags required to be placed on all approved diesel equipment under 30 CFR 7.90 must be supplied by the engine manufacturer).

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen—(202) 653–5629 / (202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

**Jean H. Ellen,**

*Chief Docket Clerk.*

[FR Doc. 01–25863 Filed 10–10–01; 12:28 pm]

**BILLING CODE 6735–01–M**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit applications received under the Antarctic Conservation Act.

**SUMMARY:** Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of a camp at Patriot Hills, Heritage Range, southern Ellsworth Mountains, Antarctica, by Adventure Network International, a company within the United States. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application on or before November 13, 2001. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Joyce A. Jatko or Nadene Kennedy at the above address or (703) 292–8030.

**SUPPLEMENTARY INFORMATION:** NSF's Antarctic Waste Regulation, 45 CFR Part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for operation of remote camp at Patriot Hills, Antarctica, and logistic support services for scientific and other expeditions, film crews, and tourists. These activities include aircraft support, cache positioning, camp and field support, resupply, search and rescue, medevac, medical support and logistic support for some National Operators. The camp can accommodate up to 100 people and is adjacent to a 100m x 2000m blue-ice runway. The blue-ice runway is a natural feature that requires limited amount of preparation and upkeep for aircraft use. There are standard programs offered on a regular basis. These include: Climbing trips to Vinson Massif, the Ellsworth Mountains and the Transantarctic Mountains; ski trips to the Ellsworth Mountains and the Geographic South Pole; and flights to the Geographic South Pole, and the Emperor Penguin Colony at the Dawson Lambton Glacier.

A total of four aircraft will be operated by Adventure Network International throughout the Antarctic. They will consist of the following: Two Twin Otter aircraft, and Ilyushin 76 (IL–76), and either a turbine DC–3 or a Cessna 185.

The permit applicant is: Ms. Anne Kershaw, President, Adventure Network International (ANI), 4800 N. Federal Highway, Suite 307D, Boca Raton, FL 33431. Permit application No. 2002–WM–003.

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. 01–25613 Filed 10–11–01; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

**SUPPLEMENTARY INFORMATION:** On August 29, 2001, the National Science Foundation published a notice in the **Federal Register** of a permit applications received. Permits were issued on October 3, 2001 to: Vickie Usher Russell, Permit No. 2002–008; Terry J. Wilson, Permit Nos. 2002–009 and –010; Robert A. Blanchette, Permit No. 2002–011; Tom W. Yelvington, Permit No. 2002–012; John T. Lisle, Permit No. 2002–013; Melissa Alexander, Permit No. 2002–014.

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. 01–25614 Filed 10–4–01; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Conservation Act of 1978; Notice of Permit Modification

**AGENCY:** National Science Foundation.

**SUMMARY:** The Foundation modified a permit to conduct activities regulated under the Antarctic Conservation Act of 1978 (Public Law 95–541; Code of Federal Regulations title 45, part 670).

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy, Permit Officer, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

**DESCRIPTION OF PERMIT AND MODIFICATION:** On September 15, 1999, the National Science Foundation issued a permit (ACA #2000–001) to Dr. Steven D. Enslie after posting a notice in the August 17, 1999 **Federal Register**. Public comments were not received. A request to modify the permit was posted in the **Federal Register** on April 30, 2001. No public comments were received. The modification, issued by the Foundation on September 19, 2001, allows the permit holder to enter additional Antarctic Specially Protected Areas for the purpose of collecting conducting surveys and excavating small 5–10cm soil samples from abandoned penguin rookeries.

Location:

ASPA 102—Rookery Islands, Holme Bay
ASPA 103—Ardery and Odbert Islands
ASPA 109—Moe Island, South Orkneys
ASPA 110—Lynch Island, South Orkneys
ASPA 111—Southern Powell Island and adjacent islands, Orkney Islands
ASPA 114—North Coronation Island
ASPA 127—Haswell Island
ASPA 135—Bailey Peninsula, Budd Coast
ASPA 136—Clark Peninsula,

Budd Coast

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. 01–25615 Filed 10–11–01; 8:45 am]

**BILLING CODE 7555–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–369–LR, 50–370–LR, 50–413–LR, and 50–414–LR; ASLBP No. 02–794–01–LR]**

### Duke Energy Corp., McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972); the Commission's Regulations, *see* 10 CFR 2.1201, 2.1207; and the Commission's Order dated October 4, 2001, CLI–01–20, 54 NRC ____ (Oct. 4, 2001), an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Duke Energy Corporation

McGuire Nuclear Station, Units 1 and 2
Catawba Nuclear Station, Units 1 and 2

On June 13, 2001, Duke Energy Corporation submitted an application to renew the operating licenses for its McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2, near Charlotte, North Carolina. This Licensing Board is being established pursuant to an August 15, 2000 notice of acceptance for docketing of an application and opportunity for a hearing (65 FR 60,693). The proceeding involves intervention petitions/hearing requests regarding the renewal application filed by the Nuclear Information and Resource Service and the Blue Ridge Environmental Defense League.

The Board is comprised of the following administrative judges:

Administrative Judge Ann Marshall Young, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Administrative Judge Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Administrative Judge Lester S. Rubenstein, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.1203.

Issued at Rockville, Md, this 5th day of October 2001.

**G. Paul Bollwerk III,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 01–25673 Filed 10–11–01; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Completion of Terminated License Review Project

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Completion of terminated license review project.

In 1989 the General Accounting Office issued a report which raised concerns about the U.S. Nuclear Regulatory Commission's (NRC's) criteria and procedures used for the decommissioning of formerly licensed sites. As a result, in 1990, the NRC decided to undertake a review of terminated materials licenses to assure that previously licensed facilities were properly decontaminated and posed no threat to public health and safety. Oak Ridge National Laboratory (ORNL) was contracted to review all materials licenses terminated by the NRC or its predecessor agencies, from inception of material regulation, to: (1) Identify sites with potential for meaningful residual contamination, based on information in the license documentation; and (2) to identify sealed sources with incomplete or no accounting that could represent a public hazard.

ORNL examined in excess of 37,000 terminated license files. From its evaluation of these license files, ORNL identified approximately 675 loose material licenses and 565 sealed source licenses that required further review. NRC Regional offices either performed a follow-up review, or transferred responsibility for the follow-up review to the appropriate Agreement State.

As a result of the Regional reviews, 40 sites were found to have residual contamination in excess of the NRC's criteria for unrestricted release. Of these sites, 18 have been closed, 11 have been transferred to Agreement States or the U.S. Department of Air Force, 8 are in the process of decommissioning, and 3 are under further NRC review.

ORNL has developed a web-based database for the NRC to document the evaluation and closure process for all terminated license files. This database will also be used to track the 300–400 licenses terminated each year by NRC. The database will be completed in September 2002.

For further details with respect to this action, see the Final Report on Results of Terminated License Reviews, dated September 26, 2001. This report is available online through NRC's Agencywide Documents Access and Management Systems (Accession No. ML012710539).

Dated at Rockville, Maryland, this 4th day of October 2001.

For the Nuclear Regulatory Commission.

**Larry W. Camper,**

*Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 01–25671 Filed 10–11–01; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review: Comment Request for Review of an Expiring Information Collection: Standard Form 1153

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of an expired information collection. Standard Form 1153, Claim for Unpaid Compensation of Deceased Civilian Employee, is used to collect information from individuals, who have been designated as beneficiaries of the unpaid compensation of a deceased Federal employee or who believe that their relationship to the deceased entitles them to receive the unpaid compensation of a deceased Federal employee. OPM needs this information in order to adjudicate the claim and properly assign a deceased Federal employee's unpaid compensation to the appropriate individual(s).

We received no comments on our 60-day notice on Standard Form 1153, published in the **Federal Register** on June 15, 2001.

Approximately 3,000 SF 1153 forms are submitted annually. It takes approximately 15 minutes to complete the form. The annual estimated burden is 750 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, fax to (202) 418–3251, or e-mail to *mbtoomey@opm.gov.* Please include your mailing address.

**DATES:** Comments on this proposal should be received within 30 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—Melissa A. Drummond, Program Manager, Office of Merit Systems Oversight, Office of Merit Systems Oversight and Effectiveness, U.S. Office of Personnel Management, 1900 E Street, NW., Room 7671, Washington, DC 20415, and Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

U.S. Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 01–25610 Filed 10–11–01; 8:45 am]

**BILLING CODE 6325–43–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44903; File No. 4–208]**

### Intermarket Trading System; Order Granting Approval of the Seventeenth Amendment to the ITS Plan Relating to Regional Computer Interface, 30-Second Commitment Expiration, and the Principal Place of Business of the Boston Stock Exchange, Inc.

October 3, 2001.

On July 16, 2001, the Intermarket Trading System Operating Committee (''ITSOC'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''ACT''),[1] and Rule 11A3a3–2 thereunder,[2] a proposed amendment (''Seventeenth Amendment'') to the restated ITS Plan.[3] The proposed amendment recognized the National Association of Securities Dealers, Inc.'s (''NASD'') use of the Regional Computer Interface (''RCI''),[4] and provided for a six-month pilot program for the use of a 30-second commitment expiration. In addition, the proposed amendment reflected the BSE's new principal place of business. Notice of the proposed amendment appeared in the **Federal Register** on August 15, 2001.[5] The Commission received no comments on the proposed amendment. This order approves the proposed amendment.

The Commission finds that the proposed amendment is consistent with the Act and the rules and regulations thereunder applicable to the ITS and, in particular, sections 11A(a)(1)(C)(ii) and (D) of the Act,[6] and Rule 11A3–2(c)(2) thereunder,[7] which requires among other things, that such plan amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and removes impediments to, and perfects the mechanisms of, a national market system. Specifically, the Commission believes that the plan amendment should help to enable the NASD to use the communications network that links all the Participant markets. In addition, the Commission believes that by providing a shorter commitment expiration option of 30-seconds as a six-month pilot program, the proposed amendment should foster efficiency and enhance competition among Participant markets.

It Is Therefore Ordered, pursuant to section 11A(a)(3)(B) of the Act,[8] that the proposed Seventeenth Amendment be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–25702 Filed 10–11–01; 8:45 am]

**BILLING CODE 8010–01–M**

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] The ITS is a National Market System (''NMS'') plan, which was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

The ItS Participants include the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Inc. (''CBOE''), the Chicago Stock Exchange, Inc. (''CHX''), the Cincinnati Stock Exchange Inc. (''CSE''), the National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange, Inc. (''NYSE''), the Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. (''PHLX'') (''Participants'').

[4] ''RCI'' is defined in Section 1(34A) of the ITS Plan as the ''automated linkage between the System and, and collectively, the Regional Switches and the AMEX [Display Book Manager] DBM that, when implemented, will enable members located on the floors of the Amex, BSE, the CHX, the PSE, and the PHLX to participate in the Applications.''

[5] *See* Securities Exchange Act Release No. 44661 (August 8, 2001), 65 FR 42904.

[6] 15 U.S.C. 78k–1(a)(1)(C)(ii) and (D).

[7] 17 CFR 240.11A3–2(c)(2).

[8] 15 U.S.C. 78k–1(a)(3)(B).

[9] 17 CFR 200.30–3(a)(29).

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 25205; 812–12016]**

### Firstmark Corp.; Notice of Application.

October 5, 2001.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'').

**SUMMARY OF THE APPLICATION:** Firstmark Corp. (''Applicant'') requests an order exempting it from all provisions of the Act until the earlier of one year from the date the requested order is issued or the date it no longer may be deemed to be an investment company.

**FILING DATES:** The application was filed on March 3, 2000 and amended on October 2, 2001.

**Hearing or Notification of Hearing:**

An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 31, 2001 and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, Three James Center, 7th Floor, 1051 Eash Cary Street, Richmond, VA 23219.

**FOR FURTHER INFORMATION CONTACT:** Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

**Applicant's Representations**

1. Applicant is a Maine corporation formed in 1982. Most recently, Applicant through wholly-owned subsidiaries, was engaged primarily in the title insurance business and related services. On December 2, 1998, Applicant executed a stock purchase agreement (''Agreement'') under which Applicant and its wholly-owned subsidiary, Southern Capital Acquisition Corporation (''SCAC''), would sell its principal operating subsidiary, Investor Southern Corporation (''ISC''), to Old Guard Group, Inc., a Pennsylvania corporation (the ''Asset Sale''). Prior to the Asset Sale, Applicant's board of directors (''Board'') adopted a resolution, effective December 15, 1998, declaring Applicant's intent to become engaged primarily in non-investment company businesses following the consummation of the Asset Sale. The Board reaffirmed this intent on March 1, 2000.

2. As a result of the Asset Sale, which occurred on March 5, 1999, Applicant, through SCAC, received $6,750,000, and the right to receive certain additional cash payments in 2000, 2001, and 2002, if the pre-tax net income of ISC and its subsidiaries in the fiscal years ending December 31, 1999, 2000, and 2001, reached targeted goals.[1] Applicant states that it invested its cash from the Asset Sale in a money market fund registered under the Act (''Invested Proceeds'') to preserve its value pending application of such assets to an acquisition of or merger with an operating business. As of March 31, 2001, the balance of the Invested Proceeds was $4,248,000 or 84.9% of Applicant's total assets (exclusive of U.S. Government securities and cash items) on an unconsolidated basis (and approximately 92.5% on a consolidated basis). Applicant also states that as of March 31, 2001, the remaining investments of Applicant and its two wholly-owned subsidiaries, SCAC and QFAN Marketing Services, Inc. (each, a ''Subsidiary''), included real estate, shares of two money market funds registered under the Act, other marketable securities, and stamps and artwork (''Other Investments''), totaling approximately $261,515, $6,998, $25,719, and $9,209, respectively. Applicant states that the Other Investments predate the Asset Sale, and that Applicant is in the process of liquidating the Other Investments, except for the investments in the money market funds.

[1] Applicant received an earn-out payment in the amount of $167,683 for the fiscal year ending December 31, 1999.

**Applicant's Legal Analysis**

1. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per cent of the value of such issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis. Section 3(a)(2) of the Act defines ''investment securities'' to include all securities except government securities, securities which are issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which are not investment companies, and are not relying on the exception from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act.

2. Applicant states that the Invested Proceeds and Other Investments may constitute ''investment securities'' within the meaning of section 3(a)(2) of the Act. Applicant states that because the Invested Proceeds and Other Investments represent more than 40% of its total assets (exclusive of government securities and cash items) on an unconsolidated basis, Applicant may be an investment company within the meaning of section 3(a)(1)(C) of the Act. Rule 3a–2 under the Act generally provides that, for purposes of section 3(a)(1)(C), an issuer will not be deemed to be engaged in the business of investing, reinvesting, owning, holding or trading in securities for a period not to exceed one year if the issuer has a bona fide intent to be engaged in a non-investment company business. Applicant states that it relied on the one-year ''transient'' investment company exception under rule 3a–2 for the period ending March 5, 2000.

3. Section 6(c) of the Act permits the Commission to exempt any person, security, or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicant requests an exemption under section 6(c) from all provisions of the Act until the earlier of one year from the date the requested order is issued or such time as Applicant would no longer be required to register as an investment company under the Act. Applicant believes that within this period it will be able to complete an acquisition of or a merger with a new operating business.

5. Applicant states that since the Asset Sale, it has devoted substantial effort to acquire or merge with an unaffiliated business. Applicant believes that the inability to consummate an acquisition or merge was largely due to certain civil litigation matters involving the Applicant as a result of the conduct of Applicant's previous management. Applicant states that all litigation matters have now been resolved, and the payment in settlement of claims has been drawn from Invested Proceeds. Applicant states that it continues to hold the Invested Proceeds to preserve the value of assets while it pursues possible acquisitions or mergers, and it has not engaged in any speculation or trading of securities. Applicant contends that registration under the Act would involve unnecessary burden and expense for Applicant and its stockholders and would serve no regulatory purpose. Applicant thus asserts that the requested relief is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

**Applicant's Conditions**

Applicant agrees that the requested exemption will be subject to the following conditions:

1. Applicant will not purchase or otherwise acquire (directly or through a Subsidiary) any securities other than short-term U.S. Government securities, certificates of deposit, commercial paper rated A–1/P–1, and shares of registered money market funds; except that Applicant may acquire equity securities of an issuer that is not an investment company as defined in section 3(a) of the Act or is relying on an exclusion from the definition of investment company under section 3(c) of the Act other than section 3(c)(1) or 3(c)(7), in connection with the acquisition of an operating business as evidenced by a resolution approved by Applicant's Board.

2. Applicant will not hold itself out as being engaged in the business of investing, reinvesting, owning, holding or trading in securities.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–25698 Filed 10–11–01; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44908; File No. SR–CBOE–2001–48]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Adopt Generic Listing Standards for Trust Issued Receipts, To Provide Alternate Eligibility Requirements for Component Securities of Trust Issued Receipts in Certain Limited Situations and To Increase the Permissible Weight of the Most Heavily Weighted Component Stock of Index Portfolio Shares and Index Portfolio Receipts

October 4, 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 August 31, 2001, the Chicago Board Options Exchange, Incorporated (''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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to adopt generic listing standards applicable to listing and trading of Trust Issued Receipts (''TIRs'') pursuant to Rule 19b–4(e) under the Act, to provide eligibility requirements for component securities represented by a series of TIRs that became part of such TIR under certain limited circumstances, and to increase the permissible weight of the most heavily weighted component stock of Index Portfolio Receipts (''IPRs'') and Index Portfolio Shares (''IPSs''). Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.[3]

**Chicago Board Options Exchange, Incorporated Rules**

* * * * *

**Rule 31.5 Criteria for Eligibility of Securities**

**L. IPRs.**

(a)–(d) Unchanged.

* * * *Interpretations and Policies:*

.01 The Exchange may approve a series of IPRs for listing and trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(a) Eligibility Criteria for Index Components. Upon the initial listing of a series of IPRs on the Exchange, or if the Exchange is trading the IPRs pursuant to unlisted trading privileges, upon the initial listing on the original listing exchange, each component of an index or portfolio underlying a series of IPRs shall meet the following criteria:

(1)–(2) Unchanged.

(3) The most heavily weighted component stock cannot exceed [25%] *30%* of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;

(4)–(5) Unchanged.

(b)–(e) Unchanged.

**M. IPRs.**

(a)–(b) Unchanged.

*** * * Interpretations and Policies:**

.01 The Exchange may approve a series of IPSs for listing and trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(a) Eligibility Criteria for Index Components. Upon the initial listing of a series of IPSs on the Exchange, or if the Exchange is trading the IPSs pursuant to unlisted trading privileges, upon the initial listing on the original listing exchange, each component of an index or portfolio underlying a series of IPSs shall meet the following criteria:

(1)–(2) Unchanged.

(3) The most heavily weighted component stock cannot exceed [25%] *30%* of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;

(4)–(5) Unchanged.

(b)–(e) Unchanged.

.02 Unchanged

**N. Trust Issued Receipts**

Notwithstanding any other provisions in these Rules to the contrary, a series of Trust Issued Receipts (as defined in Interpretations and Policies .04 following Rule 1.1) may be listed or traded pursuant to unlisted trading privileges on the Exchange subject to the criteria set forth below:

(a)–(d) Unchanged.

** * * Interpretations and Policies:*

*.01 The Exchange may approve a series if Trust Issued Receipts for listing and trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 (''Exchange Act''), provided each of the component securities satisfies the following criteria:*

*(i) each component security must be registered under Section 12 of the Exchange Act;*

*(ii) each component security must have a minimum public float of at least $50 million.*

*(iii) each component security must be listed on a national securities exchange or traded through the facilities of Nasdaq, and a reported national market system security;*

*(iv) each component security must have an average daily trading volume of at least 100,000 shares during the preceding sixty days trading period;*

*(v) each component security must have an average daily dollar value of shares traded during the proceeding sixty-day trading period of at least $1 million; and*

*(vi) the most heavily weighted component security may not initially represent more than 20% of the overall value of the Trust Issued Receipt.*

*.02 The eligibility requirements for component securities that are represented by a series of Trust Issued Receipts and that became part of the Trust Issued Receipt when the security was either: (a) distributed by a company already included as a component security in the series of Trust Issued Receipts; or (b) received in exchange for the securities of a company previously included as a component security that is no longer outstanding due to a merger, consolidation, corporate combination or other event, shale as follows:*

*(i) the component security must be listed on a national securities exchange or traded through the facilities of Nasdaq and a reported national market system security.*

*(ii) the component security must be registered under Section 12 of the Exchange Act; and*

*(iii) the component security must have a Standard & Poor's Sector Classification that is the same as the Standard & Poor's Sector Classification*

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The CBOE made non-substantive changes by deleting a typographical error from its rule text. *See* telephone conversation between Angelo Evangelou, Attorney, CBOE, and Cyndi Nguyen, Attorney, Division of Market Regulation, Commission, on October 1, 2001.

*represented by the component securities included in the Trust Issued Receipt at the time of the distribution or exchange.*

**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 CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its current listing standards for TIRs, contained in CBOE Rule 31.5.N, to provide generic standards that would permit listing and trading, or trading pursuant to unlisted trading privileges (''UTP''), of certain products pursuant to Rule 19b–4(e) under the Act.[4] The Exchange believes that the application of Rule 19b–4(e) to these securities will further the intent of that rule by allowing trading to begin in these securities, subject to the proposed generic standards, without the need for notice and comment and Commission approval. Accordingly, the Exchange believes that this new procedure has the potential to reduce the time frame for bringing these securities to the market or for trading them pursuant to UTP. In addition, the Exchange proposes to provide eligibility requirements for component securities represented by a series of TIRs that become part of such TIR under certain limited circumstances, and to make minor changes to its current listing standards for IPRs and IPSs, contained in CBOE Rule 31.5.L and 31.5.M, respectively.

*a. Generic Listing Standards for TIRs*

In August 2000, the Commission approved the Exchange's proposal to adopt listing standards for TIRs in CBOE Rule 31.5.N.[5] As discussed in the Original Approval Order, TIRs are negotiable receipts that are issued by a trust representing securities of issuers (''component securities'') that have been deposited and are held on behalf of the holders of the TIRs. TIRs are considered ''securities'' under the rules of the Exchange and are subject to various applicable trading rules.

The Exchange now is proposing to implement generic listing criteria that are intended to allow those TIRs that satisfy the proposed generic listing standards to start trading without the need for notice and comment and Commission approval. The proposed rule change to CBOE Rule 31.5.N concerning the listing of TIRs would provide that the Exchange may approve for trading, pursuant to Rule 19b–4(e) of the Act, a series of TIRs if the following criteria are satisfied. First, each component security must be registered under Section 12 of the Act. Second, each component security must have a minimum public float of at least $150 million. Third, each component security must be listed on a national securities exchange or traded through the facilities of the Nasdaq Stock Market, Inc. and a reported national market system security. Fourth, each component security must have an average daily trading volume of at least 100,000 shares and an average daily dollar value of shares traded of at least $1 million during the preceding sixty-day trading period. Finally, the most heavily weighted component security may not initially represent more than twenty percent of the overall value of the TIR.[6]

The Exchange will implement written surveillance procedures for the TIRs that it trades pursuant to Rule 19b–4(e) of the Act. Further, the Exchange will comply with all recordkeeping requirements of Rule 19b–4(e) of the Act. The Exchange also will file Form 19b–4(e) for each series of TIRs listed under Rule 19b–4(e) of the Act within five business days of commencement of trading.

*b. Alternate Eligibility Rules*

The Exchange also proposes to provide alternate eligibility requirements for component securities in certain limited situations. Specifically, the proposed alternate eligibility criteria would apply to a component security that became part of a trust when the security was either: (a) distributed by an issuer already included as a component security in the series of TIRs; or (b) received in exchange for the securities of an issuer previously included as a component security and that are no longer outstanding due to a merger, consolidation, corporate combination or other event. The Exchange believes that it would be useful to allow such securities to remain in the TIR (provided, however, that they meet the proposed standards described below) to reduce the number of distributions of securities from the TIR, which would cause inconvenience and increased transaction and administrative costs for investors.

The eligibility requirements for such component securities are as follows. First, the component security must be listed on a national securities exchange or traded through the facilities of Nasdaq and a reported national market system security. Second, the component security must be registered under Section 12 of the Act. Finally, the component security must have a Standard & Poor's sector classification that is the same as the Standard & Poor's sector classification represented by the component securities included in the TIR at the time of the distribution or exchange.[7]

*c. Changes to IPR and IPS Rules*

The Exchange also proposes to amend its existing generic listing standards applicable to IPRs and IPSs in CBOE Rules 31.5.L and 31.5.M, respectively.[8] among other things, these rules provide that no one component security may exceed twenty-five percent of the weight of the index or portfolio. The Exchange now proposes to increase from twenty-five percent to thirty percent the permissible weight of the most heavily weighted component stock in an underlying index or portfolio.[9] The Exchange believes that the proposed rule change will provide additional

[4] 17 CFR 240.19b–4(e). Rule 19b–4(e) permits self-regulatory organizations (''SROs'') to list and trade new derivatives products that comply with existing SRO trading rules, procedures, surveillance programs and listing standards, without submitting a proposed rule change under Section 19(b). *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7–13–98).

[5] *See* Securities Exchange Act Release No. 43134 (August 10, 2000), 65 FR 50255 (August 17, 2000) (SR–CBOE–00–23) (''Original Approval Order'').

[6] The proposed generic listing standards are consistent with those used by the American Stock Exchange (''Amex'') and the Chicago Stock Exchange (''CHX''), which were approved by the Commission on September 29, 2000. *See* Securities Exchange Act Release No. 43396 (September 29, 2000), 65 FR 60230 (October 10, 2000) (SR–Amex–00–10 and SR–CHX–00–16).

[7] The proposed alternate eligibility requirements are consistent with those currently used by the Amex, which were approved by the Commission on May 16, 2001. *See* Securities Exchange Act Release No. 44309 (May 16, 2001), 66 FR 28587 (May 23, 2001) (SR–Amex–2001–04).

[8] The Commission approved the Exchange's generic listing standards applicable to IPRs and IPSs on March 7, 2001. *See* Securities Exchange Act Release No. 44046 (March 7, 2001), 66 FR 15152 (March 15, 2001) (SR–CBOE–00–51).

[9] The Commission approved a similar rule change proposal by the Amex. *See* Securities Exchange Act Release No. 44532 (July 10, 2001), 66 FR 37078 (July 16, 2001) (SR–Amex–2001–25).

flexibility to unit investment trusts (in cases of IPRs) or mutual funds (in cases of IPSs) to be listed pursuant to Rule 19b–4(e) of the Act in structuring their products and would help reduce possible concerns associated with a single stock exceeding the twenty-five percent threshold immediately prior to initial listing and trading due to a spike in the price of the most heavily weighted index stock. This change would not affect the Internal Revenue Code Subchapter M requirements applicable to regulated investment companies, which continue to require investment companies to rebalance their portfolios quarterly to avoid one component stock exceeding a twenty-five percent weighting in the portfolio in order to maintain regulated investment company status.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Furthermore, the CBOE believes that the proposed rule change will enhance competition for the listing and trading of TIRs, IPRs, and IPSs, which currently are traded on other securities exchanges.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comment 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. 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–2001–48 and should be submitted by November 2, 2001.

**IV. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Change**

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6(b)(5) of the Act.[12] Specifically, the Commission finds that the CBOE's proposal will prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[13]

The Commission finds that the proposal to provide generic standards to permit the listing and trading of TIRs pursuant to Rule 19b–4(e) of the Act [14] furthers the intent of that rule by facilitating commencement of trading in these securities without the need for notice and comment and Commission approval under Section 19(b) of the Act.[15] By establishing generic standards, the proposal should reduce the CBOE's regulatory burden, as well as benefit the public interest, by enabling the CBOE to bring qualifying products to the market more quickly. Furthermore, the Commission notes that it has previously approved similar proposals by the CHX, the Amex, the Cincinnati Stock Exchange, Inc. (''CSE'') and the Pacific Exchange, Inc. (''PCX'') to establish generic listing standards for TIRs.[16]

Rule 19b–4(e) [17] provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that include the new derivative securities product and the SRO has a surveillance program for the product class.[18]

As noted above, the Commission has previously approved the CBOE's proposal to permit the listing and trading of TIRs and to trade nine series of TIRs (Biotech HOLDRs, Internet HOLDRs, Broadband HOLDRs, B2B Internet HOLDRs, Internet Architecture HOLDRs, Internet Infrastructure HOLDRs, Pharmaceutical HOLDRs, Semiconductor HOLDRs, and Telecom HOLDRs) on the Exchange or pursuant to UTP.[19] In approving these securities for trading, the Commission considered the structure of these securities, their usefulness to investors and to the markets, and the CBOE's rules and surveillance programs that govern their trading. Securities that satisfy the proposed generic listing standards for TIRs would also allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single security representing a portfolio of securities that the investor owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; 94) reduce transaction costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities underlying the TIRs. The Commission therefore finds for these reasons, and the reasons set forth below, that additional TIRs that satisfy the proposed generic standards and, therefore, can be listed pursuant to Rule 19b–4(e) of the Act without prior Commission approval, should produce the same benefits to the CBOE and to

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(5). In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 240.19b–4(e).

[15] 15 U.S.C. 78f(b).

[16] *See supra* note 6, Securities Exchange Act Release Nos. 43604 (November 21, 2000), 65 FR 75746 (December 4, 2000) (SR–CSE–00–05), and 44182 (April 16, 2001), 66 FR 21798 (May 1, 2001) (SR–PCX–2001–01).

[17] 17 CFR 240.19b–4(e).

[18] *See supra* note 4.

[19] *See* Original Approval Order, *supra* note 5.

investors. Trading of these products will be subject to the full panoply of CBOE rules and procedures that govern the trading of equity securities on the CBOE, including, among others, rules governing margin, the priority, parity and precedence of orders, responsibilities of the specialist, and operational and regulatory trading halts.[20]

The Commission further finds that adopting generic listing standards for these securities and applying Rule 19b–4(e) of the Act should fulfill the intended objective of that rule by allowing those TIR products that satisfy the generic standards to start trading, without the need for notice and comment and Commission approval. The Exchange's ability to rely on Rule 19b–4(e) of the Act for these products potentially reduces the time frame for bringing these securities to the market or for permitting the trading of these securities pursuant to UTP, and thus enhances investors' opportunities. The Commission notes that while the proposal reduces the Exchange's regulatory burden, the Commission maintains regulatory oversight over any products listed under the generic listing standards through regular inspection oversight.

The Commission further finds that: (1) by requiring that the underlying securities in a TIR be registered under Section 12 of the Act and listed on a national securities exchange or Nasdaq; and (2) by establishing minimum values for the number of outstanding receipts, average daily trading volume, average daily dollar volume, and public float, the Exchange's proposed listing criteria will help to insure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets for those TIR products listed and traded pursuant to Rule 19b–4(e) of the Act. The Commission finds that these listing criteria will help to ensure that no security underlying a TIR will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various TIRs to meet investors' needs. The Commission further finds that these criteria should serve to ensure that the securities underlying such TIRs are well capitalized and actively traded, which will help ensure that U.S. securities markets are not adversely affected by the listing and trading of new TIRs under Rule 19b–4(e) of the Act.

Additionally, the Exchange's delisting criteria set forth in CBOE Rule 31.94.I allow it to consider the suspension of trading and the delisting of a TIR if an event occurs that makes further dealings in such securities inadvisable. This will give the CBOE flexibility to delist TIRs if circumstances warrant.

The Commission further notes that, in connection with its previous review and approval of CBOE Rule 31.5.N, it approved the Exchange's surveillance procedures and disclosure and prospectus delivery requirements for TIRs.[21] In accord with these previous findings, the Commission believes that these rules, which will govern the trading of TIRs pursuant to Rule 19b–4(e), will provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest. Further, the Commission finds that the proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading TIRs.

Finally, the CBOE will file Form 19b–4(e)[22] with the Commission within five business days of commencement of trading a TIR under the generic standards.[23]

Accordingly, the Commission believes that the CBOE's proposed rules governing the listing and trading of TIRs pursuant to Rule 19b–4(e) will provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest, consistent with Section 6(b)(5) of the Act.[24]

Furthermore, the Commission finds that the proposal to provide an alternate eligibility criteria for component securities received as part of a distribution or as a result of a merger, consolidation, corporate combination or other event to remain in the trust should enhance competition by enabling the CBOE to better compete with other markets trading TIRs and notes that the Commission has previously approved similar listing standards modifications for the Amex.[25]

Finally, the Commission finds that the proposal to increase from twenty-five percent to thirty percent the permissible weight of the most heavily weighted component stock in an underlying index or portfolio of an IPR or IPS should provide additional flexibility to unit investment trusts (in cases of IPRs) or mutual funds (in cases of IPSs) to be listed pursuant to Rule 19b–4(e) of the Act in structuring their products and should help reduce possible concerns associated with a single stock exceeding the twenty-five percent threshold immediately prior to initial listing and trading due to a spike in the price of the most heavily weighted index stock. Furthermore, the Commission notes that it has previously approved a similar proposal by the Amex to increase to thirty percent the permissible weight of the most heavily weighted component stock in an underlying index.[26]

Accordingly, the Commission finds good cause, consistent with Section 6(b)(5) of the Act,[27] to approve the proposed rule change on an accelerated basis prior to the thirtieth day after the date of publication of notice in the **Federal Register**, pursuant to Section 19(b)(2) of the Act.[28]

## V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–CBOE–2001–48) is hereby approved an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–25700 Filed 10–11–01; 8:45 am]

**BILLING CODE 8010–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44906; File No. SR–CBOE–2001–53]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Allow Spread Orders Involving Certain Broad-Based Index Options and Options on Exchange Traded Funds To Be Executed at a Single Trading Post

October 4, 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 September 20, 2001, the Chicago Board Options Exchange, Incorporated (''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

[20] *Id.*

[21] *See* Original Approval Order, *supra* note 5.

[22] 17 CFR 249.820.

[23] *See* 17 CFR 19b–4(e)(2).

[24] 15 U.S.C. 78f(b)(5).

[25] *See supra* note 7.

[26] *See supra* noted 9.

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78s(b)(2).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

prepared by the Exchange. On October 2, 2001, CBOE submitted Amendment No. 1 to the proposal.[3] CBOE filed the proposal pursuant to Section 19(b)(3)(A) of the Act [4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend CBOE Rule 24.19, *OEX–SPX Spread Orders*, to apply its terms to certain order broad-based index options and options on exchange traded fund shares listed and traded on the Exchange. The text of the proposed rule change is available at the principal office of the Exchange and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In 1997, the Commission approved CBOE Rule 24.19 which sets forth a special procedure to facilitate the transaction of both legs of a spread order between OEX and SPX options at either the OEX or the SPX trading post.[6] The Exchange believes that CBOE Rule 24.19 has provided both customers and traders of OEX and SPX options an efficient manner of conducting business involving the two option classes while protecting the customer orders in the customer limit order books of both products and the customer orders being represented in the crowd at both trading posts.

The purpose of the proposed rule change is to apply CBOE Rule 24.19 to spread orders involving certain other broad-based index options and options on exchange traded fund shares derived from broad-based indices (''ETF Options'') that are currently listed and traded on the Exchange, in addition to OEX and SPX options. The additional broad-based index options that would be included under CBOE Rule 24.19 are options on the Mini-NDX Index (MNX℠) and the Nasdaq 100 Index (NDX).[7] The ETF Options that would be included under CBOE Rule 24.19 are options on the iShares S&P 100 Index Fund (OEF) and Nasdaq 100 Tracking Stock (QQQ).[8] The Exchange is not proposing to change any of the procedures in the Rule for representing and filing spread orders. Customers and traders alike often employ spread strategies using these products for hedging and risk management. The Exchange believes that expanding the applicability of Rule 24.19 to these products will encourage the use of spread orders involving these products and provide an alternative to cross market hedging of these products.

Paragraph (a) of CBOE Rule 24.19 would be revised to define a ''Broad-Based Index Option'' for purposes of the rule to mean MNX, NDX, OEX, XEO, OEF, QQQ, and SPX options, and any other broad-based index option or ETF Option that is determined by the appropriate Floor Procedure Committee to create an appropriate hedge with any other Broad-Based Index Option under CBOE Rule 24.19. Revised paragraph (a) also would define a ''Multi-Class Broad-Based Index Option Spread Order'' (''Multi-Class Spread Order'') as an order to buy a stated number of contracts of a Broad-Based Index Option and to sell an equal number, or an equivalent number, of contracts of a different Broad-Based Index Option. The proposed amendments to CBOE Rule 24.19 would apply only to Multi-Class Spread Orders composed of: (1) Any combination of MNX, NDX, or QQQ (MNX–NDX, MNX–QQQ, and NDX–QQQ); (2) any combination of OEF, OEX, XEO, or SPX (OEX–SPX, OEX–OEF, OEF–SPX, *etc.*); and (3) any other combination of related Broad-Based Index Options as determined by the appropriate Floor Procedure Committee.

When making its determination what products and spread strategies would be eligible for execution pursuant to CBOE Rule 24.19, the appropriate Floor Procedure Committee would consider, among other things, whether the particular index options classes under consideration are derived from the same underlying index, whether the particular index options classes have underlying indices that have a close relationship in their price movement, and whether there is customer demand for the particular spread strategy. The Exchange has proposed to include the spread orders listed above under CBOE Rule 24.19 because of customer demand for these strategies for hedging and risk management purposes. For example, spread strategies between OEX/XEO and OEF options are used to hedge risk as they are each based on the S&P 100.[9] Likewise, spread strategies between MNX, NDX, and QQQ options are proposed to be included under CBOE Rule 24.19, as each of these options classes are based on the Nasdaq 100 Index, and each option class is frequently used to hedge positions in one of the other classes. Spread strategies between OEF and SPX would be included under CBOE Rule 24.19 as OEF options, like OEX and XEO options, can also be hedged with SPX options.

The procedures to be followed in representing and filling a Multi-Class Spread Order, set forth in paragraph (b) of CBOE Rule 24.19, remain the same as the current procedures for representing and filing an OEX–SPX spread order, except for one minor change. The Exchange proposes to revise paragraph (b)(i) of CBOE Rule 24.19 to provide that, immediately after a Multi-Class

[3] *See* Letter from Jaime Galvan, Attorney, CBOE, to Michael Gaw, Division of Market Regulation, Commission, dated October 1, 2001 (''Amendment No. 1''). In Amendment No. 1, CBOE made a minor change to the proposed rule text to clarify that the appropriate Floor Procedure Committee may determine to make only spread orders based on a combination of *related* broad-based index options eligible to be handled pursuant to CBOE Rule 24.19.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] *See* Securities Exchange Act Release No. 38782 (June 26, 1997), 62 FR 35862 (July 2, 1997) (SR–CBOE–97–15).

[7] The Exchange is also proposing to explicitly include XEO options under CBOE Rule 24.19. XEO options are a new series of OEX options with a European-style, rather than American-style, exercise feature. *See* Securities Exchange Act Release No. 44556 (July 16, 2001), 66 FR 38046 (July 20, 2001). Because of their relation to OEX options, the Exchange already deems XEO options to be subject to CBOE Rule 24.19.

[8] OEF options are options overlying shares of the iShares S&P 100 Index Fund, an exchange traded fund based on the S&P 100 Index. QQQ options are options overlying the Nasdaq 100 Index Tracking Stock, an exchange traded fund designed to track the performance of the Nasdaq 100 Index. CBOE has determined to treat options on exchange traded fund shares that are derived from broad-based indices like broad-based index options, and generally to apply to these products the same rules that are applicable to broad-based index options. CBOE believes that options on exchange traded fund shares derived from broad-based indices, such as OEF and QQQ options, share trading characteristics similar to broad-based index options and, therefore, the same rules should apply to both.

[9] CBOE states that OEF options are about 1/10th the size of OEX and XEO options.

Spread Order is represented at the primary trading station or concurrent with the announcement of such order, the member initiating the order must contact the Order Book Official or the DPM, as applicable, at the other trading station. This change is required due to the fact that the MNX, NDX, OEF, and QQQ trading crowds are DPM trading crowds.

As is currently the case, paragraph (b)(iii) of CBOE Rule 24.19 will provide that a member holding a Multi-Class Spread Order that is priced net in a multiple of the minimum increment will have priority over bids and offers in the trading crowd if both legs of the spread would trade at a price that is at least equivalent to quotes in the crowd. Similarly, such an order will have priority over bids and offers in the customer limit order books so long as: (1) No leg of the order would trade at a price outside the currently displayed bids or offers, or bids or offers in the customer limit order book; and (2) at least one leg of the order would trade at a price that is better than the corresponding bid or offer in one of the books.

The Exchange believes that expanding the application of CBOE Rule 24.19 to the products and spread orders listed above, so that both legs of such spread orders can be executed at the same post, will result in tighter and more competitive markets for such orders, benefiting both customers and traders.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) Act[10] in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest. CBOE believes that the proposed rule will further these statutory goals by allowing for the efficient conduct of Multi-Class Broad-Based Index Option Spread Orders that will be beneficial to both customers and traders.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

[10] 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

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**

CBOE has asserted that, because the foregoing proposed rule change does not (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] In addition, CBOE gave the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the 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 provision of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2001–53 and should be submitted by November 2, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–25701 Filed 10–11–01; 8:45 am]

**BILLING CODE 8010–01–M**

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44849; File No. SR–GSCC–00–10]**

## Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to the Submission of Repo Collateral Substitutions

September 25, 2001.

On September 11, 2000, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] a proposed rule change (File No. GSCC–00–10) and on November 20, 2000, and August 28, 2001, amended the proposed rule change.[2] Notice of the proposal was published in the **Federal Register** on January 11, 2001.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

**I. Description**

The rule change enables GSCC to reduce the risk to itself and its members caused by the repurchase (''repo'') collateral substitution process. Due to a variety of reasons, this process has recently stressed GSCC's and its inter-dealer broker members' operational infrastructures, and has caused undue fail-financing expenses for other members. GSCC's new rules relating to repo collateral substitutions processes and the fees associated with such substitutions will prohibit certain practices and will impose an additional

[1] 15 U.S.C. 78s(b)(1).

[2] Because the second amendment merely modified the language in GSCC's rule to better reflect what was discussed and comment requested on in the notice, notice of the amendment and comment is not required.

[3] Securities Exchange Act Release No. 43794 (January 3, 2001), 66 FR 2466.

risk management measure on the repo substitution process.

First, GSCC will amend Rule 18 (''Special Provisions for Repo Transactions''), its Schedule of Timeframes, and its Fee Schedule to initially impose: (i) a deadline of noon (12:00 p.m. for the submission of repo collateral substitution notifications after which time the dealer member that initiated the substitution will be subject to a late fee of $500 per substitution notification and (ii) an absolute deadline of 12:30 p.m. for the submission of repo collateral substitution notifications after which time GSCC will reject the substitution notification.[4] GSCC will extend these submission deadlines by one hour on those days that The Bond Market Association announces in advance will be extraordinary volume days. All required information must be included in the substitution notification in order for it to be deemed to be received by the deadlines. Substitution notifications or amendments will no longer be accepted verbally but instead will only be accepted through the use of GSCC's designated messaging utility that is available to all repo-netting participants.

Second, GSCC will revise Rule 12 (''Securities Settlement'') to make clear that the use of reversal codes in certain situations is improper and that members may not use a reversal code for a securities delivery obligation to GSCC unless the member has obtained GSCC's prior consent. The rule change also provides that if GSCC is required to obtain overnight financing with respect to securities delivered in violation of this new rule, the entire amount of the financing cost will be borne by the offender.[5]

Third, for risk management reasons, GSCC will amend Rule 18 to add a requirement that all collateral substitutions with regard to repos that are on GSCC's books pending settlement must be made through GSCC.

Fourth, GSCC will amend Section 4 of Rule 18 to permit a repo broker to submit a repo collateral substitution. As part of this change, GSCC will add the definition of repo broker to its definitions under Rule 1. A repo broker will be defined as an inter-dealer broker or a division or other separate operating unit within a dealer netting member that operates in the same manner as a broker and that participates in GSCC's repo netting service pursuant to the same requirements imposed under Rule 15 governing special provisions for certain netting members and Rule 19 governing special provisions for brokered repo transactions.

## II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F)[6] of the Act, which requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The commission finds that GSCC's rule change meets these conditions because it implements procedures designed to prohibit practices that pose risk and operational difficulties to GSCC.

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–00–10) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–25703 Filed 10–11–01; 8:45 am]

**BILLING CODE 8010–01–M**

[4] The 12 p.m. deadline is one hour after which time the broker should have received all of the requisite substitution information under The Bond Market Association guidelines. In the future, GSCC may change these deadlines depending on market practice. Prior to making any such change, GSCC will make an appropriate filing under Section 19 of the Act and Rule 19(b)(4) thereunder and notify its members in advance.

[5] A GSCC member may continue to use a reversal code under circumstances where it wishes to indicate to GSCC (where GSCC is the initiating party of a securities delivery to the member) that it ''does not know'' (''DK'') the transaction. For example, if GSCC sends a securities delivery to a member in error, it is appropriate for the member to DK such delivery.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44910; File No. SR–NASD–2001–67]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Nasdaq National Market Execution System Fees and the Introduction of a Liquidity Provider Rebate for NASD Members

October 5, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 4, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon filing with the Commission.[1] 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

This is a rule change, on a pilot basis, to: (1) Increase the per share charge for use of the Nasdaq National Market Execution System (''NNMS'' or ''SuperSOES''); and (2) introduce a liquidity provider rebate. Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization, and therefore the proposed rule change is effective upon filing as applied to NASD members. The rule change will become operative on a pilot basis, commencing on November 1, 2001 and ending on October 31, 2002.[2] During the pilot

[1] The NASD filed an amendment to the filing on October 5, 2001. The substance of the amendment has been incorporated into this notice. *See* letter to Katherine A. England, Assistant Director, Commission, from John M. Yetter, Assistant General Counsel, Nasdaq. (October 4, 2001).

[2] Nasdaq also filed a companion rule filing (SR–NASD–2001–68) to apply the per share charge

Continued

period, Nasdaq will assess the effect of the rule change on market participants and Nasdaq and may file additional changes to the level or structure of its fees. The text of the proposed rule change is set forth below. Proposed new language is italicized; proposed deletions are in brackets.

* * *

**7010. System Services**

(a)–(h) No change.

**(i) Transaction Execution Services**

(1) No change.

(2) Nasdaq National Market Execution System (SuperSOES)

The following charges shall apply to the use of the Nasdaq National Market Execution System:

| | |
|---|---|
| Order Entry Charge. | $0.10 per order entry (entering party only). |
| Per Share Charge. | $0.001 per share executed for all fully or partially executed orders (entering party only). |
| Cancellation Fee | $0.25 per order cancelled (canceling party only). |

*For a pilot period commencing on November 1, 2001 and lasting until October 31, 2002, the per share charge will be $0.002 per share executed for all fully or partially executed orders (entering party only).*

(3) No change.

*(4) Liquidity provider rebate*

*For a pilot period commencing on November 1, 2001 and lasting until October 31, 2002:*

*(A) NASD members that do not charge an access fee to market participants accessing their quotations through the Nasdaq National Market Execution System will receive a rebate of $0.001 per share when their quotation is executed against by a Nasdaq National Market Execution System order.*

*(B) NASD members will receive a rebate of $0.001 per share when they send a Nasdaq National Market Execution System order that executes against the quotation of a market participant that charges an access fee to market participants accessing its quotations through the Nasdaq National Market Execution System.*

(j)–(q) No change.

portion of the rule change to national securities exchanges trading Nasdaq-listed securities pursuant to grants of unlisted trading privileges (''UTP Exchanges''), which are not NASD members, and has requested that the Commission grant accelerated approval to the filing. SR–NASD–2001–68 will become effective immediately upon approval by the Commission and will be implemented on the first day of the month immediately following Commission approval.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth below in Sections (A), (B), and (C), 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*

On January 14, 2000, the Commission issued an order approving a rule change that: (1) Established the NNMS, a new platform for the trading of Nasdaq National Market (''NNM'') securities; (2) modified the rules governing the use of SelectNet for trading NNM issues; and (3) left unchanged trading of Nasdaq SmallCap securities through the Small Order Execution System (''SOES'') and SelectNet.[3] Nasdaq began implementing these system changes on July 9, 2001 and completed implementation on July 30, 2001. Through these changes, the NNMS has become the primary trading platform for NNM securities, and SelectNet is intended to be used primarily for the transmittal and execution of ''non-liability'' orders for market makers in NNM securities, as well as the transmittal and execution of ''liability'' orders to market participants that do not participate in the automatic execution functionality of the NNMS. On September 28, 2001, Nasdaq filed modifications to the pricing structure for SelectNet and the NNMS.[4] These changes were designed as an interim modification to begin the process of aligning the charges to market participants for using the NNMS and SelectNet more closely with the costs of providing these services and the benefits that they provide to market participants.

In this filing, Nasdaq is increasing the per share charge for use of the NNMS and introducing a liquidity provider rebate. The per share charge for orders entered and executed in the NNMS will increase from $0.001 per share to $0.002 per share, in keeping with Nasdaq's ongoing efforts to align charges with costs and benefits. This increase, however, will be accompanied by the institution of a liquidity provider rebate. The rebate is designed to enhance market efficiency and fairness by offering incentives to market participants that provide liquidity through the NNMS. Nasdaq believes that the rebate will increase the extent to which orders are exposed to the entire market. The rebate is also structured to address competitive disparities between electronic communications networks, which may charge non-subscribers fees for accessing their quotes, and market makers, which generally are prohibited by the Commission from charging access fees. Members that do not charge an access fee will receive a rebate of $0.001 per share when their quotation is executed against by an order sent via the NNMS; in addition, a rebate of $0.001 per share will be paid to members when they send an NNMS order that executes against the quotation of a market participant that charges in access fee. The rebate will be applied to reduce any charges payable by the recipient of the rebate to Nasdaq. Any remaining balance may be paid directly to the member. The rebate will be calculated on a monthly basis.

Nasdaq believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act, which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls, and Section 15A(b)(6) of the Act, which requires rules that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that the level of fees charged to market participants under the proposal is reasonable. Nasdaq anticipates that overall fees for the NNMS, SelectNet, and SOES, net of the liquidity provider rebate, will be comparable to overall fees for the NNMS, SelectNet, and SOES under the pricing changes contained in SR–NASD–2001–63 and SR–NASD–2001–64. Such fees are, in turn, estimated to be slightly lower than overall fees for SelectNet and SOES prior to the introduction of the NNMS. Moreover, Nasdaq believes that the structure of the

[3] Securities Exchange Act Release No. 42344 (Jan. 14, 2000), 65 FR 16 (Jan. 25, 2000) (SR–NASD–99–11).

[4] *See* Securities Exchange Act Release No. 44899 (October 2, 2001) (File No. SR–NASD–2001–63) and Securities Exchange Act Release No. 44898 (October 2, 2001) (File No. SR–NASD–2001–64). SR–NASD–2001–63 applied the new fees to NASD members, effective upon filing, and was implemented on October 1, 2001. SR–NASD–2001–64 will apply the new fees to UTP Exchanges, and will be implemented on the first day of the month immediately following Commission approval.

liquidity provider rebate is equitable, because it will help to address competitive disparities between electronic communications networks and market makers stemming from access fees.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (f) of Rule 19b–4, thereunder because it establishes or changes a due, fee or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**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 the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2001–67 and should be submitted by November 2, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–25699 Filed 10–11–01; 8:45 am]

BILLING CODE 8010–01–M

## SOCIAL SECURITY ADMINISTRATION

### The Ticket To Work and Work Incentives Advisory Panel Meeting

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of meeting.

**DATES:**
November 14, 2001, 9:30 a.m.–4 p.m.
November 15, 2001, 9:00 a.m.–5 p.m.
November 16, 2001, 9:00 a.m.–4 p.m.

**ADDRESSES:** Madison Hotel, 15th and M Street, NW., Washington, DC 20005, Phone: 202–862–1600, Fax: 202–785–1255.

**SUPPLEMENTARY INFORMATION:** Type of meeting: This is a quarterly meeting and experts roundtable on of the Ticket to Work and Work Incentives Improvement Act demonstration projects, open to the public. The public is invited to participate by coming to the address listed above. Public comment will be taken during the quarterly meeting. The public is also invited to submit comments in writing on the implementation of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 at any time.

*Purpose:* In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Pub. L. 106–170 establishes the Panel to advise the Commissioner of SSA, the President, and the Congress on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive briefings, hear presentations, conduct full Panel deliberations on the implementation of TWWIIA, receive public testimony, and conduct an experts roundtable and other business.

The Panel will meet in person commencing on Wednesday, November 14, 2001 from 9:30 a.m. to 4 p.m.; Thursday, November 15, 2001 from 9 a.m. to 5 p.m.; and Friday, November 16, 2001 from 9 a.m. to 4 p.m.

*Agenda:* The Panel will hold a quarterly meeting and host an experts roundtable on the Ticket to Work and Work Incentives Improvement Act demonstration projects. Briefings, presentations, full Panel deliberations and other Panel business will be held Wednesday and Thursday, November 14 and 15, 2001. Public testimony will be heard in person Thursday, November 15, 2001 from 3:30 p.m. to 4:30 p.m. Members of the public must schedule a timeslot in order to comment. In the event that the public comments do not take up the scheduled time period for public comment, the Panel will use that time to deliberate and conduct other Panel business. The experts roundtable will be held Friday, November 16, 2001.

Individuals interested in providing testimony in person should contact the Panel staff as outlined below to schedule time slots. Each presenter will be called on by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute verbal presentation. Full written testimony on TWWIIA Implementation, no longer than 5 pages, may be submitted in person or by mail, fax or email on an on-going basis to the Panel for consideration.

Since seating may be limited, persons interested in providing testimony at the meeting should contact the Panel staff by e-mailing Kristen M. Breland, at *kristen.m.breland@ssa.gov* or calling (202) 358–6423.

The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel/* two weeks before the meeting or can be received in advance electronically or by fax upon request.

Contact Information: Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024.

[5] 17 CFR 200.30–3(a)(12).

• Telephone contact with Kristen Breland at (202) 358–6423.
• Fax at (202) 358–6440.
• E-mail to *TWWIIAPanel@ssa.gov.*

Dated: October 5, 2001.

**Deborah M. Morrison,**

*Designated Federal Officer.*

[FR Doc. 01–25606 Filed 10–11–01; 8:45 am]

**BILLING CODE 4191–01–P**

## DEPARTMENT OF STATE

**[Public Notice 3812]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Luca Giordano, 1634–1705''

**DEPARTMENT:** United States Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Luca Giordano, 1634–1705,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Los Angeles County Museum of Art, Los Angeles, CA from on or about November 4, 2001 to on or about January 20, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: October 4, 2001.

**Patricia S. Harrison,**

*Assistant Secretary for Educational and Cultural Affairs, United States Department of State.*

[FR Doc. 01–25697 Filed 10–11–01; 8:45 am]

**BILLING CODE 4710–08–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed During Week Ending September 28, 2001

The following Agreements were filed with the Department of Transportation under provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the applications.

*Docket Number:* OST–2001–10688.
*Date Filed:* September 24, 2001.
*Parties:* Members of the International Air Transport Association.
*Subject:* PTC123 0158 dated 25 September 2001, Mail Vote 146— Resolution 010n, TC123 South Atlantic Special Passenger Amending Resolution from Brazil, Intended effective date: 1 October, 2001.

**Andrea M. Jenkins,**

*Federal Register Liaison.*

[FR Doc. 01–25656 Filed 10–11–01; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under subpart B (formerly subpart Q) during the week ending September 28, 2001. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period, DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST–1996–1592.
*Date Filed:* September 28, 2001.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* October 19, 2001.
*Description:* Contingent Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Section 411102 and 41108 and subpart B, for renewal of its certificate of public convenience and necessity for Route 732, to engage in foreign air transportation of persons, property and mail between a point or points in the United States, the intermediate point, Vienna, Austria, and, the terminal point Warsaw, Poland.

**Andrea M. Jenkins,**

*Federal Register Liaison.*

[FR Doc. 01–25655 Filed 10–11–01; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA–2001–9854]**

### Notice of Alternative Policy Options for Managing Capacity at LaGuardia Airport and Proposed Extension of the Lottery Allocation; Suspension of the Closing Date of the Comment Period

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice to suspend until further notice the closing date of the comment period on alternative policy options for managing capacity and mitigating congestion and delay at LaGuardia Airport (LGA).

**SUMMARY:** In a notice published on June 12, 2001, the FAA requested comments on the feasibility and effectiveness of five different demand management options that could be used to replace the current temporary administrative limits on the number of aircraft operations at LGA. The comment period is scheduled to close on October 12, 2001. This notice suspends the closing date of the comment period until further notice.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Wharff, Senior Economist, Office of Aviation Policy and Plans, 800 Independence Avenue, SW., Washington, DC 20591; telephone number 202–267–7035.

**SUPPLEMENTARY INFORMATION:**

#### Background

On June 12, 2001, the FAA issued a ''Notice of Alternative Policy Options for Managing Capacity at LaGuardia Airport and Proposed Extension of the Lottery Allocation'' (65 FR 31731, June 12, 2001). In that notice, commenters were asked to submit detailed analyses of two different market-based approaches and three types of administrative options to allocate capacity at LGA. Commenters were also encouraged to submit comments on alternative approaches to allocate capacity at LGA.

**Suspension of the Closing Date of the Comment Period**

The terrorist attacks of September 11, 2001 on the World Trade Center and the Pentagon caused the FAA to temporarily cease all non-military flights in the United States and required airports and airlines to adopt certain security measures prior to the resumption of commercial service. In response to the new security requirements and lowered passenger demand, several, airlines have reduced the number of aircraft operations below previously planned levels throughout the national airport system, including LGA. These factors, at least in the short-run, have contributed to a significant decrease in airport congestion at LGA. In addition, the FAA has received a joint request (dated September 28, 2001) by the Air Transport Association, Regional Airline Association, National Air Carrier Association, American Association of Airport Executives, and the Cargo Airline Association for the FAA to suspend indefinitely its consideration of alternative demand management policy options or at a minimum extend the comment period by 180 days. In a letter dated October 8, 2001, the Air Carrier Association of America disagrees that all issues addressed in the June 12, 2001, **Federal Register** notice be delayed for any time period.

In these circumstances, the FAA has determined that it would be reasonable and in the public interest to suspend until further notice the closing date of the comment period for the notice 65 FR 31731, June 12, 2001. At the appropriate time, FAA will publish an advance notice giving the new closing date and an indication whether the scope or nature of the demand management options under consideration have changed.

Issued on October 9, 2001 in Washington, DC.

**John M. Rodgers,**

*Director of the Office of Aviation Policy and Plans.*

[FR Doc. 01–25725 Filed 10–9–01; 4:16 pm]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Record of Decision

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Record of decision: Programmatic Environmental Impact Statement for Licensing Launches.

**SUMMARY:** The FAA prepared a Final Programmatic Environmental Impact Statement for Licensing Launches (PEIS), to evaluate the potential environmental consequences of licensing launches. After reviewing and analyzing currently available data and information on existing conditions, potential environmental impacts, and alternative measures to mitigate those impacts, the FAA Associate Administrator for Commercial Space Transportation (AST) finds that the proposed action of licensing launches, as described in the PEIS, is not a major Federal action that would significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969. The information in this PEIS is not intended to address all site-specific launch issues including localized effects. This PEIS is intended to serve as a tiering document to assist commercial launch operators in preparing site-specific documentation. Any additionally required site-specific environmental documentation will be developed as needed prior to FAA approval of proposed licensing activities. Localized effects and any cumulative impacts at individual launch sites are appropriately analyzed in the environmental review of a launch site operator.

This PEIS assesses the potential environmental effects of licensing launches from ignition, liftoff, and ascent through the atmosphere to orbit, the disposition of launch vehicle (LV) components down range, and controlled reentry of reusable launch vehicles. Additional launch activities (including vehicle assembly, payload preparation prior to liftoff, payload functioning during useful life, and payload reentry whether controlled or uncontrolled) were determined to be outside the scope of the PEIS.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michon Washington, Office of the Associate Administrator for Commercial Space Transportation, Space System Development Division, Suite 331/AST–100, 800 Independence Ave., SW., Washington, DC 20591; phone (202) 267–9305, or refer to the following Internet address: *http://ast.faa.gov*

**Introduction**

This Record of Decision (ROD) provides final FAA approval for a program to issue launch licenses to United States (U.S.) citizens or for licensed launches within the United States. The FAA has concluded that there are no significant short-term or long-term effects to the human environment resulting from this licensing program. The proposed Federal action is consistent with the purpose of national environmental policies and objectives as set forth in NEPA and will not significantly affect the quality of the human environment.

**Background**

The Commercial Space Launch Act of 1984 (the Act) (49 U.S.C. 70101–70121), authorizes the Department of Transportation, and through delegations, the FAA, to oversee, license, and regulate launch and reentry activities and the operation of launch and reentry sites as carried out by U.S. citizens or within the United States. 49 U.S.C. 70104, 70105. The Act directs the FAA to exercise the responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. 49 U.S.C. 70105. The FAA is also responsible for encouraging, facilitating, and promoting launches by the private sector. 49 U.S.C. 70103. The FAA first licensed a launch in 1989.

In the past three decades, space has become increasingly important in a broad range of areas including scientific research, communications, and navigation. Human advancements in technologies such as telecommunications and microgravity crystal growth are leading to increased demand for access to space because of its unique environment and are being developed for direct commercial application. These new technologies and industry's desire to market them, have created the need for increased access to space. Based on the FAA's proprietary model used to project launch manifests, the demand for access to space cannot be met by the current or foreseeable U.S. government procured launch vehicles (LVs) (*see* Section 2.1 of the PEIS). Therefore, the commercial launch program is critical to ensure that the U.S. remains in the forefront of commercial space development. Current U.S. space policy requires that the U.S. government encourage private sector and state and local government investment and participation in the development and improvement of U.S. launch systems and infrastructure.

Along with the technological advancements which increase the demand for space access, the private sector has expressed heightened interest in conducting launches. These types of launches have previously been conducted only by the Federal government. However, now the commercial launch industry is attempting to promote convenient, affordable access to space, while

satisfying the payload lift requirements of the space industry, and promoting the commercial development of space.

Under the authority of 49 U.S.C. Subtitle IX, ch. 701, the FAA determines whether to issue a launch license. Issuing a launch license is considered a major federal action and is therefore subject to NEPA review. In order to meet the need for commercial access to space and comply with the requirements of 49 U.S.C. Subtitle IX, ch. 701, the FAA regulation 14 CFR 415.101, Environmental Review, and NEPA, the FAA prepared a PEIS for Licensing Launches. This type of document is permitted by the Council on Environmental Quality (CEQ) in the Implementation of Procedural Provisions of NEPA (Preamble to Final Regulations) 43 FR 55978 (November 29, 1978.) (*See also* CEQ regulations at 40 CFR 1500.4, 1502.4, 1502.20, and 1508.28 and FAA Order 1050.1D, paragraph 88.) ''Material common to many actions may be covered in a broad EIS, and then through tiering may be summarized and incorporated in each subsequent EIS.''

In February 1986, the FAA published a Programmatic Environmental Assessment for Commercial Expendable Launch Vehicle Programs. The document provided information on the impacts of expendable launch vehicles based on the known effects in existing documentation for U.S. government expendable launch vehicle programs. This document did not address site-specific aspects of launches.

The PEIS will update and replace the 1986 programmatic environmental assessment. A Notice of Intent was published in the **Federal Register** on November 27, 1995 announcing the preparation of a PEIS addressing the potential effects of licensing expendable launches. The notice stated that FAA would conduct a public scoping meeting if sufficient interest was expressed. Although no one expressed an interest in FAA conducting public scoping meetings, written comments were received. These comments have been summarized in the PEIS. In addition to the announcement of the written comment period on the Draft EIS, the FAA requested comments directly from Federal agencies, industry, and individuals who expressed an interest in being included on the distribution list. The second volume of the Final PEIS summarizes the comments received and set forth the FAA's responses.

The Final PEIS considers, at the programmatic level, the environmental impacts of licensing launches. The Final PEIS also analyzes in detail the potential environmental impacts of the estimated 261 U.S. licensed launches that will result from the proposed licensing program between 2000 and 2010. Included in the analysis are potential environmental impacts resulting from ignition and lift-off to payload separation, the deposition of LV components downrange and controlled reentry of reusable launch vehicles. Site-specific, localized environmental effects will be subject to project specific environmental reviews as part of the licensing process.

**Proposed Agency Action**

The preferred alternative for the PEIS is the Launch Licensing Alternative. The PEIS analyzes impacts by examining the following characteristics of LVs and LV launch profiles:

- Payload capacity (the mass an LV can lift into a particular orbit),
- Types of propulsion systems (the mechanisms that change the mass and velocity of the vehicle), and
- Launch platforms—ground, air, or sea-based.

**Environmental Impacts of the Proposed Action and Alternatives**

Launch licenses are needed to provide a mechanism for ensuring protection of public health and safety. U.S. laws and policy and international treaties recognize the technological and economic importance of developing space transportation. The FAA's launch review and licensing procedures are necessary to ensure that launch applicants meet conditions designed to protect the public health and safety, safety of property, and national security and foreign policy interests. These conditions include:

- Adhering to launch safety regulations and procedures,
- Complying with requirements concerning pre-launch record keeping and notifications, including those pertaining to federal airspace restrictions and military tracking operations,
- Complying with federal inspection, verification, and enforcement requirements, and
- Securing the minimum amount of third-party liability insurance specified by the DOT.

Five alternatives were considered in the PEIS in addition to the preferred alternative. Three of these alternatives were considered but not retained for detailed study in the PEIS because they were determined not to be feasible. These alternatives include the Non-Solid Propellant Alternative, More Environmentally-Friendly Vehicles Alternative, and Composite Vehicle Construction Alternative. The Non-Solid Propellant Alternative would require the FAA to preferentially license only those vehicles that use liquid or hybrid fuels. Implementing this alternative would eliminate the majority of licensed launches by existing launch service providers. The More Environmentally-Friendly Vehicles Alternative would require the FAA to stop licensing launches until such time that a new launch vehicle is designed that causes no adverse impacts to the environment. At this time, the development of such technology is not reasonably foreseeable or sufficiently practicable. Also, this alternative would put additional pressure on foreign markets to keep up with the increased demand while prohibiting the FAA from fulfilling its mandated responsibility for encouraging, facilitating, and promoting launches by the private sector. Finally, the Composite Vehicle Construction Alternative would require the FAA to preferentially license those launches using vehicles that are constructed entirely of composite materials which would make the vehicle lighter and therefore, not require as much fuel to reach orbit. However, again these vehicles do not currently exist and there are no realistic plans to develop them.

Based on a systematic evaluation of the full range of potential alternatives, three alternatives were carried forward for detailed assessment of environmental impacts. They include, the Preferred Alternative, the More Environmentally-Friendly Propellant Combinations Alternative, and the No Action Alternative.

*Preferred Alternative;* Under this alternative, the FAA would license launches. The licensing process would follow specifications as set forth in the Act and its implementing regulations. This alternative would allow U.S. licensed launch providers to meet the needs of U.S. companies that want to launch satellites; thus, decreasing the need for U.S. companies to look to foreign launch providers to launch U.S. satellites.

*More Environmentally-Friendly Propellant Combination Alternative;* Under this alternative, the FAA would preferentially license those launches that produce less harmful tropospheric and stratospheric air emissions of hydrogen chloride (HCl) and aluminum oxide ($Al_2O_3$) which are associated with solid rocket motor (SRM) propellants. Therefore, the FAA would preferentially license launches of LVs with no SRMs or with combinations of SRMs and liquids. Preferentially licensing those launches with LVs that are not solely propelled by SRMs would reduce the

total number of licensed launches projected through 2010. The number of launches using liquid, liquid/solid, or hybrid propellant systems was assumed to remain unchanged under this alternative. Thus, the total number of FAA-licensed launches in the U.S. or by U.S. citizens (i.e., programmatic launches) would decrease substantially under this alternative. It is assumed that the decrease in U.S. licensed launches using only solid propellants would be compensated for by the increase in these launches elsewhere in the world, because the same number of payloads would still be produced and need to be launched (see Section 2.4.1 of the PEIS) and it is likely that a similar size and type of launch vehicle would be employed.

*No Action Alternative;* Under this alternative, the FAA would not issue licenses for launches. Because 49 U.S.C. Subtitle IX, ch. 701 requires launches within the United States or conducted by U.S. citizens to be licensed, the U.S. launch industry would be unable to provide licensed launches, regardless of launch location. In addition, it is possible that worldwide demand for licensed launches would decline if the U.S. were no longer in the commercial space launch market. However, it is more likely that companies in need of launch services would procure these services from another country. This alternative would prohibit the FAA from overseeing, licensing, and regulating launch and reentry sites as carried out by U.S. citizens or within the United States. In addition, the FAA could not fulfill its mandated responsibility for encouraging facilitating and promoting launches by the private sector.

There are three major categories of environmental impacts examined for the preferred alternative, more environmentally-friendly propellants alternative, and no action alternative; they include: Atmospheric, noise, and other environmental impacts. The atmospheric category analyzes impacts to air quality, and includes an analysis of acid rain, ozone depletion, and global warming. The noise category includes an analysis of launch, in-flight, and reentry noise on various human and animal receptors. The final category, other environmental effects includes analyses of impacts to water, land, and biota, as well as analyses of socioeconomic, historical, cultural and archaeological impacts. Cumulative impacts are discussed in a separate section of this document. The environmental impacts of each alternative are summarized in detail below.

**Preferred Alternative**

The launch licensing alternative is the preferred alternative under which the FAA would license launches. Licenses would be issued in accordance with the specifications set out in 49 U.S.C. Subtitle IX, ch. 701 and supporting regulations. Under this alternative, some site-specific NEPA and other environmental review would still be required, prior to issuing launch licenses.

*Atmospheric Impacts*

The atmospheric impacts of the preferred alternative are addressed for all levels of the atmosphere. The primary impacts to the troposphere may result from the ground cloud, the cluster of emissions formed from the ignition of rocket motors and the resulting launch of the LV. Other potential impacts to the troposphere could result from accidents on the launch pad or during initial LV flight. In the stratosphere, LV emissions could potentially affect global warming (the greenhouse gas effect) and the depletion of the stratospheric ozone layer. The potential LV emissions that may affect global warming include water vapor and $CO_2$. The estimated water vapor and $CO_2$ emissions from LVs constitute a very small fraction of emissions of these substances from other sources. Consequently, as discussed in Section 5.1.2 of the PEIS, the impacts of LV emissions on global warming are expected to be insignificant. In this analysis, no impacts are predicted to the mesosphere during normal launches because air emissions are not an issue in this region of the atmosphere. Some exhaust products from LVs generated during launch and vehicle flight have been found to have a temporary effect on electron concentrations in the F layer of the ionosphere. However, as discussed in Section 5.1.5, these effects have been found to dissipate quickly (within minutes) and are therefore found to be insignificant.

*Noise Impacts*

The noise impacts of the preferred alternative were also considered, particularly the impact of sonic booms. A sonic boom is the noise created by a shock wave when an aircraft or LV is traveling overhead faster than the speed of sound. As discussed in Section 5.2.1 of the PEIS, there was no indication of possible health impacts from the preferred alternative. While annoyance data have not been validated, people may be more sensitive to sonic booms than previously thought. The type of interference and the activities that people were engaged in prior to the interference affect annoyance levels, and a wide range exists in estimating the percent of people annoyed. However, preliminary data indicate that people perceive sonic booms as more intrusive than aircraft noise at comparable levels. Structural damage to facilities may occur as a result of overpressure. Overpressure is a transient pressure, that occurs as a result of an explosion, that exerts a force that exceeds the standard atmospheric pressure. Approximately one in 10,000 panes of glass may be broken at an overpressure of four pounds per square foot. LVs can possibly produce an overpressure in the two to three pounds per square foot range and would only affect structures under the flight path. Flight paths could be altered to avoid overflight of sensitive structures and therefore launches of LVs would have insignificant impacts from noise.

*Land and Water*

Impacts to soil may include temporary increases in available metals and temporary decreases in pH. Impacts to surface water may include temporary increases in available metals and temporary decreases in pH. For each of the six environment types evaluated in the PEIS, the buffering capacity of the soil and water were found to be sufficient to prevent significant impacts from launches (see Sections 5.3.2 and 5.3.3 of the PEIS).

*Biological Resources*

Chronic impacts could result from subtle changes in habitat and the potential for bioaccumulation (a progressive increase of the bodily content of a toxic compound) of pollutants that may be released into the environment from launch-related activities. Impacts to biological resources from repeated LV emissions close to the source can include fish kills and/or mortality of terrestrial fauna. Flora in the vicinity of the launch site may be affected by the launch exhaust products or from combustion products associated with catastrophic events. However, a study of the impact of ten years of Space Shuttle launches on the local biota, soil, and water has not found significant impacts on these resources.

Launches also present a potential for acute impacts to fish and wildlife in the vicinity of the launch pad resulting from noise, blast debris, heat, and toxic chemicals. The possibility of acute noise impacts depends on the size and type of LVs being launched or reentering. In general, the potential for impacts to biological resources from LV heat

exhaust is mitigated by the use of berms or shields. In addition, environmental monitoring following launch failures has not indicated discernable impacts on sensitive receptors.

There is a remote possibility that jettisoned motors, stages, or fairings from an expendable launch vehicle could strike a marine animal when impacting the ocean during normal flight operations. According to the marine animal strike probability analysis conducted for the PEIS, fewer than 0.5 animal strikes are expected annually, even when all launch activity is summed and a summation is done across all species over both the Atlantic and Pacific Oceans (see Appendix B of the PEIS). For the purpose of this PEIS, a ''strike'' refers to harassment, injury, or death of a marine animal. The strike probability estimate does not indicate potential for a significant impact from launches.

*Socioeconomic Impacts*

Development and growth of a commercial launch industry would have a beneficial economic impact. Jobs associated with the commercial launch industry tend to be technology-based and require highly skilled workers with specialized training and education.

*Environmental Justice Impacts*

The PEIS considered environmental justice impacts in a general, non-site specific manner. Thus, environmental justice effects within the scope of this analysis are related to socioeconomic effects. The PEIS did not identify any significant environmental impacts from the preferred alternative. Therefore, no disproportionately high and adverse environmental impacts on any low-income or minority populations are expected as a result of the preferred alternative. Impacts to individuals and communities would be considered in site-specific environmental documentation. This analysis assumes that the preferred alternative would result in positive socioeconomic effects, including maintaining or increasing current employment levels in the U.S. launch industry, it is assumed that these positive effects would at a minimum not produce disproportionate negative impacts on minority or low-income populations (see Section 5.5 of the PEIS).

**More Environmentally-Friendly Propellant Combination Alternative**

*Atmospheric Impacts*

Potential impacts to the atmosphere from the more environmentally-friendly propellant combination alternative were examined for each atmospheric layer. The impacts from this alternative to the mesosphere and ionosphere are expected to be the same as the impacts from the preferred alternative, because this alternative does not affect emissions in those regions of the atmosphere. Potential impacts to the troposphere and stratosphere from this alternative are discussed below. It is important to note that conclusive data and analyses regarding the specific impacts of emissions from multiple combination propellant propulsion systems (e.g., liquid and solid combinations) currently do not exist. Because the environmental impacts from multi-propellant or hybrid propulsion systems have not been adequately characterized at this time, this analysis relies on existing, available data on emissions from conventional propellant systems. Ongoing U.S. Air Force and industry research in this area may alter the future understanding of the cumulative atmospheric impacts of multi-propellant propulsion systems and the relative atmospheric impacts of these different systems.

The expected emission load of HCl in the stratosphere for all projected U.S. licensed launches from 2000 through 2010 (a period of 11 years) is approximately 1,787 tons, and additional free Chlorine (Cl) load is 24 tons. This averages to approximately 165 tons of HCl and Cl load to the stratosphere from U.S. licensed launches per year. In comparison, under the preferred alternative, the emission load of HCl in the stratosphere for all projected U.S. licensed launches from 2000 through 2010 is approximately 2,292 tons, and additional free Cl load is 31 tons. This averages to approximately 211 tons of HCl and Cl load to the stratosphere from U.S. licensed launches per year. In general, emissions of concern resulting from potential accidents on the launch pad and from activation of flight termination systems would also be reduced under this more environmentally-friendly propellant combinations alternative, because LVs using only solid propellant systems would no longer be licensed by the FAA (*see* Section 6.1 of the PEIS).

*Noise Impacts*

As discussed in Section 6.2 of the PEIS, due to the expected decrease in the number of U.S. licensed launches, this alternative is anticipated to have fewer noise impacts than those associated with the preferred alternative.

*Land and Water*

The more environmentally-friendly propellant combinations alternative would reduce the impacts of licensed launches on soils in the vicinity of launch pads (*see* Section 6.3 of the PEIS). Space Shuttle and other government launches using solids would still have an impact on soil pH, but the cumulative effects from these launches, as a result of fewer licensed launches involving only solid propellants, would not be as great. The additional impact to local water resources near a launch site from FAA licensed launches would also be reduced (see Section 6.4 of the PEIS). Additionally, coastal waters that could be affected in the event of an accident would experience reduced impacts due to the lack of use of solely SRM propelled vehicles.

*Biological Resources*

Vegetation changes due to acid deposition from the ground cloud at launch, as well as wildlife impacts from launch activities, would be reduced. However, the demand for launches could lead to construction of launch sites outside the U.S. As discussed in Section 6.5 of the PEIS, these launch sites could potentially have a significant impact on biodiversity if they are sited on or near endangered or biologically fragile ecosystems (*i.e.,* rain forests or habitats of endangered species). The probability of jettisoned expendable LV sections (e.g., payload fairings or stages) striking a marine animal would remain remote under this alternative.

*Socioeconomic Impacts*

Development and growth of the commercial launch industry would have a beneficial economic impact; limiting this development and growth by preferentially licensing a subset of launches of LVs would reduce the magnitude of this beneficial impact relative to the preferred alternative (*see* Section 6.6 of the PEIS).

*Environmental Justice Impacts*

This PEIS considered environmental justice impacts in a general non site-specific manner. Thus, environmental justice effects within the scope of this analysis are related to the socioeconomic effects. Because this analysis has shown no significant environmental effects from this alternative and further assumes that this alternative would result in positive socioeconomic effects (although less positive relative to the preferred alternative), including maintaining or increasing current employment levels in the U.S. launch industry, it is assumed that these positive effects would, at a minimum, not produce disproportionate negative impacts on minority racial,

ethnic, or economically-disadvantaged populations (*see* Section 6.7 of the PEIS).

**No Action Alternative**

Because 49 U.S.C. Subtitle IX, ch. 701—Commercial Space Launch Activities, formerly the Commercial Space Launch Act (CSLA) requires launches by U.S. entities to be licensed, the U.S. launch industry would be unable to continue LV launch operations regardless of their location, under the no action alternative. Chapter 701 requires FAA to license a launch if the applicant complies and will continue to comply with chapter 701 and implementing regulations. 49 U.S.C. 70105. One of the purposes of chapter 701 is to provide that the Secretary of Transportation, and therefore the FAA, pursuant to delegations, oversees and coordinates the conduct of launch and reentry, and issues and transfers licenses authorizing those activities. 49 U.S.C. 70104 (b)(3). The agency has the authority to prevent a launch if it decides that the launch would jeopardize public health and safety, safety of property, or national security or a foreign policy interest of the United States. 49 U.S.C. 70104 (c). Not licensing any U.S. launches would not be consistent with chapter 701 in this context. Additionally, the no action alternative could negatively impact the national security and foreign policy interests of the United States. Some U.S. government payloads have been launched by the U.S. commercial launch industry. Therefore, if launches were not licensed, the overall reduction in available payload capacity could, in a worst case scenario, impact the U.S. government's ability to launch needed payloads and negatively affect programs that rely on access to space. Additionally, parties that had planned to launch from U.S. launch sites would be forced to find alternatives potentially exposing sensitive technologies to countries with competing economic and security interests.

Under the no action alternative it was assumed that the same number of worldwide commercial launches would take place. However, because the FAA would cease issuing licenses for launches by U.S. companies, the launches would take place using foreign launch providers and locations. In the absence of access to licensed launches in the United States, it is likely that other countries with existing launch programs (*e.g.*, France, Russia, China, and Canada) would significantly expand their programs to accommodate the demand. In addition, it is possible that countries without existing launch programs would initiate commercial launches to meet this worldwide demand.

*Atmospheric Impacts*

It is possible that if no licensed launches could take place from the U.S., then fewer LVs would be launched overall worldwide unless existing foreign launch programs could expand rapidly to accommodate increased launch requirements. As discussed in Section 7.1 of the PEIS, this would result in an overall decrease globally in launch emissions that potentially affect the atmosphere. However, based on the comparison of capacity and propulsion systems, the transfer of launches from U.S. LVs to foreign LVs (*e.g.*, Zenit (Russia), Proton (Russia), Ariane IV and V (France), Long March (China), H2 (Japan), GSLV (India), PSLV (India), and M–V (Japan)) could cause an increase in atmospheric emissions overall. Any specific effects that might be associated with launches such as the potential for acid rain, and highly transient and localized stratospheric ozone depletion, would occur outside the U.S. However, the potential for global warming and stratospheric ozone depletion would remain essentially the same based on the assumption that an equal number of launches would occur in either case.

*Noise Impacts*

The prospect of noise and sonic booms near U.S. launch sites from licensed launches would be eliminated (see Section 7.2 of the PEIS).

*Land and Water*

If no licensed launches occurred, there would be no impact on the soils in the vicinity of launch pads at U.S. launch sites. Space Shuttle and other government launches would still have an impact on soil pH, but the cumulative effects from these launches, absent licensed launches, would not be as great (see Section 7.3 of the PEIS). Similarly, the prospect of local water impacts near U.S. licensed launch sites would be eliminated, and coastal waters that could be affected in the event of an accident would no longer be impacted (see Section 7.4 of the PEIS).

*Biological Resources*

Vegetation changes from the launch ground cloud would be eliminated, as well as impacts to wildlife from launch activities. However, the increased demand for launches could lead to construction of launch sites outside the U.S. As discussed in Section 7.5 of the PEIS, these launch sites could potentially have a significant impact on worldwide biodiversity if they were sited on or near endangered or biologically fragile ecosystems (i.e., rainforest or habitats of endangered species). The probability of jettisoned expendable launch vehicle sections (*e.g.*, spent SRMs, payload fairings, or stages) striking a marine animal would remain remote.

*Socioeconomic Impacts*

The no action alternative could have negative socioeconomic impacts by forcing all payloads currently planned for licensed launches in the U.S. to use foreign launch vehicles (see Section 7.6 of the PEIS). As a result, U.S. jobs would be lost to foreign entities to support their launch activities and programs. It is also possible that U.S. telecommunication companies and other U.S. space users would be given lower priority for launching satellites, creating a potential for scheduling problems and loss of competitiveness in the global technology market.

*Environmental Justice Impacts*

The no action alternative would create no significant environmental effects and thus would not disproportionately affect minority or disadvantaged populations. However, because the no action alternative would have negative socioeconomic impacts that may result in a loss of U.S. jobs to foreign entities, it is possible that minority or low-income populations could suffer some disproportionate effects of these job losses (see Section 7.7 of the PEIS).

**Potential Cumulative Impacts of Launches**

This section considers the potential cumulative impacts of launch events. Cumulative impacts are defined as impacts to the environment which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions (40 CFR 1508.7). Only the cumulative atmospheric impacts of licensed launches combined with all other launches worldwide were analyzed. Other cumulative impacts, including most cumulative noise and local environmental impacts, would be site-specific and are beyond the scope of this PEIS. Other cumulative impacts would be considered in site-specific documentation.

*Cumulative Atmospheric Impacts*

The cumulative impact of all tropospheric emissions loadings from launches is relatively insignificant

compared with industrial and natural emissions loadings to the troposphere (see Section 8.1.1 of the PEIS).

As discussed in Section 8.1.2 of the PEIS, the cumulative impacts of launches on global warming and depletion of the stratospheric ozone layer are insignificant compared to other global industrial sources. The cumulative impact on stratospheric ozone depletion from launches is far below and indistinguishable from the effects from other natural and man-made sources.

The PEIS does not predict any cumulative impacts to the mesosphere or ionosphere (see Sections 8.1.3 and 8.1.4 of the PEIS). The greater the number of vehicles that are launched, the greater the potential for creating ''holes'' in the ionosphere; however, based on available data indicating that this effect is temporary, the cumulative impacts to the ionosphere are assumed to be extremely small.

When an accident occurs near the launch pad or a launch anomaly forces the use of in-flight termination capabilities (if equipped), there is a cumulative effect on air quality, potential global warming, and stratospheric ozone depletion (see Section 8.1.5 of the PEIS). For accidents that occur in the stratosphere, HCl and nitrogen oxides emissions could potentially contribute to stratospheric ozone depletion, while carbon dioxide emissions could potentially contribute to global warming. Although on a cumulative basis the likelihood of accidents occurring increases as the number of launches increases, accidents involving launch vehicles are relatively uncommon events primarily because launches of these vehicles are infrequent events especially as compared to other traditional modes of transportation.

*Cumulative Noise Impacts*

In general, the potential cumulative impacts of noise from LV launches are expected to be local effects that are expected to impact the area around the launch pad (see Section 8.2 of the PEIS). However, an important possible cumulative noise impact might include changes in the migrating route and habitat selection of certain marine animals exposed to repeated occurrences of sonic booms caused by the flight and reentry of LVs.

**Irreversible and Irretrievable Commitment of Resources**

The launch of LVs requires the commitment of natural resources, including the consumption of mineral resources. No additional cultural resources, whether human or land resources, are expected to be committed to the launching of LVs beyond those that have been or will be addressed in site-specific environmental documentation. Basic commitments of natural and cultural resources for licensed launches are not different from those necessary for many other research and development programs; they are similar to the activities that have been carried out in previous space program activities (see Section 11 of the PEIS).

**Mitigation Measures**

A variety of mitigation measures are presented in the PEIS and selected measures could be implemented for those projects for which site-specific environmental analyses show the potential for significant impacts. The PEIS specifically presented mitigation measures for noise, water quality, air quality, solid and hazardous waste, cultural and historical resources, biological resources, and orbital debris (for detailed discussion see Sections 9.1, 9.2, 9.3, 9.4, 9.5, 9.6, and 9.7, respectively, of the PEIS). Monitoring may be appropriate at individual launch sites, such as water sampling and analyses, archeological surveys of areas with historic artifacts, and biological species surveys by specialists to monitor the health and numbers of biological species of concern.

Examples of mitigation measures are described below.

*Noise.* Research and guidelines regarding noise harassment and injury to threatened or endangered species are evolving. Launch personnel responsible for environmental health and safety should keep abreast of advances in this area, and take active measures to avoid levels established as inducing behavior modification or injury (*e.g.,* certain sea state conditions may be associated with less noise impacts, as well as certain slower speeds). Possible actions to mitigate the effects of noise at launch sites include:

- Orientating the flame bucket away from sensitive receptor areas.
- Using a deflector sheet on the flame bucket.
- Using a deluge system to suppress engine ignition noise.
- Constructing blast fences around the launch site perimeter.
- Restricting launches to optimal seasons (*e.g.*, launching only during non-nesting or non-migratory seasons, depending on the species of concern).
- Restricting launches to optimal times during the day (*e.g.,* preferably mid-day).
- Planting tall and fast-growing trees around the perimeter of the launch site (*e.g.*, poplar trees).
- Constructing berms along roadways.
- Using lower engine power levels at liftoff, as appropriate.
- Coordinating with U.S. Fish and Wildlife and National Marine Fisheries Service (NMFS) personnel regarding appropriate local activities and monitoring of sensitive species.

*Water Quality.* Possible actions to mitigate the effects on water quality at launch sites include:

- If surface or ground water is to be withdrawn for fire protection, personnel deluge purposes, noise mitigation, or for potable water, studies may be undertaken to ensure the reservoir has an adequate capacity.
- Preparing spill contingency plans that are updated as frequently as needed.
- Containment structures can be constructed around storage facilities to prevent a leak from impacting surface or ground water.
- Contoured land or catchment basins can be put in place to collect excess water from flame suppression or noise suppression activities to prevent runoff into bodies of water.
- Recycle or reuse water generated and used on site.
- Marine pollution abatement measures may include: Deployment of booms, use of dispersion chemicals, collection of debris, and implementation of a monitoring program.

*Air Quality.* Possible actions to mitigate the effects on air quality at launch sites include:

- Using environmentally-friendly propellants, as feasible.
- Launching in optimal weather and wind conditions to maximize the rate of dissipation of the ground cloud while minimizing the potential impacts to sensitive receptors.
- Participating in emissions banking/trading programs.

Research is continuing in several areas vital to mitigating the potential air impacts of launches. As additional information becomes available regarding currently unresolved research questions, this information should be used to implement appropriate air quality mitigation measures. Examples of current unresolved research questions include: (1) The influence of local stratospheric meteorology in ozone depletion related to LV emissions; (2) size distributions and relative influence of alumina versus soot emissions; (3) U.S. $LO_x$/kerosene propellant systems ozone loss mechanism; (4) emissions and potential ozone-depleting

differences between U.S. and Russian $LO_x$/kerosene motors; and (5) impacts from emissions from pure (no SRM) $LO_x$/kerosene LV propellant systems.[i]

*Solid and Hazardous Waste.* Possible actions to mitigate the effects of solid and hazardous wastes at launch sites include:

- Taking advantage of all pollution prevention opportunities, and implementing an active pollution prevention plan and reward system.
- Implementing a proactive recycling program for solid and some hazardous wastes to minimize the amounts generated.
- Purchasing environmentally-friendly products whenever possible.
- Maintaining appropriate site-specific clean-up materials in accordance with spill prevention and preparedness procedures (*e.g.*, pH neutralizers).
- Developing a comprehensive Environmental Management System consistent with ISO 14000 guidelines.

*Cultural and Historical Resources.* The most important mitigation action to protect cultural and historical resources is to restrict activities and disturbances at launch sites, as much as is feasible, to limited areas in order to maintain near-natural conditions on as much of the site as possible. In addition, consultation with appropriate state historic preservation offices, tribal historic preservation offices, local communities, and impacted populations should be conducted to identify and further mitigate possible effects on cultural and historical resources. Specific mitigation actions should include the following:

- Whenever possible, avoid launching in culturally or historically sensitive areas.
- Relocate resources, if possible and approved by stakeholders and public authorities.
- Protect resources from launch impacts with blast fences, enclosures, and other physical control measures.
- Coordinate with the state historic preservation office, tribal historic preservation offices, and other local authorities, as appropriate and meet proactively with members of the public.

*Biological Resources.* The most important mitigation action to protect biological resources is to restrict activities and disturbances at launch sites, as much as is feasible, to limited areas in order to maintain near-natural conditions on as much of the site as possible. Generic mitigation measures should also include proper containment of all chemicals and an adequate spill preparedness program, including effective emergency and disaster plans to minimize the effects of accidents. Specific mitigation measures to protect biological resources at launch sites might also include the following:

- Relocating endangered or threatened animals.
- Banking wetlands.
- Using barriers (*e.g.*, fencing) to minimize animal intrusion in the area or to keep species in place and away from the launch location.
- Building new habitat (habitat substitution) or improving existing habitat.
- Implementing an effective lighting policy for management of exterior lights, emphasizing the use of low-pressure sodium lights as opposed to lights that emit ultraviolet, violet-blue, and blue-green wavelengths.
- Active monitoring (and implementing appropriate action plans using the results of monitoring) to offset any unanticipated effects.
- Optimally directing the launch pad flame duct so as to minimize impacts to vegetation from scorching.
- Coordinating early in the proposed project with U.S. Fish and Wildlife, NMFS, and/or state wildlife officials regarding any concerns including: Local activities and monitoring of sensitive species (*e.g.*, conducting operations to avoid sensitive breeding, spawning, or weaning seasons).

*Orbital Debris.* Although orbital debris is in outer space, it is possible that it could reenter Earth's atmosphere. Likely impacts would be insignificant but the FAA does require applicants to demonstrate certain safety measures in order to receive license approval. While these launch plan features are not required for environmental purposes and the orbital debris outside the Earth's atmosphere are not an impact category, the requirements can have a beneficial mitigating effect. The more orbital debris, the greater the likelihood debris could reenter Earth's atmosphere; and therefore efforts to minimize the amount of debris have an added benefit beyond safety as mitigating detrimental impacts. To obtain safety approval, an applicant must demonstrate for any proposed launch that for all launch vehicle stages or components that reach Earth orbit—(a) There will be no unplanned physical contact between the vehicle or its components and the payload after payload separation; (b) Debris generation will not result from the conversion of energy sources into energy that fragments the vehicle or its components. Energy sources include chemical, pressure, and kinetic energy; and (c) Stored energy will be removed by depleting residual fuel and leaving all fuel line valves open, venting any pressurized system, leaving all batteries in a permanent discharge state, and removing any remaining source of stored energy. Other equivalent procedures may be approved in the course of the licensing process. Additional mitigation measures may be employed to shield against debris particles up to 1 cm in diameter. For debris of larger sizes, current shielding concepts may become impractical.[ii] Advanced shielding concepts may make shielding against particles up to 2 cm diameter reasonable, but it is possible that the only useful alternative strategy for large particles will be avoidance, which is feasible for average size spacecraft, but for very large spacecraft collision probabilities are sufficiently high that an alternate means of protection may be required.[iii]

Launch planning may help to protect launch vehicles and payloads from potential damage. Although there are no measures to significantly modify the current debris environment, there are options available to control, limit, or reduce the growth of orbital debris in the future including:

- Obtaining a conjunction on launch assessment from U.S. Space Command (See 14 CFR 417.233).
- Booster and payload design to minimize release of debris.
- Preventing spontaneous explosions of launch vehicle bodies and spacecraft.
- Use of particle-free propellants.
- Disposal or de-orbiting of spent upper stages or spacecraft.
- Careful mission design to actively remove debris.
- Launch vehicles and spacecraft can be designed so that they are litter-free (i.e., they dispose of separations devices, payload shrouds, and other expendable hardware at a low enough altitude and velocity that they do not become orbital).
- Stage-to-stage separation devices and spacecraft protective devices such as lens covers and other potential debris can be kept captive to the stage or spacecraft with lanyards or other provisions to minimize debris.
- When stages and spacecraft do not have the capability to de-orbit, they can be made as inert as feasible by expelling all propellants and pressurants and

[i] Ross, Martin. The Aerospace Corporation. *Rocket Impacts on Stratospheric Ozone: Program Review.* March 25, 1998 Briefing.

[ii] National Science and Technology Council. *Interagency Report on Orbital Debris.* November 1995.

[iii] National Science and Technology Council. *Interagency Report on Orbital Debris.* November 1995.

assuring that batteries are protected from spontaneous explosion.

• No unplanned physical contact between the vehicle or its components and the payload after payload separation.

• When the mission requires delivery of a spacecraft which itself has a maneuver capability, two alternatives are possible.

1. Leave the upper stage attached for delivery of the spacecraft to orbit to maximize its maneuver capability.

2. Separate the spacecraft at suborbital velocity so that the stage decays naturally and the spacecraft uses its onboard propulsion to establish its orbit.

All launch sites would comply with any permit conditions imposed by regulatory authorities.

Prepared by Michon Washington. Dated: October 5, 2001.

Recommended by Herb Bachner. Dated: October 5, 2001.

**Decision and Order**

The more environmentally-friendly propellant combinations alternative is defined as preferentially licensing those vehicles that are not solely propelled by SRMs. The number of launches using liquid, liquid/solid, or hybrid propellant systems was assumed to remain unchanged under this alternative. Thus, the total number of FAA-licensed launches in the U.S. would decrease substantially under this alternative. It was assumed that the decrease in U.S. licensed launches that use only solid propellants would be compensated for by an increase in these types of launches elsewhere in the world.

Because 49 U.S.C. Subtitle IX, ch. 701—Commercial Space Launch Activities, formerly the Commercial Space Launch Act (CSLA) requires launches by U.S. entities to be licensed, the U.S. launch industry would be unable to continue LV launch operations regardless of their location under the no action alternative. Not licensing any U.S. launches would not be consistent with chapter 701 in this context. Under the no action alternative it was assumed that the same number of worldwide commercial launches would take place. However, because the FAA would cease issuing licenses for U.S. launches, the launches would take place using foreign launch providers and locations.

Neither the more environmentally-friendly propellant combinations alternative nor the no action alternative would enable the FAA to fully meet projected demand for increased access to commercial space transportation. The preferred alternative does fulfill the purpose and need for commercial access to space. In addition, although some environmental effects may be greater under the preferred alternative as compared to the no action or more environmentally-friendly propellant combinations alternative, the impacts are still expected to be less than significant. For the reasons summarized earlier in this Record of Decision and supported by detailed discussion in the PEIS, the FAA has selected the preferred alternative.

The information in this PEIS is not intended to address all site-specific launch issues. Appropriate site-specific environmental documentation would be developed in conjunction with the licensing process. The PEIS is intended to serve as a tiering document to assist launch operators in preparing site-specific documentation.

I have carefully considered the FAA's goals and objectives in relation to the programmatic launch actions discussed in the PEIS, including the purpose and need to be served, the alternative means of achieving them, the environmental impacts of these alternatives at a broad, programmatic level, and the mitigation measures available to preserve and enhance the environment as needed on a site-specific basis. Based upon the record of this proposed Federal action, and under the authority delegated to me by the Administrator of the FAA, I find that the action in this Record of Decision is reasonably supported.

Issued in Washington, DC on: October 5, 2001.

**Patricia G. Smith,**

*Associate Administrator for Commercial Space Transportation.*

[FR Doc. 01–25754 Filed 10–11–01; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

**DATES:** The meeting will be held on October 25, 2001, at 10 a.m.

**ADDRESSES:** The meeting will be held in Conference Room 833, Federal Office Building 10A (the ''FAA Building''), 800 Independence Ave., SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Linda Williams, Office of Rulemaking, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9685.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee on Air Carrier Operations to be held on October 25, 2001.

The agenda will include:

- Airplane Performance Working Group final report.
- Extended Range Operations with Two-Engine Aircraft (ETOPS) Working (ETOPS) Working Group status report.

Attendance is open to the interested public but may be limited by the space available. Members of the public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

If you are in need of assistance or repair a reasonable accommodation for this event, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on October 5, 2001.

**Louis C. Cusimano,**

*Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.*

[FR Doc. 01–25756 Filed 10–11–01; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Research, Engineering and Development (R, E&D) Advisory Committee

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of meeting.

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA

Research, Engineering and Development (R, E&D) Advisory Committee.

*Name:* Research, Engineering & Development Advisory Committee.

*Time and Date:* October 30—9 a.m.–5 p.m., October31—10 a.m.–5 p.m.

*Place:* Holiday Inn Rossyln Westpark Hotel, 1900 North Forth Myer Drive, Arlington, Virginia 2209.

*Purpose:* On October 30 from 9 a.m.–5 p.m. and October 31 from 10 a.m.–12 noon the meeting agenda will include receiving guidance from the Committee for FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, security, human factors and environment and energy. A joint session will be held on October 31 from 1 p.m. to 5 p.m. with NASA's Aerospace Technology Advisory Committee. The planned agenda includes briefings on NASA's Blueprint for Aeronautics, a budget synopsis by both NASA and FAA, and a discussion on issues and activities that impact both groups.

Attendance is open to the interested public but limited to space available. Persons wishing to attend the meeting or obtain information should contact Gloria Dunderman at the Federal Aviation Administration, AAR–200, 800 Independence Avenue, SW., Washington, DC 20591 (202) 267–8937.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on October 9, 2001.

**Herman A. Rediess,**

*Director, Office of Aviation Research.*

[FR Doc. 01–25757 Filed 10–11–01; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

**[Docket RSPA–98–4957; Notice 30]**

### Submission for OMB Approval and Public Comment Request

**ACTION:** Notice of request to renew an existing information collection.

**SUMMARY:** As required by the Paperwork Reduction Act the Research and Special Programs Administration (RSPA) is announcing its intention to request renewal of an existing information collection, Recordkeeping for Liquid Natural Gas Facilities (LNG) . This notice requests that LNG operators submit comments to indicate the burden associated with submitting this information. This information collection helps RSPA assess how it can better collect information and also helps RSPA ensure that LNG facilities are operated in a safe manner.

**DATES:** Comments on this notice must be received by December 11, 2001 to be assured of consideration.

**ADDRESSES:** Comments should identify the docket number of this notice, RSPA–98–4957. Comments can be mailed to Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001. You should submit the original and one copy. If you wish to receive confirmation of receipts of your comments you must include a stamped self-addressed postcard. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday , except on Federal holidays. In addition, the public may also submit or review comments by accessing the Docket Management System's homepage at *http://dms.dot.gov.*

*Type of Information Request:* Reinstatement of an information collection.

*Title of Information Collection:* Recordkeeping for Liquid Natural Gas (LNG) Facilities.

*OMB Approval Number:* 2137–0048.

*Frequency:* On occasion.

*Use:* This collection is used by RSPA to ensure that LNG facilities are being operated in a safe manner.

*Estimated Number of Respondents:* 150.

*Respondents:* LNG facility operators.

*Total Annual Hours Requested:* 18,000 hours.

**FOR FURTHER INFORMATION CONTACT:** Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20950, (202) 366–6205 or by e-mail at *marvin.fell@rspa.dot.gov.*

Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Issued in Washington, DC on October 5, 2001.

**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 01–25652 Filed 10–11–01; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

**[Docket Number RSPA–98–4957; Notice 31]**

### Submission for OMB Review; Comment Request

**ACTION:** Request for public comments and OMB approval.

**AGENCY:** Research and Special Programs Administration, DOT.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Research and Special Programs Administration (RSPA) is publishing a notice in the **Federal Register** announcing its intention to request a renewal of a currently approved information collection in support of the Office of Pipeline Safety Recordkeeping for Gas Pipeline Operators. This notice requests comments from gas pipeline operators regarding the burden associated with providing recordkeeping information to RSPA. The feedback provided in response to this notice will assist RSPA in assessing how it collects this information and also will ensure that gas pipelines are operated in a safe manner.

**DATES:** Comments on this notice must be received by December 11, 2001, to be assured of consideration.

**ADDRESSES:** Comments should identify the docket number of this notice, RSPA–98–4957. Comments can be mailed to Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street SW, Washington, DC 20590–0001. You should submit the original and one copy. If you wish to receive confirmation of receipt of you comments you must include a stamped self-addressed postcard. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. In addition, the public may also submit or review comments by accessing the Docket Management System's homepage at *http:/dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW Washington, DC 20590, (202) 366–6205, or by e-mail at *marvin.fell@rspa.dot.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Recordkeeping for Gas Pipeline Operators.

*OMB Number:* 2137–0049.

*Type of Request:* Renewal of a currently approved information collection.

*Abstract:* 49 U.S.C. 60117 explains that in order to enable the Secretary of Transportation to decide whether a person transporting gas is complying with Federal safety standards this statue requires the maintenance of records and reports and that these and other requested information be provided to the Department of Transportation upon request. These records help ascertain compliance and provide information for incident investigation.

*Estimate of Burden:* The average burden hours per operator is 41.5.

*Respondents:* Gas Pipeline operators.

*Estimated Number of Respondents:* 22,700.

*Estimated Total Annual Burden on Respondents:* 940,991.

*Comments are invited on:* (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on October 5, 2001.

**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 01–25653 Filed 10–11–01; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

**[Docket: RSPA–98–4957; Notice 32]**

### Submission for OMB Review; Comment Request

**ACTION:** Submission for OMB review; comment request.

**AGENCY:** Research and Special Programs Administration, DOT.

**SUMMARY:** In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Research and Special Programs Administration (RSPA), is publishing its intention to renew the collection of information for Certification and Agreement Forms for the Gas and Hazardous Liquid Pipeline Safety Program. The information provided on these forms is used to calculate grants to states to assist them in monitoring pipeline safety. This notice requests that states submit comments to RSPA to indicate the burden associated with providing the information requested in the certification and agreement forms. This information helps RSPA assess how it can better collect information and also helps ensure that states are receiving adequate assistance to further pipeline safety.

**FOR FURTHER INFORMATION CONTACT:** Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–6205 or by e-mail at *marvin.fell@rspa.dot.gov.*

**DATES:** Comments on this notice must be received by December 11, 2001 to be assured of consideration.

**ADDRESSES:** Comments should identify the docket number of this notice, RSPA–98–4957. Comments can be mailed to Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001. You should submit the original and one copy. If you wish to receive confirmation of receipts of your comments you must include a stamped self-addressed postcard. The Dockets Facility is open from 10 A.M. to 5 p.m., Monday through Friday , except on Federal holidays. In addition, the public may also submit or review comments by accessing the Docket Management System's homepage at *http:/dms.dot.gov.*

*Type of Information Collection Request:* Renewal of Existing Collection.

*Title of Information Collection:* Certification and Agreement Forms for the Gas and Hazardous Liquid Pipeline Safety Program.

*OMB Approval Number:* 2137–0584.

*Frequency:* Annually.

*Use:* This collection is used by RSPA to ensure that state agencies attesting they have regulatory jurisdiction over pipeline safety, have adopted and are complying with minimum Federal safety standards. This information is used to calculate grants to states.

*Estimated Number of Respondents:* 61.

*Respondents:* State Agencies.

*Total Annual Hours Requested:* 3,660.

Interested persons are invited to send comments regarding the burden estimated or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Issued in Washington, DC on October 5, 2001.

**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 01–25654 Filed 10–11–01; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–55 (Sub–No. 598X)]**

### CSX Transportation, Inc.—Abandonment Exemption—in Greenbrier County, WV

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 13.6-mile line of railroad between Rubert Junction at milepost CAH–7.2 and Clearco at milepost CAH–20.8 in Greenbrier County, WV. The line traverses United States Postal Service Zip Codes 25984, 25958 and possibly 24931.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be

effective on October 13, 2001, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 22, 2001. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 1, 2001, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to CSXT's representative: Paul R. Hitchcock, Assistant General Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 17, 2001. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by CSXT's filing of a notice of consummation by October 12, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

Decided: October 3, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 01–25541 Filed 10–11–01; 8:45 am]

**BILLING CODE 4915–00–P**

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

### Agency Information Collection; Submission for OMB Review; Comment Request; Registration of Money Services Business

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), FinCEN hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request to review the information collection in Form TD F 90–22.55, Registration of Money Services Business. On October 10, 2000, FinCEN requested public comment on Form TD F 90–22.55 (65 FR 60246).

**DATES:** Written comments should be received on or before November 13, 2001 to be assured of consideration.

**ADDRESSES:** You are invited to submit written comments to FinCEN. In addition, you should send a copy of your comments to the OMB desk officer. Direct all written comments to:

FinCEN: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 1618, Vienna, Virginia 22183–1618, *Attention:* PRA Comments—Registration of Money Services Business. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov* with the caption in the body of the text, ''*Attention:* PRA Comments—Registration of Money Services Business.''

OMB: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Patrice Motz, FinCEN (800) 949–2732, or Cynthia Clark, FinCEN (703) 905–3590.

**SUPPLEMENTARY INFORMATION:**

*Title:* Registration of Money Services Business.

*OMB Number:* Unassigned.

*Form Number:* TD F 90–22.55.

*Type of Review:* New information collection.

*Affected Public:* Business or other for-profit institutions.

*Estimated Number of Respondents:* 8500.

*Estimated Total Annual Responses:* 8500.[1]

*Estimated Total Annual Burden Hours:* Reporting average of 30 minutes per response; recordkeeping average of 15 minutes per response. Estimated total annual burden hours: Reporting burden of 4250 hours; recordkeeping burden of 2125 hours, for an estimated combined total of 6375 hours.[2]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: October 4, 2001.

**James F. Sloan,**

*Director, Financial Crimes Enforcement Network.*

**BILLING CODE 4820–03–P**

[1] The estimated number of responses is for the year in which a registration form must be filed; because the form is generally required to be filed only every other year, the estimated annual number of responses would be lower.

[2] The estimated burden is for the year in which a registration form must be filed; because the form is generally required to be filed only every other year, the estimated annual burden would be lower.

Department of the Treasury
**TD F 90-22.55**
Issued November 2001
OMB No.1506-0013

# Registration of Money Services Business

Do not write in this space.

1 Date of Filing
M M D D Y Y Y Y

2 Type of Filing
a ☐ Initial Registration
b ☐ 2 Year Update
c ☐ Corrects Prior Filing

d ☐ Refiling because: Check all that apply [see instructions].
1 ☐ re-registered under state law
2 ☐ more than 10 percent transfer of equity interest
3 ☐ more than 50 percent increase in agents

## Part I Registrant Information

3 Organization Name

4 Doing Business As (DBA)

5 Address (Number, Street, and Apt. or Suite No.)

6 Taxpayer Identification Number

7 City

8 State

9 Zip Code

10 Telephone Number (include area code)
( ) —

## Part II Owner or Controlling Person Information

11 Individual's last name or Organization's name

12 First Name

13 Middle Initial

14 Address (Number, Street, and Apt. or Suite No.)

15 Telephone Number - (include area code)
( ) —

16 City

17 State

18 Zip Code
—

19 Country (if other than US)

20 Date of Birth
M M D D Y Y Y Y

21 Taxpayer Identification Number

22 If an individual, provide identification information for Owner or Controlling Person (Provide at least one)

a ☐ Driver's Lic./State ID b ☐ Passport c ☐ Alien Registration d ☐ Other _____

e Number

f Issuer of Identification

## Part III Money Services Information

23 Where services are offered: Check as many as apply. **a** ☐ All States and Territories **b** ☐ All States

| | | | |
|---|---|---|---|
| ☐ **Alabama (AL)** | ☐ **Idaho (ID)** | ☐ **Montana (MT)** | ☐ **Puerto Rico (PR)** |
| ☐ **Alaska (AK)** | ☐ **Illinois (IL)** | ☐ **Nebraska (NE)** | ☐ **Rhode Island (RI)** |
| ☐ **American Samoa (AS)** | ☐ **Indiana (IN)** | ☐ **Nevada (NV)** | ☐ **South Carolina (SC)** |
| ☐ **Arizona (AZ)** | ☐ **Iowa (IO)** | ☐ **New Hampshire (NH)** | ☐ **South Dakota (SD)** |
| ☐ **Arkansas (AR)** | ☐ **Kansas (KS)** | ☐ **New Jersey (NJ)** | ☐ **Tennessee (TN)** |
| ☐ **California (CA)** | ☐ **Kentucky (KY)** | ☐ **New Mexico (NM)** | ☐ **Texas (TX)** |
| ☐ **Colorado (CO)** | ☐ **Louisiana (LA)** | ☐ **New York (NY)** | ☐ **Utah (UT)** |
| ☐ **Connecticut (CT)** | ☐ **Maine (ME)** | ☐ **North Carolina (NC)** | ☐ **Vermont (VT)** |
| ☐ **Delaware (DE)** | ☐ **Maryland (MD)** | ☐ **North Dakota (ND)** | ☐ **Virgin Islands (VI)** |
| ☐ **District of Columbia (DC)** | ☐ **Massachusetts (MA)** | ☐ **Northern Mariana Islands (MP)** | ☐ **Virginia (VA)** |
| ☐ **Florida (FL)** | ☐ **Michigan (MI)** | ☐ **Ohio (OH)** | ☐ **Washington (WA)** |
| ☐ **Georgia (GA)** | ☐ **Minnesota (MN)** | ☐ **Oklahoma (OK)** | ☐ **West Virginia (WV)** |
| ☐ **Guam (GU)** | ☐ **Mississippi (MS)** | ☐ **Oregon (OR)** | ☐ **Wisconsin (WI)** |
| ☐ **Hawaii (HI)** | ☐ **Missouri (MO)** | ☐ **Pennsylvania (PA)** | ☐ **Wyoming (WY)** |

24 Number of Branches of Registrant

25 Services Offered by Registrant at its Branches:
Check as many as apply.
a ☐ Traveler's Checks issue
b ☐ Traveler's Checks sales and/or redemption
c ☐ Money Orders issue
d ☐ Money Orders sales and/or redemption
e ☐ Currency Exchange
f ☐ Check Cashing
g ☐ Money Transmission

26 Is this a mobile operation?
a ☐ Yes b ☐ No

**Paperwork Reduction Act.** The estimated average burden associated with this collection of information is 45 minutes per respondent or recordkeeper, depending on individual circumstances. Comments regarding the accuracy of this burden estimate, and suggestions for reducing the burden should be directed to the Paperwork Reduction Act; Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 1618, Vienna, VA 22183-1618. You are not required to provide the requested information unless a form displays a valid OMB control number.

2

27 Specify number of Agents authorized to conduct each Money Services Business activity:

a Traveler's Check sales or redemption
b Money Order sales or redemption
c Currency Exchange
d Check Cashing
e Money Transmission

## Part IV Primary Transaction Account

28 Check here if Registrant has more than one primary transaction account ☐ If more than one primary transaction account, enter the account with the greatest dollar amount of transaction activity.

29 Name of bank or other depository institution where primary transaction account for Money Services Business activities is held

30 Bank address (Number, Street, and Suite No.)

| 31 City | 32 State | 33 Zip Code | 34 Primary Transaction Account number at bank |
|---|---|---|---|
| | | — | |

## Part V Location of Supporting Documentation

If kept at the U.S. location reported in Part I, check here, ☐ and leave this part blank.

35 Address (Number, Street, and Apt. or Suite No.)

| 36 City | 37 State | 38 Zip Code |
|---|---|---|
| | | — |

## Part VI Authorized Signature

39 I am authorized to file this form on behalf of the money services business listed in Part I. I declare that the information provided is true, correct and complete, and I understand that the registered money services business listed in Part I is subject to the Bank Secrecy Act and its implementing regulations. See 31 CFR Part 103. The registered money services business maintains a current list of all agents, an estimate of its business volume in the coming year, and all other information required to comply with 31 U.S.C. 5330 and the regulations thereunder. **The signature of the owner, controlling person or authorized corporate officer is mandatory.**

Sign Here ➤

Print Name of Owner, Controlling Person or Authorized Corporate Officer

Signature of Owner, Controlling Person or Authorized Corporate Officer

| 40 Date Signed | 41 Title of signer |
|---|---|
| M M D D Y Y Y Y | |

**PRIVACY ACT NOTIFICATION**

Pursuant to the requirements of Public Law 93-579 (Privacy Act of 1974), notice is hereby given that, in accordance with 5 U.S.C. 552a(e), the authority to collect information on TD F 90-22.55 is Public Law 103-305; 31 USC 5330; 5 USC 301; 31 CFR 103.

The principal purpose for collecting the information is to assure maintenance of reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The information collected may be provided to those officers and employees of any constituent unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the United States, to any State, or Tribal Government, or part thereof, upon the request of the head of such department or agency, or authorized State or Tribal Government official for use in a criminal, tax, or regulatory investigation or proceeding, and to foreign governments in accordance with an agreement, or a treaty. Disclosure of this information is mandatory. Civil and criminal penalties, including in certain circumstances a fine of not more than $5,000 per day and imprisonment of not more than five years, are provided for failure to file the form, supply information requested by the form, and for filing a false or fraudulent form. Disclosure of the Social Security or Taxpayer Identification Number is mandatory. The authority to collect is 31 CFR 103. The Social Security Number/Taxpayer Identification Number will be used as a means to identify the individual or entity who files the report.

## General Instructions for TD F 90-22.55

**All fields must be completed in their entirety.**

**When to File**

**Initial Registration: Item 2a.** File the form by December 31, 2001 or within 180 days after the business begins operations, whichever is later.

**2-Year Update: Item 2b.** File the form not later than December 31 of the second calendar year in each two year registration period. See 31 CFR 103.41(b)(2).

**Corrects Prior Filing: Item 2c.** File this form to correct a prior report. Complete Part I in its entirety and only those other entries that are being amended. Staple a copy of the prior report (or the acknowledgement from DCC if received) to the corrected report.

**Refiling: Item 2d.** Refile the form if:

1 there has been a change in ownership requiring re-registration under state registration law;
2 more than 10 percent of voting power or equity interest has been transferred (except certain publicly-traded companies) or;
3 the number of agents has increased by more than 50 percent.

See 31 CFR 103.41(b)(4).

**Who should file:**

Each money services business, except one that is a money services business solely because it serves as an agent of another money services business, must register. Money services businesses include:

- money transmitters;
- currency exchangers (except those who do not exchange more than $1,000 for any one customer on any day);
- check cashers (except those who do not cash checks totaling more than $1,000 for any one customer on any day);
- issuers of traveler's checks or money orders (except those who do not issue more than $1,000 in traveler's checks or money orders for any one customer on any day);
- sellers or redeemers of traveler's checks or money orders (except those who do not sell or redeem more than $1,000 in traveler's checks or money orders for any one customer on any day).

See 31 CFR 103.11(n) and (uu).

Excluded from the registration requirement are the United States Postal Service, any agency of the United States, of any state or of any political subdivision of any state. At this time, persons are not required to register to the extent that they issue, sell or redeem stored value. If, however, a money services business provides money services in addition to stored value, the provision of stored value services does not relieve it of the responsibility to register, if required, as a provider of those other services.

**Where to file:** Send this completed form to:

**IRS Detroit Computing Center**
**Attn: Money Services Business Registration**
**P.O. Box 33116**
**Detroit, MI 48232-0116**

Keep a copy of this registration form.

**Penalties for failure to comply:** Any person who fails to comply with the requirements to register, keep records, and/or maintain agent lists pursuant to 31 CFR 103.41 shall be liable for a civil penalty of $5,000 for each violation. Failure to comply may also subject a person to criminal penalties including imprisonment of five (5) years and/or a criminal fine. 18 USC 1960.

**Estimate of Business Volume:**

The law requires a money services business to estimate the volume of its business in the coming year. 31 U.S.C. 5330(b). That estimate must be prepared annually. The estimate is not reported on this form, but must be maintained in the files of the money services business.

**Supporting Documentation:**

A money services business must retain for five (5) years certain information in support of this registration form at a location within the United States. That information includes: a copy of the registration form and, as indicated above, an estimate of the volume of its business in the coming year.

In addition, a money services business must retain as supporting documentation the following information with regard to the ownership or control of the business: the name and address of any shareholder holding more than 5%; any general partner; any trustee; and/or any director or officer of the business. If the supporting documentation is retained at a location other than the address listed in Part I, enter the appropriate location information in Part V; if not, check the box in Part V.

**Agent Lists:**

A money services business that has agents must prepare and maintain a listing of its agents. That list must be updated annually and retained by the business at the location in the United States reported on the registration form in Part I or Part V, as appropriate. The list should NOT BE FORWARDED with the registration form. The list must include:

- each agent's name;
- each agent's address;
- each agent's telephone number;
- the type of service(s) provided by each agent on behalf of the money services business in Part I;
- a listing of the months in the immediately preceding 12 months in which the gross transaction amount of each agent with respect to financial products/services issued by the money services business in Part I exceeds $100,000;
- the name and address of any depository institution at which each agent maintains a transaction account for the money services in Item 27 conducted by the agent on behalf of the money services business in Part I;
- the year in which each agent first became an agent of the money services business in Part I; and
- the number of branches or subagents each agent has.

See 31 CFR 103.41(d)(2).

**Note: Registration with the IRS Detroit Computing Center does not satisfy any state or local licensing or registration requirement.**

## Specific Instructions

**Part I. Registrant Information**

**Items 3 and 4. Organization Name and Doing Business As (DBA).** – Enter the name of the organization and, if applicable, the Doing Business As name. For example, Good Hope Enterprises, Inc., DBA Joe's Check Cashing.

**Items 5, 7, 8 and 9. Address**. – Enter the permanent street address, including zip code, of the registering business. Use the Post Office's two-letter state abbreviation code. A P.O. Box address may only be used if there is no street address.

**Part II. Owner or Controlling Person**

**Items 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21.**

Any person who owns or controls a money services business shares the responsibility for seeing that the business is registered. Only one registration form is required for any business in any registration period. If more than one person owns or controls the business, they may enter into an agreement designating one of them to register the business. The designated owner or controlling person must complete Part II and provide the requested information about himself, herself, or itself. In addition, that person must sign and date the form as indicated in Part VI. Failure by the designated person to register the business does not relieve any other person who owns or controls the business of the liability for failure to register the business.

An "Owner or Controlling person" includes the following:

| Registrant Business | Owner or Controlling Person |
|---|---|
| Sole Proprietorship | the individual who owns the business |
| Partnership | a general partner |
| Trust | a trustee |
| Corporation | the largest single shareholder |

If two or more persons own equal numbers of shares of a corporation, those persons may enter into an agreement as explained above that one of those persons may register the business.

If the owner or controlling person is a corporation, a duly authorized officer of the owner-corporation may execute the form on behalf of the owner-corporation.

**Public Corporation**

If the registrant business is a public corporation, it is sufficient to write "public corporation" in line 11 of Part II. Where registrant is a public corporation, a duly authorized officer of the registrant may execute the form.

**Item 22. Identification –** Do not provide "other" identification unless no driver's license/state ID, passport or alien registration number is available. "Other" identification includes any official identification that is issued by a governmental authority.

**Part III. Money Services Information**

**Item 23. Where services are offered.** -- Mark the box(es) for any state, territory or district in which the money services business offers services through its branches, its agents, or both. If a service is offered on tribal lands, mark the box for the state, territory or district in which the tribal lands are located.

**Item 24. Number of Branches of Registrant.** -- Enter the number of branches of the money services business at which one or more Money Services Business (MSB) services are offered.

**Item 25. Services Offered by Registrant**. -- The services listed in Items 25a through 25g are MSB services. Mark the box of each MSB service that is offered by the registrant at its branches.

**Item 26. Mobile Operation.** – If any part of the money services business is conducted as a mobile operation, check yes here. A mobile operation is one based in a vehicle, for example, a check cashing service offered from a truck. For purposes of Item 24, each mobile operation is counted as a separate branch.

**Item 27. Number of Agents.** -- Enter the number of agents that the registrant has authorized to sell or distribute its MSB services. A bank is not an agent for this purpose. See 31 CFR 103.11(c) and 103.11(uu).

**Part IV Primary Transaction Account**

**Item 28.** -- Mark this box if the money services business (registrant) has more than one primary transaction account. Example: If the registrant is both an issuer of money orders and an issuer of traveler's checks and the registrant has a separate clearing account for money orders and one for traveler's checks, the box should be checked because there is a primary transaction account for money orders and a primary transaction account for traveler's checks.

**Items 29, 30, 31, 32, 33, and 34. Name, Address, and Account Number of Primary Transaction Account.** -- Enter the name and address of the bank or other depository institution where the money services business has its primary transaction account.

If the business has more than one primary transaction account and the box in Item 28 has been checked, enter information about the account with the greatest transaction volume as measured by value in dollars. A transaction account is defined in 12 U.S.C. 461(b)(1)(c).

[FR Doc. 01–25609 Filed 10–11–01; 8:45 am]

BILLING CODE 4820–03–C

## DEPARTMENT OF THE TREASURY

### Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces the date, time, and location for a meeting of the Treasury Advisory Committee on Commercial Operations (COAC), combining both the fourth meeting of the first COAC year, and the first meeting of the second COAC year of the current charter, and the provisional agenda for consideration by the Committee.

**DATES:** The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Thursday, November 15, 2001, starting at 9 a.m., the Department of the Treasury, Secretary's Diplomatic Reception Room (Rm. 3311), located at 15th Street and Pennsylvania Avenue, NW., in Washington, DC. The duration of the meeting will be the entire day.

**FOR FURTHER INFORMATION CONTACT:** Gordana S. Earp, Deputy Director, Tariff and Trade Affairs (Enforcement), Office of the Under Secretary (Enforcement), Telephone: (202) 622–0336.

The morning meeting will replace the COAC meeting which had been scheduled for September 14 in Detroit, but was cancelled due to travel disruptions following the terrorist attacks on September 11. The afternoon session will cover the meeting that had been tentatively scheduled for December of this year.

At this meeting, the Advisory Committee is expected to pursue the following agenda. The agenda may be modified prior to the meeting.

**Agenda**

(1) Merchandise Processing Fee Subcommittee

(2) Office of Rules & Regulations Subcommittee

(3) Compliance Assessment Team Subcommittee

(4) Import Data & Customs Entry Subcommittee; ACE (Automated Commercial Environment) development; impact of bill S. 1214; ''Port and Maritime Security Act of 2001''

(5) Impact on Customs Operations stemming from heightened alert in terrorist activities

(6) Update on Other Customs Matters

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public; however, participation in the Committee's deliberations is limited to Committee members, Customs and Treasury Department staff, and persons invited to attend the meeting for special presentations. A person other than an Advisory Committee member who wishes to attend the meeting should contact Theresa Manning at (202) 622–0220 or Helen Belt at (202) 622–0230.

Dated: October 2, 2001.

**Timothy E. Skud,**

*Acting Deputy Assistant Secretary, Regulatory, Tariff, and Trade (Enforcement).*

[FR Doc. 01–25749 Filed 10–11–01; 8:45 am]

BILLING CODE 4810–25–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–118620–97]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–118620–97 (TD 8855), Communications Excise Tax; Prepaid Telephone Cards.

**DATES:** Written comments should be received on or before December 11, 2001 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Communications Excise Tax; Prepaid Telephone Cards.

*OMB Number:* 1545–1628.

*Regulation Project Number:* REG–118620–97.

*Abstract:* Carriers must keep certain information documenting their sales of prepaid telephone cards to other carriers to avoid responsibility for collecting tax. The regulations provide rules for the application of the communications excise tax to prepaid telephone cards.

*Current Actions:* There are no changes being made to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 104.

*Estimated Time Per Respondent:* 20 min.

*Estimated Total Annual Burden Hours:* 34.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 5, 2001.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 01–25758 Filed 10–11–01; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

## Office of Thrift Supervision

## FEDERAL RESERVE SYSTEM

## Proposed Agency Information Collection Activities: Comment Request

**AGENCIES:** Office of Thrift Supervision (OTS), Treasury; and Board of Governors of the Federal Reserve System (Board).

**ACTION:** Joint notice and request for comment.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board and the OTS (collectively, the ''agencies''), may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), propose the discontinuance of two information collections, the Annual Report of Trust Assets (FFIEC 001) and the Annual Report of International Fiduciary Activities (FFIEC 006), effective with the December 31, 2001, report date. At the end of the comment period, the comments and recommendations received will be analyzed to determine whether the FFIEC and the agencies should proceed with their plan to discontinue the information collections. The agencies will then submit this action to OMB for review and approval.

**DATES:** Comments must be submitted on or before December 11, 2001.

**ADDRESSES:** Interested parties are invited to submit written comments to any or all of the agencies. All comments should refer to the OMB control number(s) and will be shared among the agencies.

*OTS:* Submit any written comments concerning this notice to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, Attention: 1550–0026, fax number (202) 906–6518, or e-mail to *infocollection.comments@ots.treas.gov.* OTS will post any comments and the related index on the OTS Internet Site at www.ots.treas.gov.

*Board:* Written comments on the FFIEC 001 and 006 should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551, or delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.12 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12(a).

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

**FOR FURTHER INFORMATION CONTACT:** Additional information or a copy of the collections may be requested from:

*OTS:* Sally W. Watts, OTS Clearance Officer, (202) 906–7380, e-mail address *sally.watts@ots.treas.gov.* Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

*Board:* Mary M. West, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551. Telecommunications Device for the Deaf (TDD) users may contact Capria Mitchell (202) 872–4984, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

**SUPPLEMENTARY INFORMATION:**

**Proposal to discontinue the following currently approved collections of information:**

*Report Titles:* Annual Report of Trust Assets and Annual Report of International Fiduciary Activities.

*Form Numbers:* FFIEC 001 and FFIEC 006.

*Frequency of Response:* Annual.

*Affected Public:* Business or other for profit.

*For OTS:*

*OMB Number:* 1550–0026

*Number of Respondents:* 101 (FFIEC 001)

*Estimated Average Time per Response:* 4.08 burden hours (FFIEC 001)

*Estimated Total Annual Burden:* 412 burden hours

*For Board:*

*OMB Number:* 7100–0031

*Number of Respondents:* 22 (FFIEC 001)
0 (FFIEC 006)

*Estimated Average Time per Response:* 3.82 burden hours (FFIEC 001)
4.0 burden hours (FFIEC 006)

*Estimated Total Annual Burden:* 84 burden hours

*General Description of Reports:*This information collection (FFIEC 001 and FFIEC 006) is mandatory: 12 U.S.C. 1464 (for thrift institutions), and 12 U.S.C. 248(a)(1) and (2) and 1844(c) (for state member banks and bank holding companies). The data on the FFIEC 001 are publicly available with the exception of Schedule E - Fiduciary Income Statement. The FFIEC 006, collected by the Board, is given

confidential treatment [5 U.S.C. 552(b)(8)]. Small businesses (i.e., small banks) are affected.

Abstract: These interagency reports collect information on fiduciary asset totals and activities. They are used to monitor changes in the volume and character of discretionary trust activity and the volume of nondiscretionary trust activity and to determine resource needs for supervisory purposes.

*Current Actions:* Financial institutions that exercise fiduciary powers and have fiduciary assets or accounts have reported information on their trust activities each December 31 in the Annual Report of Trust Assets (FFIEC 001). Institutions with trust operations in foreign offices also complete the Annual Report of International Fiduciary Activities (FFIEC 006). The agencies propose to discontinue the FFIEC 001 and the FFIEC 006 trust activities reports.

This proposed discontinuance is prompted by the introduction of Schedule RC-T, ''Fiduciary and Related Services,'' on the quarterly bank Consolidated Reports of Condition and Income (Call Report) (FFIEC 031 and 041, OMB No. 7100–0036),[1] and Schedule T, ''Fiduciary and Related Services'' on the quarterly Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002, OMB No. 7100–0032).[2] Schedules RC-T and T take effect as of December 31, 2001. The OTS is adding Schedule FS - Fiduciary and Related Services to the Thrift Financial Report (OMB No. 1550–0023) effective March 31, 2002. This new trust schedule significantly reduces the amount of detail that institutions must report on their trust activities compared to the amount in the current forms. However, the new schedule continues to collect information on the number of accounts and market value of trust assets for specified categories of fiduciary activities, fiduciary and related services income (except for Schedule T), corporate trust activities, collective investment funds and common trust funds, fiduciary settlements and other losses, and types of managed assets held in personal trust and agency accounts. Institutions (including all nondeposit trust companies that file Call Reports) with total fiduciary assets greater than $250 million or with fiduciary income greater than 10 percent of their net interest income plus noninterest income are required to report some of the trust information quarterly and the rest annually on the new schedule. Other institutions with trust activities report only annually, but only those with total fiduciary assets greater than $100 million are required to report fiduciary income and loss information on the Call Reports.

The new trust schedule will replace the Annual Report of Trust Assets (FFIEC 001) in December 2001 for institutions that file Call Reports and the FFIEC 002 and in March 2002 for institutions that file Thrift Financial Reports. For national and state member banks, two items in the new schedule will replace the Annual Report of International Fiduciary Activities (FFIEC 006). However, federally supervised state-chartered nondeposit trust companies that are subsidiaries of holding companies do not file Call Reports or Thrift Financial Reports, but are currently required to complete the FFIEC 001. The agencies have determined that the information of supervisory interest on trust activities that these trust companies have reported on the FFIEC 001 can be monitored by other means.

At the beginning of 2001, the agencies carried 2,828 hours of respondent burden for these two reports for 728 respondents. After Schedule RC-T was added to the Call Reports and Schedule T to the FFIEC 002, the Board reduced their FFIEC 001 and FFIEC 006 burden estimates by 2,332 hours to avoid double counting. After OTS adds Schedule FS to the TFR with the first quarter 2002, and these reports have been discontinued, the remaining 496 burden hours for the agencies associated with the FFIEC 001 will fall to zero.

**Request for Comment**

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology;and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

September 25, 2001.

**Deborah Dakin,**

*Deputy Chief Counsel, Regulations & Legislation DivisionOffice of Thrift Supervision.*

Board of Governors of the Federal Reserve System, October 5, 2001.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 01–25641 Filed 10–11–01; 8:45 am]

BILLING CODES 6720–01–P ½; 6210–01–P ½

[1] **Federal Register**, March 5, 2001 (66 FR 13369).

[2] **Federal Register**, May 4, 2001 (66 FR 22556).

## DEPARTMENT OF VETERANS AFFAIRS

### Performance Review Board Members

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice revises the list of members of the Department of Veterans Affairs (VA) Performance Review Boards which was published in the **Federal Register** on September 25, 2000 (65 FR 57655).

**EFFECTIVE DATE:** October 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Angel I. Wolfrey, Office of Human Resources Management (052B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273– 4940.

**VA Performance Review Board (PRB)**

Jacob Lozada, Ph.D., Assistant Secretary for Human Resources and Administration (Chairperson)
Nora E. Egan, Chief of Staff
Stanley R. Sinclair, Action Deputy Under Secretary for Benefits, Veterans Benefits Administration
John H. Thompson, Deputy General Counsel
Frances M. Murphy, M.D., M.P.H., Deputy Under Secretary for Health, Veterans Health Administration
James S. Jones, Deputy Assistant Secretary for Resolution Management

Maureen P. Cragin, Assistant Secretary for Public and Intergovernmental Affairs
D. Mark Catlett, Principal Deputy Assistant Secretary for Management
Michael G. Sullivan, Deputy Inspector General
Roger R. Rapp, Deputy Under Secretary for Operations, National Cemetery System
Michael Walcoff, Associate Deputy Under Secretary for Operations, Veterans Benefits Administration (Alternate)
Laura Miller, Assistant Deputy Under Secretary for Health (Alternate)
Vincent L. Barile, Deputy Under Secretary for Management, National Cemetery System (Alternate)

**Veterans Benefits Administration PRB**

Stanley R. Sinclair, Acting Deputy Under Secretary for Benefits, (Chairperson)
Robert J. Epley, Associate Deputy Under Secretary for Policy & Program Management
R. Keith Pedigo, Jr., Director, Loan Guaranty Service
Michael Walcoff, Associate Deputy Under Secretary for Operations
James A. Whitson, Associate Deputy Under Secretary for Operations
Julius M. Williams, Jr., Director, Vocational Rehabilitation and Counseling Service
Ronald R. Aument, Deputy Chief of Staff, Secretary's Representative

**Veterans Benefits Administration PRB**

Frances M. Murphy, M.D. M.P.H., Deputy Under Secretary for Health (Chairperson)
Laura J. Miller, Assistant Deputy Under Secretary for Health (Vice-Chairperson)
Terrence S. Batliner, D.D.S., Network Director, VISN 19
Alfonso R. Batres, Ph.D., Chief Readjustment Counseling Officer
Linda W. Belton, Network Director, VISN 11
Lawrence A. Biro, Network Director, VISN 4
Jeanette A. Chirico-Post, MD., Network Director, VISN 11
Jose R. Coronado, Acting Network Director, VISN 17
Gary A. Christopherson, Chief Information Officer
Patricia A. Crosetti, Network Director, VISN 15
Joan E. Cummings, M.D., Network Director, VISN 12
John Dandridge, Jr., Network Director, VISN 9
Larry R. Deal, Network Director, VISN 7
James H. Holley, Chief Communications Officer
James B. Donahoe, Director, Veterans Canteen Service
James J. Farsetta, Network Director, VISN 3
John R. Feussner, M.D., Chief Research and Development Officer
Stephanie H. Pincus, M.D., M.B.A., Chief Academic Affiliations Officer
William T. Galey, M.D., Network Director, VISN 20
Daniel F. Hoffmann, Network Director, VISN 6
Thomas J. Hogan, Director, Management Support Office (Ex Officio)
Thomas V. Holohan, M.D., Chief Patient Care Services Officer
Smith Jenkins, Jr., Network Director, VISN 18
Robert E. Lynch, M.D., Network Director, VISN 16
Susan H. Mather, M.D., M.P.H., Chief Public Health and Environmental Hazards Officer
Frederick L. Malphurs, Network Director, VISN 2
Steven M. Cohen, M.D., Acting Network Director, VISN 10
Kenneth J. Clark, Network Director, VISN 22
James J. Nocks, M.D., Network Director, VISN 5
Jimmy A. Norris, Chief Financial Officer
Gregg A. Pane, M.D., M.P.A., Chief Policy and Planning Officer
Robert A. Petzel, M.D., Network Director, VISN 13
Jonathan B. Perlin, M.D., Ph.D., M.S.H.A., Chief Quality and Performance Officer
Robert H. Roswell, M.D., Network Director, VISN 8
Robert L. Wiebe, M.D., Network Director, VISN 21
Gary L. Wilkinson, Acting Network Director, VISN 14
Charles V. Yarbrough, Chief Facilities Management Officer
Thomas J. Sanders, Acting VHA Chief of Staff
Ronald R. Aument, Deputy Chief of Staff, Secretary's Representative

**Office of Inspector General PRB**

David A. Brinkman, Director, Audit Followup Directorate, Department of Defense (Chairperson)
Nancy Hendricks, Assistant Inspector General for Audit, Federal Emergency Management Agency
George Grob, Deputy Inspector General for Evaluation and Inspections, Department of Health and Human Services

Dated: October 4, 2001.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

[FR Doc. 01–25748 Filed 10–11–01; 8:45 am]

BILLING CODE 8320–01–M

# Corrections

**Federal Register**

Vol. 66, No. 198

Friday, October 12, 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 EDUCATION

### Office of Special Education and Rehabilitative Services; Grant Applications Under Part D, Subpart 2 of the Individuals With Disabilities Education Act

*Correction*

In notice document 01–24403 beginning on page 49647 in the issue of Friday, September 28, 2001, make the following correction:

On page 49653, in the first column of the table, in the sixth entry, ''84.324A'' should read, ''84.327A''.

[FR Doc. C1–24403 Filed 10–11–01; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services; Grant Applications Under Part D, Subpart 2 of the Individuals With Dsabilities Education Act

*Correction*

In notice document 01–25130 beginning on page 51408 in the issue of Tuesday, October 9, 2001, make the following correction:

On page 51415, in the first column of the table, in the third entry, ''84.325D'' should read, ''84.325E''.

[FR Doc. C1–25130 Filed 10–11–01; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–1175–N]**

**RIN 0938–ZA08**

### Medicare Program; Hospice Wage Index Fiscal Year 2002

*Correction*

In notice document 01–23820 beginning on page 49454 in the issue of Thursday, September 27, 2001, make the following correction:

On page 49463, in the second column, in the ninth grouped entry, ''Knox, TN'' should be added to follow ''Blount, TN''.

[FR Doc. C1–23820 Filed 10–11–01; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF JUSTICE

**[AAG/A Order No. 243–2001]**

### Privacy Act of 1974; System of Records

*Correction*

In notice document 01–22449 beginning on page 46812 in the issue of Friday, September 7, 2001, make the following correction:

On page 46813, in the first column, beginning in the sixth line, ''(by 30 days from the publication date of this notice).'' should read, ''October 9, 2001.''

[FR Doc. C1–22449 Filed 10–11–01; 8:45 am]

BILLING CODE 1505–01–D

## SECURITIES AND EXCHANGE COMMISSION

**[Securities Exchange Act of 1934 Rel. No. 44839/September 24, 2001]**

### Order Regarding Government Securities Reconciliations

*Correction*

In notice document 01–24329 appearing on page 49727 in the issue of Friday, September 28, 2001, make the following correction:

On page 49727, in the third column, the Release No. and subject title should be as set forth above.

[FR Doc. C1–24329 Filed 10–11–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

**Friday,**

**October 12, 2001**

## Part II

# Environmental Protection Agency

**40 CFR Parts 124, 260, 267, and 270**

**Hazardous Waste Management System; Standardized Permit; Corrective Action; and Financial Responsibility for RCRA Hazardous Waste Management Facilities; Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 124, 260, 267, and 270**

**[FRL–7066–6]**

**RIN 2050–8E44**

## Hazardous Waste Management System; Standardized Permit; Corrective Action; and Financial Responsibility for RCRA Hazardous Waste Management Facilities

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule; request for public comment.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing revisions to the RCRA hazardous waste permitting program to allow a ''standardized permit.'' The standardized permit would be available to facilities that generate hazardous waste and then manage the waste in units such as tanks, containers, and containment buildings. This proposed revision to the RCRA permitting program reflects one of the recommendations of EPA's special task force, known as the Permits Improvement Team (PIT), which was convened to evaluate permitting activities and to make specific recommendations to improve these activities. The standardized permit should streamline the permit process by allowing facilities to obtain and modify permits more easily while maintaining the protectiveness currently existing in the individual RCRA permit process. In addition to the requirements proposed in this **Federal Register** document, we also are soliciting comment on two issues related to RCRA treatment, storage, and disposal facilities. We are requesting comment on how all facilities receiving permits (standardized, individual, and permits by rule) can satisfy RCRA corrective action requirements by conducting cleanup under the direction of appropriate alternative state cleanup programs. We also are requesting comment on the conclusions about captive insurance in a March, 2001 report by EPA's Inspector General, and on a requirement that insurers that provide financial assurance for hazardous waste and PCB facilities have a minimum rating from commercial rating services.

**DATES:** Comments on this proposal must be submitted by December 11, 2001.

**ADDRESSES:** If you wish to comment on this proposal, you must send an original and two copies of your comments, referencing docket number F–2001–SPRP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. You may also submit comments electronically through the Internet to: *rcra-docket@epamail.epa.gov.* Comments in electronic format must also reference the docket number F–2001–SPRP–FFFFF. If you choose to submit your comments electronically, you must submit them as an ASCII file avoiding the use of special characters and any form of encryption.

You should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling 703–603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the Supplementary Information section of this **Federal Register** document for information on accessing the index and these supporting materials.

**FOR FURTHER INFORMATION CONTACT:**

For general information, contact the RCRA Hotline at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For more detailed information on specific aspects of this rulemaking, contact Vernon Myers, Office of Solid Waste, 5303W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, (703–308–8660), *(Myers.Vernon@epa.gov).*

**SUPPLEMENTARY INFORMATION:**

The index and some supporting materials are available on the Internet: *http://www.epa.gov/epaoswer/hazwaste/permit/index.htm*

The official record for this action will be kept in paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RCRA Information Center.

Our responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document we will place in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

Acronyms used in today's preamble are listed below:

APA: Administrative Procedures Act
EAB: Environmental Appeals Board
EPA: Environmental Protection Agency
CAMU: Corrective Action Management Unit
CFR: Code of Federal Regulations
EO: Executive Order
FR: Federal Regulations
HSWA: Hazardous and Solid Waste Amendments
MOU: Memorandum of Understanding
NTTAA: National Technology Transfer and Advancement Act
OMB: Office of Management and Budget
PIT: Permit Improvement Team
PPE: Personal Protection Equipment
RCRA: Resource Conservation and Recovery Act
RFA: RCRA Facility Assessment
SBREFA: Small Business Regulatory Enforcement Fairness Act
SWMU: Solid Waste Management Unit
UMRA: Unfunded Mandates Reform Act

The contents of today's preamble are listed in the following outline:

I. Overview and Background
A. Why do this Proposed Rule and Preamble Read so Differently From other Regulations?
B. Who is Potentially Affected by this Proposed Rule?
C. What is the Agency's Proposal?
1. What is a RCRA Standardized Permit?
2. Why are we Proposing a RCRA Standardized Permit?
3. What would be the Advantages of a Standardized Permit?
4. Who would be Eligible for a Standardized Permit?
D. What are the Differences between the Existing Individual Permitting System and the Proposed Standardized Permitting Process?
1. What are the Steps for Obtaining an Individual Permit?
2. What are the Proposed Steps for Obtaining a Standardized Permit?
3. How does the Proposed Process for Standardized Permits Compare to the Process for Individual Permits?
Process for Individual Permits?
E. Public Comments on this Rulemaking

1. How can I Influence EPA's Thinking on this Rule?
2. What Topics are not Appropriate for Public Comment?
3. What Topics are we Specifically Requesting Public Comment on?
F. What Law Authorizes this Proposed Rule?

II. Conforming Amendments to General Permit Process

A. What Changes would we Make to 40 CFR Part 124 Subpart A—General Program Requirements?
B. How would the RCRA Expanded Public Participation Requirements Change?
C. Where would I find the Procedures Governing RCRA Standardized Permits?

III. Applying for a Standardized Permit

A. How would I Apply for a Standardized Permit?
1. Conduct a pre-application meeting with the community.
2. Submit a Notice of Intent to operate under the standardized permit along with appropriate supporting documents.
B. How would I Switch from an Individual Permit to a Standardized Permit?

IV. Issuing a Standardized Permit

A. How would the Regulatory Agency Prepare a Draft Standardized Permit?
1. Drafting terms and conditions for the supplemental portion.
2. Denying coverage under the standardized permit.
3. Preparing your draft permit decision in 120 days.
B. How would the Regulatory Agency Prepare a Final Standardized Permit?
C. In what Situations could Facility Owners or Operators be Required to Apply for an Individual Permit?

V. Proposed Opportunities for Public Involvement in the Standardized Permit Process

A. What are the Proposed Requirements for Public Notices?
B. What are the Proposed Opportunities for Public Comments and Hearings?
C. What are the Proposed Requirements for Responding to Comments?
D. How could People Appeal a Final Standardized Permit Decision under the Proposal?

VI. Maintaining a Standardized Permit

A. What Types of Changes could Owners or Operators Make?
B. What are the Proposed Definitions of Routine And Significant Changes?
C. What are the Proposed Standardized Permit Procedures for Making Routine Changes?
D. What are the Proposed Standardized Permit Procedures for Making Significant Changes?
E. What would be the Proposed Process for Renewing Standardized Permits?

VII. Proposed Part 267 Standards for Owners and Operators of Hazardous Waste Facilities Operating Under A Standardized Permit

A. Overview
B. Subpart A—General
1. What are the purpose, scope and applicability of this proposed part?
2. What is the proposed relationship to interim status standards?
3. How would this subpart affect an imminent hazard action?
C. Subpart B—General Facility Standards
1. Would this subpart apply to me?
2. How would I comply with this subpart?
3. How would I obtain an identification number?
4. What are the proposed waste analysis requirements?
5. What are the proposed security requirements?
6. What are the proposed general inspection schedule requirements?
7. What training would my employees be required to have?
8. What are the proposed requirements for managing ignitable, reactive, or incompatible waste?
9. What are the proposed standards for selecting the location of my facility?
10. Would I be required to have a construction quality assurance program?
D. Subpart C—Preparedness and Prevention
1. What are the proposed general design and operation standards?
2. What equipment would I be required to have?
3. What are the proposed testing and maintenance requirements for the equipment?
4. When would personnel be required to have access to communication equipment or an alarm system?
5. How would I ensure access for personnel and equipment during emergencies?
6. What arrangements would I be required to make with local authorities for emergencies?
E. Subpart D—Contingency Plan and Emergency Procedures
1. What is the purpose of the proposed contingency plan and how would I use it?
2. What would be required to be in my contingency plan?
3. Who would be required to have copies of the contingency plan?
4. When would I have to revise the contingency plan?
5. What is the proposed role of the emergency coordinator?
6. What are the proposed emergency procedures for the emergency coordinator?
F. Subpart E—Record Keeping, Reporting, and Notifying
1. When would I need to manifest my waste?
2. What information would I need to keep?
3. What records would I provide to the permitting agency?
4. What reports would I need to prepare and who would I send them to?
5. What notifications would be required?
G. Subpart F—Releases from Solid Waste Management Units
1. Would this proposed rule require me to address releases of hazardous waste or constituents from solid waste management units?
2. Are the proposed corrective action requirements for standardized permits different from the corrective action requirements for individual permits?
3. Why are we proposing these requirements?
4. Why would the proposed corrective action requirements be included in the supplemental portion of the standardized permit?
5. Would I be able to utilize the flexibility provided by CAMUs, temporary units, and staging piles when I conduct corrective action under a standardized permit?
H. Subpart G—Closure
1. What general standards would I need to meet when I stop operating the unit?
2. What procedures would I need to follow?
3. After I stop operating, how long would I have until I close the unit?
4. What would I have to do with contaminated equipment, structures, and soils?
5. How would I certify closure?
I. Subpart H—Financial Requirements
1. Who would have to comply with this subpart and briefly what would they have to do?
2. Definitions.
3. Closure cost estimates.
4. Methods for estimating costs for units eligible for standardized permits.
5. We considered six options for developing cost estimates, but preferred three of them for this proposal.
6. Option 4, Standard forms for estimating closure costs.
7. Option 5, Default estimates for estimating closure costs.
8. Option 6, Waiving the cost estimate for facilities using the financial test or corporate guarantee.
9. Availability of information on EPA's proposed approaches.
10. Financial assurance for closure.
11. Post closure financial responsibility.
12. Liability requirements.
13. Other provisions of the financial requirements.
J. Subpart I—Use and management of containers
1. Would this subpart apply to me?
2. What standards would apply to the containers?
3. What are the proposed inspection requirements?
4. What proposed standards apply to the container storage area?
5. What special requirements would I need to meet for ignitable or reactive waste?
6. What special requirements would I need to meet for incompatible wastes?
7. What would I need to do when I want to stop using the containers?
8. What air emission standards are proposed apply?
K. Subpart J—Tank Systems
1. Would this subpart apply to me?
2. What are the proposed required design and construction standards for new tank systems or components?
3. What are the proposed handling and inspection requirements for new tank systems?
4. What testing would be required?
5. What installation requirements would be required?
6. What are the proposed preventative requirements for containing a release?

7. What are the proposed devices for secondary containment and what are their design, operating and installation requirements?
8. What are the proposed requirements for ancillary equipment?
9. What are the proposed general operating requirements for tank systems?
10. What are the proposed inspection requirements?
11. What would I do in case of a leak or a spill?
12. What would I do when I stop operating the tank system?
13. What are the proposed special requirements for ignitable or reactive wastes?
14. What are the proposed special requirements for incompatible wastes?
15. What air emission standards are proposed?
L. Subpart DD—Containment Buildings
1. Would this subpart apply to me?
2. What are the proposed design and operating standards for containment buildings?
3. What additional design and operating standards would apply if liquids will be in my containment building?
4. What are the proposed other requirements to prevent releases?
5. What would I do if I detect a release?
6. What would I do if my containment building contains areas both with and without secondary containment?
7. Could a containment building be considered secondary containment for other units?
8. How would I obtain a waiver from secondary containment requirements?
9. What would I do when I stop operating the containment building?

VIII. Conforming Permit Changes to Part 270

A. Overview of Part 270 Changes.
B. Specific Changes to Part 270.
1. Overview of the RCRA Program
2. Definitions.
3. Permit applications.
4. Permit reapplication.
5. Transfer of permits.
6. Modification or revocation and reissuance of permits.
7. Continuation of expiring permits.
8. Standardized permit.

IX. RCRA Standardized Permits

A. General Information about Standardized Permits.
B. What Information would I Need to Submit to the Permitting Agency to Support my Standardized Permit Application?
1. RCRA Part A application information.
2. Preapplication meeting summary.
3. Compliance with location standards.
4. Compliance with other Federal laws.
5. Solid waste management units.
6. Certification of compliance with proposed part 267 requirements.
C. What are the Proposed Certification Requirements?
1. Certification of compliance.
2. Certification of availability of information.
3. What happens if my facility is not in compliance with proposed part 267 requirements at the time I submit my Notice of Intent?
D. What Information would be Required to be Kept at my Facility?
1. General facility information.
2. Container information.
3. Tank information.
4. Equipment information.
5. Air emission control information.
E. How would I Modify my RCRA Standardized Permit?

X. Public Comment on Corrective Action and Financial Assurance Issues

A. Corrective Action.
1. Could I satisfy the RCRA corrective action requirements for my site by conducting cleanup under an alternate State program?
2. How would EPA and the authorized States address the alternate authority cleanup provisions in the RCRA permit?
3. How would EPA or the authorized State determine that cleanups conducted under an alternate cleanup program would satisfy the requirements of section 264.101?
B. Financial Assurance.

XI. State Authorization

A. Applicability of Rules in Authorized States.
B. Effect on State Authorization.

XII. Regulatory Assessments

A. Executive Order 12866.
1. Assessment of Potential Costs and Benefits.
a. Description of entities to which this rule applies.
b. Description of potential benefits of this rule.
c. Description of potential costs of this rule.
d. Description of potential net benefits of the rule.
B. Regulatory Flexibility Act.
C. Unfunded Mandates Reform Act.
D. Paperwork Reduction Act.
E. Executive Order 13045: Children's Health
F. National Technology Transfer and Advancement Act.
G. Executive Order 12898: Environmental Justice.
H. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments.
I. Executive Order 13132: Federalism.
J. Executive Order 13211: Energy Effects.

XIII. List of References

## I. Overview and Background

### *A. Why Do This Proposed Rule and Preamble Read so Differently From Other Regulations?*

We wrote today's proposed regulations and preamble in ''readable regulations'' format. We tried to use the active rather than the passive voice, plain language, a question-answer format, and other techniques to make it easier for the readers to find and understand information in today's rule and preamble. The pronoun ''we'' refers to EPA and the pronoun ''you'' refers to the person who would be subject to these proposed requirements (which could be either a facility owner/operator or a Director of a regulatory agency). Once promulgated in a final rule, all requirements, including those set forth in table format, will constitute binding, enforceable requirements.

### *B. Who Is Potentially Affected by This Proposed Rule?*

Today's action, if finalized, could potentially affect an estimated 866 RCRA-permitted private sector facilities which store and/or non-thermally treat RCRA hazardous wastes on-site, using tanks, containers and/or containment buildings. Table 1 below displays the SIC/NAICS code economic sectors associated with these facilities.

TABLE 1.—ECONOMIC SECTORS WHICH OWN AND OPERATE FACILITIES POTENTIALLY AFFECTED BY THIS PROPOSAL

[Facilities with eligible RCRA hazardous waste management units](a)

| SIC (b) | Economic Sector Description | NAICS (b) equivalent | Count of Potentially Affected Facilities | | | |
|---|---|---|---|---|---|---|
| | | | Containers | Tank systems | Containment Bldgs. | Total |
| 0 | Agriculture, Forestry & Fisheries | 11 | 21 | 12 | 0 | |
| 1 | Mining, Oil/Gas & Construction | 21, 23 | 26 | 16 | 0 | |
| 2 | Manufacturing(c) | 31–33, 511 | 427 | 313 | 5 | |
| 3 | Manufacturing (continued)(d) | 31–33 | 285 | 136 | 17 | |
| 4 | Transport, Communication, Utilities | 22, 48, 49, 513, 562 | 272 | 201 | 10 | |
| 5 | Wholesale & Retail Trade | 42, 44, 45 | 175 | 132 | 3 | |
| 6 | Finance, Insurance & Real Estate | 52, 53 | 5 | 2 | 0 | |
| 7 | Services(e) | 71, 72, 512, 514, 811, 812 | 221 | 183 | 2 | |

TABLE 1.—ECONOMIC SECTORS WHICH OWN AND OPERATE FACILITIES POTENTIALLY AFFECTED BY THIS PROPOSAL—Continued

[Facilities with eligible RCRA hazardous waste management units](a)

| SIC (b) | Economic Sector Description | NAICS (b) equivalent | Count of Potentially Affected Facilities | | | |
|---|---|---|---|---|---|---|
| | | | Containers | Tank systems | Containment Bldgs. | Total |
| 8 ..... | Services (continued)(f) ..... | 54, 55, 561, 61, 62, 813, 814 ..... | 90 | 38 | 0 | ..... |
| 9 ..... | Public Admin, Environment & NEC ..... | 92 ..... | 200 | 85 | 4 | ..... |
| | | | Non-duplicative column totals(g) = | | | |
| | | | 800 | 623 | 22 | 866 |

Explanatory Notes:
(a) Source: EPA Office of Solid Waste customized query of RCRIS and BRS databases (data as of March 2000).
(b) SIC = ''Standard Industrial Classification'' system.
NAICS = ''North American Industry Classification System'', adopted by the US Federal Government in 1997, replacing the SIC code system (for SIC/NAICS conversion tables see http://www.census.gov/epcd/www/naics.html).
(c) SIC 2 Manufacturing = Food, Textile/Apparel, Lumber/Wood, Furniture/Fixtures, Paper, Printing/Publishing, Chemicals/Allied Products, & Petroleum/Coal.
(d) SIC 3 Manufacturing = Rubber/Plastic, Leather, Stone/Clay/Glass, Primary Metals, Fabricated Metals, Industrial Machinery, Electronics, Transportation Equipment, Instruments, & Misc. Mfrg.
(e) SIC 7 Services = Hotels, Personal, Automotive, Repair, Motion Pictures, & Recreation.
(f) SIC 8 Services = Health, Legal, Social, Museums/Gardens, Membership Orgs & Engineering/Mngmnt.
(g) Some facilities report multiple SIC codes for their operations to the EPA; consequently both the facility and unit total counts in this table exceed the non-duplicative total numbers of facilities shown in the bottom row above.

*C. What Is the Agency's Proposal?*

We are proposing revisions to the RCRA hazardous waste permitting program to allow a type of general permit, called a ''standardized permit.'' The standardized permit would be available to facilities that generate hazardous waste and then manage the waste in units such as tanks, containers, and containment buildings. In addition to the requirements proposed today, we also are soliciting comment on two issues related to RCRA treatment, storage, and disposal facilities. We are requesting comment on how all facilities receiving permits (standardized, individual, and permits by rule) can satisfy RCRA corrective action requirements by conducting cleanup under the direction of appropriate alternative state cleanup programs. We also are requesting comment on a requirement that insurers that provide financial assurance for hazardous waste and PCB facilities have a minimum rating from commercial rating services.

1. What Is a RCRA Standardized Permit?

We are proposing to define a ''standardized permit'' as a general permit for facilities that generate waste and routinely manage the waste on-site in tanks, containers, and containment buildings. The RCRA standardized permit would be a document that EPA or the authorized state issues. It would consists of two components: A uniform portion that is included in all cases, and a supplemental portion that would be included at EPA's or the Director's discretion. The terms and requirements that we are proposing as part of today's rulemaking would constitute the uniform portion of the standardized permit (see Section VII: Proposed Part 267 Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit). All facilities that are authorized to operate under the standardized permit would need to comply with these applicable terms and conditions.

In developing a permit process for the RCRA standardized permit, we need to satisfy both the statutory requirements in RCRA and Agency policy to provide for local public participation and to ensure that permits include all terms and conditions necessary to protect human health and the environment. Under the proposed permitting scheme for standardized permits, the uniform terms of the standardized permit would be the same nationwide, but there would be an opportunity to add conditions tailored to each particular site. This would ensure that we meet the statutory standard of protectiveness (see Section IV A 1: How would the Regulatory Agency Prepare a Draft Standardized Permit?). In order to satisfy the statutory standard and agency policy for local public participation, RCRA pre-application meeting requirements are included in the proposed standardized permit process as well as other opportunities for public involvement that are traditionally part of the permit issuance process (see Section V: Proposed Opportunities for Public Involvement in the Standardized Permit Process).

We are proposing that the documents and certification the permittee submits with the notice of intent to be covered by the standardized permit would become attachments to the RCRA standardized permit (see Section IX B: What Information would I need to Submit to the Permitting Agency to Support my Standardized Permit Application). These documents and certification include the general RCRA Part A information, the pre-application meeting summary, the location standard information, the permittee's self audit, and the owner's certification of compliance and information availability. This is similar to the way individual RCRA permits are issued with sections of the permit application placed in appendices.

2. Why Are We Proposing a RCRA Standardized Permit?

In 1984, the Agency proposed a standard permit application form and requirements (49 FR 29524, July 20, 1984) for facilities that generated hazardous waste on-site and then stored it in above-ground tanks or containers. The 1984 proposal considered similar issues that are discussed in today's proposal. However, the 1984 proposal was never finalized at that time because of the new requirements imposed by the Hazardous and Solid Waste Amendments of 1984.

The Agency convened a special task force in 1994 to look at permitting activities throughout its different programs and to make specific recommendations to improve these permitting programs. This task force,

known as the Permits Improvement Team (PIT), spent two years working with stakeholders from the Agency, State permitting agencies, industry, and the environmental community. The PIT stakeholders suggested, among other things, that permitting activities should be commensurate with the complexity of the activity. The stakeholders felt that current Agency permitting programs were not flexible enough to allow streamlined procedures for routine permitting activities.

Under the RCRA program, facilities that store, treat, or dispose of hazardous waste currently must obtain site-specific ''individual'' permits prescribing conditions for each ''unit'' (e.g., tank, container area, etc.) in which hazardous waste is managed. Experience gained by the Agency and states over the past 15 years has shown that the complexity of waste management varies by type of activity. Some activities, such as thermal treatment or land disposal of hazardous waste, are more complex than storage of hazardous waste. We believe that thermal treatment and land disposal activities continue to warrant ''individual'' permits, prescribing unit-specific conditions. Similarly, we also believe that the storage of hazardous waste military munitions should continue under the individual permitting program. The site-specific nature of the management of hazardous waste military munitions generally are not routine activities the lend themselves to standardized conditions. However, we also believe that some accommodation can be made for hazardous waste management practices in standardized units such as tanks, container storage areas, and containment buildings. The PIT recommended, among other things, that regulations be developed to allow ''standardized permits'' for on-site storage and non-thermal treatment of hazardous waste in tanks, containers, and containment buildings.

Today, we are proposing to revise the RCRA regulations to allow this type of standardized permit for several reasons. First, this new permitting system is intended to streamline the administrative permitting process and shorten the time required to obtain a RCRA permit, without lessening the environmental protection provided by the permit. The new permit system would also reduce the amount of time and administrative resources required to maintain a RCRA permit throughout the operating life of the facility by providing streamlined permit modification and renewal processes for the standardized permit.

Second, such a standardized permit process takes into account the relative risks posed by the on-site storage and non-thermal treatment of hazardous waste in tanks, containers, and containment buildings. These units are relatively simple to design and properly construct. The engineering and construction knowledge and skills necessary to design and construct these units are relatively basic. These units are in common usage in many applications and are frequently bought ''off-the-shelf'' or built from ''off-the-shelf'' designs. Industry associations and standards organizations have developed standards for these units that are in widespread use. Past experience with these units indicates that they are simpler to design, construct, and manage than units such as combustion units or land disposal units. Storage and non-thermal treatment of waste in these types of units is generally less complicated than thermal treatment of waste (e.g. combustion of hazardous waste in incinerators, boilers, or industrial furnaces) or disposal of waste (e.g. landfilling). It is easier to control risks at these simpler storage and treatment units. We believe that the streamlined standardized permit, as proposed, would allow adequate interaction and oversight by the regulating agency and would provide sufficient technical controls to protect human health and the environment.

Third, although the proposed standardized permit would streamline some of the administrative permitting process, we are not proposing to streamline the public participation requirements and technical standards. The proposed standards and requirements are for the most part the same requirements that apply under the current hazardous waste permitting system. We are only proposing minimal changes to the general facility standards and several minor changes to the technical requirements for tanks, containers, and containment buildings. Because the technical standards remain substantially unchanged, the level of environmental protection that the standardized permit offers would remain high.

3. What Would Be the Advantages of a Standardized Permit?

The proposed standardized permit application procedures are less cumbersome than the procedures for an individual permit. You would not have to submit the amount of information needed to support an individual permit application; although you would need to keep the required information at your facility. Maintaining your standardized permit should be easier because the permit modification procedures would be less cumbersome for a standardized permit than for an individual permit.

Although the standardized permit process would be more streamlined than the process for individual permits, we are proposing that you must continue to comply with waste management practices, day-to-day housekeeping, and judicious maintenance programs found in the ''individual'' RCRA permit program. As mentioned, one of the benefits of the proposed standardized permit would be the reduced paperwork burden and effort associated with the permit application submittal and review process. Since, under the proposal, the permitting agency would no longer be involved with detailed review of permit application material associated with waste management unit design and operation, it would be incumbent on you to properly design, operate, and maintain the waste management units and facility operations subject to the standardized permit.

You should not construe the more efficient standardized permitting process as a reduced compliance burden. Under today's proposal, compliance with proper waste management practices would be ensured by your operation, maintenance and inspection programs and routine inspection by the permitting agency. Similar to the individual permitting system, failure to maintain waste management practices that protect human health and the environment could result in revocation of the standardized permit by the permitting agency, as well as in civil and/or criminal penalties.

In addition the burden reductions for facilities, permitting agencies should be able to more efficiently administer the proposed standardized permit program. Since the application for a standardized permit is intended to be less burdensome than the current RCRA permit requirements, the administrative record should be easier to maintain. Also, the proposed permit modification procedures for a standardized permit should reduce the administrative burden on the permitting agency. EPA welcomes comments on the anticipated advantages—as well as any disadvantages—of a standardized permit.

4. Who Would Be Eligible for a Standardized Permit?

We are proposing to allow generators to apply for standardized permits for hazardous wastes that they non-thermally treat or store on-site in tanks, containers, or containment buildings.

Once a standardized permit rule is promulgated, we would inform you of your eligibility when we make a decision on your permit application. Although you may be eligible for a standardized permit, you would not have to apply for one if you choose not to. Instead you would have the option of applying for an individual RCRA hazardous waste permit. In Section I E 3: What Topics are we Specifically Requesting Public Comment on?, we are taking comment on whether treatment/storage of off-site waste should be eligible for a standardized permit.

*D. What Are the Differences Between the Existing Individual Permitting System and the Proposed Standardized Permitting Process?*

1. What Are the Steps for Obtaining an Individual Permit?

Permits for the management of hazardous waste are issued according to the procedures established in 40 CFR parts 124 and 270. The permit process generally follows the steps laid out briefly below:

- You, as the owner or operator of a hazardous waste management facility, develop an individual site-specific permit application.
- Early in the permitting process (i.e., before submitting an application for a permit), you hold an informal public meeting to discuss proposed hazardous waste management activities with community members.
- You then send the permit application to the permitting agency and the permitting agency announces the submission of a permit application by sending a notice to community members.
- The permitting agency then reviews the application for completeness.
- Following this review, the permitting agency either begins to develop a draft permit applying the section 3004 standards that are codified in 40 CFR part 264 or determines that it intends to deny the permit.
- The permitting agency then gives public notice of the draft permit or intent to deny, allows a 45-day comment period, and holds a public hearing, if requested, before it issues or denies the permit.
- The permit for your facility typically becomes effective 30 days after the issuing agency serves notice of the final permit decision. Within 30 days after the final permit decision, an appeal of the decision to the Environmental Appeals Board (EAB) may be initiated. Decisions of the EAB are subject to judicial review.

2. What Are the Proposed Steps for Obtaining a Standardized Permit?

We propose that the RCRA standardized permit process follow the steps laid out briefly below. We discuss each of these steps in more detail in later sections of this preamble.

- First, you, as a facility owner or operator, would advertise and conduct a meeting with your neighboring community to discuss potential operations. (see Section III A 1: Conduct a pre-application meeting with the community.)
- Then you would submit to the regulatory agency a Notice of Intent to operate under the standardized permit. We are proposing that you must include with the notice a summary of the meeting with the community, certain certifications required under proposed § 270.280, and the Part A information required under § 270.13. (see Section III A 2: Submit a Notice of Intent to operate under the standardized permit with appropriate supporting documents.)
- Within 120 days of receiving the notice of intent and accompanying information, the Director of the regulatory agency would need to make a preliminary decision to either grant or deny you coverage under the standardized permit. (see Section IV A: How would the Regulatory Agency Prepare a Draft Standardized Permit?)
- If the Director anticipates granting coverage, he or she would prepare a draft standardized permit. We are proposing that the draft standardized permit would consist of a uniform portion that applies to all facilities, and any additional terms or conditions that the Director tentatively decides to apply to your specific facility. These site-specific terms or conditions would constitute a supplemental portion of your standardized permit. (see Section IV A: How would the Regulatory Agency Prepare a Draft Standardized Permit?)
- The Director would provide public notice of the draft permit. Under the proposal, the public notice would initiates a 45-day public comment period; any requests for a public hearing would need to be made during the public comment period. We are proposing that the public could comment on your facility's eligibility as well as on the supplemental conditions that the Director tentatively identified. The public could also offer comments on the need for additional supplemental conditions. (see Section V: Proposed Opportunities for Public Involvement in the Standardized Permit Process.)
- Following the public comment period (and public hearing, if any), the Director would make a final permit decision. These requirements would include responding to public comments. (see Section IV B: How would the Regulatory Agency Prepare a Final Standardized Permit? and Section V: Proposed Opportunities for Public Involvement in the Standardized Permit Process.)
- The standardized permit for your facility typically would become effective 30 days after the final permit decision. Also, we are proposing that within 30 days after the Director makes a final decision on an EPA permit, an appeal of the decision to the Environmental Appeals Board (EAB) could be initiated. [Note: Although the final EPA permit decision is subject to appeal to the EAB, we are proposing that the terms and conditions of the uniform portion of the standardized permit would not be subject to EAB review.] Decisions of the EAB are subject to judicial review. (see Section V D: How could People Appeal a Final Standardized Permit Decision Under the Proposal?)

3. How Does the Proposed Process for Standardized Permits Compare to the Process for Individual Permits?

We (or states authorized by us) currently issue site-specific RCRA permits to operate hazardous waste management facilities on an individual basis. Each facility applies for a permit, and we (or the authorized state) write the site-specific permit. The requirements governing how we process a RCRA individual permit application are laid out in 40 CFR parts 124 and 270. In general, the individual process requires you to prepare a much more detailed permit application and the regulatory agency to conduct a more extensive review. The ''back and forth'' between permit applicants and regulators that normally takes place as both parties come to agreement on the completeness and accuracy of the application can impose a significant workload and delay. Under our proposed standardized permit procedures, we streamline this activity. Table 2 offers a step-by-step comparison of the individual permitting process as administered by EPA and the proposed standardized permitting process.

TABLE 2.—PERMITTING PROCESS COMPARISON

| Steps in the EPA permitting process | Individual permit | Proposed standardized permit |
|---|---|---|
| Advertise and conduct pre-application meeting (facility) | ✔ | ✔ |
| Submit permit application/Notice of Intent (facility) | ✔ | ✔ |
| Provide public notice at application submittal (agency) | ✔ | |
| Review application for completeness (agency) | ✔ | |
| Issue Notices of Deficiency (NODs) as necessary (agency) | ✔ | |
| Respond to NODs (facility) | ✔ | |
| Determine application is complete (agency) | ✔ | |
| Make draft permit decision (agency) | ✔ | ✔ |
| | (no deadline) | (within 120 days) |
| Prepare draft permit and statement of basis or fact sheet (agency) | ✔ | ✔ |
| Establish administrative record (agency) | ✔ | ✔ |
| Provide public notice of draft permit decision (agency) | ✔ | ✔ |
| 45 day public comment period; opportunity for public hearing | ✔ | ✔ |
| Make final permit determination; respond to comments (agency) | ✔ | ✔ |
| Final permit becomes effective; deadline for appeals to EAB | ✔ | ✔ |

**Note.**—The blanks represent permitting process steps that are not explicit regulatory requirements under the proposed standardized permits. However, we are proposing that during the 120-day review and processing period of the application by the permitting Agency, the Director would determine the adequacy of the permit application including completeness.

We are also proposing new procedures for modifying standardized permits. In brief, these new procedures would allow you to make certain types of routine changes without prior approval, provided you inform both the regulatory agency and the public of the changes. For more significant changes, you would have to request approval from the regulatory agency before making the changes. The proposed modification process is discussed in detail in Section VI: Maintaining a Standardized Permit.

*E. Public Comments on This Rulemaking*

1. How Can I Influence EPA's Thinking on This Rule?

In developing this proposal, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we haven't considered, new data, information on how this rule may effect you, or other relevant information. We welcome your views on all aspects of this proposed rule, but we request comments in particular on the items in Section I D 3 below. Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and why you feel that way.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
- Make sure to submit your comments by the deadline in this notice.
- Be sure to include the name, date, and docket number with your comments.

2. What Topics Are Not Appropriate for Public Comment?

The proposed provisions for standardized permits are modeled on the existing permit requirements for storing hazardous waste. While tailored specifically for standardized permits, many of the rules are restatements of the existing regulations in plain language format to make them easier to understand. We welcome comment on whether these rules are appropriate for standardized permits and whether, in restating and reorganizing the existing regulatory requirements, we inadvertently changed their meaning. Nevertheless, we are not reopening the existing regulations to public comment, except those provisions explicitly modified by this proposal.

3. What Topics Are we Specifically Requesting Public Comment on?

In addition to general comments about the scope of the standardized permit and its impacts, EPA seeks public comment on the specific regulatory provisions addressed below. We are also requesting comment on corrective action and financial assurance in Section X: Public Comment on Corrective Action and Financial Assurance Issues.

We are interested in the public's views on the following items:

a. Should a facility which manages some of its hazardous waste in on-site storage and treatment units and some of its hazardous waste in other types of waste management units be eligible for a standardized permit for the on-site storage and treatment activities? There are currently facilities in the RCRA hazardous waste universe that have multiple waste management units. It is not uncommon for a hazardous waste facility to have storage and treatment units, and other units such as thermal treatment units or disposal units.

Under the existing RCRA individual permitting system (see §§ 270.1(c)(4) and 270.29), we can issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit for all units at the facility. In other words, a facility's RCRA permit under the existing permitting system does not necessarily cover every unit at the facility. We drafted the proposed standardized permit regulations so that a facility could obtain both an individual permit for any disposal or thermal treatment activities and a standardized permit for any on-site storage and treatment activities. Although it may be resource-intensive for a facility with multiple types of units to choose to go through the RCRA permitting process several times, facilities may see an advantage in obtaining a standardized permit for a portion of their operations. This is

because continued maintenance of a standardized permit should be less burdensome than following the current individual permit modification procedures because of the simplified procedures. We encourage your comments and supporting data on this topic. As currently proposed, standardized permits would not relieve facilities of any substantive compliance requirements; rather, such permits would only streamline the permitting process.

b. Should we expand the applicability of the RCRA standardized permit to include facilities that treat or store waste generated off-site? Such situations could include facilities that take off-site waste from any source as well as a more limited operation where companies with more than one manufacturing location would like to centralize their management of any generated waste at one location. One of the concerns that we have heard about the management of waste generated off-site is that some facilities' owners or operators may not always have complete knowledge of the compatibility of the different waste streams that are brought onto their facilities. Therefore, management of such wastes may be more complicated and require greater attention. In some cases, uncertainty regarding the full chemical make-up of incoming wastes might pose additional risks not readily apparent to the receiving facility. This potential situation may be less likely to occur at a company managing only its own waste generated at several locations, since the company should know what specific wastes are generated by the company and be able to manage them properly at a centralized location. We are interested in your views and supporting data on this topic. As mentioned above, the proposed standardized permits would not relieve facilities of any substantive compliance requirements, including those that are intended to ensure protection of human health and the environment.

c. We are also interested in feedback on a proposal to allow RCRA standardized permits at RCRA permitted off-site hazardous waste recycling facilities. A major goal of EPA is to eliminate regulatory disincentives to safe hazardous waste recycling. Providing regulatory relief for these types of facilities might encourage additional firms to enter the hazardous waste recycling business.

Under current RCRA rules, recycling units are not regulated. As a result, existing requirements focus on the safe storage of hazardous recyclable materials in tanks, containers and containment buildings prior to entering the recycling process. Environmental health and safety for the storage of these materials is addressed comprehensively under part 264, subparts I, J and DD, respectively, as well as part 270. Facilities must, at a minimum, manage these materials in units of good condition, respond to releases in a timely manner, inspect units at least weekly, and address concerns of ignitable, reactive and incompatible wastes.

RCRA permitted hazardous waste recycling facilities frequently must make changes to their business operations that require a permit modification from the EPA or State authorizing agency. Such changes usually do not pose a risk to human health and the environment. However, such changes can take months to approve because of the backlog in permitting work. Therefore, in order to facilitate hazardous waste recycling activities, the Agency is interested in obtaining the views from the public on a proposal that would allow RCRA permitted hazardous waste recycling facilities to follow the modification process that is described in Section VI: Maintaining a standardized Permit.

d. We are also asking for comment on additional opportunities within the framework of the standardized permit, to reduce the burden and cost of the permitting process for facilities, while still maintaining the protectiveness afforded by the RCRA standardized permit process. Specifically, we are interested in whether we should look into the feasibility of developing a ''fill-in-the-blank'' type standard format for each type of covered unit that facilities could then use to prepare required ''Part B'' information that would be required to be retained at the facility. This fill-in-the-blank type standard format could be offered to facilities as guidance to further reduce the permitting burden.

e. Throughout the preamble we request comment on various topics. Some of the sections that we are seeking comments on are:

1. *Section I C 3:* What are the anticipated advantages and disadvantages of a standardized permit?

2. *Section IV A 3:* Is 120 days an appropriate time frame for making a draft permit decision? Should we allow a one time extension to the 120 day requirement?

3. *Section IV B:* Is it appropriate to apply the current provisions for final issuance of an individual permit to a process for issuing standardized permits?

4. *Section VI B:* Are the categories for determining the significance of the permit change appropriate?

5. *Section VII C 5:* Is an exemption from security provisions appropriate for facilities operating under standardized permit?

6. *Section VII C 9:* Should we retain the floodplain waste removal waiver in the standardized permit?

7. *Section VII G 4:* What standard conditions might be used for corrective action requirements under a standardized permit?

8. *Section VII H:* What policy and procedure should be followed in the event that a facility cannot submit a closure plan 180 days prior to last receiving the last volume of waste? Should we drop the closure plan requirement?

9. *Section VII H 1:* What other options should be available to facilities that cannot clean close?

10. *Section VII H 3:* Is an 180 day closure time period appropriate and under what circumstances should it be extended?

11. *Section VII I 4:* What information is available that compares the closure cost estimate with the actual cost incurred performing closure?

12. *Section VII I 6:* What information is most crucial for estimating cost of closure of an eligible unit?

13. *Section VII I 13:* Do States currently assume responsibility for facility compliance and would they obtain standardized permits?

14. *Section VII K:* Should underground and in-ground tank systems be excluded from standardized permits?

15. *Section IX C 1:* Are there significant benefits of a compliance audit and under what conditions would such audits need to be performed by an independent third party?

16. *Section IX C 2:* Should a waste analysis plan be submitted? Under what circumstances?

17. *Section X A 1:* For all types of permits, should facilities be able to satisfy RCRA correction action requirements by conducting cleanup under an alternative State program? Under what circumstances?

18. *Section X A 2:* What methods should EPA and the authorized States use to address the alternate authority cleanup provisions in RCRA permits?

19. *Section X A 3:* How would EPA or the authorized State determine that cleanups conducted under an alternate cleanup program would satisfy corrective action requirements?

20. *Section X B:* Should pure captive insurance be treated differently than third party liability?

21. *Section XII A 1 b:* What are the potential benefits of permit streamlining?

*F. What Law Authorizes This Proposed Rule?*

We are proposing these regulations under the authority of sections 1003, 2002(a), 3004, 3005, 3006 and 3010 of the Solid Waste Disposal Action of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6902, 6912(a), 6924–6926, and 6930.

**II. Conforming Amendments to General Permit Process**

*A. What Changes Would we Make to 40 CFR Part 124 Subpart A—General Program Requirements?*

The General Program Requirements (subpart A) in part 124 apply to many of our permitting programs, not just to RCRA Permits. Consequently, we could not rewrite all of this subpart according to plain language guidelines. We are proposing, however, to amend certain sections to accommodate RCRA standardized permit procedures. We refer to these types of amendments as conforming changes. The proposed standardized permit procedures themselves would be in a separate subpart, which we discuss later.

The conforming changes we propose to the General Program Requirements would ensure that we have fully incorporated the standardized permit into the existing regulations. For example, we are proposing changes to § 124.1 Purpose and Scope and § 124.2 Definitions to include references to the RCRA standardized permit.

We are also proposing to amend § 124.5(c) to have the standardized permit procedures apply in circumstances where an individual permit is being ''revoked and reissued.'' This change would allow you to convert from an individual permit (if you already have one) to a standardized permit. We are also proposing amendments to 40 CFR 270.41(b) to add conversion to a standardized permit as a cause for revocation and reissuance.

*B. How Would the RCRA Expanded Public Participation Requirements Change?*

The current RCRA expanded public participation requirements are in 40 CFR part 124 subpart B—Specific Procedures Applicable to RCRA Permits (these are the procedures specific to the RCRA program that apply in addition to the public participation elements of the General Program Requirements in subpart A). We propose conforming changes in both §§ 124.31 and 124.32 governing pre-application meeting and notice requirements and public notice requirements at the application stage, respectively.[1] The proposed amendments clarify the applicability of the requirements in those sections to the standardized permit (in brief, the pre-application requirements apply under the proposal, but the public notice at application does not since we are proposing to incorporate other notice requirements into proposed § 124.207).

We are not proposing any changes to § 124.33 Information repository (or to existing § 270.30(m) Information repository). Under the proposal, the Director of a regulatory agency could require you to establish and maintain an information repository whether you are applying for an individual permit or a standardized permit. Since we are proposing that anyone seeking standardized permits must certify that the information being maintained onsite is readily available to both the regulatory agency and the public (see proposed § 270.280), we anticipate the Director generally would not need to invoke the information repository requirement. We acknowledge, however, that there may be situations where a community has a special need for access to information, and so are not precluding the use of the information repository requirement in this proposed rule.

Since the waste management activities at facilities eligible for the proposed standardized permit are relatively less controversial than other types of management activities, we anticipate that people in nearby communities would generally not object to going to a facility to review information. However, if it is impractical to go to the facility, people could ask the Director to require a separate information repository. The way the requirement is currently worded (see § existing 124.33(d)), you would get a ''first choice'' at selecting a location, although the Director would have the authority to select an alternate location. According to § 124.33(d), if the Director found the site unsuitable for the purposes and persons who need the repository, then the Director could specify a more appropriate site, such as the local library.

*C. Where Would I Find the Procedures Governing RCRA Standardized Permits?*

We are proposing a new subpart G to 40 CFR part 124 that would contain the procedural requirements for the RCRA standardized permit. Although existing subpart B is reserved for specific procedures applicable to RCRA permits, there are an insufficient number of available sections in that subpart to accommodate all of the standardized permit requirements. We are proposing to leave the RCRA expanded public involvement requirements in subpart B, and establish the RCRA standardized permit procedures in subpart G, starting with § 124.200. Proposed Subpart G is organized into several subdivisions shown in Table 3.

TABLE 3.—SUBPART G ORGANIZATION

| Centered headings | Section numbers |
|---|---|
| General Information about Standardized Permits | §§ 124.200–124.201 |
| Applying for a Standardized Permit | §§ 124.202–124.203 |
| Issuing a Standardized Permit | §§ 124.204–124.206 |
| Opportunities for Public Involvement in the Standardized Permit Process | §§ 124.207–124.210 |
| Maintaining a Standardized Permit | §§ 124.211–124.213 |

[1] Although we are proposing the conforming changes necessary to accommodate the standardized permit procedures, we are not rewriting all of the expanded public participation requirements into plain language during this rule development effort.

## III. Applying for a Standardized Permit

### *A. How Would I Apply for a Standardized Permit?*

We are proposing that you must follow the applicable requirements in 40 CFR part 124 subparts A, B, and G, as well as the requirements in 40 CFR part 270 subpart I. The first activity you would need to do is conduct a pre-application meeting with your neighboring community (see § 124.31). After you hold the meeting, we are proposing that you would submit a notice of intent to operate under the standardized permit, along with a summary of the meeting and the certifications and supporting documents we require under § 270.275, to the Director of the appropriate regulatory agency. In the remainder of this section we provide additional information on the proposal for a pre-application meeting and the Notice of Intent.

1. Conduct a Pre-Application Meeting With the Community

We continue to be firmly committed to public involvement in the permitting process. As mentioned in Section II B: How would the RCRA Public Participation Requirements Change?, we are proposing to apply the pre-application meeting requirement to owners or operators of facilities seeking coverage under a RCRA standardized permit. If we apply the requirements of § 124.31 to the standardized permit process, you as the facility owner or operator would be obligated to advertise and host a meeting with your neighboring community before submitting your Part B application. This meeting is intended as an important first step in establishing good relations between you and the community.

As we said in the preamble for the RCRA Expanded Public Participation Final Rule (see 60 FR 63422–63423, December 11, 1995), we do not expect such a meeting to be a forum for examining technical aspects of your facility operations in extensive detail. Instead, the meeting should provide an open, flexible, and informal occasion for you and the public to share ideas, educate each other, and start building the framework for a solid working relationship. Although we did not prescribe required discussion topics for a pre-application meeting in the 1995 final rule, we encourage you to address, at the level of detail that is practical at the time of the meeting, such topics as: The type of facility, the location, the general processes involved, the types of wastes generated and managed, and implementation of waste minimization and pollution control measures. The discussions could also include such topics as planned procedures and equipment for preventing or responding to accidents or releases. Of course, the public retains the opportunity to submit comments during the proposed formal public comment period as well.

We would like to reaffirm our commitment to the policies we expressed in the RCRA Public Participation Manual (EPA530–R–96–007, September 1996, available from the RCRA Hotline or at *http://www.epa.gov/epaoswer/hazwaste/permit/pubpart/manual.htm)* for promoting successful and equitable public involvement in RCRA permitting activities. We encourage facilities, communities, and permitting agencies to refer to that Manual when planning public involvement activities. The Manual emphasizes the need to tailor activities to the needs of the situation at hand. For example, if the community around a facility includes people who do not speak English as their primary language, we encourage both facilities and permitting agencies to provide multilingual notices.

2. Submit a Notice of Intent To Operate Under the Standardized Permit Along With Appropriate Supporting Documents

If you want to operate under a standardized permit, we are proposing that you must let the regulatory agency know of your intent to do so. We are proposing in § 124.202 to require owners or operators of facilities seeking coverage under a RCRA standardized permit to submit a ''notice of intent to operate under the standardized permit.'' This is consistent with the process and terminology currently used for NPDES general permits.

We are also proposing you send in with your notice of intent several supporting documents: The certifications required under proposed §§ 270.275 (which include the Part A information, and pre-application meeting summary with ancillary materials) and 270.280 (which include the required certifications and audit report). Section 270.280 would require you to certify that your facility meets the performance standards and waste management unit design requirements of proposed Part 267. Section 124.31 would require you to submit a summary of the pre-application meeting where you discussed with the community your planned waste management activities. The RCRA Part A permit information includes the types and volumes of hazardous waste that you will manage and the types of units that you will use. As discussed later, we anticipate that these materials should provide sufficient information for the Director to make a draft permit decision.

We are proposing that you submit with your Notice of Intent a compliance certification as described in § 270.280. These proposed regulations governing the compliance certification would require you either to (1) certify compliance with part 267 or, (2) if you determine that your facility is not in compliance, provide a description of what aspects of your operations are not in compliance with the part 267 regulations (specifying which regulations) and provide a schedule indicating when your facility will achieve compliance with RCRA regulations. As required by current regulations, the schedule would be subject to approval by the permitting authority and the permitting authority would not make a final permit determination until after you have achieved compliance.

Under the proposal, you would have to conduct an internal audit to complete the compliance certification. We propose that this audit would be a systematic, documented, and objective review of your operations and practices related to meeting environmental requirements to assess the compliance status prior to submitting the Notice of Intent. You would need to include the audit results with the compliance certification when you submit the certification to the regulatory agency as a supporting document to your Notice of Intent.

### *B. How Would I Switch From an Individual Permit to a Standardized Permit?*

We are proposing that you could request the Director of the regulatory agency to revoke your individual permit and reissue you a standardized permit. We anticipate that some of you who currently operate under an individual permit may wish to convert to the standardized permit, once regulations to establish such permits are promulgated. We believe there would be advantages to switching to the standardized permit. For example, the proposed technical requirements for the standardized permit (see part 267) would impose significantly fewer reporting requirements than part 264 (e.g. no Part B application submittal required at initial permit stage or for permit renewal), which in turn would reduce your paperwork burden. Also, under today's proposal, you would be able to take advantage of the proposed streamlined modification procedures for any future changes to your facility.

We are proposing that you could initiate the conversion at any point. If there is a substantial amount of time remaining in your permit term, you could initiate the conversion by requesting to have your individual permit revoked and reissued as a standardized permit. We propose this provision in § 124.203, which refers to the procedures in § 124.5 governing revocation and reissuance of permits. Under existing regulations (§ 124.5(a)), any interested person, including the permittee, can request the regulatory agency to revoke and reissue a permit, as long as the reasons are specified in § 270.41. We are proposing to amend the causes for revocation and reissuance in § 270.41(b) to add conversion from an individual permit to the standardized permit. Once a permittee submits this request, we propose applying the procedures for RCRA standardized permits in 40 CFR part 124 subpart G. If, on the other hand, you are nearing the end of your permit term, you could convert simply by deciding to pursue your permit renewal as a standardized permit rather than as an individual permit (see Section VIII B 4: Permit reapplication).

**IV. Issuing a Standardized Permit**

*A. How Would the Regulatory Agency Prepare a Draft Standardized Permit?*

We are proposing that you, as the Director of a regulatory agency, would have to follow three steps to prepare a draft standardized permit.[2] First, you would review the incoming Notice of Intent and supporting information and determine whether the facility is eligible for the standardized permit. Second, you would tentatively decide whether to grant or deny coverage under the standardized permit. We are proposing that, if you decide to grant coverage, you would then propose appropriate terms and conditions, if any, to include in the supplemental portion of the permit. Finally, you would prepare your draft permit decision within 120 days after receiving the notice of intent and supporting information. We propose in § 124.204(c) that your tentative determination either to grant coverage under the standardized permit, including any tentatively identified facility-specific conditions in a supplemental portion, or to deny coverage under the standardized permit, would constitute a draft permit decision. Of course, you would not have to wait until the end of the 120 days to make your draft permit decision, and could provide notice of your decision earlier. You would need to follow many of the proposed requirements in part 124 subpart A in processing the standardized permit application and preparing your draft permit decision. To help you determine which requirements apply, we propose in § 124.204(d), the applicability of relevant subpart A sections in the context of the RCRA standardized permit, as it would be administered by EPA.

In this section, we concentrate our discussion on three areas of the proposal: drafting terms and conditions for the supplemental portion, denying coverage under the standardized permit, and preparing your draft permit decision in 120 days.

1. Drafting Terms and Conditions for the Supplemental Portion

If you, as the Director, decide to grant coverage under the standardized permit, we are proposing that you must tentatively identify appropriate facility-specific conditions, if any, to impose in the supplemental portion of the standardized permit, and include those conditions as part of the draft permit. (Note: If a need for additional facility-specific conditions arises after you make a permit determination, or any of the facility-specific conditions you initially included need to be amended at a later time, you could modify the permit at that time, in accordance with existing provisions in § 270.41.) These proposed facility-specific conditions would go beyond the nationwide conditions in the uniform portion of the standardized permit. We propose that the site-specific conditions that you impose would be those that, in your discretion, are necessary for corrective action purposes or otherwise to ensure protection of human health and the environment. Your authority to impose permit conditions necessary for corrective action purposes comes from RCRA section 3004(u) and (v) and EPA regulations at 40 CFR 267.101. Your authority (and your obligation) to impose permit conditions that ensure protection of human health and the environment (including conditions requiring cleanup of any contamination not subject to 3004(u) and (v)) comes from the ''omnibus'' provision of RCRA section 3005(c)(3) and EPA regulations at 40 CFR 270.32(b)(2).

We anticipate that in certain cases communities may raise the need for site-specific conditions, or actually propose such conditions, during the proposed pre-application meeting. You would see the community's concerns or proposed conditions in the meeting summary that the facility owner or operator submits with their notice of intent. For example, the community may express concern that certain waste management units are too close to the facility's boundaries. To address the concern, you might specify how far back from the boundaries to place the units. As another example, the community might have concerns or pertinent information about the facility's location in relation to local flood patterns, especially if the facility is located in a 100-year floodplain area. (Under the § 267.18 locations standards, facilities can locate in the 100-year floodplain only if the waste management units are properly designed, constructed and operated to prevent damage during flooding events.) You may need to address this situation by imposing site-specific conditions similar to what would be considered under the current individual permit process.

Of course, under the proposal, a facility owner or operator could voluntarily suggest additional permit requirements in response to community concerns or to address corrective action. We are proposing that a facility owner or operator could include a statement with their Notice of Intent specifying additional conditions they would like you to attach to their standardized permit.

If you found that some of the general design or management standards of 40 CFR part 267 are not adequate for a particular facility, we are proposing that you could determine that more stringent standards would be necessary. We do not anticipate that more stringent standards would be necessary in most standardized situations. However, if you determine more stringent standards are necessary for a particular facility, then you would add conditions in the supplemental portion of the standardized permit.

We are proposing that you could determine, in some situations, that there is no need for additional site-specific conditions to satisfy regulatory requirements or to ensure protection of human health and the environment, and that a facility could operate under the terms of the uniform portion of the permit alone. In these situations, you would simply not include any conditions, beyond those in the uniform portion, as part of the draft permit. This scenario is certainly plausible, since existing regulatory controls for the types of units eligible for the proposed standardized permit (e.g., tanks, containers) generally do not need much site-specific variation. Where a site

[2] We are proposing that you would follow the standardized permit procedures if you are issuing an EPA standardized permit; you would follow equivalent state permitting procedures if you are issuing a state permit in a state authorized to issue standardized permits.

requires corrective action, however, the corrective action requirements, which are generally not uniform among sites, could drive the need for supplemental permit conditions.

2. Denying Coverage Under the Standardized Permit

We are proposing that you, as the Director, could decide to tentatively deny coverage under the standardized permit—for example, if a facility owner or operator failed to submit all the information required under § 270.275, or if the facility does not meet the eligibility requirements for a standardized permit (e.g., the facility's activities are outside the scope of the standardized permit). We also propose that you could consider the facility's compliance history, in situations where the facility is operating under RCRA interim status or already has an individual permit and is choosing to convert to the standardized permit. Given the self-implementing nature of the proposed requirements in the uniform portion of the standardized permit, we believe that it is important that the facility demonstrate its ability to adhere to the regulations. If a facility has a demonstrated history of not complying with applicable requirements, it may not be a viable candidate for a standardized permit. We welcome your comments on this issue.

We are also proposing that you may decide not to allow a facility to operate under the standardized permit where such a permit cannot ensure protection of human health and the environment, even if additional site-specific conditions were imposed. We are proposing that facilities that you determine are ineligible for the standardized permit would, of course, still have the option of applying for an individual permit.

3. Preparing Your Draft Permit Decision in 120 Days

Under proposed § 124.204(c), you, as the Director, would need to make a draft permit decision within 120 days of receiving a notice of intent and supporting documents from the facility owner or operator. The proposed 120-day time frame for issuing the draft permit is a new concept in the RCRA program. Although the existing process for RCRA individual permits requires EPA to determine the completeness of an application within a set time frame (60 days), it does not impose any time limit for issuing a draft permit. To ensure that the standardized permitting process does, in fact, streamline the administrative process and shorten the time required to obtain the permit, we believe it is appropriate to propose a time limit for preparing standardized permits. On the other hand, it is important to allow a sufficient period of time for you to review the supporting documents for information that may influence your decision on a facility's eligibility for the standardized permit or prompt you to develop facility-specific conditions to include in a supplemental portion. We suggest that a limit of 120 days would still provide a reasonable amount of time for you to review the supporting documents to (1) determine that the facility is in compliance with applicable regulations (in the case of existing facilities); (2) propose conditions that might be necessary for corrective action purposes, or to otherwise ensure protection of public health and the environment; or (3) propose conditions to address community concerns raised in the early public meeting. This time would also afford you the opportunity to consult with the community or the facility, if necessary to expand on the information submitted with the Notice of Intent.

We request your comments on whether 120 days is an appropriate time frame for a draft permit decision, or whether a longer or shorter time frame would be more suitable. We anticipate that the proposed 120-day period leading up to the draft permit decision would provide sufficient time for you, as the Director, to decide whether to grant or deny coverage under the standardized permit. We would also like comments on whether we should allow for a one-time extension to the time limit, and what an appropriate amount of time for such an extension might be. For example, if state and EPA regional permitting authorities anticipate that they might continue to have joint permitting issues under the standardized permit scenario (such as those that currently exist under the individual permit scenario), how much additional time would be sufficient to address joint permitting or other types of permitting issues? Would a one-time, 90-day extension period be an appropriate amount of time to address concerns? Is some other time period more appropriate? We would also like comments on whether to suspend the 120 day ''clock'' if site-specific conditions require a comprehensive site visit and follow up by the permitting authority. Under this approach the review ''clock'' would be restarted after the site-specific issues were resolved.

*B. How Would the Regulatory Agency Prepare a Final Standardized Permit?*

We are proposing that, after the close of the public comment period, you, as the Director, would make a final determination on your draft permit decision. In other words, you would decide whether to grant or deny coverage to a facility to operate under the standardized permit. In arriving at your decision you would need to consider all significant comments on the draft decision that were raised during the public comment period or the public hearing, if one took place. If you decide to grant coverage, you would, as part of your final permit decision, make a final determination on the facility's eligibility, and on the terms and conditions to include in the supplemental portion, if any. As we discuss below, we propose applying the current procedures for final issuance of an individual permit, codified in § 124.15, to the standardized permit as well.

Once you issue a draft standardized permit, we are proposing that you would follow the same procedures for finalizing the permit that you use to finalize a draft individual permit for a facility—i.e., you would generally follow the procedures of 40 CFR part 124, subpart A, with the exception of certain steps as modified in subpart G.

We propose in § 124.205 which sections of part 124 subpart A would apply to the preparation of your final permit decisions, in the context of a RCRA standardized permit process, as administered by EPA. These proposed procedures include, among other things, requirements for responding to comments, establishing an administrative record, and the issuance and effective date of the final permit. For example, by applying the provisions in § 124.15 Issuance and effective date of the permit, we are proposing that your final permit decision would become effective 30 days after you announce it, with three possible exceptions: (1) You specify a later date in your notice of final determination; (2) someone requests an appeal under § 124.19 Appeal of RCRA, UIC, and PSD Permits (§ 124.19 is referenced by § 124.210 May I, as an interested party in the permit process, appeal a final standardized permit?); or, (3) you received no comments requesting a change in the terms and conditions in the supplemental portion. In this third situation, the permit would become effective immediately upon issuance of your notice. We welcome comments on whether it is appropriate to apply the current provisions of § 124.15 for final issuance of an individual permit to the process for issuing standardized permits. However, we are not reopening for comment the provisions of § 124.15

or the Part 124 permit procedures more generally.

*C. In What Situations Could Facility Owners or Operators Be Required To Apply for an Individual Permit?*

We are proposing to provide the flexibility for you, as the Director of a permitting agency, to require a facility owner or operator to obtain an individual permit (*see* § 124.206). We are also proposing to allow any interested person to petition you to require a facility to get an individual permit. We do not anticipate that you would invoke this provision very often. There are at least two reasons for such a situation. The first is if the facility is not eligible for the standardized permit. The second is if the facility has a poor compliance record while operating under the standardized permit. Given the self-implementing nature of the technical requirements applicable to the facility, we believe it will be important that the facility demonstrate its ability to adhere to the regulations. If a facility has consistently failed to fulfill this obligation in the past, then it likely warrants the more in-depth review that occurs under the individual permit scenario. We are proposing that if you decide to invoke this provision, you would have to provide notice to the facility of your decision, including a description of the reasons that led up to your decision. We are interested in you comments on this topic.

**V. Proposed Opportunities for Public Involvement in the Standardized Permit Process**

*A. What Are the Proposed Requirements for Public Notices?*

We propose in § 124.207 that you (the Director) would issue a public notice announcing your draft permit decision, and place in a location accessible to the community near the facility or at your office a copy of: the draft permit denial or the draft standardized permit (including both the uniform portion and the supplemental portion, if any); the statement of basis or fact sheet; the facility's notice of intent to operate under the standardized permit; and the supporting documents. We are limiting these proposed requirements to the information that the facility owner or operator actually submits to you, since we are proposing in § 270.280 that you would certify that the information that supports the Notice of Intent and the certifications (*e.g.,* all the technical design information for the units) would be available for review at the facility itself. We request comments on whether the public notice requirements are sufficient.

The public notice requirements we are proposing in § 124.207 for announcing your draft permit decision for RCRA standardized permits mirror the public notice requirements for individual RCRA permits that are specified in § 124.10(c). These current requirements specify how you must develop and maintain facility mailing lists and to whom you must send public notices. We are likewise proposing to mirror the methods for distributing public notices. For example, under proposed § 124.207, you would need to publish public notices in a local newspaper and broadcast them over local radio stations.

Section 124.207(c) lays out the proposed content for the notice, such as contact people at both the facility and the permitting agency, the location where you put the draft standardized permit and the supporting information, a brief description of the facility and its operations (including an address or a map showing the facility's location), and an address people can write to join the facility's mailing list. The notice would also provide a mailing address to which people may direct comments, information, opinions and inquiries. We are also proposing that you would provide public notice of your final permit determination according to the requirements in § 124.207. We believe the information in this notice will provide the public an adequate opportunity to stay involved in the standardized permitting process beyond the initial meeting with the facility owners or operators. We are interested in your comments on the appropriateness of this proposed public notice procedure which is modeled after the existing individual RCRA permit public notice procedure.

*B. What Are the Proposed Opportunities for Public Comments and Hearings?*

We are proposing that the notice described in § 124.207 would initiate a 45-day public comment period (see proposed § 124.208). Anyone who chooses to comment on your draft standardized permit decision would need to submit their comments to you in writing. We are proposing a 45 days because it parallels the existing public comment period on a draft individual RCRA permit.

During the public comment period, we are proposing that anyone could ask you to hold a public hearing. They would need to submit their request for a hearing to you in writing and would state the nature of the issues they want to address in the hearing. You could hold a public hearing whenever you find, on the basis of requests, a significant degree of public interest in your draft permit decision. You could also hold a public hearing at your discretion, whenever, for instance, such a hearing might clarify one or more issues involved in your permit decision. However, as is the case for RCRA individual permits, we are proposing that you must hold a public hearing whenever you receive written notice of opposition to a standardized permit and a request for a hearing within the public comment period. The hearing should be held at a location that is convenient to the community, for example, at a town hall or school auditorium. As is the case in the individual permitting process, you would need to automatically extend the public comment period to the close of any public hearing you schedule.

We also propose that the requirements for providing public notice of the hearing, and governing the manner in which the hearing will be conducted, be the same as those followed by the individual RCRA permitting process (see §§ 124.10(c), 124.12(b), (c), and (d)). We propose in § 124.208(d) that you provide the public notice at least 30 days before the hearing. This requirement is consistent with the timing requirements in 124.10(b) for individual permits. Under the proposal, you could give notice of the hearing at the same time you provide public notice of your draft permit decision, and you could combine the two notices.

During the public comment period, we are proposing that interested parties could provide comments on your draft permit decision, including the facility's eligibility for the standardized permit. For example, they could ask you to reconsider a facility's eligibility to operate under the standardized permit. They could also comment on any site-specific conditions, either those you proposed in a draft supplemental portion, or those the commenters would like you to impose when you make your final permit decision. We discuss examples of site-specific conditions in Section IV A 1: Drafting terms and conditions for the supplemental portion. We are also proposing that people could also comment on your decision to deny the permit because sufficient conditions could not be imposed.

Although we are proposing the terms and conditions of the uniform portion on a national basis in Part 267 (see Section VII: Proposed Part 267 Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit), which makes them subject to public comment and challenge as part of this rulemaking,

we are also proposing that the public may comment on the adequacy of those terms and conditions in the context of a particular facility. In other words, if people believe there are site-specific factors that impact the effectiveness of those national standards in protecting human health and the environment, they can submit comments to this effect. In this situation, the terms of the uniform portion would still apply to the facility, but you could impose additional conditions in the supplemental portion to ensure that the facility indeed operates in a manner that is protective of human health and the environment. We request your comments on the adequacy of the proposed opportunities for public comments and hearings, and whether they should be strengthened or even relaxed (given that the management units potentially eligible for the standardized permits are more straightforward).

*C. What Are the Proposed Requirements for Responding to Comments?*

We are proposing that, at the time you make your final decision on the draft permit, you must also provide a response to comments you received during the public comment period. We propose in § 124.209 that the requirements for the response to comments under the standardized permit process be consistent with the requirements under the individual permit process. That is, your response would (1) specify any additional site-specific conditions that you changed in the final permit, and the reasons for the change, and (2) describe and respond to all significant comments on the facility's ability to meet the general requirements, and on any additional conditions necessary to protect human health and the environment. You would make your response to comments available to the public. We are also proposing that you would include in the administrative record for your final permit decision any documents cited in your response to comments. If new points are raised or new material supplied during the public comment period, you could document your response to those matters by adding new materials to the administrative record.

We are also proposing to allow you to request additional information from the facility (i.e., information beyond that submitted with their notice of intent and supporting documents). We are including this provision to address situations that may arise when you need additional information to adequately respond to the comments, or to make decisions about additional conditions you may need to add to the standardized permit for a particular facility. This provision parallels the authority we have under 40 CFR 270.10(k). We are requesting your comments on this topic.

*D. How could People Appeal a Final Standardized Permit Decision Under the Proposal?*

We propose in § 124.210 to allow interested parties to appeal your final EPA permit decision to EPA's Environmental Appeals Board (EAB) within 30 days. Anyone who filed comments on the draft permit decision, either in writing or orally at the public hearing, if one took place, could initiate an appeal. We are proposing that the procedures for appealing permit decisions in § 124.19 also apply to standardized permits. A petition to the EAB is currently a prerequisite to seeking judicial review of a final permit determination. Appeals of RCRA permit actions are often resolved at the administrative appeal step, and do not progress to judicial appeal. We believe the administrative appeal is important to propose as part of the RCRA standardized permitting procedures.

Under today's proposal, people could appeal the standardized permit, including any terms and conditions in the supplemental portion, only after you make your final permit decision. They could also appeal your decision about the facility's eligibility for the standardized permit at this time (e.g., someone may challenge that the unit is not a tank but a thermal treatment unit, and thus not eligible for coverage under the proposed standardized permit). People could not, however, appeal the terms and conditions of the uniform portion. As we point out in Section V B: What are the Proposed Opportunities for Public Comments and Hearings?, we are proposing to promulgate the uniform portion of the permit as regulation, which would make it subject to public notice and comment procedures that are an integral component of our rule-making process. Once the uniform portion becomes a final rule, it could not be challenged after 90 days under RCRA section 7006(a)(1).

## VI. Maintaining a Standardized Permit

*A. What Types of Changes Could Owners or Operators Make?*

Regardless of what type of permit you (the owner or operator) may have, you will likely need to modify your permit over time to reflect changes in your facility's design or operations. For example, you may add new units or start managing a different waste stream, or you may need to reflect administrative changes, like name changes or changes in ownership.

We believe many changes to standardized permits, as proposed, can occur without regulatory oversight or with greatly reduced regulatory oversight and processing time. We also recognize that not all potential changes are of the same magnitude, and thus not all potential changes need to follow one prescribed set of procedures. Consequently, we propose categorizing potential modifications to your standardized permit into two categories: Routine changes and significant changes.

*B. What Are the Proposed Definitions of Routine and Significant Changes?*

We are proposing to define routine changes as any changes that qualify as class 1 or 2 permit modifications under 40 CFR 270.42 Appendix I (commonly referred to as the permit modification table). These types of changes typically include things such as: Administrative and informational changes, changes in ownership or operational control, changes to allow less than 25% increase in capacity of a hazardous waste management unit, and changes to allow you to store different wastes at your facility as long as they undergo similar waste management processes.

We are proposing to define significant changes as: (1) Any changes that qualify as class 3 permit modifications under 40 CFR 270.42 Appendix I, (2) any changes that are not specifically identified in Appendix I, or (3) any changes that amend terms or conditions in the supplemental portion of your standardized permit. These types of changes typically include such things as a greater than 25% increase in a unit's capacity, as well as managing wastes that you did not previously identify and which require different management processes than those you currently use.

We decided to propose categorizing modifications in this way because it is consistent with the approach we used in the existing RCRA pre-application meeting requirements in § 124.31(a). In applying those requirements, we are proposing that the pre-application meeting would only apply to renewal applications in cases where the facility owner or operator was proposing a significant change in facility operations. Additionally, in § 124.31(a) we said that for the purposes of that section, ''a 'significant change' is any change that would qualify as a class 3 permit modification under 40 CFR 270.42.''

We would like people to comment on whether these categories are appropriate, and whether the

procedures we describe in the following two sections correctly reflect the appropriate level of regulatory oversight necessary for these levels of changes. Of particular interest to us is whether changes in ownership or operational control should be included with routine changes. Is there a need for the permitting authority to evaluate the impacts of owner or operator changes on existing permits prior to such changes being made (as currently provided for in §§ 270.40 and 270.42), to confirm that the new owner(s) or operator(s) are legitimate and financially capable of complying with the facility's closure and post-closure care responsibilities and corrective action obligations, if any?

*C. What Are the Proposed Standardized Permit Procedures for Making Routine Changes?*

We propose in § 124.212 to allow you to make routine changes without prior approval by the regulatory agency. If the changes amend any of the information you submitted under proposed § 270.275, however, you would need to submit the revised information to the Director before you make the change. For example, § 270.275(a) would require you to provide the Part A information to the Director. The Part A form includes information such as your name and address. If you change ownership or operational control of your facility, this would be a routine change (it is a type of class 1 modification in § 270.42 Appendix I) which you can make without obtaining approval from the Director. However, the Director would need to know of these types of changes (for purposes including accountability and liability), and so it would be important for the Director to have the revised information. In cases where you have to provide notice to the Director, you would also provide notice of the changes to the facility mailing list and to appropriate units of state and local government before putting the changes in place.

We are not proposing to require you to provide advance notice of all routine changes. Some types of modifications that qualify as routine may not amend information submitted under § 270.275. For example, some changes could be within the scope of the uniform portion of your standardized permit (e.g., a less than 25% capacity increase in a unit). Under the proposed standardized permit scheme, you would not provide detailed information about the technical aspects of your operations. You would instead certify that you meet the technical standards in part 267. Since you would not submit the detailed information as part of the permit application, it would not make sense to submit modifications to that information. In other words, the information would not be part of a permit application and would not result in any facility-specific permit conditions that the Director would need to modify. We are proposing that, regardless of what routine changes you make, you would still need to operate your facility in accordance with the proposed design and management standards of part 267, and you would still be bound by the certifications submitted with the notice of intent to operate under the standardized permit. We request your comments on these proposed procedures.

*D. What Are the Proposed Standardized Permit Procedures for Making Significant Changes?*

If you want to make significant changes to your facility, you would need to follow a set of procedures we are proposing in § 124.213 that closely resemble the initial standardized permitting process. Under the proposed § 124.213 procedures, you would initiate the process for making significant changes by publishing a notice announcing a public meeting on your permit modification request. Since the site-specific conditions by their very nature relate directly to your facility and your neighboring community, and could be the direct result of community input, we believe it is important to make sure the community is aware of potential changes to those conditions. Therefore, we propose requiring you to advertise and conduct a meeting with the public about the proposed modifications. This meeting would be similar to the pre-application meeting you must conduct as part of the initial standardized permitting process.[3] For example, as proposed, you would hold both meetings prior to submitting the notice of intent either to operate under the standardized permit or to modify the standardized permit. As in the case of the initial meeting, you would provide notice of the meeting about the proposed changes at least 30 days beforehand and in the same manner (*i.e.,* as required by § 124.31(d). During the meeting, you would solicit questions from the community and inform the community of the proposed changes to your facility's hazardous waste management activities. Also, as in the case with the initial meeting, you would post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

We are proposing that, after the public meeting on the modifications you want to make, you would submit a modification request to the Director. In your request, you would describe the exact changes you want to make, identify whether they are changes to the information you submitted under 40 CFR 270.275 or to terms and conditions in the supplemental portion of your standardized permit, and you would explain why you need to make the changes. You would also include a summary of the meeting, the list of attendees, and copies of any written comments or materials people submitted at the meeting. We propose that the Director would then have 120 days to make a tentative determination to approve or not approve your modification request.

The proposed 120-day time frame for the Director to make a tentative determination on the modification request is the same as the proposed 120-day time frame that the Director would have to make a draft decision about your initial standardized permit. We solicit comments in Section IV A 3: Preparing your draft permit decision in 120 days, on the appropriateness of the 120-day time frame. If we adopt a different time frame in the initial process in response to comments on this proposal, we plan to make the same change in the modification process as well. Nevertheless, we request comments on our assumption that the modification process would require the same level of effort as the initial process.

We are proposing that, once the Director makes a tentative determination on your modification request, the remaining procedures governing the initial standardized permitting process, i.e., the procedures for providing public notice of the tentative determination, public comment, public hearings, final determination, response to comments, and appeals, would apply to the modification process as well. We request your comments on the applicability of these proposed procedures to the modification process.

*E. What Would Be the Proposed Process for Renewing Standardized Permits?*

We examined the possibility of having a standardized permit remain in effect for the entire life of a facility. The Agency's Permits Improvement Team (PIT) included this as a possible approach for streamlined permitting procedures in its recommendation for a RCRA standardized permit. However,

[3] The meeting we propose here is also consistent with current class 3 modification regulations for individual permits. Those regulations include a requirement for you to conduct a public meeting as part of the modification process (see 40 CFR 270.42(c)(4)).

we are bound by statute (under RCRA Section 3005(c)(3), see also § 270.50)) to limit the lifetime of a RCRA permit to a maximum of 10 years in length, and so are not proposing any new provisions to govern renewals of standardized permits.

Under current regulations (see §§ 270.11(h) and 270.30(b)), if you wish to continue an activity regulated by your permit after the expiration date of your permit you must submit a new application at least 180 days before the expiration date unless you have obtained permission for a later date. This same provision applies to you if you operate under an individual permit, and would apply if you had a standardized permit. To renew a standardized permit, you would follow the same procedures as you would to initially obtain coverage under the standardized permit (those in 40 CFR part 124 subpart G).

## VII. Proposed Part 267 Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standardized Permit

### *A. Overview*

This section of the preamble discusses the specific part 267 RCRA hazardous waste requirements that we propose standardized permitted facilities must meet. The specific topics that will be discussed are:

1. General Facility Standards
2. Preparedness and Prevention
3. Contingency Plans and Emergency Procedures
4. Record Keeping, Reporting, and Notifying
5. Releases from Solid Waste Management Units
6. Closure of Units
7. Financial Requirements
8. Use of Management of Containers
9. Tank Systems, and
10. Containment Buildings.

We are proposing to add a new part to the RCRA hazardous waste standards that specifies the general facility requirements and the unit specific standards for RCRA hazardous waste facilities operating under a standardized permit. These proposed requirements would form the basis of the ''uniform'' portion of the standardized permit. Specifically, during the standardized permit application process, you, as the facility owner or operator, would certify that you are meeting the performance standards and waste management unit design requirements of part 267. You would prepare specific documentation on how your facility is meeting the performance standards and unit-specific requirements found in part 267, and would keep this information on-site at the facility. You would not have to submit this information to the permitting agency for review and approval. Table 4 offers a comparison of the waste management standards found in part 264 (for the individual permit) and in part 267 (for the standardized permit).

We request comment on all aspects of the proposed part 267 rules. Since many of these provisions are restatements of the existing part 264 regulations in plain language format, we particularly invite comment on whether, in rewriting and reorganizing the existing part 264 requirements, we inadvertently changed their meaning. As noted previously, however, we are not reopening the existing regulations to public comment, except those provisions explicitly modified by this proposal. Nevertheless, we request comments on whether each of these existing requirements should apply (and to what extent) to units covered by standardized permits, which we consider inherently more straightforward than other types of management units.

TABLE 4.—TECHNICAL STANDARD COMPARISON

| | Individual permits | Proposed Standardized Permit |
|---|---|---|
| Applicability: | | |
| Facilities that treat, store, or dispose of hazardous waste | ✔ | |
| Only for facilities that store or non-thermally treat hazardous waste on-site in tanks, containers, or containment buildings. | | ✔ |
| General Facility Standards: | | |
| EPA identification numbers | ✔ | ✔ |
| Waste analysis plans | ✔ | ✔ |
| Security | ✔ | ✔ |
| Inspection schedules | ✔ | ✔ |
| Personnel training | ✔ | ✔ |
| Preventive measures | ✔ | ✔ |
| Floodplain and seismic location standards | ✔ | ✔ |
| Construction quality assurance | ✔ | |
| Preparedness/Prevention: | | |
| Requirements for minimizing threats from unplanned events | ✔ | ✔ |
| Contingency Plan and Emergency Procedures: | | |
| Requirements for contingency plans that describe how hazards from fire/explosion/and other releases will be minimized. | ✔ | ✔ |
| Manifest system, record keeping and reporting: | | |
| Requirements for keeping: manifests for wastes accepted from off-site | ✔ | |
| Operating records | ✔ | ✔ |
| Other records | ✔ | ✔ |
| Releases from Solid Waste Management Units: | | |
| Requirements for ground water monitoring | ✔ | |
| solid waste management unit corrective action | ✔ | ✔ |
| Closure: Requirements for facility closure including: | | |
| Closure performance standards | ✔ | ✔ |
| A closure plan | ✔ | ✔ However, closure plan not submitted until 6 months prior to closure. |
| Time for closure | ✔ | ✔ |
| Post-closure | ✔ | |
| Financial Assurance: | | |

TABLE 4.—TECHNICAL STANDARD COMPARISON—Continued

| | Individual permits | Proposed Standardized Permit |
|---|---|---|
| Requirements for financial assurance for closure, post-closure, and liability ..... | ✔ | ✔ Except financial assurance for post-closure and non-sudden liability requirements are not applicable. |
| Management Standards for Containers: | | |
| Requirements for management of containers and container storage areas, and closure. | ✔ | ✔ |
| Tank Systems: | | |
| Requirements for design and installation of tanks, containment of releases, operating standards, inspections, and closure. | ✔ | ✔ Except no waiver provision from secondary containment, no underground tanks allowed, and clean closure required. |
| Containment Buildings: | | |
| Requirements for design and operation, and closure ..... | ✔ | ✔ Except, clean closure required. |

We believe that the current minimum national requirements for hazardous waste management in tanks, containers, and containment buildings found in 40 CFR Part 264 are appropriate for facilities covered under the proposed standardized permit. Therefore, we are proposing to incorporate most of the part 264 standards for owners and operators of hazardous waste facilities into the proposed part 267 standards with minor changes necessary to accommodate the intent of the standardized permit. For example, we made some changes to accommodate the reduced level of interaction under the standardized permit between the permitting agency and the facility owner or operator. Other changes were made to make the part 267 standards more readable. We believe that the proposed part 267 standards provide the same baseline of protection that the part 264 standards do.

*B. Subpart A—General*

1. What Are the Purpose, Scope, and Applicability of This Proposed Part?

In § 267.1, we discuss the purpose, scope, and applicability of the part 267 regulations. The purpose of proposed part 267 would be to establish minimum national standards for facilities managing waste under a standardized permit. As discussed previously in Section I C 4: Who would be Eligible for a Standardized Permit?, facilities that generate waste and then manage the waste on-site in tanks, containers, or containment buildings would be eligible for a standardized permit under today's proposal. The proposed part 267 regulations would apply to owners and operators of facilities who non-thermally treat or store waste under a standardized permit as described in § 270.67. We explain that three categories of facilities are exempt from the part 264 regulations, and the proposed part 267 regulations would include the same exemptions.

First, the existing part 261 regulations contain requirements for the identification and listing of hazardous waste and also discuss several waste streams that are not hazardous waste. Facilities that manage these exempted wastes and non-hazardous waste are not currently subject to the part 264 standards. Similarly, we are proposing that facilities managing these excluded wastes would not be subject to the proposed part 267 standards.

Second, § 264.1(f) currently provides an exemption from the part 264 regulations for facilities that manage hazardous waste if the state in which the hazardous waste management activity is occurring has a RCRA hazardous waste program authorized under part 271 of this chapter. The proposed part 267 regulations would also contain this provision.

Finally, existing § 264.1(g) requirements provide an exemption from the part 264 regulations for various facilities and individuals who manage hazardous waste, such as small quantity waste generators, certain recyclers, farmers disposing of waste pesticides, to name a few. The proposed part 267 regulations would also contain the § 264.1(g) exemption provisions.

2. What Is the Proposed Relationship to Interim Status Standards?

The provisions of proposed § 267.2 discuss the relationship of the standardized permit requirements to the interim status standards. Under section 3005(e) of RCRA, owners and operators of hazardous waste treatment, storage, and disposal facilities in existence on November 19, 1980 or when they are subjected to RCRA permitting, and who submit appropriate notification and a Part A permit application have ''interim status.'' The proposed § 267.2 provisions are similar to those found in the current § 264.3. Under the proposed provisions, if you are currently complying with the requirements for interim status as defined in section 3005(e) of RCRA and qualifying for interim status under § 270.70, you would be required to continue to comply with the interim status standards specified in part 265 until final disposition of your standardized permit application.

3. How Would This Subpart Affect an Imminent Hazard Action?

Proposed § 267.3 repeats the provisions found currently in § 264.4 concerning imminent and substantial hazards. As this proposed provision states, the permitting agency could issue enforcement orders to a facility if an imminent and substantial endangerment to human health or the environment is present, even if the facility is complying with the proposed part 267 provisions.

*C. Subpart B—General Facility Standards*

This section of the preamble discusses the general facility standards that we are proposing for standardized permitted facilities. These proposed general facility standards are similar to the general facility standards currently found in the 40 CFR part 264 subpart B. They describe how you would obtain an EPA identification number, and what the proposed requirements would be for waste analysis, site security, general inspection schedule, employee training, managing ignitable, reactive, or incompatible waste, and locations standards. We are requesting your

comments on the appropriateness of these proposed general facility standards.

1. Would This Subpart Apply to Me?

Section 267.10 contains the proposed applicability language of this subpart. This section states that ''this subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a part 270 subpart I standardized permit, except as provided in § 267.1(b).'' We repeat this applicability language in all the proposed subparts of part 267.

2. How Would I Comply With This Subpart?

Proposed § 267.11 lists the steps that you would take if this subpart applies to you. Specifically, you would obtain an EPA identification number, and follow prescribed requirements for waste analysis, security, inspections, training, special waste handling, and location standards.

3. How Would I Obtain an Identification Number?

Proposed § 267.12 repeats the requirement found currently in § 264.11 on identification numbers with the addition of who to contact for information. Permitting agencies use a facility's identification number to track the operations at the facility and to enter the facility in their hazardous waste facility data system. The existing notice requirements of § 264.12(a) and (b) are not applicable to the proposed standardized permit situation because, under this proposal, no waste would be coming onto a standardized permitted facility from any off-site sources. The existing requirements of § 264.12(c), stipulating that you notify a new owner or operator of your facility of the requirements of both this part and part 270, are included in proposed subpart E (Record keeping, reporting, and notifications).

4. What Are the Proposed Waste Analysis Requirements?

Proposed § 267.13 discusses general waste analysis requirements and repeats most of the requirements currently found in § 264.13 except for those specific to off-site generated waste and land disposal units, which are not proposed to be eligible for standardized permits. We are not proposing to include in § 267.13 off-site waste and disposal units discussed in §§ 264.13(a)(3)(ii), (a)(4), (b)(5), (b)(7), and (c).

Under the standardized permit procedures proposed in § 270.67, you, as the facility owner or operator, would be required to develop a waste analysis plan and keep it at your facility. You can find the proposed waste analysis plan requirements in § 267.13(b). The waste analysis plan would describe sampling and analytical procedures. The purpose of the waste analysis plan would be to ensure that you possess sufficient information on the properties of the waste to be able to treat or store the waste in a safe manner. The waste analysis plan required by proposed § 267.13 (b) should be the same level of detail as the existing plan currently required by § 264.13. You would be required to specify in the plan the level of analysis you would perform on your waste and the frequency with which you would repeat the analysis.

5. What Are the Proposed Security Requirements?

The facility security procedures we proposed in § 267.14 are important factors in the safe management of hazardous waste. These proposed requirements are similar to the security requirements found in current § 264.14. The provisions of § 267.14 would require you to have security procedures that prevent the unknowing entry of people and minimize the potential for the unauthorized entry of people or livestock onto the active portion of the facility. We are proposing that, during inspection of the facility, the permitting agency could review the security procedures and determine if the components of the security system are in place and in working order.

If you wish an exemption to any component of the security system, as provided under the proposed provisions in § 267.14(a) (similar to provisions of § 264.14), you would be required to prepare a written justification and keep it readily available on-site at your facility. This procedure is different from the existing § 264.14 provisions in that you would not make the demonstration to the Director, but instead self-certify that you qualify for the exemption. This self-certification is similar to the demonstration currently available to interim status facilities under § 265.14. The proposed § 267.14 provision contains two conditions for the exemption: (1) If unauthorized entry will not result in injury to people or livestock who might enter the facility, and (2) if such entry will not result in injury to the environment (for example, as a result of disturbing the waste or the equipment within the active portion of the facility). Because past experience shows us that these two conditions are rarely satisfied, we do not expect many of you would be able to qualify for the proposed exemption from security requirements. We invite comment on the inclusion of this proposed exemption for standardized permits. Do you believe that the exemption from security provisions is appropriate for facilities operating under standardized permits?

6. What Are the Proposed General Inspection Schedule Requirements?

We propose requiring you to make the general inspection schedule, as well as the inspection logs or summaries, as described in proposed § 267.15, readily available at your facility. You would generally develop and follow your own written inspection schedules. You would be required to base the written inspection schedule described in proposed § 267.15 on your facility's critical processes, equipment, and structures, and on the potential for failure and the rate of deterioration processes (for example, corrosion) that may lead to failure (just as is required currently in § 264.15). We are proposing to retain minimum inspection requirements and schedules for tanks, containers, and containment buildings. You would be required to incorporate these inspection schedules into your written inspection schedules. You would document all repairs and responses to problems noted during inspections in your inspection log and keep the documentation with the inspection schedule. Several of the regulatory citations currently in § 264.15(b)(4) are not appropriate because they refer to units that are not eligible for the proposed standardized permit (for example, thermal treatment units and land disposal units); therefore, we are not including these citations in the proposed § 267.15(b)(3) requirements.

7. What Training Would my Employees be Required to Have?

The purpose of the training requirement is to reduce the potential for mistakes that might threaten human health or the environment by ensuring that facility personnel are knowledgeable in the areas to which they are assigned. The proposed standards found in § 267.16 are essentially the same as the training standards currently in § 264.16, and include requirements that specify what training your personnel would be required to have and when they need to receive training to do their jobs. You would be required to keep a description of the training program and individual personnel training logs with the other required records at your facility.

8. What Are the Proposed Requirements for Managing Ignitable, Reactive, or Incompatible Waste?

We propose general requirements for handling ignitable, reactive, or incompatible waste in § 267.17 which are similar to the existing requirements found in § 264.17. These general requirements minimize the potential for accidents when you handle ignitable or reactive waste, or when you mix incompatible wastes. Extreme heat or pressure, fires, explosions, violent reactions, or damage to the structural integrity of the device or unit containing the waste are clearly undesirable because of the likelihood that they will cause injury or death or release hazardous waste into the environment.

9. What Are the Proposed Standards for Selecting the Location of my Facility?

The proposed technical standards would require you to comply with location standards described in § 267.18. These standards are similar to the location standards currently found in § 264.18. We believe that the location characteristics of a facility are an important consideration in ensuring safe waste management. The hazards a facility could present to human health and the environment may be increased by locating a facility in certain areas. These proposed location standards are designed to reduce these additional risks. We believe that you should be required to submit the information required by the location standards to the permitting agency, because the location of the facility is a site-specific factor that determines its suitability for hazardous waste management activities. We discuss the submittal of this information to the permitting agency in more detail later in Section IX B: What Information would I need to submit to the Permitting Agency to Support my Standardized Permit Application?

The proposed location standards found in § 267.18 would restrict the siting and waste management activities of facilities in floodplains and seismic zones. We determined in 1981 that waste management activities should be restricted in those two areas because of the risks that these locations pose.

The existing § 264.18(c) provision that sets forth location standards for salt domes, salt bed formations, and underground mines and caves is not included in the proposed location standards of § 267.18 because this provision deals with hazardous waste disposal which is not eligible for a proposed standardized permit.

The proposed § 267.18 standards retain the existing § 264.18(b) provisions allowing facilities to locate within a 100-year floodplain as long as the facility meets proper design, construction, and operating requirements to prevent washout, and to seek a waiver if the facility can remove the waste before flood waters can reach the facility. If a waiver is granted, the facility to where the waste is moved would be required to either have a RCRA permit to manage that particular waste or have interim status. We invite comments on whether we should retain the floodplain waste removal waiver in the standardized permit. It has been our experience that the submittal and approval of any waiver involves a lengthy review process. This review process may defeat the streamlined permitting goal of the standardized permit.

The § 264.18(b)(ii) provisions are specific to land disposal waste management activities and is not applicable to the standardized permit situation. Therefore, these requirements have not been added to the proposed § 267.18(b) provisions.

10. Would I Be Required To Have a Construction Quality Assurance Program?

No, under the proposed rule, you would not need a construction quality assurance program because you are not managing waste in land disposal units. The existing § 264.19 construction quality assurance program has provisions that are applicable to surface impoundments, waste piles, and landfill units. Because these units are considered land disposal units and not eligible for a proposed standardized permit, the construction quality assurance program is not included in the proposed part 267 requirements. Therefore, we did not include a section containing those provisions.

*D. Subpart C—Preparedness and Prevention*

This proposed subpart contains standards that would require you, as the owner or operator of a hazardous waste facility, to minimize threats to human health and the environment caused by the release of waste from a fire, explosion or any unplanned event. Except where noted, the proposed requirements of this subpart are the same as those currently found in subpart C of part 264. We are requesting your comments on these proposed preparedness and prevention requirements.

1. What Are the Proposed General Design and Operation Standards?

Proposed § 267.31 would require you to design, construct, maintain, and operate your facility to minimize threats to human health and the environment caused by the release of waste being managed at the facility from a fire, explosion or any unplanned event. This is the same provision that is found in existing § 264.31.

2. What Equipment Would I Be Required To Have?

Proposed § 267.32 would require you to have certain equipment at the facility, including an alarm system, communication equipment, fire extinguishers and fire control equipment, and either water for hose streams, foam equipment, or water spray systems. This proposed provision would also allow you to not have certain equipment if the potential hazards at the facility don't warrant having the equipment. This proposed section differs from the existing § 264.32 in that the Director would not have to make a determination about whether your facility can be exempt from having some of the required equipment. However, you would be required to keep documentation supporting any equipment exemption at the facility and you would make the documentation available for review by the permitting agency and the public. In this respect, the proposed § 267.32 is the same as the current § 265.32 regulation governing interim status facilities.

3. What Are the Proposed Testing and Maintenance Requirements for the Equipment?

Proposed § 267.33 would require you to test and maintain, as necessary, all the equipment proposed in § 267.32 so that it would be ready when needed. This provision is the same as the requirements currently found in § 264.33.

4. When Would Personnel Be Required To Have Access to Communication Equipment or an Alarm System?

Proposed § 267.34 would require all personnel involved in waste handling to have ready access to the communication equipment and alarms, including situations when only one employee is working at the facility. The requirement would not apply when the equipment is not required under proposed § 267.32. As opposed to the existing requirements in § 264.34, no prior determination by the Regional Administrator would be required for the exemption. However, you should keep documentation supporting the exemption at your

facility, and would be required to make it available for review by the public and the permitting Agency. This is the same approach applicable to interim status facilities under existing § 265.34.

5. How Would I Ensure Access for Personnel and Equipment During Emergencies?

Proposed § 267.35 would require you to maintain sufficient aisle space to allow for rapid remediation of any emergency. The aisle space should be wide enough to allow personnel, fire protection equipment, spill control equipment, and decontamination equipment to move to any facility operation in the case of an emergency. This provision is the same as the current § 264.35 requirement, except for the provision for a waiver in § 264.35. We have not provided for a waiver in proposed § 267.35 because we do not believe, under the proposed standardized permit, that a situation would arise when sufficient aisle space should not nor could not be provided.

6. What Arrangements Would I Be Required To Make With Local Authorities for Emergencies?

The proposed § 267.36 provisions would require you to attempt to make arrangements with local police, fire and emergency response authorities, and hospitals to assist in responding to emergencies. These requirements are similar to those found in existing § 264.37 and include provisions on familiarizing emergency response personnel with the facility layout, properties of the wastes you manage, possible evacuation routes, and types of injuries or illnesses that could result from fires, explosions, or releases at the facility. You would be required to document, in the facility's operating record, any refusal on the part of any of the State or local authorities to enter into such arrangements.

*E. Subpart D—Contingency Plan and Emergency Procedures*

This proposed subpart contains standards that would require your facility to have a contingency plan that describes how hazards to human health and the environment will be minimized. The requirements of this proposed subpart are similar to the provisions currently found in subpart D of part 264, with the exception that you would not be required to submit the plan with your application.

1. What Is the Purpose of the Proposed Contingency Plan and How Would I Use it?

The proposed provisions of § 267.51 would require you to have a contingency plan at your facility. The purpose of the plan is to minimize hazards to human health or the environment whenever a fire, explosion or unplanned event results in the release of hazardous waste or hazardous waste constituents. You would be required to comply with the proposed requirements of § 267.51 immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous constituents that could threaten human health or the environment. The proposed requirements in § 267.51 are the same as the provisions currently found in § 264.51.

2. What Would Be Required To Be in my Contingency Plan?

Under proposed § 267.52, you would be required to include the following in your contingency plan: a description of the planned response to emergencies at your facility; any arrangements with local and state agencies to provide emergency response support (§ 267.36); a list of your facility's emergency coordinators, a list of your facility's emergency equipment; and an evacuation plan, where necessary. The primary purpose of the proposed contingency plan is to ensure that you have anticipated potential emergencies and have developed appropriate response plans. Under EPA's existing ''one-plan'' guidance for contingency planning (61 *FR* 28641, June 5, 1996), you are currently allowed to consolidate multiple plans that may be required under various regulations into one functional emergency response plan. Facilities that are required to comply with the existing § 264.52 requirements, are allowed to meet these requirements by following the ''one-plan'' guidance. Likewise, if you need to comply with proposed § 267.52 requirements, you would not need to prepare a separate plan if you already had a contingency plan that followed the ''one-plan'' guidance. The proposed requirements of § 267.52 are similar to the current provisions of § 264.52. However, proposed § 267.52 does not include the existing requirement of § 264.52(d) to submit the compliance plan information at the time of certification. However, this information would be kept at the facility as proposed by § 270.290(g).

3. Who Would Be Required To Have Copies of the Contingency Plan?

Section 267.53, as proposed, would require that you keep a current copy of the plan at your facility and give copies to all local authorities, including hospitals, that may be called in the event of an emergency. This requirement is the same as the provision in current § 264.53. You may choose, in the interests of promoting good community relations, to provide a copy of the plan to the heads of any local community groups as well. EPA has learned anecdotally that communities can be very interested in this type of information.

4. When Would I Have To Revise the Contingency Plan?

Proposed § 267.54 lists the criteria that dictate when you would need to revise the contingency plan. The proposed § 267.54 requirements are the same as provisions currently found in § 264.54. Factors that would require you to modify the contingency plan include changes in any of the lists of equipment or emergency coordinators, a failure of the plan when it was implemented, permit revision, and changes in design, construction, operation, or maintenance that materially increase the potential for harm to human health or the environment.

5. What Is the Proposed Role of the Emergency Coordinator?

Section 267.55, as proposed, would require at least one employee to be responsible for coordinating all emergency responses. The employee may be either at the facility or on call, and would be required to be knowledgeable of all aspects of the contingency plan, the facility operations, the waste handled, location of records, and facility layout. Equally important, the employee should be able to commit necessary resources to implement the contingency plan. Existing § 264.55 has the same requirements.

6. What Are the Proposed Emergency Procedures for the Emergency Coordinator?

Proposed § 267.56, which elaborates on the responsibilities of the emergency coordinator, is the same as the existing provisions found in § 264.56. Applicable responsibilities vary with type and variety of waste handled and the complexity of the facility. The responsibilities include the following: activating alarms; notifying appropriate State and local authorities, as needed; identifying the nature, source, and extent of any release; assessing possible

hazards to human health or the environment; and monitoring for leaks, pressure buildups, gas generation, or ruptures, as appropriate.

Proposed § 267.57 discusses actions that the emergency coordinator would be required to take after an emergency. These actions include the following: the treatment, storage, or disposal of any materials or waste that result from a release, fire, or explosion at the facility; and the examination and replacement, if necessary, of any emergency equipment you use in response to the emergency. This provision corresponds to existing § 264.56(g) and (h).

Proposed § 267.58 identifies your responsibilities, as the owner or operator of a hazardous waste management facility, operating under a standardized permit. You would be required to notify the Director and appropriate state and local authorities about details of the incident that required implementing the contingency plan. This provision corresponds to existing § 264.56 (i) and (j) .

*F. Subpart E—Recordkeeping, Reporting, and Notifying*

This proposed subpart of 267 contains the standardized permit record keeping, reporting and notifying requirements.

1. When Would I Need To Manifest my Waste?

Because the part 267 standardized permit regulations, as proposed, would not apply to facility owners and operators who receive waste from off-site, the requirements currently found in § 264.71 (a), (b), and (d) are not included in § 267.71. Existing regulations that apply to waste sent from the generator § 264.71(c), has been retained in proposed § 267.70. This is because there could be situations where waste generated, stored, or treated at a facility operating under a standardized permit could be shipped off-site for final treatment or disposal. Also this proposed subpart has been renamed (compared to subpart E of part 264) to reflect that no manifest system is involved. The existing provisions of § 264.72, which cover manifest discrepancies, apply only to wastes received from off-site sources. Because the proposed rule does not currently apply to off-site shipments, we did not include that section in Part 267. As mentioned earlier in Section I E 3, we are interested in your comments on whether the scope of the proposed standardized permit regulations should be expended to include facilities that treat or store waste generated off-site.

2. What Information Would I Need To Keep?

Proposed § 267.71 would require you to maintain a record of operations at your facility. This provision is similar to the current requirements found in § 264.73. You would be required to keep the operating record at your facility until final closure of your facility. The information that you would place in the operating record includes the following: descriptions and quantities of waste handled, location of the wastes at the facility, results of waste analyses and determinations, reports of incidents that required implementing the contingency plan, inspection reports, monitoring and testing data, closure cost estimates, waste minimization certification, and information required under the land disposal restrictions found in part 268 of this chapter. Under existing § 268.7, if a generator sends waste off-site for land disposal, the generator must determine if the waste has to be treated before it can be land disposed. The generator must keep records that were used to make this determination. Because proposed part 267 only applies to the on-site storage and treatment of hazardous waste, certain existing paragraphs in § 264.73 were not included in the proposed § 267.71 standards.

3. What Records Would I Provide to the Permitting Agency?

Proposed § 267.72 stipulates that you would furnish all records required in this part upon request to the permitting authority. This is the same requirement currently found in § 264.74. It should be noted that proposed part 270 subpart I requires many of the same records be made available to the public for review. However, the Agency is not proposing to make the entire operating record available for public review. This is the same as the current situation; a RCRA facility's operating record is not subject to public review. However, the information described in part 270 subpart I is subject to public disclosure. See Section IX B: What Information would I Need to Submit to the Permitting Agency to Support my Standardized Permit Application?, and Section IX D: What Information would be Required to be Kept at My Facility?. The existing provisions in § 264.74(c) are not proposed for § 267.71, because they apply to land disposal, which is not currently covered by the proposed standardized permit.

4. What Reports Would I Need To Prepare and Who Would I Need To Send Them to?

Proposed § 267.73 contains the same requirement for submitting a biennial report as the existing requirements of § 264.75. As with 264.75, the report covers a facility's activities including: the method of treating or storing waste, the most recent cost estimate for closure, waste reduction efforts, and changes in waste volume and toxicity. Section 264.75(c) and (d), which applies to off-site facilities and wastes received, have not been included in proposed § 267.73, because the proposed standardized permit does not apply to such facilities.

Because the existing § 264.76 provision for unmanifested waste report applies to facilities that receive waste from off-site, which is not currently allowed under the proposed standardized permit rule, that section has not been included in proposed § 267.73.

Proposed § 267.73 also lists reports, in addition to the biennial report, that you would have to submit in special circumstances. You would report on fires, releases, and explosions at your facility and report when your facility closes. You would also submit any other reports required for container storage units, tanks, and containment buildings, and reports required under the air standards in part 264 subparts AA, BB, and CC.

5. What Notifications Would Be Required?

If your facility changes owner or operator, you would be required to notify that person, in writing, of the proposed requirements of § 267.74 as well as those in proposed part 270.

*G. Subpart F—Releases From Solid Waste Management Units*

1. Would This Proposed Rule Require me To Address Releases of Hazardous Waste or Constituents From Solid Waste Management Units?

This proposed rule would require you to undertake corrective action to address releases of hazardous waste or constituents from solid waste management units (SWMUs) ( the ''facility-wide corrective action requirement imposed by section 3004(u)) if your facility, or a portion of your facility, as a condition of your standardized permit (unless of course, standardized permit conditions are being added to an existing permit that already addresses corrective action).

The corrective action requirements proposed for standardized permits for

storage facilities are identical in substance to the existing corrective action requirements for non-standardized permits for such facilities[4] and, as in the case of non-standardized permits, site-specific cleanup requirements would be required to be determined on a site-by-site basis. Because corrective action requirements are site-specific, EPA or the authorized State would include them in the supplemental portion of your standardized permit.

2. Are the Proposed Corrective Action Requirements for Standardized Permits Different From the Corrective Action Requirements for Individual Permits?

The proposed corrective action requirements for standardized permits are specified in § 267.101 of part 267 subpart F and are analogous in substance to the current requirements of § 264.101, which otherwise would apply to the facilities addressed in this proposed rule.[5] Proposed § 267.101(a) (analogous to existing § 264.101(a)) would impose the general RCRA section 3004(u) requirement that all facilities seeking a permit must conduct corrective action as necessary to protect human health and the environment for all releases of hazardous wastes or constituents from solid waste management units at the facility. Proposed § 267.101(b) (analogous to existing § 264.101(b)) would require that the permit specify a schedule of compliance for completing corrective action at the facility (where corrective action is not completed prior to permit issuance), and provide assurances of financial responsibility for completing corrective action. Proposed § 267.101(c) (analogous to existing § 264.101(c)) generally would require you to conduct corrective action beyond the facility boundary, and to provide financial assurance for such corrective action. Proposed § 267.101(d) (analogous to existing § 264.101(d)) provides that facilities that require a RCRA permit only because they treat, store, or dispose of hazardous waste in the course of conducting a cleanup are not subject to the facility-wide proposed corrective action requirements of § 267.101.

3. Why Are we Proposing These Requirements?

In the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), Congress directed EPA to require corrective action as necessary to protect human health and the environment for releases from all solid waste management units (SWMUs) at hazardous waste treatment, storage, and disposable facilities seeking a permit. Section 3004(u) of RCRA requires that any permit issued under section 3005(c) of RCRA to such a facility after November 8, 1984, address corrective action for releases of hazardous wastes or hazardous constituents from any SWMU at the facility. Section 3004(u) requires that schedules of compliance (where corrective action cannot be completed prior to permit issuance) and financial assurances for completing such corrective action be included in the permit. In addition, section 3004(v) directs EPA to require corrective action beyond the facility boundary, where permission to conduct such corrective action can be obtained. Because standardized permits, like non-standardized permits (individual permits and permits-by-rule), would be issued under the authority of section 3005 of RCRA to facilities seeking a permit, these corrective action requirements extend to standardized permits as well and EPA has included these requirements for corrective action in proposed part 267.

4. Why Would the Proposed Corrective Action Requirements Be Included in the Supplemental Portion of the Standardized Permit?

One of EPA's objectives in developing this proposed rule was to streamline the permit application and permit issuance processes by developing generic design and operating standards for storage permits, thereby avoiding detailed review of permit applications. To the extent possible, we have developed such standards and proposed them in this rule. However, in developing this proposal, we had to balance our desire for a streamlined permitting process against the need for flexibility in the corrective action program. In the past 16 years, since we began implementing the corrective action mandates of HSWA, EPA has been reminded consistently that most sites in the RCRA universe are unique, and that site-specific determinations for corrective action remedies are typically vital to assuring the best remedy is selected at each site. Based on this experience, rather than attempting to develop generic standards for corrective action, we chose early in the development of this proposed rule to utilize the same site-specific flexibility for corrective action under standardized permits as is currently available under non-standardized permits. That corrective action process provides us with considerable flexibility to fashion remedies that are protective of human health and the environment and that reflect the conditions and the complexities of each facility.

We solicit comment on this proposed approach to corrective action in standardized permits. Further, though we have not proposed standardized permit conditions for corrective action, we specifically request suggestions for standardized permit conditions that might be used for corrective action under standardized permits.

5. Would I Be Able To Utilize the Flexibility Provided by CAMUs, Temporary Units, and Staging Piles When I Conduct Corrective Action Under a Standardized Permit?

All of the flexible mechanisms available under non-standardized permits for corrective action would be available to you under a standardized permit. To utilize any of these mechanisms, you would be required to comply with the existing requirements in part 264 that are applicable to them.

*H. Subpart G—Closure*

The title of this subpart has been changed from the current part 264 subpart G title: ''Closure and Post-Closure'' because we are proposing that facilities with standardized permits be required to meet clean closure standards (or obtain individual RCRA post-closure permits instead). Also, land disposal facilities (which are subject to post-closure care) are not proposed to be eligible for standardized permits.

For most cases, the basic proposed requirements of subpart G in part 267 parallel the existing provisions in part 264 subpart G. However, we propose several changes to the closure provisions in part 267. These proposed changes include the following: the closure plan not being submitted until at least 180 days prior to closure, not allowing the option to close as a landfill and therefore requiring clean closure, and not allowing time extensions for closure. The policy considerations prompting these changes are discussed in further detail below.

[4] The specific language of the provisions, however, differs from the language in Part 264 because of the Agency's recent efforts to use ''plain language'' techniques when drafting regulations and other documents.

[5] You should note that there are significant differences between existing part 264 subpart F and proposed part 267 subpart F, because the hazardous waste management units that are proposed to be eligible for standardized permits are not subject to most existing provisions of part 264 Subpart F. The existing requirements of §§ 264.91–100, apply to ''regulated units,'' which are currently defined in § 264.90 as surface impoundments, waste piles, and land treatment units or landfills that receives hazardous waste after July 26, 1982. Since these units are not proposed to be eligible for the standardized permits, proposed part 267 Subpart F does not contain provisions analogous to sections 264.91–100.

The purpose of these proposed changes is to streamline the closure process in appropriate areas by eliminating unnecessary review and approval of plans by the permitting agency. By not requiring a closure plan until 180 days before closing, you would have better knowledge of what steps and procedures should be taken to ensure closure of each waste management unit. This would preclude the necessity of changing the plan and modifying the permit, which is typically the sequence of events under the existing individual permit process.

Once a standardized permit rule is promulgated, we would recommend that you begin preparing your closure plan as early as possible prior to the submittal of the plan, preferably when the other documents that are normally part of the existing Part B application are prepared. This would allow you to update and change the plan as more details become available. We are proposing that the plan be required to be submitted at least 180 days before you expect to begin closure, and you may not know that date until shortly before the 180-day period. Once a final rule is in place, preparing the plan early would better enable you to meet the deadline.

We are asking comments and suggestions for procedures to be followed in the event that you do not know you are to receive the last volume of hazardous waste until you are within the 180-day period. As the proposed regulations read, you would be required to submit the closure plan at least 180 days before you begin closure, and you would be required to complete closure within 180 days of receiving the last hazardous waste shipment, but you would not be able to begin closure without an approved closure plan. If, because of circumstances that you could not have foreseen, you were unable to submit a closure plan in the time required, you could be in violation of the regulations.

We have considered several options for addressing this situation, and we invite comments on these as well as suggestions for other possible options. One option would be to require the closure plan to be submitted with the original permit application, as in individual permits. Another approach would be a waiver limited to narrow circumstances, such as a bankruptcy forcing an unexpected final shipment of waste. Alternatively, we could attempt to develop a standardized closure plan for each type of unit. The Agency could also leave this aspect of the proposal unchanged, which would place the burden of compliance on you. Under that approach, if you are in a type of business in which it is difficult to predict when the final shipment of waste might occur, we would encourage you to consider submitting your closure plan early to minimize potential noncompliance.

We also intend to simplify the closure plan requirements, by proposing to require the units covered by the standardized permit to meet ''clean closure requirements.'' We believe that in most cases the units can meet these requirements and therefore would not require post-closure care. Consequently, part 267 subpart G, as proposed, contains no provisions for units to close as a landfill or to undergo post-closure care. If your facility could not be clean-closed, you would be required to apply for an individual ''post-closure care'' permit under the proposed rule. No separate provisions are proposed for modifying the closure plan. We believe that a plan submitted at least 180 days before clean closing a container storage area, tank system, or containment building would not require modifying. Since the closure plan would become part of the permit, we are proposing that any changes to the closure plan would be required to follow the permit modification procedures found in §§ 124.211–213. We solicit comments on this requirement and whether our assumptions are valid.

We are also considering an option of not requiring a closure plan. A written plan may not be necessary because we are proposing to require clean closure of all units, and because the procedures for clean closing the types of units subject to this rule should not vary greatly. Instead, we would use inspections and certifications to assure that the unit(s) were closed in accordance with the clean closure performance standards in § 267.111 (general closure standards), § 267.176 (containers), § 267.201 (tanks), and § 267.1108 (containment buildings).

Under this proposed option, the clean closure requirements, including any site-specific requirements, would be written as conditions into the permit. The permitting agency inspectors would verify that all remaining hazardous waste was properly removed and that decontamination and removal of equipment was accomplished according to the permit conditions. The independent professional engineer would also certify that the facility was closed according to the permit conditions, rather than the closure plan as currently proposed in § 267.117. You would still be required to notify the director 45 days before you expect to begin final closure of a unit, so that the permitting agency inspectors and the independent professional engineer can be present.

We invite comments on the feasibility of not requiring a closure plan and on the enforecability of performance standards in the permit. We note that, if you select option 4 as a means of estimating closure cost (see Section VII.I.6.) you would have collected all of the information necessary to prepare a detailed closure plan.

Operations at the units affected by this proposed rule should not effect your ability to clean closure because spills should not occur. The containment standards for container storage areas in section § 267.173 are designed to prevent releases from accidental spills. Furthermore, the proposed standards do not allow a waiver from secondary containment for tanks systems, which will also prevent releases from accidental spills. Finally, the proposed standards require that any releases be quickly collected and contained. For these reasons, a detailed closure plan may also not be necessary.

1. What General Standards Would I Need To Meet When I Stop Operating the Unit?

The proposed closure performance standards of part 267 subpart G are the same as the performance standards currently found in part 264 subpart G. Tanks, container storage areas, and containment buildings are required in both part 264 and under today's proposal to ''clean close.'' Both parts 264 and 267, however, allow you to close tanks and containment buildings as landfills if you cannot attain clean closure. Under the proposed part 267 standards, you would be required to obtain an individual post-closure permit, separate from the standardized permit, if you do not clean close. Thus, for these types of units to continue to be eligible for the standardized permit, you would be required to remove all waste, decontaminate the containment unit, and clean up any spills during closure. The proposed performance standard found in § 267.111 would require you to minimize the need for further maintenance and to minimize or eliminate the potential for post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the extent necessary to protect human health and the environment. We propose minor citation changes in § 267.111(c) to remove inapplicable regulatory references that were in the existing requirements in § 264.111.

We invite comments on whether to make other options available to facilities

that cannot meet the clean closure standards. Under the Post-Closure rule (63 FR 56710, October 22, 1998), if you own or operate a facility with land disposal units, you would have the options of obtaining a post-closure permit or integrating the closure of the unit with on-going corrective action activities in progress at the facility. We are interested in comments on whether a similar process should be available to storage and treatment units covered by the standardized permit that have difficulty clean closing. Under this option, you may not have to obtain an individual post-closure permit if you can address the residual contamination at the closing unit by on-going corrective action activities at your facility.

2. What Procedures Would I Need To Follow?

You would need to follow the procedures listed in proposed §§ 267.111–267.113. These requirements for a written closure plan in proposed § 267.112 parallel those in existing § 264.112, for the most part. One notable exception is that you would not have to submit the plan until at least 180 days before you expect to begin closure. Generally, closure of a unit begins within 90 days of receiving the last volume of waste. Under today's proposal, you would be required to notify the permitting authority 45 days prior to beginning the final closure of a unit. You would still have your closure plan approved by the Director before you begin closure. In addition, because you would not submit the plan with the Notice of Intent described in Section III A 2: Submit a Notice of Intent to operate under the standardized permit along with appropriate supporting documents, the Director would provide the public an opportunity to comment on the plan. You would provide persons on the facility mailing list with a copy of the closure plan at the same time you submit a copy to the permitting authority. You would also place a notice in the local newspaper notifying the public of the opportunity to comment on the plan. The comment period would be open for 30 days. After review of the public comments, the permitting agency would approve, modify, or disapprove the plan. The permitting authority would have 60 days after receipt of the closure plan to make its decision on it.

You would identify and describe in the plan all steps necessary to perform partial and/or final closure of the facility. The proposed § 267.112(b) provisions describe the contents of the closure plan. These provisions are similar to the current requirements found in § 264.112(b) with a few exceptions. You would be required to describe in the plan how you would close each hazardous waste management unit in accordance with the closure performance standards of proposed § 267.111. You would also include, in the plan, an estimate of the maximum inventory of hazardous waste on-site at the facility and a detailed description of the method you would use during final closure for removing, transporting, treating, storing, or disposing of all hazardous waste and identify the types of off-site hazardous waste units you plan to use. You would describe the steps needed to remove or decontaminate hazardous waste residues, contaminated containment system components, contaminated soils, and contaminated ground water. You would also include a schedule for closure of each hazardous waste management unit and the total time for closure of each unit.

No provisions are included in proposed § 267.112 for closing land disposal units or combustion facilities because they are not proposed to be eligible for a standardized permit. We would retain the provision that allows you to modify the closure plan before you notify the Director of your intent to close. Even though you do not have to submit a closure plan until 180 days before you begin closing, we understand that unusual circumstances could cause you to change how you plan to close your facility. To allow for that situation, we have included procedures for modifying your closure plan through a permit modification. Proposed § 267.112(c) includes procedures for amending the closure plan. As with the original plan, you would have to submit the modified plan to the Director of the permitting authority for approval before you could begin closure. Proposed § 267.112 does not contain provisions that require you to modify the closure plan. We do not anticipate that we would need to require you to change the plan given the fact you are submitting it just six months prior to closure of the units.

We are proposing in § 267.112(d) to greatly simplify the existing § 264.112(d) requirement for you to notify the Regional Administrator when closure is expected to begin. This simplification results from several factors. First, we are proposing to limit the applicability of the standardized permit to on-site storage and treatment units. Second, we are proposing to allow only clean closure of the units covered by a standardized permit. Third, we are proposing to prohibit any extensions to the start of closure. These factors are intended to greatly simplify the closure notification provisions currently found in § 264.112(d).

We used provisions similar to those found in the current part 265 interim status requirements as a model for the proposed provisions found in § 267.112(d). We modified slightly in proposed § 267.112(c) and § 267.113 the existing § 265.112 (d)(4) process for submitting and approving the closure plan. Proposed § 267.113 requires the Director to make the closure plan available for public review and comment. This provision is necessary because the closure plan is not available for comment by the public at the time the ''notice of intent'' is submitted to the permitting agency.

3. After I Stop Operating, How Long Would I Have Until I Close the Unit?

We are proposing to simplify the requirements for the time allowed for closure in proposed § 267.115 from those found in existing § 264.113. As proposed, § 267.115(a) would require you to begin closure of the unit following the approved closure plan within 90 days after you receive the final volume of hazardous waste. Because we are proposing to require you to clean close the hazardous waste management units, and because you would not have to submit the closure plan until six months prior to closure under this proposal, we do not expect you to need any extension to the closure period. Additionally, the nature of the units subject to this rulemaking reduces the likelihood of any unforseen circumstances making the closure take longer than planned. We have therefore decided to propose that no time extensions for closing are appropriate for the standardized permit. The § 267.115(b) provisions, as proposed, require you to complete final closure activities in accordance with your approved closure plan within 180 days after receiving the final volume of waste. We do not believe that the existing § 264.113(c) provisions are appropriate for standardized permitting because they focus on the timing of demonstrations for extending the closure period. Existing § 264.113 (d) and (e) have not been incorporated into proposed part 267 because they apply to land disposal units which are not considered in this proposed rule.

The Agency invites comments on the requirement for closure within 180 days. Extensive ground water contamination may prevent the owner or operator from completing clean closure within 180 days. Under this situation, should the Agency allow for extending the closure time period or

should the owner or operator be required to apply for a post-closure permit (or use the corrective action process)?

4. What Would I Have To Do With Contaminated Equipment, Structures, and Soils?

We are proposing to adopt the requirements for disposal or decontamination of equipment, structures, and soils that are currently found in § 264.114 for standardized permits. Proposed § 267.116 repeats most of the existing part 264 requirements. You would have to properly dispose of or decontaminate all equipment, structures, and soils. You would be required to handle any waste that is removed during closure of a unit according to the generator standards of existing part 262. Several regulatory citations found in existing § 264.114 were not repeated in proposed § 267.114 because they are applicable to land disposal or combustion situations.

5. How Would I Certify Closure?

The provision for certifying closure is in proposed § 267.117 and is similar to the current provision in § 264.115. This proposed provision would require you to submit a certification, signed by you and by an independent registered professional engineer, that you have closed your facility following the approved closure plan.

*I. Subpart H—Financial Requirements*

Much of the regulatory language in this proposed rule uses a format of questions and answers that refers to the permittee as ''you'' and to EPA as ''we.'' Except for the introduction to the regulations (§ 267.140), the proposed language in Subpart H does not follow the question and answer format, and it does not use these first and second person pronouns to identify the subject. There are two main reasons for this difference. First, the underlying current financial responsibility regulations in subpart H of 40 CFR 264 and 265, which remain integral to the proposed part 267 regulations, do not use first and second person pronouns, and EPA has not rewritten the existing part 264 and 265 regulations to conform to the question and answer format. The regulations proposed here cross reference the existing part 264 regulations extensively, and often provide that compliance with an existing part 264 provision would constitute compliance with proposed part 267. This linkage of the regulations is necessary so that firms with facilities under both existing part 264 (or part 265 regulations) and proposed part 267 could use the same mechanism for more than one facility, thus eliminating the expense of a separate mechanism. EPA expects that several firms using the proposed standardized permit could have other facilities operating under existing part 265 interim status or part 264 permitting standards.

Second, unlike many other permitting regulations, the responsibilities in the financial assurance regulations often extend to parties other than EPA (or the state permitting agency) and the permittee. For example, a trustee agrees to perform certain functions as part of a trust agreement where EPA is the beneficiary, but EPA is not a signatory. Third, parties must fulfill these responsibilities and the language used for the documents often must conform to specific industry standards such as the Uniform Commercial Code. Because third parties are integral to the operation of the financial responsibility regulations, EPA has not proposed regulatory language based upon first and second person subjects.

If in the future EPA revises the language of existing parts 264 and 265, including the financial requirements sections, then EPA will make corresponding changes in proposed part 267 requirements. This would allow the changes to be consistent across facilities. At present, EPA believes that it is more important to maintain consistency with the existing part 264 and part 265 standards than to introduce substantially different proposed regulatory language in part 267 for the financial requirements.

1. Who Would Have To Comply With This Subpart and Briefly What Would They Have To Do?

The financial responsibility requirements proposed for the standardized permit largely mirror the provisions found currently in 40 CFR part 264 subpart H. Under proposed § 267.140 you would have to comply with these regulations if you are the owner or operator of a facility that treats or stores waste under a standardized permit, except as provided under proposed § 267.1(b), and § 267.140(d), which similarly to current part 264 subpart H, would exempt the States and the Federal government from the requirements of this proposed subpart. If you are subject to these proposed regulations, you would be required to prepare a closure cost estimate, demonstrate financial assurance for closure, and demonstrate financial assurance for liability. You would also notify the Regional Administrator if you are named as a debtor in a bankruptcy proceeding under Title 11(Bankruptcy), U.S. Code.

2. Definitions

The definitions and terms proposed in § 267.141 largely follow those currently used in § 264.141. As discussed below, the proposed regulatory text includes a financial test as a method of complying with the financial assurance requirements that reflects the test that EPA has proposed for other hazardous waste TSDFs. Because this proposed test does not use some of the terms in the current financial test, EPA has not included all of the definitions in the current part 264 regulations in the proposed part 267. If EPA promulgates the current Subtitle C financial test instead, EPA will include those definitions when it promulgates this rule in final form.

3. Closure Cost Estimates

For the financial assurance portion of the standardized permit rule proposal, EPA has tried to develop a process that takes into account the differing regulatory and operating status of facilities that will seek a standardized permit. The first group is facilities that already are subject to part 265 subpart H interim status standards and are already providing financial assurance. The second group of facilities may already be permitted and providing financial assurance under the part 264 subpart H requirements, but wish to switch to a standardized permit. Both of these types of facilities will already have closure plans, cost estimates and financial assurance instruments in place before receiving a standardized permit. EPA believes that the regulations proposed here will not cause conflicts for facilities that are already complying with the existing part 264 and 265 standards. EPA requests comments on any aspects of this proposal that appears to cause conflicts for facilities switching from either part 264 or part 265 requirements to a proposed standardized permit.

The third group is new facilities that will adopt the standardized permit so that they can begin operation. The proposed standardized permit rule would require them to have a closure cost estimate even if they do not yet have a closure plan. There is no separate deadline for the initial estimate. The cost estimate is necessary to comply with the requirement for a financial responsibility instrument which has its own deadline.

Similar to the requirements for other permitted facilities, you would be required to develop and keep at the facility a detailed written estimate, in

current dollars, of the cost of closing the facility in accordance with the proposed closure requirements of §§ 267.111 through 267.117, and applicable closure proposed requirements in §§ 267.176, 267.201, and 267.1108. Unlike the requirements for facilities operating under individual permits, initially you would not have to base these cost estimates upon a closure plan, since treatment and storage facilities with a standardized permit need not have a closure plan until six months before closure begins. However, we propose retaining the other requirements for closure cost estimates. Under proposed § 267.142(a)(1) the estimate would equal the cost of final closure at the point in your facility's active life when the extent and manner of its operation would make closure the most expensive. We are proposing in § 267.142(a)(2) that you base the closure cost estimate on the cost to hire a third party to close the facility. The closure cost estimate may not incorporate any salvage value from the sale of hazardous waste, non-hazardous waste, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure (proposed § 267.142(a)(3)). Further, your cost estimate may not incorporate a zero cost for hazardous waste or non-hazardous waste that you might be able to sell because they have an economic value (proposed § 267.142(a)(4)).

In proposed § 267.142(b) you would be required to adjust the closure cost estimate for inflation within 60 days before the anniversary of the date you established the financial instruments to comply with § 267.143. Proposed § 267.143, which we discuss below, would require an instrument to demonstrate financial assurance for closure. If you use the financial test or corporate guarantee to demonstrate financial responsibility, you would be required to update your closure cost estimate for inflation within 30 days after the close of the firm's fiscal year and before submitting the updated financial test information to the Regional Administrator. We are asking for public comment on whether to change the deadline for updating the cost estimate for inflation for users of the financial test to 90 days after the close of the fiscal year. Changing to 90 days would make this requirement consistent with the deadline for updating the financial test. In adjusting your cost estimate, you could recalculate the maximum costs in current dollars or use an inflation factor derived from the Implicit Price Deflator for Gross Domestic Product published by the U.S. Department of Commerce. This is a slightly different specification for the adjustment than is currently in § 264.142 because the existing regulations currently specify the use of the Implicit Price Deflator for Gross National Product rather than the Gross Domestic Product. We are proposing to use the Gross Domestic Product deflator since it is more readily available. Generally, the differences between the two series are not significant and we believe using the more readily available information will help you comply with this requirement.

Under proposed § 267.142(a)(5), you would be required to revise your closure cost estimate in accordance with the closure plan within 30 days after submitting your closure plan. You would also adjust this revised closure cost estimate for inflation as proposed in § 267.142(b). These requirements mirror those currently in part 264 for facilities operating under individual permits.

Unlike the current § 264.142(c) requirement, you do not have to update the closure cost estimate when a modification to the closure plan has been approved. This is because there is no provision for updating an existing closure plan. Since you only need to submit a closure plan 180 days before closure, there is no need to have a provision allowing for modification of the plan, or for updating the cost estimate as a result of the modification. However, this absence of a modification requirement does not change your responsibility to maintain a current cost estimate. If you modify your operations so that the cost of closure would increase, you would be required to increase the closure cost estimate and provide financial assurance for that amount under proposed § 267.143.

Similarly, the proposed requirements in § 267.142(c) correspond to the existing requirements in § 264.142(d) and would require you to maintain the latest cost estimate at the facility, and, when the cost estimate has been adjusted for inflation as proposed under § 267.142, the latest adjusted closure cost estimate.

Currently, we are aware of various methods that owners or operators use to prepare closure cost estimates. You may base cost estimates for closure, in part, on your past experience closing other facilities. You also may use handbooks to estimate costs for labor, materials, and equipment associated with performing closure activities, such as decontamination, sampling and analysis of wastes or residues, or the off-site transportation and disposal of wastes. In addition, you may reference specific quotes or cost estimates from contractors to perform various closure activities. Whichever method of cost estimating you choose, you would be required to have a cost estimate that meets all of the proposed requirements of § 267.142, and you would need to demonstrate that it meets the requirements.

4. Methods for Estimating Costs for Units Eligible for Standardized Permits

We would not require owners or operators of units eligible for standardized permits to submit to the implementing agency a complete closure plan as part of the initial standardized permitting process. However, we would still require you to prepare a cost estimate for closure as part of the initial standardized permitting process and under proposed § 267.112(a) to submit the closure plan at least 180 days prior to closure. In addition, under proposed § 267.142(a)(5) you would be required to submit a revised closure cost estimate no later than 30 days after submitting a closure plan. In conjunction with today's proposed rule, we are assessing different options that would provide to owners and operators several methods for preparing closure cost estimates for units eligible for standardized permits. Use of the methods would be optional. We intend to design methods that would reduce the burden on the regulated community of complying with proposed requirements under § 267.142 by enabling you to generate estimates that you and the permitting agency can accept as reasonably accurate without preparing an accompanying closure plan for those units. To facilitate the use of any of these alternative methods, we expect to provide guidance explaining the methods in detail and identifying the types of information that you will need to use them.

We recognize that estimating closure costs before developing a closure plan means that you might potentially have less information to factor into your estimates, which could make them less accurate. We are interested in obtaining information on the practical difference between the quality of cost estimates without closure plans and the quality of costs estimates currently received by permitting agencies. While we believe that the closure plan can lead to more accurate estimates, we also have some information that even with closure plans, cost estimates can be incomplete or low.

We compared closure cost estimates submitted to states in one of our regions to an estimate we developed using a cost estimating methodology. This

comparison showed a fairly consistent pattern of lower estimates from the owners and operators than from the methodology. Overall, the cost estimates from the owner or operator were about one-half of the estimates generated by the methodology's model.

We recognize that our evaluation of closure cost estimates only compares estimates developed by owners or operators to estimates generated using our methodology. We did not compare cost estimates from either of these sources with the actual costs incurred by viable owners and operators, or by States which have had to perform closures on facilities with non-viable (bankrupt) owners or operators. We seek information from owners or operators or state permitting agencies which compares the closure cost estimates with the costs actually incurred in performing closure, either by the owner or operator, or the state permitting authority. For more information on EPA's comparison of closure cost estimates please see the document entitled ''Revised Draft Report on Analysis of Cost Estimates for Closure and Post-Closure Care,'' PRC Environmental Management, Inc., October 15, 1996 in the docket, and also on the Internet. See Supplementary Information. Because adequate cost estimates are an essential component of the financial responsibility program, EPA considered several options for improving cost estimates.

5. We Considered Six Options for Developing Cost Estimates, but Prefer Three of Them for This Proposal

We considered six options for guidance for developing closure cost estimates for units eligible for the standardized permit. Under each of the options we considered, our goal was to reduce the burden on owners and operators of developing such cost estimates. The options we considered were:

(1) Have owners or operators provide to the permitting agency specific data from which the agency will calculate cost estimates for closure;

(2) Prepare a methodology for the agency to use to generate ''default'' cost estimates for closure;

(3) Develop a cost estimate matrix based on historical data;

(4) Provide to owners or operators standard forms that they can use to calculate cost estimates for closure;

(5) Prepare a methodology for owners or operators to prepare ''default'' cost estimates for closure; and

(6) Waive requirements to develop cost estimates for eligible units based on the owners or operators ability to demonstrate financial assurance for closure and post-closure care for all other types of units using the financial test or corporate guarantee.

Further information on these options appears in the docket to this rule.

We believe that Options 1 and 2: would remove from the owner or operator the responsibility of preparing a cost estimate for closure, would impose a significant administrative burden on the implementing agency, and might prevent the owner or operator from providing financial assurance for the unit immediately upon submitting its permit application because the owner or operator would have to wait for the implementing agency to generate a cost estimate before the amount of assurance required for closure of the unit could be determined.

Under Option 3, we would use actual costs government agencies incurred when performing closure at abandoned facilities to develop default cost estimates. We believe that we might be able to obtain such data from the files of authorized states or EPA regions that managed closures at facilities when the owners or operators were unwilling or unable to do so. Because the cost data would reflect actual third-party expenditures incurred by the government, default cost estimates based on this research might provide a more realistic basis for demonstrations of financial assurance than cost estimates prepared under more traditional methods.

We have considered this option carefully because it might provide us cost data for closure that are more accurate than those currently available from other widely-used cost estimating methodologies. We may wish to undertake efforts to gather historical cost data for closures of abandoned facilities in the future. At this time, however, we have elected not to propose Option 3 because we do not currently have this information. If we receive sufficient information during the public comment period to support it, we may use such information in the final rule. We requests comments on the advisability of pursuing this option.

As noted above, however, we are requesting that anyone who may have historical cost data regarding the closure of any type of RCRA hazardous waste facility (not just facilities with only the types of units eligible for the standardized permit), or who knows how we might readily access such data, submit it to us for further consideration. To be useful for this effort, the historical cost data should be: (1) Be specific to the actual costs and whether these costs were incurred when either the governmental agency or another entity closed specific units, (2) be specific whether the facilities were abandoned or not, (3) be in sufficient detail to identify costs for specific closure activities, and (4) state when the closure activities occurred. Being able to relate specific costs to specific activities is an important factor in ensuring that we use the data properly when developing methods to estimate closure costs for units at facilities, particularly because the total costs incurred to effect ''closure'' at abandoned facilities frequently include costs of both corrective action and closure activities. Because the distinction between corrective action and closure activities is not always clear, it can be difficult to differentiate between costs that pertain only to closure activities for the regulated unit and all other costs associated with the cleanup of a site. However, we can only use those cost data that differentiate the closure activities to support the development of less burdensome methods for estimating closure costs.

6. Option 4, Standard Forms for Estimating Closure Costs

Under Option 4, EPA developed draft standard forms that you could use to estimate the costs of closing those units proposed to be eligible for a standardized permit. (See the report entitled ''Closure Cost Estimates for Standardized Permits, Background Document—Option 4,'' prepared by Tetra Tech EM Inc., December 31, 1998, available in the docket to this rulemaking and also electronically. See Supplementary Information.) Because cost data derived from private, nationally recognized sources often are proprietary, the draft forms do not contain suggested costs for specific closure activities. The draft forms, however, provide you with a methodology that would help reduce the burden on you by standardizing the cost estimating process. Use of the draft forms also would help to ensure that you recognize all applicable closure activities and incorporate them into your cost estimates for those activities.

Use of the draft forms would reduce the burden of complying with the applicable regulations because the draft forms would provide a step-by-step approach for developing cost estimates for closure. The draft forms would identify the specific activities required for closure in a standard format, so using the forms also would also reduce the burden on the regulatory agency of reviewing and evaluating cost estimates that you submit. It would be easier for the agency to review and evaluate the

adequacy of cost estimates based on the forms because the agency could more easily check the costs of specific activities for reasonableness. However, we recognize that some may wish for a larger reduction of burden associated with cost estimating and so in addition to this option we have also developed an Option 5, discussed below, that has a larger burden reduction, but tends to produce higher cost estimates than this option.

*What Information Would I Need To Develop Cost Estimates for Containers?*

In the case of container storage areas, information you would need to use the draft forms to develop closure cost estimates would include: (1) Type and physical state of each waste you plan to store; (2) maximum capacity of each waste you plan to manage; (3) types of containers that you plan to use (for example, 55-gallon drums); (4) surface area of all pads, berms, or other secondary containment structures; (5) types of heavy equipment you plan to use during closure activities; (6) level of personal protective equipment (PPE) you anticipate needing during closure activities; (7) methods of decontamination you plan to use for the unit and for heavy equipment; (8) number and types of samples you plan to take and appropriate analytical procedures you anticipate using to determine ''clean'' closure; (9) a prediction of whether you will close with the containment system in place or will remove the containment system; and (10) methods you anticipate using to treat and dispose of all wastes you remove and all residues you generate during closure.

*What Information Would I Need To Develop Cost Estimates for Tanks?*

In the case of tanks, information you would need to use the draft forms to develop closure cost estimates would include: (1) Types of tanks; (2) type and physical state of each waste you plan to store or treat in the tanks; (3) maximum capacity of each type of waste you plan to store or treat in the tanks; (4) interior surface area of the tanks; (5) length and nominal diameter of all ancillary piping; (6) surface area of all pads, berms, or other secondary containment structures; (7) types of heavy equipment you anticipate using during closure activities; (8) level of PPE you anticipate needing during closure activities; (9) methods of decontamination you expect to use for the unit and for heavy equipment; (10) number and types of samples you plan to take and appropriate analytical procedures you anticipate using to determine ''clean'' closure; (11) a prediction of whether you will close the tanks in place or will disassemble and remove them; and (12) methods you anticipate using to treat and dispose of all wastes you remove and all residues you generate during closure.

*What Information Would I Need To Develop Cost Estimates for Containment Buildings?*

In the case of containment buildings, information you would need to use the draft forms to develop cost estimates would include: (1) Type and physical state of each waste you plan to store at the unit; (2) maximum capacity of each waste you plan to store at the unit; (3) interior surface area of the containment building; (4) types of heavy equipment you plan to use during closure activities; (5) level of PPE you anticipate needing during closure activities; (6) methods of decontamination you plan to use for the unit and for heavy equipment; (7) number and types of samples you plan to take and appropriate analytical procedures you anticipate using to be performed to determine ''clean'' closure; (8) a prediction of whether you will close the containment building in place or will remove the containment building; and (9) methods you anticipate using to treat and dispose of all wastes you removed and all residues you generate during closure.

Using the draft forms and the information listed above, you would be able to estimate costs for all applicable closure activities for each of the three proposed types of eligible units. In addition to all basic closure activities, the forms would allow you to estimate costs for items such as certification of closure, contingencies, and management and design that frequently are overlooked during the preparation of cost estimates for closure.

We request comments on the potential for further development of Option 4. We recognize that of the information needs listed above for each proposed type of eligible unit, certain factors may be more crucial than others in increasing the accuracy of estimated costs. Some factors might not be necessary at all, or would not be cost-effective. Therefore, we also request comments on which of the information needs listed above to require for use in estimating the costs for closure for the proposed eligible units.

7. Option 5, Default Estimates for Estimating Closure Costs

Option 5 uses data from available cost estimating methodologies to develop ''default'' cost estimates for proposed eligible units. The methodology uses only a minimal amount of key, unit-specific data, you would use those data to calculate costs for all closure activities for each unit. (See the report entitled ''Closure Cost Estimates for Standard Permits, Background Document—Option 5,'' prepared by Tetra Tech EM Inc., December 31, 1998, available in the docket to this rulemaking.) To use this methodology, you would only need the following data: (1) Type of unit; (2) maximum capacity of each waste that would be managed at the unit; and, (3) type and physical state of each waste that would be managed at the unit.

We have developed a possible methodology for container storage areas and tank systems. (We do not have sufficient information to develop this methodology for containment buildings.) The methodology for tank systems differentiates the costs based on whether you close the tanks in place or remove them. The approach further differentiates the costs based on whether the wastes are ignitable or non-ignitable. For both container storage and tank systems, costs per gallon can vary by the volume of waste in gallons. To determine the cost of closing the unit (exclusive of the cost of treating and disposing of the waste), you would multiply the cost per gallon for the size and type of unit by the maximum number of gallons of waste.

To determine the cost of treating and disposing of the waste in the units, we developed a table showing these costs per gallons for different types of waste. First, you would have to determine whether the waste is an aqueous waste or a non-aqueous waste. For an aqueous waste, a table shows a different multiplier depending upon whether the waste is in drums or in bulk, because waste in bulk form is less expensive to treat and dispose of. For several dry wastes there is also a table that provides a cost per gallon for treatment and disposal. Again, you would produce a cost estimate for treating and disposing of the waste by multiplying the quantity of waste by the estimated cost per gallon. The total estimated cost for the facility would be the costs of closing the units plus the cost of treating and disposing of the maximum amount of waste you plan to handle.

We compared the costs using Option 5 with those using industry standard costs in Option 4. Our comparison shows that except for the smallest operations, the cost estimates in Option 5 are higher by an average of one-quarter to one-third. Thus, if you would want to minimize the amount of time necessary to derive a cost estimate, you could

simply use the information in Option 5. Using Option 5 could be especially useful for those of you who would use the financial test and so do not incur the expense of obtaining a third party instrument whose costs depends upon the amount assured. Alternatively, if you would prefer to use a more involved method to obtain a more accurate closure cost estimate, you could use Option 4 or a more complicated approach of your choice. Currently, we believe that additional efforts by us to make the estimates generated using Option 5 (which is quick and easy to use) closer to the estimates generated by Option 4 or other methods are not warranted. Variations can occur around any closure cost estimates.

While we have discussed these alternative methods of estimating closure costs, the purpose of the proposed regulatory requirement for those of you operating under the standardized permit remains the same as for a facility currently operating under a Part 264 permit or under interim status. Under proposed § 267.142 you would be required to have a closure cost estimate that ensures you have sufficient funds available to close your facility properly. While options 4 and 5 provide simplified methods of estimating these costs, you would still be responsible for ensuring that the use of these methods provides an estimate that will cover the costs of closure by a third party.

8. Option 6, Waiving the Cost Estimate for Facilities Using the Financial Test or Corporate Guarantee

Under Option 6, we would waive the requirement that you develop cost estimates if you are able to demonstrate financial assurance for closure and post-closure care using the financial test or the corporate guarantee. We discuss the actual requirements of the financial test in a later section of the preamble. As discuss more fully latter, under this approach we presume a firm that passes the financial test has the financial wherewithal to close the facility. We base our presumption on the fact that a firm that passes the financial test has a very low probability of bankruptcy, and because the closure costs would not represent a significant outlay for the firm in comparison with its net worth.

9. Availability of Information on EPA's Proposed Approaches

The regulatory language in this proposal does not specify any of the six options outlined above. Instead the proposed regulatory language in § 267.142 includes only the requirement to develop the cost estimate. We intend to provide guidance on how to estimate closure costs for facilities with a standardized permit which have not already developed a closure plan. (Once the facility has submitted a closure plan, EPA proposes that the facility must update the closure cost estimate within 30 days to reflect the information in the closure plan). We have included in the docket to this rulemaking information explaining more fully the approaches for estimating costs under options 4 and 5. We seek comments on the advisability of these options (and on option 6 which we discuss more fully below) and on whether the use of guidance for cost estimating in the absence of a closure plan is advisable. If the commenter believes that we should require the use of a particular cost estimating techniques in the standardized permit regulations, we would like information on how to maintain current costing methodologies in regulations. Since methodologies change over time, this approach could obligate us to update the regulations periodically and authorized states to adopt the updated language.

10. Financial Assurance for Closure

We designed the requirements proposed in § 267.142(a)(1)–(4) to ensure that the cost estimate which forms the basis for determining the amount of the financial assurance instrument required in § 267.143 would provide sufficient funds to close the facility properly at any time. We want to ensure that there would be sufficient financial resources to close the facility properly even in the event that you enter bankruptcy. The requirements proposed in § 267.143 specify the mechanisms from which you can choose to demonstrate financial assurance for closure obligations.

The proposed § 267.143 provides you the same mechanisms that are available to owners and operators of facilities operating under permits currently issued under part 264. However, we have made modifications to these requirements (from the analogous requirements in part 264) to account for the particular circumstances of the standardized permit. The differences between the requirements under §§ 264.143 and 267.143 are discussed below.

*Closure Trust Fund (§ 267.143(a)).* Under the proposed § 267.143(a) the pay-in period for the closure trust fund for the standardized permit facility would differ slightly from the requirement for facilities with permits issued under part 264. Currently, if you have a new facility seeking coverage under a part 264 permit, you must make annual payments into the trust fund over the remaining life of your facility, as estimated by your closure plan, or over the life of the permit which is usually ten years, whichever is shorter. Under the proposed standardized permit procedures, however, you would not have to provide a closure plan as part of the initial permitting process. Without the requirement for a closure plan as part of the initial process, we needed a time period over which to compute the pay-in period, and so are proposing a period of three years. We chose this time period, which is shorter than the life of the permit as currently allowed for individual permits under § 264.143(a)(3), because the current requirements in § 264.143(a)(3) were selected to accommodate types of operations, such as landfills, which would normally be receiving waste over a period of years, with potentially increasing closure costs over that time period. Conversely, we do not expect facilities proposing to operate under the standardized permit to build up their waste volumes, and the resulting closure costs, over time. Moreover, the cost for closing a facility operating under the standardized permit would not include the costs of ground water monitoring, covers, or post-closure monitoring, so we would expect the cost to be less than for many of the other types of facilities with individual permits that are currently subject to § 264.143. Therefore, we anticipate that the burden of the three year pay-in period will not be excessive. Further, we note that requiring a three year pay-in period can preclude some potential problems that can arise under the longer pay-in period. For example, a long pay-in period can lead to insufficient funds being available at the time of closure. If the financial condition of the permittee were to deteriorate toward the beginning of the period, the owner or operator would not yet have funded a substantial fraction of the trust, and the permitting authority could be left with insufficient funds for closure in the event of the permittee's failure to perform closure. Furthermore, the three year period is consistent with the requirements for financial assurance for commercial storers of PCB wastes. See § 761.65(g)(1)(i). EPA requests comment on the proposed use of three years as the pay-in period for a trust fund in the absence of a closure plan.

We are proposing to simplify the requirements for the pay-in period for a trust fund for existing facilities seeking coverage under the standardized permit and wishing to use a trust fund to demonstrate financial assurance. An

existing facility whose trust fund's value is less than its closure cost estimate when it receives a standardized permit would have 60 days to increase the value of the trust to the amount of the closure cost estimate. The requirement proposed in § 267.143(a)(3) clarifies that the 60 days will apply both to existing facilities under interim status and under individual permits, regardless of when they obtain a standardized permit. This means that it would effectively have a 60 day pay-in period.

The Agency arrived at this proposed requirement by considering the two classes of existing facilities that could use a trust fund with the standardized permit: Those currently operating under interim status (part 265 standards) and those operating under part 264 permits. A facility operating under interim status and using a trust fund must fully fund its trust by July 6, 2002, which is twenty years after the effective date of the § 265.143 standards. See § 265.143(a)(3), and 47 FR 15432. For such a facility, the deadline for a fully funded trust under interim status would probably be close to the effective date of their standardized permit. The effective date of a standardized permit would be after we promulgate this proposed rule in final form, and, in authorized States, after the State has adopted the rule and begun to issue these permits. Therefore, EPA proposes a 60 day pay-in period for an existing interim status facility seeking a standardized permit and using a trust fund to demonstrate financial assurance. This 60 day period is the same deadline facing an interim status facility that must increase the amount of a trust fund after the end of the pay-in period.

A facility that already has an individual permit based on the existing part 264 requirements must fully fund the trust over the term of the initial permit (or over the remaining life of the facility, whichever is shorter). See § 264.143(a)(3). Thus a facility that wishes to convert to a standardized permit rather than renew its existing permit should already have funded its trust fully. A permitted facility using a trust could also decide to convert to a standardized permit before the normal end of its current permit's life by asking to have its individual permit revoked and reissued as a standardized permit. Under existing § 264.143(a)(3), owners or operators must make payments into the trust annually over the ''term of the initial permit,'' or the remaining operating life of the facility, whichever is shorter. This is the ''pay-in period'' for an existing permitted facility. By terminating its permit early (in order to convert to the standardized permit), the owner or operator in effect terminates the pay-in period. After the pay-in period which would end at the end of the life of the initial Part 264 permit, an owner or operator using a trust must comply with existing § 264.143(a)(6) and maintain within 60 days the value of the trust to at least the amount of the closure cost estimate (or obtain other financial assurance). Therefore the 60 day requirement in the proposed standardized permit regulations is the same as in the current 264 standards.

*Surety Bonds (§ 267.143(b) and (c)).* The proposed rule would allow you to use surety bonds guaranteeing either payment or performance as mechanisms for demonstrating compliance with proposed § 267.143(b) or (c) respectively. As in the existing part 264 subpart H standards, you must also establish a standby trust fund.

*Letter of Credit (§ 267.143(d).* The proposed regulations would allow you to use an irrevocable standby letter of credit, and a standby trust fund as specified in existing § 264.143(d).

*Closure Insurance (§ 267.143(e)).* Under proposed § 267.143(e), we would allow you to use insurance as a mechanism for demonstrating financial assurance for closure. The requirements of this section reference the corresponding existing requirements in § 264.143(e).

Some companies which do not qualify for the financial test (discussed more fully latter) for any or all of their obligations, have sought to use captive insurance as a method of self insurance. These companies can establish a pure captive insurer subsidiary to provide insurance for the parent company's costs of closure, or third party liability requirements. The pure captive insurance company provides insurance for the parent, and the parent can have direct involvement and influence over the insurance company's major operations such as underwriting, claims management, and investment. We discuss captive insurance in more detail in Section X B: Financial assurance.

*Financial Test (§ 267.143(f)) and Corporate Guarantee (§ 267.143(g)).* The proposed regulation in § 267.143(f) would allow the use of a financial test by you or by a corporate guarantor as currently provided in § 264.143(f) though the tests proposed here differ from those currently in effect in parts 264 and 265. We proposed changes to the financial test on July 1, 1991 (56 FR 30201) for owners and operators of treatment, storage and disposal facilities. In addition, on October 12, 1994 (59 FR 51523) we proposed changes to the domestic asset requirement for the RCRA Subtitle C financial test when we proposed a financial test for private owners and operators of municipal solid waste landfill facilities (MSWLFs). It is important to understand how the proposed changes to the financial test could affect the proposed standardized permit rule.

The proposed changes to the financial test would make the test less available to firms more likely to enter bankruptcy. The test would do this by changing the financial test ratios to make the test less available to firms with large debts compared with their cash flow or net worth. However, the proposed test allows firms that pass to assure a higher level of obligations than the current RCRA Subtitle C financial test. Under the current financial test, companies must have tangible net worth at least six times the amount of the obligations covered, and also at least $10 million. Firms that pass the proposed test can assure an amount of obligations up to $10 million less than their tangible net worth.

We anticipate that companies passing the proposed financial test will be much more likely to cover all of their obligations than under the current rule. This occurs because the additive requirement (tangible net worth of at least $10 million more than the amount of obligations covered) covers a larger amount of obligations that the six times multiple of the current rule. With this in mind, we are seeking public comment on not requiring a firm to prepare a closure cost estimate for units covered by the standardized permit if it passes the financial test and can cover all of its other obligations with the financial test. By all of their other obligations, we mean to include costs for liability, closure, post-closure care and corrective action under RCRA Subtitle C; costs for closure, post-closure care, and, if necessary, corrective action obligations for municipal solid waste landfills under RCRA Subtitle D; closure costs for PCB storage facilities; plugging and abandonment costs for Class I wells under the UIC program; financial assurance obligations for underground storage tanks; financial assurance for actions under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); and any other environmental obligations (see proposed § 267.143(f)(2)(i)(A)(1)). If such a company could no longer pass the financial test, it would have to prepare a cost estimate and provide a financial assurance mechanism through a third party.

We promulgated a final regulation establishing a financial test for private

owners and operators of municipal solid waste landfill facilities April 10, 1998 (63 FR 17706). That financial test differs from the regulatory text in the rule proposed for RCRA Subtitle C facilities. To assist the reader in determining what the proposed financial test for the standardized permit could look like if we were to adopt the test proposed for Subtitle C and adopted for municipal solid waste landfill facilities, we have included proposed regulatory text in this notice. We could also determine that we would use the financial test currently in existing § 264.143(f), § 264.147(f), and the associated language for the instruments in § 264.151(f) and (g) if we should promulgate the standardized permit rule in final form before promulgating revisions to the RCRA Subtitle C financial test.

In the record keeping and reporting requirements of today's proposal we have proposed the requirements for a special report from the firm's independent certified public accountant consistent with those in existing § 258.74(e)(2)(i)(C) rather than the existing § 264.143(f)(3)(i). Under the existing financial test for hazardous waste facilities, we always require a special report from the firm's independent certified public accountant (§ 264.143(f)(3)(i)), even if the data in the chief financial officer's letter come directly from the annual report. The proposed requirement (§ 267.143(f)(2)(i)(C)) would only require a special report from the independent certified public accountant in instances where we cannot verify financial data in the chief financial officer's letter from the firm's financial report. This change could reduce the reporting burden for users of the financial test whose submissions of information could be verified from their audited financial statements, and eliminate for these companies the expense of requiring a letter from the outside auditor. We are interested in comments on the appropriateness of reducing this reporting burden, whether this would also be appropriate for facilities currently regulated under part 264 or 265, and whether this change would significantly reduce the reporting burden and by how much.

Today's proposed regulatory language has some other differences from the current RCRA Subtitle C test regulations. The first is that we do not prescribe language for the chief financial officer's letter as we currently do under § 264.151(f). The advantage of this approach would be the additional flexibility it provides to facilities that could operate under the standardized permit and who would use the financial test. Another advantage to this approach might be that requiring standard language could make compliance easier, since the chief financial officer would not have to choose the wording of the letter. EPA could also promulgate a final regulation that includes the language requirement similar or identical to that currently in § 264.151. We request information from States and the regulated community on the need for specific language, or whether the current arrangement used in the municipal solid waste landfill regulations (§ 258.74), which does not specify the language of the letter, is appropriate. Second, today's proposed language follows the model of the existing part 258 regulations by giving a separate section for the regulations governing the use of a corporate guarantee.

*Use of Multiple Mechanisms.* Under proposed § 267.143(h) you could utilize a combination of mechanisms at your facility. In the proposed revisions to the RCRA Subtitle C financial test (56 FR 30201), EPA proposed to allow the combination of the financial test with another mechanism for demonstrating financial responsibility for closure at a single location. We propose to allow this same flexibility for facilities qualifying for the standardized permit.

Under proposed § 267.143(i), if you have multiple facilities with a standardized permit you would be able to use a single mechanism for more than one of your facilities. This provides the same flexibility that owners or operators of facilities with individual permits or interim status facilities have under existing §§ 264.143 and 265.143.

11. Post Closure Financial Responsibility

Because the proposed standardized permit rule would only be available to facilities that can clean close, the proposed standardized permit regulation does not anticipate a need for post-closure cost estimates, or financial assurance for post-closure care. Similarly there is no need for mechanisms for combining financial assurance for closure and post-closure care. Therefore, the proposed regulations in part 267 do not have provisions reflecting the existing requirements of § 264.144–146.

12. Liability Requirements

We are proposing to require financial assurance for third party liability for sudden accidental occurrences. We propose that you have and maintain liability coverage of at least $1 million per occurrence, with an annual aggregate of at least $2 million exclusive of legal costs (§ 267.147(a)). These proposed requirements are the same as for facilities with individual permits, and apply to the facility or a group of facilities. Thus, if the owner or operator of facilities with individual permits had the required liability coverage for them, the addition of facilities under the standardized permit would not increase the dollar amount of the liability coverage.

The proposed mechanisms available for demonstrating financial assurance for third party liability would be the same under the standardized permit rule as for units covered by individual permits. In this proposed rule, we have arranged the mechanisms in the same order as they appear for closure, even though this is different from the order currently in § 264.147. We request comments on whether this makes the regulation easier to follow, or if we should organize proposed § 267.147 in the same order as existing § 264.147. The mechanisms for third party liability would be a trust fund (§ 267.147(a)(1), surety bond (§ 267.147(a)(2), letter of credit (§ 267.147(a)(3), insurance (§ 267.147(a)(4), financial test (§ 267.147(a)(5), or guarantee (§ 267.147(a)(6). Furthermore, we would also allow the use of multiple mechanisms under proposed § 267.147(a)(7), as allowed under existing § 264.147(a)(6).

As noted above, we are considering whether to disallow the use of captive insurance as a mechanism for providing financial assurance for closure. However, we believe that liability requirements are generally better suited to the use of insurance. Insurance is a mechanism for protecting from risk, or the probability that an unfortunate event may occur. Closure is a certain event because an owner or operator (or the permitting authority in the event of the permittee's bankruptcy) will have to close its hazardous waste facility and so the risk only involves the timing of the closure, and not whether it might occur. Because the hazardous waste regulations are designed to protect human health and the environment, a release from a facility that could affect a third party is not a certainty, and in fact, there can be a low probability of a facility having a release that could affect a third party. We request comments on whether pure captive insurance should be treated differently for third party liability where there is a risk of an event occurring than for closure where the risk involves the timing of an event that will occur.

We are proposing that the standardized permit would not be available for land disposal units such as

surface impoundments, landfills, land treatment facilities, or disposal miscellaneous units. Therefore, requirements for land disposal units under existing § 264.147(b) to maintain third party liability for non-sudden accidental occurrences should not be necessary for standardized permit units. The proposed regulation reserves § 267.147(b).

Because the proposed standardized permit is intended to rely upon limited interaction between the permittee and the permitting agency, we believe it would not be appropriate to include the provisions of existing § 264.147(c) and (d). These provisions, respectively, allow the owner or operator to request a variance from the amounts required in § 264.147(a), or allow the Regional Administrator to require a different amount. Thus, there are no corresponding provisions in the proposed § 264.147 and the corresponding paragraphs are reserved.

Along with the proposed changes to the financial test for closure, we have previously proposed changes to the financial test for liability coverage (56 FR 30201 and 59 FR 51523). Under the proposed test, we expect that more owners and operators will be able to pass the liability financial test than under the current financial test. We expect that when we promulgate these tests in final form that they would also apply to the standardized permit. We are publishing the language of the proposed liability financial test here for your convenience. If we promulgate the standardized permit rule in final form before final promulgation of the revised RCRA Subtitle C financial test, we may use the current RCRA Subtitle C financial test in the final standardized permit rule.

13. Other Provisions of the Financial Requirements

We are proposing that the requirements in existing § 264.148 to notify the permitting authority in the event of a bankruptcy would apply also to the standardized permit (see proposed § 267.148). We have also referenced this requirement in proposed § 267.140(c).

Under existing § 264.149, if your facility is in a state where EPA administers the program but the state imposes its own financial assurance mechanism, you may continue to use the state approved mechanism. There are only three states where we administer the program, and we do not expect that these states have their own mechanisms. Therefore, we are not including an analogous provision, and have reserved § 267.149.

In the financial responsibility regulations covering facilities with permits under part 264, States can assume responsibility for an owner or operator's compliance with existing §§ 264.143 and 147 (§ 264.150). We have included a similar provision (§ 267.150) in this proposal, but request comment on whether such a provision is appropriate. Do States in fact undertake such responsibilities, and would they for holders of a standardized permit?

The proposed language of §§ 267.143 and 267.147 references existing § 264.151, and would require the use of the language in existing § 264.151. Section 264.151 contains the exact wording of the instruments used to demonstrate financial assurance. In light of the substantial amount of text in existing § 264.151, we have decided not to propose the creation of a § 267.151. This is similar to our decision not to include the instrument language in the current interim status standards in part 265. We request comments on suggested changes to the language of § 264.151 that we should make for consistency with the proposed standardized permit rule.

*J. Subpart I—Use and Management of Containers*

The proposed standards for the use and management of containers in this subpart of part 267 are similar to the existing provisions in subpart I of part 264. However, we are proposing conforming changes to reflect the standardized permit rather than the individual permit. We also are proposing changes to make the requirements more readable. We request comments on these changes, and whether additional modifications are warranted.

1. Would This Subpart Apply to Me?

These proposed standards would apply to you if you own or operate a facility that stores hazardous waste under a standardized permit, except as provided in proposed § 267.1(b). Note that, under existing §§ 261.7 and 261.33(c), if you empty a hazardous waste from a container, the residue remaining in the container is not considered a hazardous waste if the container is ''empty'' as defined in § 261.7. If the container is ''empty'' we are proposing that the management of the container would be exempt from the requirements of this subpart.

2. What Standards Would Apply to the Containers?

We are proposing that the requirements of § 267.171 would be the same as standards currently found in § 264.171. This provision would require you, as the facility owner or operator, to transfer hazardous waste from a leaking container to a container in good condition, or otherwise manage the waste in a manner that complies with the proposed part 267 requirements.

Proposed § 267.171 would require that the container be made of materials or lined with materials that will not react with the hazardous wastes being stored. We are proposing this requirement, which is the same as that in existing § 264.172, to ensure that the container is suitable for managing the wastes.

Proposed § 267.171 would further require you to close (keep covered) all containers that store hazardous waste except when necessary to handle the waste, and that care be taken not to rupture the container or somehow create a leak. This proposed provision is the same as the existing § 264.173 standards. Note that the U.S. Department of Transportation regulations, including those in 49 CFR 173.28, govern the reuse of containers in transportation.

3. What Are the Proposed Inspection Requirements?

Section 267.172, as proposed, would require you to inspect at least once a week to check for leaking containers. This proposed requirement is the same as the current § 264.174 provision. If you find a leak, you would need to follow the proposed procedures in §§ 267.15(c) and 267.171.

4. What Proposed Standards Apply to the Container Storage Area?

Section 267.173, of the proposed rule, specifies the design and operation requirements of a system for containing any leaks, spills, or precipitation. These requirements would apply if you are storing free liquids in the containers. As proposed, they would also apply, even if no free liquids are present, for F020, F021, F022, F023, F026, and F027 wastes. The containment system would need to contain 10 percent of the volume of all the containers or the volume of the largest container, whichever is greater. Also, you would need to prevent run-on to the storage area unless the containment system is large enough to contain that container volume and the run-on. You would need to remove any spills or leaks as soon as possible to avoid overflowing the containment system. These proposed provisions are the same as the requirements in existing § 264.175.

Note that if the collected material is a hazardous waste under part 261 of this chapter, we are proposing that you must

manage it as a hazardous waste in accordance with all applicable requirements of parts 262 through 266 of this chapter. If the collected material is discharged through a point source to waters of the United States, it would be subject to the requirements of section 402 of the Clean Water Act, as amended, under our proposed rule.

5. What Special Requirements Would I Need To Meet for Ignitable or Reactive Waste?

Under proposed § 267.174, we would require that you store ignitable or reactive waste no closer than 50 feet from your facility's property line. The general requirements proposed in § 267.17(a) provide additional requirements for ignitable or reactive wastes. This proposed standard is the same as the provision currently in § 264.176.

6. What Special Requirements Would I Need To Meet for Incompatible Wastes?

Under proposed § 267.175, we would stipulate that you cannot place incompatible wastes in the same container. This provision would also apply to an unwashed container that previously held an incompatible waste. The exception to this prohibition is found in proposed § 267.17(b), which would stipulate precautions that you would need to take if you have to mix incompatible wastes.

Section 267.175, as proposed, would further require that you physically separate incompatible wastes from other wastes and protect them with barriers such as dikes, berms, or walls. The purpose of this proposed section is to prevent fires, explosions, gaseous emissions, leaching, or other discharge of hazardous waste or hazardous waste constituents which could result from the mixing of incompatible waste or materials if containers break or leak. All of these proposed provisions are the same as the existing § 264.177 requirements.

7. What Would I Need To Do When I Want To Stop Using the Containers?

Section 267.176, as proposed, would require clean closure of the facility. This proposed requirement would require you to remove all hazardous waste and residues and to decontaminate or remove all components that came in contact with the hazardous wastes, including soils. These proposed requirements are the same as the existing provisions in § 264.178. Under our proposal, unless you can demonstrate, following § 261.3(d), that the solid waste removed from the containment system is not a hazardous waste, you would become a generator of hazardous waste and would need to manage it in accordance with all applicable requirements of parts 262 through 266 of this chapter. This provision would apply to any solid waste you remove from the container system during closure as well as during the operating period.

8. What Air Emission Standards Are Proposed?

We are proposing that the air emission standards in § 267.177 be similar to those currently in § 264.179. Under the proposed rule, you would need to comply with the requirements of subparts AA, BB, and CC of part 264. There is a one notable difference between proposed § 267.177 and the current § 264.179. Section 267.177, as proposed, would only allow the following control devices: thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit. This is because performance testing and reporting is required in part 264 subpart AA and BB to support alternative control devices. This requires close interaction on the part of the facility owner/operator and the permitting agency. Because this proposed rule is intended to reduce the burdens of such interactions, we have chosen to limit the type of control devices. We welcome public comment on this decision.

*K. Subpart J—Tank Systems*

We believe that most of the tank system standards in subpart J of part 264 would be appropriate for tank units operating under a standardized permit. However, some provisions in today's proposed tank requirements are different from those in part 264. Today's proposal would require secondary containment for all tank systems managing free liquids, with no provisions for waivers. The waiver provision in the part 264 standards requires significant work on the part of you, as the facility owner or operator, to justify that secondary containment is not necessary. It also requires that the permitting agency review the waiver demonstration and determine its appropriateness. The close review and exchange of materials taking place during the waiver process do not fit the intent of the standardized permit. Part of our premise in developing the standardized permit is that a high level of interaction between the permittee and the permitting agency is not necessary. In addition, our experience is that few owners or operators have availed themselves of this waiver provision. We welcome public comment on this topic.

We are not requiring integrity testing for tanks managing free liquids and operating under a standardized permit because we would require secondary containment. Under the existing part 264 tank standards, we only require tanks that don't have secondary containment to undergo annual integrity testing. Also, we are proposing that the standardized permit only apply to above ground or on ground tanks (for example, tanks raised off the ground or resting on a pad or the ground surface). Therefore, as proposed, underground or in-ground tank systems would not be eligible for a standardized permit. This is because we would rely on inspections to ensure compliance with the standardized permit. Underground and in-ground tank systems are inherently harder to inspect than above ground or on ground tanks. We are soliciting comments on the merits of excluding underground and in-ground tank systems from obtaining standardized permits.

Finally, as explained above in the preamble for subpart G, you would be required to clean close all units at the facility. We believe that a properly designed, constructed, and operated tank system with secondary containment should always be able to clean close with minimal unforseen contingencies.

1. Would This Subpart Apply to Me?

Subpart J of part 267 would apply to you if you own or operate a facility that treats or stores hazardous wastes in above ground or on ground tanks under a standardized permit. We would, however, provide exemptions from some requirements of subpart J for special situations. Specifically, the requirement for secondary containment, as specified in § 267.195, would not apply to you if you have tanks that do not contain free liquids and are inside of a building or for tanks or sumps that you are using as secondary containment. All other tanks that manage hazardous waste, whether it's a free liquid or not, would require secondary containment.

2. What Are the Proposed Design and Construction Standards for New Tank Systems or Components?

The proposed § 267.191 provisions differs from existing § 264.192 requirements in several areas. First, under the proposed standardized permitting process there would be no ''part B application'' therefore we did not include any references to the part B application in the proposed § 267.191 standards. Under this section, you would still be required to obtain a written assessment, reviewed and certified by an independent, registered

professional engineer, attesting to the structural integrity and acceptability of tank system. However, instead of requiring you to submit this estimate to the Regional Administrator, this section would require you to retain it at your facility. The assessment would be required to show that the foundation, structural support, seams, and connections are adequately designed and that the tank system has sufficient structural strength to ensure that it will not collapse, rupture or fail. The design and construction requirements in proposed § 267.191 would be the same as the current § 264.192 provisions. However, the proposed requirements in proposed § 267.191 differ from the part 264 standards in that facilities with underground tank systems or components not be eligible for a standardized permit. Therefore, we would not be carrying over the existing provisions in §§ 264.192(a)(4) and 264.192(c) in today's proposal. The Agency invites comments on whether we should allow underground piping connecting above ground or in-ground tank systems under a standardized permit. The proposed regulations in the part 267 tank standards do not allow any underground tank components, including piping. If, in the final rule, the Agency chooses to include underground tanks, part 267 would include provision similar currently found in § 264.192.

3. What Are the Proposed Handling and Inspection Requirements for New Tank Systems?

Proposed § 267.192 retains the same requirements as existing § 264.192(b). You would be required to follow these requirements during the installation phase of the new tank system to ensure that the integrity of the system is maintained.

4. What Testing Would Be Required?

As with existing § 264.192(d), you would be required to test for leaks as proposed in § 267.193.

5. What Installation Requirements Would Be Required?

In addition to the general requirements proposed in § 267.192 and § 267.193 regarding installation, you would be required to follow the specific installation requirements proposed in § 267.194. These are the same requirements found in existing 264.192(e), (f), and (g).

6. What Are the Proposed Preventative Requirements for Containing a Release?

The proposed § 267.195 standards would require secondary containment and a leak detection system for all tank systems (except indoor tanks that do not contain free liquids.) Neither the age of the tank nor the waste it contains would be taken into consideration when deciding when a tank needs secondary containment; the secondary containment requirement would apply to all new and existing tanks for which you would be seeking a standardized permit. All proposed design, installation, and operating requirements of § 267.195 are identical to the current provisions § 264.193, except for the current part 264 requirement to submit a demonstration to the Director when the leak detection and removal system cannot detect a leak within 24 hours of it occurring. Instead, you would self-certify and document that a leak or spill cannot be detected and/or removed within 24 hours. You would keep this documentation on-site and make it available for review by the permitting agency.

7. What Are the Proposed Devices for Secondary Containment and What Are Their Design, Operating, and Installation Requirements?

Proposed § 267.196 lists the specific devices that you would be required to use in providing secondary containment, as well as the design, operating, and installation requirements for each one. These requirements are the same as those in existing § 264.193 (d) and (e).

8. What Are the Proposed Requirements for Ancillary Equipment?

The proposed requirements for ancillary equipment in § 267.197 are the same as the existing provisions in § 264.193 (f). We have retained the requirement for secondary containment for all ancillary equipment, such as piping, valves and pumps. We have also retained the exemption from secondary containment for four particular situations.

9. What Are the Proposed General Operating Requirements for Tank Systems?

The proposed requirements in § 267.198 are identical to those currently in § 264.194. This section stipulates that you manage your tanks to prevent the tank system from rupturing, leaking, corroding, or failing in any manner. Also, proposed § 267.198 specifies controls and practices for preventing spills and overflows from occurring. It includes spill prevention controls, overfill prevention controls, and the maintenance of freeboard in uncovered tanks.

10. What Are the Proposed Inspection Requirements?

The inspection requirements of proposed § 267.199 are the same as current provisions in § 264.195, noting, however, that today's proposed part 267 standards apply to above ground tank systems only. You would be required to inspect your tank system daily to detect corrosion or releases and to check data from monitoring and leak detection equipment. These provisions would also require you to inspect any cathodic protection systems on a regular schedule. Note that proposed § 267.15(c) would require you to fix any deterioration or malfunction that you find. Further, proposed § 267.200 would require you to notify the Director within 24 hours of confirming a leak, and 40 CFR part 302 and part 355 may require you to notify the National Response Center or state and local emergency responders of a release. You would be required to document all inspections in your facility's operating record.

11. What Would I Do in Case of a Leak or a Spill?

Proposed § 267.200 specifies the procedures you would be required to follow in the event of a leak or spill from a tank system or secondary containment system, or if a tank system or secondary containment system is unfit for use. The proposed § 267.200 provisions are similar to the current requirements found in § 264.196 with a few modifications. We did not propose in § 267.200 the current provisions of § 264.196 related to releases from a tank system without secondary containment because all tank systems operating under a standardized permit would be required to have secondary containment.

The proposed § 267.200 provisions require that, in the case of a leak or a spill you would be required to immediately remove the tank systems or secondary containment systems from service. These provisions also identify the steps you would be required to take to stop the flow of hazardous waste and find the source of the release, and to remove the released waste within 24 hours. You would have to report any releases to the Director within 24 hours of detection. We have included in this section the same exception that is currently available in § 264.196 for reporting small releases that you clean up quickly. The proposed § 267.200 provisions would require you to submit a more detailed report on any release to the environment to the Director within 30 days of the release. This section would also require you to close the tank

system unless you satisfy specified repair requirements. Any major repairs must be certified by an independent, qualified, registered, professional engineer, in accordance with § 270.11(d), before you return the tank system to service.

12. What Would I Do When I Stop Operating the Tank System?

When you stop operating the tank system you would be required to clean close it. The proposed § 267.201 requirements differ from § 264.197 standards in two important areas. As stated earlier, we are not proposing to allow any waivers from secondary containment for tank systems operating under a standardized permit. Therefore, we would not carry over the existing § 264.197 provisions for closing a tank system that does not have secondary containment to proposed § 267.201. Another important difference is that if you cannot clean close a tank system, you would be required to close it as a landfill under part 264. Therefore, you would have to submit a RCRA part B application described in § 270.14 and follow the RCRA individual permitting process to obtain a post-closure permit.

13. What Are the Proposed Special Requirements for Ignitable or Reactive Waste?

The proposed § 267.202 provisions are the same as the existing § 264.198 standards. This section would require special handling of ignitable or reactive wastes before you can store them in tanks. The section would require that you: (1) Manage the wastes so that they are no longer ignitable or reactive (before or after being placed in the tank); (2) store or treat the waste to prevent the waste from igniting or reacting; or (3) use the tank system strictly for emergencies. Additionally, you would be required to adhere to all requirements for maintenance of protective distances as specified in the National Fire Protection Association's ''Flammable and Combustible Liquids Code.''

14. What Are the Proposed Special Requirements for Incompatible Wastes?

Proposed § 267.203 stipulates, as does existing § 264.199, that you could not place incompatible wastes in the same tank system, or in a tank system that previously held an incompatible waste and has not been decontaminated, unless you follow the provisions proposed in § 267.17(b). Proposed § 267.17(b) specifies precautions that you would be required to take if you have to store incompatible wastes in the same tank system.

15. What Air Emission Standards Are Proposed?

Proposed § 267.204 contains similar requirements to those currently in § 264.200 for complying with subparts AA, BB, and CC of part 264 of this chapter. There is one notable difference between proposed § 267.204 and existing § 264.200. Proposed § 267.204 only allows the following control devices: thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit. This is because performance testing and reporting is required in part 264 subpart AA and BB to support alternative control devices. This requires close interaction on the part of the facility owner/operator and the permitting agency, which is not appropriate for the standardized permit.

*L. Subpart DD—Containment Buildings*

The Agency is proposing to adopt most of the design and operating requirements for containment buildings in part 264 directly into the standardized permit standards of part 267. However, we are proposing changes to several of the existing part 264 requirements as we tailor the analogous part 267 requirements to the standardized permit. First, containment buildings that would be managing free liquids would need to have secondary containment measures in place. You would not be allowed to delay the installation of secondary containment measures. As with the secondary containment requirement for tanks, we believe that the part 264 secondary containment waiver demonstration and its subsequent review by the permitting agency does not fit with the intent of the standardized permit. We are, however, proposing to retain the provision that allows you to request a waiver if the only liquids in the building are the result of required dust suppression measures. Another change from the part 264 standards that we are proposing would be to require clean closure of containment buildings. We believe if your containment buildings have secondary containment, and they are properly designed, constructed and operated, you should be able to clean close them with minimal problems.

1. Would This Subpart Apply to me?

This subpart would apply to you if you own or operate a facility that stores or treats hazardous wastes on-site in containment buildings. As with the current requirements in subpart DD of part 264, if the unit was designed and operated according to proposed § 267.1101, you would not be subject to the land disposal restrictions in RCRA section 3004(k).

2. What Are the Proposed Design and Operating Standards for Containment Buildings?

Proposed § 267.1101 stipulates design and operating standards similar to those currently in § 264.1101. We are proposing specific design requirements for floor, walls, doors, and windows, as well as for the primary barrier which would come in contact with the waste.

3. What Additional Design and Operating Standards Would Apply if Liquids Will Be in my Containment Building?

If you plan to use your containment building to treat or store hazardous wastes that contain free liquids, then the primary barrier would be required to be able to prevent the migration of hazardous constituents into the barrier. You could accomplish this, for example, by putting a geomembrane on top of a concrete surface. You would also be required to install a secondary containment system. The function of the secondary containment would be to allow the use of a leak detection system capable of detecting leaks in the primary barrier, and to collect the liquids that could penetrate the primary barrier. Proposed § 267.1102 stipulates the same design requirements for the secondary containment system as does existing § 264.1101. This proposed section would also require a certification by a qualified registered professional engineer that the unit meets all design and operating requirements.

The existing § 264.1101 provisions allow you to delay implementation of secondary containment for existing containment buildings and describe the process for granting the delay. We are not proposing such a delay for containment buildings under a standardized permit. We believe that, in the interest of streamlining the standardized permitting process, the permitting agency should not have to review any demonstrations. The standardized permitting process does not provide for an iterative process of submitting a demonstration for a waiver, and responding to comments.

4. What Are the Proposed Other Requirements To Prevent Releases?

The proposed § 267.1103 would require you to use certain controls and practices to make certain any hazardous waste stored in your containment building does not leave the building. These are the same requirements currently in § 264.1101(c). These requirements include maintenance of

the primary barrier and of the height of the waste in relation to the wall height. Also, you would be required to take measures to prevent tracking of the waste by personnel and equipment, including decontamination procedures. Finally, this section would require methods of containing fugitive emissions so that you could meet a ''no visible emissions'' standard.

5. What Would I Do if I Detect a Release?

The proposed § 267.1106 provisions specify procedures for responding to releases of hazardous waste that are the same as those currently in § 264.1101(c)(3). These procedures would require you to enter all such incidents in your facility's operating record, and to notify the Regional Administrator both of the release and of the repairs.

6. What Would I Do if My Containment Building Contains Areas Both With and Without Secondary Containment?

Proposed § 267.1105 addresses those buildings with areas where you would manage wastes with free liquids and areas where you either would manage wastes without free liquids or you would have a waiver from secondary containment requirements in proposed 267.1104. For buildings with this type of ''mixed use'', you could construct a portion without secondary containment. The requirements in proposed § 267.1105, which are the same as those currently in § 264.1101(d), and are designed to prevent migration of the wastes that require secondary containment to the areas that do not.

7. Could a Containment Building Be Considered Secondary Containment for Other Units?

Proposed § 267.1107 addresses the specific instance of a tank being inside of a containment building. In this situation, the containment building would be the secondary containment system for the tank if it meets the proposed requirements of § 267.1107. This provision is the same as currently in § 264.1101(b)(3)(iii).

8. How Would I Obtain a Waiver From Secondary Containment Requirements?

Proposed § 267.1104 would allow for a waiver from secondary containment if the only liquids in the building were a result of required dust suppression and you could assure the containment of liquids and wastes without secondary containment. This would be the only waiver from secondary containment. We are providing it because we believe you could easily make the demonstration without an iterative process with the permitting agency. This is the same waiver allowed currently in § 264.1101(e).

9. What Would I Do When I Stop Operating the Containment Building?

The proposed § 267.1108 closure provisions would require the clean closure of containment buildings. This is similar to the proposed standardized permit requirements for container storage areas and tanks. During closure of the containment building, you would have to remove or decontaminate all waste residues from subsoils and containment system components. You should have no problem meeting clean closure requirements for a properly designed and operated containment building. However, if for some reason you cannot clean close your facility, you would be required to submit a part B application for an individual post-closure care permit for closure as a landfill. We discussed this before in more detail in Section VII H: Subpart G—Closure.

## VIII. Conforming Permit Changes to Part 270

### *A. Overview of Proposed Part 270 Changes*

We are proposing to modify the hazardous waste permit program requirements by adding a new type of permit: The standardized permit. The hazardous waste permit program requirements are in part 270. This part of the RCRA hazardous waste regulations contains specific requirements for permit applications, permit conditions, changes to permits, expiration and continuation of permits, interim status, and special forms of permits.

Under the existing hazardous waste permitting system, facility owners and operators must obtain an ''individual'' permit based on site-specific information in order to manage hazardous waste. We briefly described the existing individual permitting system in Section I D 1: What are the steps in Obtaining an Individual Permit?. As previously discussed, we propose allowing standardized permits for certain types of hazardous waste management activities: The storage and non-thermal treatment of hazardous waste in tanks, containers, and containment buildings at facilities that generate the waste. We are proposing to add § 270.67 to part 270 subpart F and to add part 270 subpart I that would allow a special form of permit, a RCRA standardized permit.

We request comment on the changed sections and added sections of part 270 rules. As noted previously, however, we are not reopening the existing regulations to public comment, except those provisions explicitly modified by this proposal.

### *B. Specific Changes Proposed for Part 270*

We are proposing certain ancillary changes to other sections of part 270 to ensure we have fully incorporated the standardized permit into the existing regulations. These include: Proposed changes to § 270.1 (b) Overview of the RCRA Permit Program, § 270.2 Definitions, § 270.10(a) Applying for a permit, § 270.10(h) Reapplying for a permit, § 270.40 (a) and (b) Transfer of Permits, § 270.41 Modify or revoking and reissuing permits, and § 270.51 Continuation of expiring Permits.

1. Overview of the RCRA Program

We are proposing to add a sentence to § 270.1(b) that briefly mentions that a facility that treats or stores hazardous waste on-site could be eligible for a standardized permit.

2. Definitions

We are proposing to add ''standardized permit'' to the definition list in § 270.2. This definition for standardized permit is the same definition that we are proposing to add to part 124: ''Standardized permit means a RCRA permit authorizing management of hazardous waste under part 124 subpart G and part 270 subpart I. The standardized permit may have two parts: A uniform portion issued in all cases and a supplemental portion issued at the Director's discretion.'' We are also proposing to modify the definition of ''permit'' to include a standardized permit.

3. Permit Applications

We are proposing to modify § 270.10(a) to make it more readable and to add a sentence to the Permit application section clarifying that the procedures for application, and issuance of a standardized permit are in part 124 subpart G and part 270 subpart I. However, as noted in Table 5: Permit program comparison, many of the current part 270 permit administration requirements would still be applicable for the standardized permit.

4. Permit Reapplication

We are proposing to modify § 270.10(h) to make it more readable and to take into account the standardized permit. If your facility is operating under an individual permit and

manages waste on-site in tanks, containers, or containment buildings, then you could meet the reapplication requirement for these units by submitting a notice of intent to operate under a standardized permit at least 180 days prior to expiration of your individual permit. Likewise, if your facility is operating under a standardized permit, you would submit a notice of intent at least 180 days before the expiration date of the permit.

5. Transfer of Permits

We are proposing to make changes to § 270.40 (b) that would allow transfer of a standardized permit to a new owner or operator. The change to this paragraph adds applicable reference to §§ 270.320 and 124.212. A transfer of a standardized permit to a new owner or operator would qualify as a routine permit modification and would follow appropriate procedures for this category of standardized permit modification.

6. Modification or Revocation and Reissuance of Permits

We are proposing to make two changes to § 270.41. First, we would add a reference to § 270.320, which includes the requirements for modifying standardized permits. Also, we are proposing a new paragraph (b)(3) which would specify another reason for revocation and reissuance of a permit. This new paragraph would apply where a facility owner or operator with an individual RCRA permit wishes to operate under a standardized permit. This was discussed earlier in Section III B: How would I Switch from an Individual Permit to a Standardized Permit. Under this situation, you would request revocation of the individual permit and issuance of a standardized permit. The causes for modification (§ 270.41(a)), modification or revocation and reissuance (§ 270.41(b)), and facility siting (§ 270.41(c)) that apply to an individual permit would also apply to a standardized permit.

7. Continuation of Expiring Permits

We are proposing to modify § 270.51 by adding a new subsection (e) which discusses continuation of expiring standardized permits. This new paragraph is similar to the requirements in existing § 270.51(a) except we have replaced references to the permit, permit application, and §§ 270.14 through 270.29 citations with references to the standardized permit, notice of intent, and part 124 as appropriate. We are proposing this provision under the authority of the Administrative Procedures Act (APA).

We are also proposing to add paragraph (2) to this subsection because we want to give you the opportunity to continue to operate under an existing permit if you submit an individual permit application following the Regional Administrator's decision that you are not eligible for a standardized permit.

Under this paragraph, you would be able to continue to operate by submitting an application for an individual permit within 60 days of the Director giving you notice of your ineligibility for the standardized permit. This would be the case even if the Director provides the notice after your previous permit has expired. Under this proposed scheme, as long as your reapplication for a standardized permit is timely, you would qualify under the APA and § 270.51 for an administrative continuance of the permit. We view the later reapplication for an individual permit as simply a part of the ongoing reapplication process.

8. Standardized Permit

As discussed above in Section I C: What is the Agency's Proposal, we are proposing to add a new type of permit (e.g. ''standardized permit'') to part 270 subpart F: Special Forms of Permits. Section 270.67 contains the general statement allowing the permitting authority the ability to issue standardized permits.

## IX. RCRA Standardized Permits

### *A. General Information About Proposed Standardized Permits*

In proposed §§ 270.250 and 270.255, we describe what a proposed standardized permit is and who would be eligible for one. This has been discussed earlier in Section I C: What is the Agency's Proposal. Although proposed regulatory language on these two topic is already in part 124 and 267, we have repeated these requirements in part 270 to give Subpart I better context.

In proposed § 270.260, we describe what sections and subparts of part 270 would be applicable to standardized permits. Table 5 offers a comparison of the hazardous waste permit program provisions of part 270 that are applicable to individual permits and proposed standardized permits. Most of the part 270 requirements applicable to individual permits would also be applicable to standardized permits except where noted in Table 4 and proposed § 270.260.

TABLE 5.—COMPARISON OF THE PROVISIONS OF THE INDIVIDUAL PERMIT PROGRAM AND THE PROPOSED STANDARDIZED PERMIT PROGRAM

| | Individual permits | Proposed standardized permits |
|---|---|---|
| General Information: | | |
| Definitions | ✔ | ✔ |
| Consideration under Federal laws | ✔ | ✔ |
| Effect of permit | ✔ | ✔ |
| Noncompliance and reporting program by the Director | ✔ | ✔ |
| Permit Application: | | |
| General application requirements | ✔ | ✔ |
| Special form of permit procedures specific to standardized permits | | ✔ |
| Confidentiality of information | ✔ | ✔ |
| Signatories on permit application and reports | ✔ | ✔ |
| Contents of part A of permit application | ✔ | ✔ |
| Contents of Part B of permit application submitted | ✔ | ✔ |
| Permit information kept at facility | | ✔ |
| Permit Denial | ✔ | ✔ |
| Permit Conditions: | | |
| Conditions Applicable to all permits | ✔ | ✔ |
| Requirements for recording and reporting of monitoring results | ✔ | ✔ |
| Establishing permit conditions | ✔ | ✔ |
| Schedule of compliance | ✔ | ✔ |

TABLE 5.—COMPARISON OF THE PROVISIONS OF THE INDIVIDUAL PERMIT PROGRAM AND THE PROPOSED STANDARDIZED PERMIT PROGRAM—Continued

| | Individual permits | Proposed standardized permits |
|---|---|---|
| Changes to Permits: | | |
| Transfer of permits | ✔ | ✔ |
| Modification or revocation and reissuance of permits | ✔ | ✔ |
| Permit modification requirements | ✔ | ✔ |
| Special modification requirements for standardized permits | | ✔ |
| Termination of permits | ✔ | ✔ |
| Expiration and Continuation of Permits: | | |
| Duration of permits | ✔ | ✔ |
| Continuation of expiring permits | ✔ | ✔ |
| Interim Status: | | |
| Qualifying for interim status | ✔ | ✔ |
| Operation during interim status | ✔ | ✔ |
| Changes during interim status | ✔ | ✔ |
| Termination of interim status | ✔ | ✔ |

*B. What Information Would I Need to Submit to the Permitting Agency to Support My Standardized Permit Application?*

We are proposing that you submit certain information to the permitting authority. Under proposed § 270.275, you would submit with the notice of intent: (1) The part A information required by § 270.13, (2) A meeting summary and other materials required by § 124.31, (3) Documentation of compliance with the location standards of § 267.18 and § 270.14(b)(11), (4) Information that allows the Director to carry out our obligations under other Federal laws as required by § 270.3, (5) Solid waste management unit information § 270.14(d), and (6) A certification meeting the requirements of proposed § 270.280.

1. RCRA Part A Application Information

Section 270.275(a) would require you to submit the information required by § 270.13. This information is the general Part A application information required currently from all facility owners or operators seeking a RCRA individual permit. The Part A information includes: (a) General information on the hazardous waste management activity requiring a permit, the name and mailing address of your facility along with its latitude and longitude, (b) SIC codes that best reflect the products or services your facility provides, (c) the operator's name, address, phone number, and the ownership status of the facility, (d) the owner's name , address, and phone number, (e) whether your facility is located on Indian lands, (f) an indication of whether your facility is new or existing, (g) for existing facilities, a scale drawing showing past, present and future waste management areas along with photographs clearly delineating waste management structures, (h) a description of the processes you use to manage the waste, (i) a specification of the hazardous waste you treat or store at the facility, (j) an estimate of volumes of hazardous waste your facility manages annually, (k) a listing of all permits approved or applied for including federal and state Permits, (l) a topographic map which extends at least 1 mile beyond the facility boundary in all directions and indicates the location of the facility, the waste management areas, surface waters, and drinking water wells, and (m) a description of nature of the business. We published a document, RCRA Part A Permit Application (EPA form 8700–23 (October 1999), which describes the Part A application in detail and includes instructions for filling out the application form. You would be able to comply with proposed § 270.275(a) requirements by attaching a completed EPA Form 8700–23 or State equivalent form to the notice of intent to be covered by the standardized permit.

2. Preapplication Meeting Summary

Proposed § 270.275(b) would require you to submit a copy of the meeting summary and ancillary materials required by § 124.31. This is the pre-application meeting that you host with the community before submitting a Notice of Intent. This meeting is also required if you are seeking an individual RCRA hazardous waste permit. As discussed above in Section III A 1: Conduct a pre-application meeting with the community, the meeting should provide an informal occasion for you and the public to share ideas, educate each other, and start building the framework for a working relationship. We encourage you to address topics such as: the type of facility, the location, the types of waste generated and managed, and waste minimization and pollution control measures. You would submit a summary of the meeting, along with a list of the attendees and their addresses, and copies of any comments or materials submitted at the meeting.

3. Compliance With Location Standards

We are proposing under § 270.275(c), that you submit documentation that your facility is in compliance with the location standards described in § 267.18 and § 270.14(b)(11). We believe that the location of a facility is an important site-specific aspect of safe waste management. Therefore, we propose to continue to require the submittal of the documentation of compliance with the location standards. This documentation would include several analyses.

First, if you have a new facility, you would have to determine the applicability of the seismic standard by checking if your facility is in a political jurisdiction listed in the regulations at appendix VI of part 264. The demonstration should show no recent faults are present within 3000 feet of the facility. If you find evidence of a recent fault, then your demonstration would need to show that no fault exists within 200 feet of an area where you are going to manage waste.

Second, you (whether your facility is new or already existing) would need to determine whether your facility is located in a 100-year floodplain. If your facility is in a 100-year floodplain, you would provide information on engineered structures which are designed to prevent washout or emergency procedures to remove hazardous waste to safety prior to flooding.

4. Compliance With Other Federal laws

We are proposing in § 270.275(d) that you submit information necessary for the Regional Administrator to carry out his/her duties under other federal laws as required by existing § 270.3. This requirement is similar to the provision found in § 270.14(b)(20). Specifically, the Regional Administrator would need to meet various obligations under several Federal laws: the Wild and Scenic Rivers Act. 16 U.S.C. 1273 et. seq., the National Historic Preservation Act of 1966. 16 U.S.C. 470 *et seq.*, the Endangered Species Act. 16 U.S.C. 1531 *et seq.,* the Coastal Zone Management Act. 16 U.S.C. 1451 *et seq.,* and the Fish and Wildlife Coordination Act. 16 U.S.C. 611 *et seq.* You should discuss with the Regional Administrator the specific information that you would need to submit with your notice of intent for him/her to meet the obligations of these Federal laws. Failure to submit this information could either significantly delay the issuance of the standardized permit or result in denying the standardized permit and requiring you to obtain an individual RCRA permit.

5. Solid Waste Management Units

Under current regulations in § 270.14(d), permit applicants must include certain information about solid waste management units in their permit applications. Under the approach we are proposing today, you would need to submit this information to the permitting agency. As discussed in Section VII G: Subpart F—Releases from Solid Waste Management Units, corrective action requirements depend on site specific circumstances. The information that would be required to be submitted on solid waste management units includes: (1) The location of the unit on the facility topographic map; (2) a designation of the type of unit (e.g., storage, treatment, disposal); (3) a description of the general dimensions and structure of the unit, with any available drawings; (4) the dates over which the unit was operated; (5) to the extent available, a list of the types of wastes that have been managed in the unit; and (6) all available information pertaining to any releases of hazardous wastes or hazardous constituents from the unit. We would use this information to make decisions about the specific types of corrective actions, if any, that might be necessary to protect human health and the environment at your facility.

We believe that most of the facilities which would operate under a standardized permit are currently operating under RCRA interim status or an individual RCRA permit, and so would have already completed a RCRA Facility Assessment. Therefore, you should have this information available for all solid waste management units at your facility. In situations where you do not have this information available when you apply for a standardized permit, we will either develop the information (e.g., by conducting a RCRA Facility Assessment) or may require you to develop and submit it prior to issuing your permit.

6. Certification of Compliance With Proposed Part 267 Requirements

Proposed § 270.275(f) would require you to submit a certification meeting the requirements of proposed § 270.280. Submittal of this certification would put you on record that you understand your obligation to comply with all the proposed requirements of part 267.

*C. What Are the Proposed Certification Requirements?*

1. Certification of Compliance

Proposed § 270.280 would require you to certify that your facility is either in compliance with all applicable proposed requirements of part 267 or would come into compliance with all applicable requirements. You would also certify that you would continue to remain in compliance with proposed part 267 during the term of your permit. The Resource Conservation and Recovery Act (RCRA) provides for severe penalties for submitting false information on application forms. If you knowingly submit false information or make a false representation you would be subject to significant monetary penalties and possible imprisonment. The proposed certification that you would be in compliance with proposed part 267 requirements would apply to new facilities and existing facilities currently operating under interim status or an individual RCRA permit. Your certification would be based on an internal audit of your facility's operations. You would submit the certification of compliance along with a copy of the audit to the Director.

We are aware that the level of detail in compliance audits can range from the very general to the very specific. Although we don't expect the audit reports to consist of only a few pages of findings, they should not involve extensive documentation. The audits should be comprehensive and the reports should include supporting materials such as completed audit checklists. We expect to issue guidance on audit reporting concurrent with issuance of the final rule.

We are asking for public comments on the benefits of such an audit and whether the audit should be performed by an independent third party. Our current proposal allows the facility owner or operator to perform the compliance audit.

2. Certification of Availability of Information

Proposed § 270.280 also would require you to certify that the information required by proposed §§ 270.290–270.315 would be available at your facility for review by the public and the permitting authority. This would be a major departure from the existing RCRA permitting program. Under the proposed standardized permit, you would not have to submit most of the information contained in individual RCRA permit Part B applications currently required by § 270.14. Instead of submitting detailed Part B type information to the permitting authority, you would retain this information on-site at your facility. Furthermore, you would certify when submitting the notice of intent to be covered by a standardized permit that the Part B type information would be available for on-site for review by the public and the permitting agency.

As previously mentioned, we are not proposing to require you to submit the waste analysis plan with your notice of intent because of the relatively simple waste management practices that take place at the proposed type of facilities eligible for a standardized permit. We do not feel that it would be necessary for you to submit the waste analysis plan with the notice of intent or for the permitting agency to review the waste analysis plan prior to permit issuance. However, we are interested in the public's views on the submittal of the waste analysis plan. Specifically, are there waste management situations that may occur at an on-site hazardous waste treatment or storage facility that warrant the review of the waste analysis plan prior to permitting the facility? For example, does a waste analysis plan for a large facility with many different waste streams warrant prior review? We encourage the public to provide detailed descriptions of any situation that they are aware of in their comments to us.

3. What Happens if my Facility Is Not in Compliance With the Proposed Part 267 Requirements at the Time I Submit my Notice of Intent?

Your standardized permit would not be issued until you are in compliance with proposed part 267 requirements. If

your facility is not in compliance with applicable part 267 requirements when you submit your notice of intent, you would submit a certification stating that your facility would come into compliance and provide a schedule detailing when your facility would achieve compliance with applicable requirements. Your suggested schedule would be required to meet the requirements of existing § 270.33 and include an enforceable sequence of actions with specific milestones. The milestones should clearly delineate when compliance would be attained for each proposed part 267 requirement that your facility would currently not be in compliance with. Delay in coming into compliance with applicable regulations would delay issuance of the standardized permit and could be a reason for the Director to extend the 120 day time period for making a draft permit decision (see Section IV: Issuing a Standardized Permit). A poor compliance history could also contribute to a Director's decision to not allow coverage under the standardized permit.

*D. What Information Would Be Required To Be Kept at my Facility?*

We are proposing that information that you would normally submit to the permitting agency in a Part B permit application be kept at your facility. The specific information that you would keep at your facility would be based on the general and specific Part B permit application requirements currently found in §§ 270.14–270.27.

We are proposing that you keep this information at the facility (and make it available for review by agency inspectors and the public) instead of submitting it to the permitting agency. We expect that you would consolidate the information in one area at the facility to the extent practicable to facilitate access. Maintaining the information on-site would streamline the administrative permitting process and should shorten the time required to obtain a RCRA permit, without lessening the environmental protection provided by the permit. There could be some situations where people in the community may need special access to the information (i.e., beyond having it available on-site). For example, there could be facility safety issues that necessitate the information being kept at an off-site location. To address these situations, we propose to apply the information repository requirements codified in existing §§ 124.33 and 270.30(m) to standardized permits. In other words, the permitting agency could require you to set up and maintain an information repository, and keep it up to date with information relevant to the standardized permit. Although you could initially choose the location, the Director could override your choice. The Director would have final say in where the repository is established and could require it to be located at an off-site location, such as a public library. We would not require that the information be maintained off-site in all cases. As discussed in Section I: Overview and Background, waste management activities at facilities eligible for the standardized permit have traditionally posed relatively less risk than other types of management activities, so we anticipate that people in nearby communities would generally not object to going to the facility to review the information.

1. General Facility Information

The proposed requirements in § 270.290 are the same as the existing § 270.14(b) requirements with minor exceptions. We believe that it is appropriate to clearly articulate the information requirements with which facility owners or operators would have to comply. Therefore, we repeat many of the general information requirements of existing § 270.14(b) verbatim in these proposed § 270.290 requirements. We made minor changes in the requirements to make appropriate citation changes and for readability reasons. Existing part 264 citations were in most cases changed to part 267 citations.

You will notice that there is no parallel reference in proposed paragraph § 270.290(c) to existing § 264.13(c) as there is in existing § 270.14(b)(3) because § 264.13(c) is applicable to facilities treating or storing waste generated off-site. As discussed previously, the proposed standardized permit is only applicable to on-site facilities. Also, we did not include several of the inspection schedules currently required by § 270.14(b)(5) in proposed § 270.290(e) because they are for units not eligible for the proposed standardized permit (e.g. surface impoundments, landfills, waste piles, land treatment unit, and miscellaneous units). In addition, you would be required to submit the facility location information currently required by § 270.14(b)(11) with your Notice of Intent. Therefore, we are proposing to reserve § 270.290(k) in order to maintain the parallel structure between this section and existing § 270.14(b). We have omitted several of the regulatory citations in existing § 270.14(b)(13) from proposed § 270.290(m) because they are for units not eligible for the proposed standardized permit. In addition, we have omitted references and regulatory citations to the post-closure plan currently found in § 270.14(b)(13) from proposed § 270.290(m) because the post-closure plan would no longer be applicable. As discussed above in Section VII H: Subpart G—Closure, all units that receive a standardized permit would be required to either clean close or apply for an individual RCRA post-closure permit. Since existing § 270.14(b)(14) refers to disposal units, which would not be eligible for a proposed standardized permit, we have not carried over this requirement and have reserved § 270.290(n) to maintain a parallel regulatory structure. We have modified the proposed regulatory text in § 270.290(o) from the text in existing § 270.14(b)(15). This is because the last phrase referring to the Part B in paragraph § 270.14(b)(15) would not be applicable to proposed standardized permits. Since existing § 270.14(b)(16) refers to post-closure cost estimates, there is no parallel requirement proposed for standardized permits. Therefore, § 270.290(p) has been reserved.

Requirements in existing paragraphs § 270.14 (b)(20), (b)(21) and (b)(22) are either not appropriate for the proposed standardized permit or are already addressed. Existing paragraph § 270.14(b)(20) requires an information submittal for the purposes of the Regional Administrator to carry out his/her duties under other Federal Laws. We propose this requirement in § 270.275(d), which would require that information to be submitted to the permitting agency to support your application. The current requirements of § 270.14(b)(21) are not applicable because they are for land disposal facilities. The existing requirements of § 270.14(b)(22) discuss the pre-application meeting and the submittal of the meeting summary along with other items. We proposed these requirements in § 270.275(b), specifying that you would be required to submit these items with the Notice of Intent as discussed previously. We are not proposing to include the requirements of § 270.14(c) because they address ground water monitoring that we believe is unnecessary for the types of units that would be eligible for proposed standardized permits.

2. Container Information

The container information requirements we are proposing today in § 270.300 are similar to the current requirements in § 270.15. In developing the proposed language for proposed § 270.300, we modified the existing

§ 270.15 requirements to make them more readable. You would be required to keep information at your facility on the design and operation of the container storage area including its containment system. You would also keep diagrams showing the location of ignitable, reactive, and incompatible waste at your facility along with drawings showing compliance with appropriate buffer zones.

3. Tank Information

Under today's proposal, you would have to keep tank system information onsite at the facility. This information deals with design, construction, and operation parameters. The proposed § 270.305 requirements are similar to the individual permit requirements currently in § 270.16. However, we would not carry over to proposed § 270.305, the current requirements from § 270.16(h). The existing § 270.16(h) requirements deal with tanks with variances from secondary containment. As discussed previously, we are proposing that tanks have secondary containment to be eligible for the standardized permit.

4. Equipment Information

Under today's proposal, you would be required to keep onsite the information required for equipment subject to the part 264 subpart BB requirements (air emissions standards for equipment leaks). These information requirements concern emission standards for equipment that contains or comes in contact with hazardous waste with organic concentrations of at least 10 percent by weight. The proposed § 270.310 requirements are similar to the individual permit requirements currently found in § 270.25. The proposed § 270.315 requirements differ from the existing § 270.25 provisions in one main area. The performance test plan currently required by § 270.25(c) for alternative control devices is not included in proposed § 270.315 requirements because proposed §§ 267.177 and 267.204 would only allow the following control devices: thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit. This is because the performance testing and reporting to support alternative control devices would require close interaction on the part of the facility owner/operator and the permitting agency, which would not be appropriate for the standardized permit.

5. Air Emission Control Information

We are also proposing to have you keep onsite the information required for tanks and containers subject to the part 264 subpart CC standards (air emission standards for tanks, surface impoundments and containers). The proposed § 270.315 requirements for air emission controls would be similar to the existing § 270.27 requirements for facilities seeking individual permits. These information requirements concern compliance with the air emission controls that apply to facilities managing hazardous waste in tanks and containers. The proposed § 270.315 requirements contain minor changes to the current § 270.27 provisions because surface impoundments would not be eligible for standardized permits.

*E. How Would I Modify my RCRA Standardized Permit?*

You would modify your RCRA standardized permit by following the procedures found in proposed §§ 124.211–213. As mentioned above in Section VI: Maintaining a Standardized Permit, today's proposed modification procedures are separated into: (1) Routine changes to the standardized permit; and (2) significant changes. You would follow these procedures in lieu of the permit modification procedures found in existing § 270.42, which describe permittee initiated permit modifications for individual permits.

**X. Public Comment on Corrective Action and Financial Assurance Issues**

As was discussed previously, in addition to requesting public comment on the proposed provisions of this rule, we are requesting public comment on some additional issues related to corrective action and financial assurance requirements. These additional issues potentially affect the universe of RCRA treatment, storage, and disposal, including those that would receive standardized permits. We have discussed these issues, and our reasons for soliciting comment on them, in detail below.

*A. Corrective Action*

1. Could I Satisfy the RCRA Corrective Action Requirements for my Site by Conducting Cleanup Under an Alternate State Program? [6]

EPA is soliciting comment on whether and under what conditions it should adopt a policy that would promote the use of cleanup programs other than the authorized RCRA program to satisfy corrective action requirements at permitted facilities. In the discussion below, EPA presents several issues and options related to the use of such alternate authorities. You should note that these issues and options are presented by the Agency for the purpose of soliciting ideas. In developing this discussion, EPA did not develop an Agency position on these issues—rather, the Agency chose to present for comment the options and issues it currently is considering. Thus, the following discussion does not represent the Agency's position on the use of alternate authorities, and should not be used as guidance on the issues discussed.

Currently, when an alternate State authority is used to address corrective action at a facility, the provisions of the cleanup order issued by the alternate authority are typically either written into the RCRA permit as conditions, or are incorporated by reference in the permit. In both cases, the provisions of the cleanup order become RCRA permit conditions, which are subject to administrative and judicial review at the time of permit issuance and may be enforced under RCRA.

EPA is considering issuing a policy to address the use, in appropriate circumstances, of alternate cleanup authorities to satisfy the corrective action requirements of a permit. Under such a policy, EPA would recommend general guidelines for determining whether action under an alternate authority will result in cleanups that meet the requirements of § 264.101, and would specify how the alternate authority cleanup generally should be addressed in the permit to ensure enforceability of cleanup requirements. This policy, if adopted, would likely apply at all facilities receiving RCRA permits, including standardized permits. It should be noted that, although the Agency currently is contemplating issuing policy guidance on the alternate authority issue, the Agency may decide instead to issue the guidance provisions discussed in this section as final regulations. EPA solicits comment on whether such a policy, if adopted, should be promulgated as regulations or issued as guidance.

EPA believes that many alternate State cleanup programs conduct cleanups that are protective of human health and the environment, and that many alternate State cleanup authorities

[6] The discussion in this notice addresses only alternate State cleanup authorities. For information on conducting cleanup under non-RCRA Federal authorities see a memorandum dated September 24, 1996 from Steven A. Herman and Elliott P. Laws to RCRA/CERCLA National Policy Managers entitled ''Coordination between RCRA Corrective Action and Closure and CERCLA Site Activities.''

offer features such as streamlined procedures, provisions for voluntary cleanup, and provisions for collection of user fees to pay for State oversight which, if used at RCRA facilities, could help speed the pace of RCRA cleanups nationwide. At the same time, EPA recognizes its responsibility to ensure that cleanups conducted at facilities subject to RCRA corrective action requirements satisfy the requirements of RCRA sections 3004(u) and (v) and the ''omnibus'' provision of section 3005(c)(3) (i.e., are protective of human health and the environment). EPA believes that by developing a policy that recommends guidelines for the use of alternate authorities at permitted facilities, the Agency would be able to leverage the potential offered by alternate authorities, while at the same time ensuring that cleanups conducted under those authorities satisfy the statutory requirements of RCRA.

Whether cleanup at facilities subject to RCRA corrective action is conducted under a Federal cleanup program (e.g., RCRA corrective action or CERCLA), an authorized RCRA corrective action program, or an alternate State cleanup program, EPA is responsible for reporting the progress of cleanups at RCRA treatment, storage, and disposal facilities to Congress and to the public, and for overseeing implementation of the RCRA corrective action program in authorized States. To meet these responsibilities, EPA regularly solicits information from the States regarding the progress of cleanups at RCRA treatment, storage, and disposal facilities, regardless of the authority under which they are being conducted, and includes this information in a national data base for reporting progress at those facilities. It should be noted that, if EPA develops a policy regarding the use of alternate authorities in permits, that practice would not change—EPA would still expect States to provide this information to the Agency.

It also should be noted that § 264.101(b) requires financial assurance for corrective action, and use of an alternate cleanup program at a RCRA permitted facility would not modify that requirement. If an alternate cleanup program were used to address corrective action at a RCRA permitted facility, the permit issuing agency (EPA or the authorized State) would be responsible for ensuring that adequate financial assurance was available to satisfy the requirement of § 264.101 (or authorized State equivalent).

Issues related to potential adoption of this policy, and specific requests for comment are detailed below.

2. How Would EPA and the Authorized States Address the Alternate Authority Cleanup Provisions in the RCRA Permit?

At facilities where cleanup is completed satisfactorily prior to permit issuance, EPA or the State authorized for corrective action must make a determination that no additional corrective action is necessary to protect human health and the environment and consequently includes no provisions requiring corrective action in the permit (except those necessary to address future releases). Where corrective action is not completed satisfactorily prior to permit issuance, there may be a number of approaches to allow cleanups conducted under alternate State cleanup programs to satisfy the RCRA permit requirements for corrective action under section 3004(u) and (v).

EPA is soliciting comment on whether to recommend, under certain circumstances, two methods of addressing, within the RCRA permit, the cleanups conducted pursuant to alternate State authorities. Both methods address situations where corrective action is determined by the Agency to be necessary to protect human health and the environment at the time of permit issuance. Under the first method, referred to as ''postponement,'' the permit issuing agency would postpone the determination of RCRA-specific corrective action provisions until after a cleanup under an alternate State authority is completed. Under the second method, referred to in this notice as ''deferral,'' the permit issuing agency would make a determination that a cleanup conducted under an alternate authority will satisfy the corrective action requirements at the site, then completely defer corrective action requirements to the alternate program. Both of these methods are discussed below.

*Postponement.* Using the postponement method, the agency issuing the RCRA permit would determine, considering the recommended criteria (see discussion below), whether the planned or ongoing cleanup under the alternate program would satisfy the requirements of § 264.101 (i.e., whether it would result in a cleanup that is protective of human health and the environment). The agency would determine that, while corrective action is necessary at the facility, the requirements of § 264.101 will likely be satisfied by the planned or ongoing cleanup, so specific permit cleanup conditions are not necessary at the time of permit issuance. Instead, the Agency would incorporate a schedule of compliance into the permit that, among other things, postpones the final decision on whether specific cleanup conditions need to be included in the RCRA permit until completion of the cleanup under the alternate authority (the schedule of compliance should also include requirements, as appropriate, to report to EPA on the progress of the alternative state cleanup). EPA or the authorized State issuing the permit would make the decision to postpone imposition of specific cleanup permit requirements based on an analysis, considering the recommended criteria, of either the specific corrective action contemplated by the alternate cleanup program, on a review of the alternate program itself, or both, as appropriate. Where the agency determines that the cleanup under the alternate program, or the alternate program itself, would not likely result in a cleanup that is protective of human health and the environment, there would be no postponement and specific cleanup conditions would be required in the RCRA permit at the outset.

As described above, if the agency finds that specific permit cleanup conditions are not necessary at the time of permit issuance, the agency would include in the permit a schedule under which the agency would make a determination, upon completion of the alternative cleanup, whether the requirements of § 264.101 have been satisfied. At that time, if the agency were to determine that the cleanup did not satisfy the requirements of § 264.101, it would impose further corrective action as necessary to protect human health and the environment, and modify the permit to reflect that determination (using the procedures in § 270.41 for modifications based on new information). The basis for the agency's determination at the time of permit issuance that it is reasonable to postpone a determination on the need for RCRA-specific cleanup requirements until completion of cleanup under the alternate State authority would be part of the administrative record for the permit, and the public would have opportunity to comment on the postponement decision prior to permit issuance. Similarly, the basis for the determination, upon completion of the alternative state program cleanup, whether additional corrective action is required would be part of the administrative record for the permit; the Agency would include in the permit procedures for making such a determination, including an opportunity for public notice and comment. These

Agency decisions would be subject to applicable administrative and judicial review. It is important to note that under this approach, during the course of the cleanup, the conditions of the order or other mechanism issued under the alternate State authority would not be enforceable RCRA permit conditions and, therefore, would not be enforceable under RCRA by EPA or citizens. However, under § 270.41(a) (or the authorized State equivalent), EPA or the authorized State would have authority to modify the permit if new information revealed that the cleanup under the alternate authority was not protective, and that RCRA-specific conditions were necessary to protect human health and the environment at that time.

Further, as a condition to allowing postponement of corrective action, EPA or the authorized State would include in the permit schedule of compliance some type of conditions to assure that the Agency or State agency would be made aware of changed conditions at the site, so that the decision to postpone could be reviewed and corrective action conditions incorporated into the permit, if necessary. These conditions could be structured in several ways. For example, the permit might include a requirement that the permittee notify EPA or the authorized State if the conditions upon which the determination to postpone is made change (e.g., if cleanup under the alternate authority is not proceeding for some reason). Alternatively, the permit might require periodic reporting to the Agency or State agency; at that time the decision to postpone the inclusion of specific corrective action conditions could be reviewed. If necessary, specific corrective action conditions could then be incorporated into the permit. Another option would be to include in the permit schedule of compliance conditions such that EPA or the authorized State agency would receive notice prior to and after the completion of significant milestones of the cleanup. This also would allow for the opportunity to review the decision to postpone imposition of specific cleanup provisions in the RCRA permit.[7]

EPA solicits comment on whether it should, as a general matter, recommend use of the postponement method and on situations where postponement may or may not be appropriate.

*Deferral.* A second approach, referred to in this notice as ''deferral,'' would allow EPA or the authorized State to completely defer corrective action requirements to an alternate cleanup program. To implement the deferral approach, upon permit issuance, EPA or the authorized State would make the finding that corrective action is necessary, and that the appropriate corrective action at the site would be the State action run by the State alternate program. Under this approach, the permit issuing agency would include in the permit a condition requiring the facility to meet all requirements of an alternate State cleanup program order or agreement (or whatever legal mechanism is used by the State program to document the facility's cleanup obligations). The permit would clearly state that the State alternate program is the sole implementer of the cleanup, in other words, it would be the State program that is responsible for the day-to-day implementation of the cleanup without intervention by EPA. It should be noted, however, that because the cleanup requirements imposed by the State alternate authority would, under this approach, become RCRA permit conditions, they would be enforceable by EPA and by citizens. For example, if the alternate authority order specified a deadline for completion of specific interim measures, if such measures were not implemented by that deadline, EPA (or a citizen) could bring an action for enforcement of that requirement under RCRA.

Unlike under the postponement approach, the permitting agency's deferral would not be conditioned on a review conducted at the end of the cleanup. Rather, it would be based on an analysis at the time of permitting, considering the recommended criteria, of the specific corrective action contemplated by the alternate cleanup program, or on a review of the alternate program itself, and demonstrating that the cleanup at the facility will be protective of human health and the environment. The review of the alternate program could include a general prior review (see discussion below) with a particular determination about deferral when issuing the permit. The basis for the agency's decision to defer would be part of the administrative record for the permit, and the public would have opportunity to comment on the decision prior to permit issuance. The final deferral decision would be subject to applicable administrative and judicial review.

EPA solicits comment on whether it should, as a general matter, recommend the use of the deferral method and on situations where deferral may or may not be appropriate.

3. How Would EPA or the Authorized State Determine That Cleanups Conducted Under an Alternate Cleanup Program Would Satisfy the Requirements of § 264.101?

Upon issuing a permit at a facility where the Agency has determined that corrective action is necessary, EPA or the authorized State must make a determination that the provisions of the permit addressing corrective action satisfy the requirements of § 264.101, i.e., that they require ''corrective action as necessary to protect human health and the environment * * *''(*see* § 264.101(a)). This determination would be no different where the requirements of § 264.101 are to be satisfied by a cleanup conducted through an alternate cleanup program at a RCRA permitted facility. In order to make the determination that the permit requires corrective action ''as necessary to protect human health and the environment,'' (or, in the case of postponement, that the alternate program cleanup is likely to be adequate, and it therefore is reasonable to set a schedule that postpones the determination of whether specific corrective action requirements are necessary to protect human health and the environment), the Agency or the authorized State would either: (1) Review the alternate program and make a determination that cleanups conducted under that program will, or likely will, satisfy the requirements of § 264.101[8]; or (2) review the provisions of an existing site-specific cleanup order (or equivalent) and find that it will satisfy the requirements of § 264.101. Therefore, EPA believes that a policy supporting use of alternate authorities at permitted sites should include guidance for assessment of alternate cleanup programs.

EPA is soliciting comment on: (1) What assessment factors should be recommended for assessing an alternate program (or site-specific cleanup); and (2) what role should EPA assume in reviewing and approving alternate State cleanup programs.

*Assessment Criteria.* EPA believes that a policy addressing use of alternate State cleanup programs at RCRA

[7] EPA does not intend that the decision to postpone normally would be revisited. Moreover, EPA would not expect permits to require that the cleanup under the non-RCRA program wait for approval from the RCRA authorized program before proceeding with the cleanup. Instead, it would be incumbent upon the RCRA program to undertake affirmative steps if it was concerned with how the cleanup was proceeding under the non-RCRA program.

[8] It should be noted that although the decision whether it is appropriate to postpone or defer in any particular instance will be informed by the results of prior program review (and EPA does not generally expect that additional review of a previously reviewed program will be necessary at the time of permit issuance), that decision will be made on a case-by-case basis in the course of permit issuance.

permitted facilities should recommend criteria for assessment and evaluation of those programs. EPA already has provided guidance on assessment and review of alternate programs on two occasions. In a memorandum dated November 14, 1996 from Elliot P. Laws and Steven A. Herman to Superfund National Policy Members entitled ''Interim Approaches for Regional Relations with State Voluntary Cleanup Programs,'' (the VCP guidance) EPA recommended six baseline criteria for evaluating the adequacy of State voluntary cleanup programs. (A copy of the VCP guidance is available in the docket for today's proposal.) In the October 22, 1998 final Post-Closure rule (see 63 FR 56710 at 56792), EPA established criteria to evaluate the alternate authorities that would be used in lieu of a post-closure permit to address corrective action. The criteria from the VCP guidance and the Post-Closure rule are outlined below. EPA solicits comment on recommending the use of the VCP guidance criteria and/or the Post-Closure rule criteria to evaluate alternate programs for use in RCRA permits. EPA also solicits comment on other criteria that might be appropriate.

It should be noted that EPA would not necessarily deny the use of an alternate cleanup program at a RCRA permitted facility because it does not meet all of the criteria developed by the Agency. EPA believes that inadequacies of an alternate State program could be addressed by supplementing the program through conditions in the RCRA permit. For example, if the Agency determined that an alternate program did not provide for meaningful public involvement, the Agency could still use the approaches outlined above, but also include specific permit provisions requiring such public participation (or ask the alternate state program to enhance public participation at the specific site in question). EPA solicits comment on this approach.

*VCP Guidance Criteria.* In the November 14, 1996 VCP guidance, EPA established the baseline criteria for evaluating adequacy of State voluntary cleanup programs. These criteria are used by the Agency in negotiating Memoranda of Agreement (MOAs) with States for purposes of dividing cleanup responsibilities between EPA's Superfund program and the States. By negotiating these MOAs, EPA seeks to develop partnerships with the States to encourage cleanups at non-NPL sites, including brownfields.

Under the guidance, voluntary cleanup programs should be evaluated to assure they have the following:

- Opportunities for meaningful public involvement;
- Response actions that are protective of human health and the environment;
- Adequate resources to ensure that response actions are conducted in an appropriate and timely manner, and that both technical assistance and streamlined procedures, where appropriate, are available;
- Mechanisms for the written approval of response action plans and a certification or similar documentation indicating that response actions are complete;
- Adequate oversight to ensure that response actions are conducted in such a manner to assure protection of human health and the environment; and
- Capability, through enforcement or other authorities, of ensuring completion of response actions if the party conducing the response action fails or refuses to complete the necessary response actions, including operation and maintenance or long-term monitoring activities.

Many of these listed criteria are the same as those used in the authorization process for state RCRA corrective action programs. However, it should be noted that the review of resources available to voluntary cleanup programs during the MOA process is typically significantly less detailed than the capability assessment associated with State authorization. Regardless of which criteria may ultimately be used, EPA does not believe the level of overall review of the alternate program would be the same level as an authorization review. Instead, the review would simply need to be sufficient to support a determination that the use of the alternate program will, or in the case of postponement likely will, result in protective cleanups, i.e., will satisfy the requirements of § 264.101.

EPA solicits comment on whether these factors are appropriate to consider in the context of reviewing alternate cleanup programs for use at permitted facilities. In particular, EPA solicits comment on to what extent the reviewing agency should consider the practices, resources, and oversight capability of the alternate program when determining whether cleanups conducted under the program will satisfy the requirements of § 264.101. Finally, EPA solicits comment on whether other aspects of the alternate program, not listed above, also should be considered.

*Post-Closure Rule Criteria.* In the final Post-Closure rule, the Agency established that an assessment of a cleanup program must demonstrate, at a minimum, that the authority is sufficiently broad to: (1) Require facility-wide assessments; (2) address all releases of hazardous wastes or constituents to all media for all SWMUs within the facility boundary as well as off-site releases to the extent required under RCRA section 3004(v) (to the extent that releases pose a threat to human health and the environment); and (3) impose remedies that are protective of human health and the environment. In promulgating that final rule, EPA determined that these criteria are appropriate for evaluation of alternate authorities that would be used in lieu of post-closure permits to satisfy corrective action requirements. EPA solicits comments on whether these factors are appropriate for reviewing alternate programs for use at permitted facilities.

Over the years, EPA has provided guidance on imposing remedies that are protective of human health and the environment, and that will achieve corrective action cleanup objectives. On May 1, 1996, EPA published an Advance Notice of Proposed Rulemaking (ANPR) (*see* 61 FR 19432), which serves as the primary guidance for the corrective action program. EPA expects that any policy issued on the use of alternate cleanup programs at RCRA permitted facilities would provide that, when evaluating a State's alternate cleanup program, EPA or the authorized State should consider whether cleanups conducted under the program are at least as protective as the EPA corrective action program or the equivalent State corrective action program authorized by EPA, as implemented under the ANPR guidelines.

In addition to the criteria discussed above, the Post-Closure final rule required that a cleanup conducted under an alternate authority include meaningful opportunity for public involvement (*see* § 265.121(b)). EPA believes that public involvement is a critical component of a corrective action process that assures that cleanups are protective of human health and the environment, and that any policy supporting use of alternate authorities at permitted facilities must include meaningful involvement of the public. The final Post-Closure rule established criteria for meaningful public involvement—at a minimum, public notice and opportunity for comment at three key stages of cleanup: (1) When EPA or the authorized State agency first becomes involved in the cleanup process as a regulatory or enforcement matter, (2) when EPA or the authorized State agency is ready to approve a remedy for the site (this opportunity

must include a chance to comment on the assumptions on which the remedy is based), and (3) when EPA or the authorized State is ready to decide that remedial action is complete at the facility. EPA solicits comment on whether these are the appropriate public involvement criteria to recommend for cleanups conducted under alternate authorities at permitted facilities.

The final Post-Closure rule also discussed the need for the alternate authority to have adequate enforcement authority. EPA specifically stated in the preamble to that rule, that the alternate authorities ''must include the authority to sue in court, and to assess penalties, consistent with § 271.16'' (*see* 62 FR 56710 at 56730). The referenced regulation specifically requires that the alternate program have the authority to enjoin any threatened or continuing violation of the requirements, and the authority to compel compliance with requirements for corrective action or other emergency response measures deemed necessary to protect human health and the environment. These provisions assure that program conducting the cleanup will be able to enforce the cleanup requirements imposed at the facility in a timely manner. As in the case of the Post-closure rule, EPA wants to assure that, where a cleanup is conducted through an alternate cleanup program at a RCRA permitted facility, the Agency or the authorized State will be able to enforce the cleanup requirements in a timely manner.

*General Process for Review of Alternate Cleanup Programs.* EPA believes that, as a general matter, the Agency should review state alternate program in advance of relying on them at individual sites in the state. EPA believe such an up-front review would result in faster permit decisions overall, since it would provide, in advance, useful record support for a postponement of deferral decision at a specific site. In addition, any potential issues associated with alternate authority would be worked out in advance of individual permit decisions. EPA therefore solicits comment on two options for documenting the up-front review of an alternate program. EPA approves RCRA cleanup programs through the corrective action authorization process (and reviews alternate authorities as part of authorization for the Post-Closure rule). EPA also conducts less formal reviews as part of program oversight, and as part of Federal-State joint implementation efforts. These less formal reviews typically result in site-specific or program-wide agreements between EPA and States. Under the first option, EPA could use an authorization approach, where the State would submit, among other things, copies of the statutes and regulations for the alternate cleanup authority, to demonstrate that the program would result in protective cleanups. Under the second option, EPA and the State could enter into an MOU, or other agreement, regarding permit determinations and the use of a particular alternate authority for RCRA corrective action facilities (e.g., a VCP MOA for RCRA corrective action). EPA solicits comment on these two options, when they should be used, and whether other options should be considered. In either case, the purpose of this up-front review would be to make an early assessment of the fitness of an alternate cleanup program for use at permitted facilities in the State. Of course, although the decision whether it is appropriate to postpone or defer in any particular instance will be informed by the results of this prior program review (and EPA does not generally expect that additional review of a previously reviewed program will be necessary at the time of permit issuance) that decision will be made on a case-by-case basis in the course of permit issuance.

In some cases, EPA may already have reviewed an alternate State cleanup authority for other purposes. For example, EPA may have reviewed and approved the authority during authorization of the State RCRA program for the Post-Closure Rule. In other cases, EPA may have reviewed the authority during the process of authorizing the State RCRA program for section 3004(u) corrective action. EPA solicits comment on whether alternate cleanup authorities that have been reviewed during the authorization process should be evaluated again. EPA also solicits comments on other situations where the Agency may have reviewed the alternate authority and where it might be unnecessary to conduct additional review.

*Process for Review of Alternate Cleanup Programs In States Authorized for RCRA Corrective Action.* EPA solicits comment on what is an appropriate level of participation for the Agency in the review and assessment of an alternate program in a state authorized for RCRA corrective action. In particular, EPA solicits comment on whether it is necessary for EPA to review and approve an alternate program before a State authorized for corrective action defers to that program in a permit, or postpones corrective action under a permit pending a cleanup conducted under the alternate program. While a State authorized for corrective action is responsible for implementing the program, the Agency retains oversight responsibility in authorized States; EPA believes that review and assessment of alternate cleanup programs used in the ways outlined above, should be considered part of the Agency's oversight responsibility. EPA solicits comment on to what extent review and assessment of alternate programs should be considered part of the Agency's oversight responsibilities, and on what its role should be in evaluating alternate State cleanup programs.

*B. Financial Assurance*

EPA's Office of Inspector General (OIG) recently issued an audit report on financial assurance for closure (RCRA Financial Assurance for Closure and Post-Closure, Audit Report No. 2001–P–007, U.S. Environmental Protection Agency Office of Inspector General, March 30, 2001. (Available at *http://www.epa.gov/oigearth/audit/list301/finalreport330.pdf,* and in the docket to today's proposed rulemaking). The report raised several issues regarding the use of pure captive insurance for closure. The report states:

> We believe that insurance policies issued by a ''captive'' insurance company do not provide an adequate level of assurance because we found no independence between facility failure and the failure of the mechanism.

In addition, the report concluded that the sampled captive insurance policies did not allow assignment to a new owner or operator as required by the regulations. EPA has sent a letter to the Vermont Department of Banking, Insurance, Securities and Health Care Administration requesting information on the assignment of captive insurance policies issued by insurers domiciled there. The docket to this rulemaking includes copies of EPA's letter and Vermont's response. The audit report also recommends that the Agency investigate complex insurance issues with the States to determine the States' need for guidance. EPA requests comments on the conclusions in the OIG report. EPA also requests information from States, the insurance industry, and the regulated community on the need for the guidance suggested by OIG, appropriate topics, and information that should be included.

The OIG report considers captive insurance to be a form of ''self insurance,'' and in that sense is similar to the financial test. For the financial test, EPA has information on the probability that a company which passes the financial test could enter bankruptcy and so be unable financially

to fulfill its closure obligations. This information comes from data on bankruptcy rates, and default rates on bonds of various ratings. For captive insurance, we have no specific information, and therefore would like States, organizations, companies, or individuals to provide us with any information they may have on the risks associated with captive insurers, and experience with their payment of claims for closure, post-closure care, or third party liability under RCRA.

The financial status of the parent company and the pure captive insurer is potentially important because regulatory agencies might be forced to perform closure at a facility if the parent were to enter bankruptcy without having closed the facility and if the captive insurance company could not afford to close the facility promptly or properly. While the proposed financial test requires a company have a tangible net worth of at least $10 million more than the amount of obligations covered, the capitalization requirements for captive insurers can be much smaller. Vermont, for example, has a minimum capitalization requirement for a pure captive insurance company of $250,000. The cost of a RCRA closure could surpass that amount.

In addition, we are not aware of any state that covers captive insurance with State insurance funds that pay off claims in the event of the failure of the insurer. Because the captive insurer is providing insurance for its parent company, a State that would provide such coverage for claims might be creating a disincentive for prudent risk management. However, this means that in the event of bankruptcy by the company and the default of the captive insurer, EPA or the State might not have the funds available for closure. Therefore, we request comments on the use of captive insurance as a financial assurance mechanism for closure.

We also request comments on any additional requirements for insurers in general, such as minimum ratings (and appropriate rating agencies), beyond the current requirement to ''be licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.'' (See § 264.143(e)(1)). We are interested in this information not only for potential users of the standardized permit, but also for other facilities that demonstrate financial assurance for environmental obligations through the use of insurance. Insurance is currently an allowable mechanism for demonstrating financial assurance for closure in §§ 258.74, 264.143, 265.143 as well as 761.65. Insurance is also an allowable mechanism for demonstrating financial assurance for the costs of plugging and abandonment of Class I hazardous waste injection wells under § 144.63.

Specifically, EPA is considering a requirement that an insurer, in addition to being ''licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer, in one or more States,'' meet at least one of the following requirements: a rating of Aaa, Aa or A by Moody's, or a rating of AAA, AA or A by Standard & Poor's, or a rating of A++, A+, A or A− from A.M. Best Company.

EPA recognizes that these ratings may appear to be more stringent than the requirements it has established for companies that qualify on the basis of a bond rating to self-insure under the financial test in, for example, subpart H of parts 264 and 265. This is appropriate because a company that previously qualified to use the financial test and then becomes ineligible because of a reduced bond rating is still likely to qualify for a third party instrument such as a surety bond or a letter of credit. However, third party providers of financial assurance generally service a group of owners and operators that are financially weaker than those qualifying for the financial test (otherwise they would have used the less expensive financial test as a mechanism to comply with the financial assurance requirements). If a third party provider, such as an insurer, loses its qualification to provide assurance, its customers can find it very difficult to obtain another instrument within the 60 day period required by the regulations. Until the customers obtain a new instrument, the policy remains in force, but the certainty of payment is less than with a more qualified company. By imposing an additional requirement on the financial strength of the insurer, EPA expects to reduce the possibility that a permitting authority is faced with having a claim on a third party for closure which the third party cannot fund.

## XI. State Authorization

### *A. Applicability of Rules in Authorized States*

Under section 3006 of RCRA, EPA may authorize qualified States to administer the RCRA hazardous waste program within the State. A State may receive authorization by following the approval process described under part 271. See 40 CFR part 271 for the overall standards and requirements for authorization. Following authorization, the State requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized States also have independent authority to bring enforcement actions under State law.

After a State receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State until the State adopts and receives authorization for equivalent State requirements. In contrast, under RCRA section 3006 (g)(42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized States at the same time they take effect in unauthorized States. As such, EPA carries out HSWA requirements and prohibitions in authorized States, including the issuance of new permits implementing those requirements, until EPA authorized the State to do so.

Authorized States are required to modify their programs when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows States to impose standards more stringent than those in the Federal program. See also 40 CFR 271.1(i). Therefore, authorized States are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered equivalent or less stringent than existing Federal requirements.

### *B. Effect of State Authorizations*

Today's proposal, if finalized, will promulgate regulations that are not HSWA-related. Thus, the standards proposed today will be applicable on the effective date only in those States that do not have final authorization. In authorized States, the requirements would not be applicable until the State revises its program to adopt equivalent requirements under State law.

Authorized States are required to modify their programs only when EPA promulgates Federal regulations that are more stringent or broader in scope than the authorized State regulations. For those changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. This is a result of section 3009 of RCRA, which allows States to impose more stringent regulations than the Federal program.

Today's rule however, is considered to be neither more nor less stringent than the current standards. Therefore, authorized States would not be required to modify their programs to adopt regulations consistent with and equivalent to today's proposed standards.

As in the case of individual permit procedures, a state that chooses to adopt and request authorization for issuing standardized permits must adopt permitting procedures equivalent, but not identical to those promulgated by EPA. The authorization regulations in 40 CFR 271.14 lists several provisions of the permitting regulations which EPA determined are necessary for an equivalent permitting program. States would need to adopt a similar scope of legal authorities for issuing standardized permits as for individual permits.

**XII. Regulatory Assessments**

*A. Executive Order 12866*

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] we must determine whether a 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 impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has determined that this proposed rule is a ''significant regulatory action'' because it raises novel legal or policy issues. As such, we submitted this action to OMB for review before publishing it in the **Federal Register**. Changes made in response to OMB suggestions or recommendations are documented in the public record in support of this proposal.

1. Assessment of Potential Costs and Benefits

For regulations that are projected to have significant economic impacts, Agencies are required to conduct a ''Regulatory Impact Assessment'' of potential costs and benefits of the regulation. Although OMB has not designated this proposed rule as economically significant, we have completed a preliminary economic analysis of the proposed rule, the results of which we summarize below and present for public review and comment.

*a. Description of entities to which this rule applies.* This rule potentially applies to approximately 866 existing private sector facilities which non-thermally treat and/or store RCRA hazardous waste in tanks, containers, and containment buildings. The rule only applies to on-site treatment and storage of hazardous waste, not to off-site commercial treatment and storage facilities. Eligible facilities may voluntarily participate in the RCRA standardized permit program. We designed the proposed rule to reduce the information reporting requirements for eligible facilities, as well as to reduce EPA and state administrative review time for these permit activities. Eligible facilities are a mix of small, medium and large facilities.

*b. Description of potential benefits of this rule.* The RCRA standardized permit proposal is an optional rule designed to streamline the regulatory burden to EPA/states as well as to private sector facilities covered by the rule, by reducing the amount of information collected, submitted and reviewed for RCRA permit actions (i.e., new RCRA permit applications, RCRA permit modifications, and RCRA permit renewals). Because the rule proposes to streamline existing RCRA regulation, rather than add new RCRA regulation, we expect implementation of the rule by the EPA and by states with EPA-authorized permitting programs to result in economic benefits in the form of national cost savings from reducing both government and private sector resources required for the RCRA permit process. The public is particularly encouraged to comment on desired permit streamlining benefits.

Based on an economic analysis, we estimate that the potential average annual cost savings to eligible facilities resulting from implementation of this rule will range from approximately $100 to $5,800 per permit action (i.e., between two to 140 administrative burden hours reduction per permit action, which is equivalent to 4% to 14% reduction in burden hours compared to the baseline (existing) RCRA permit program), depending on the type of individual permit they're converting from and the type of eligible treatment and storage equipment. We estimate that an average of 55% of annual permit actions will involve container systems, 43% will involve tank systems, and 2% containment buildings. Aggregated over an average annual 135 RCRA standardized permit actions (11% of which are expected to consist of conversion of existing permits, 61% of interim status and new facility permit applications, 18% modification permit applications, and 10% permit renewal applications upon expiration), produces an expected national cost savings benefit for RCRA permitting of between $0.36 to $0.53 million annually. This annual savings consists of 76% of benefits to the private sector eligible facilities, and 24% of benefits to EPA/state permit authorities. Potential cost savings benefits are incremental to the average annual cost associated with the current RCRA permitting program.

*c. Description of potential costs of this rule.* We believe that the costs to EPA and states of implementing the standardized permit option will be minimal, and therefore we did not estimate them in the economic analysis. Private sector costs associated with this rule have been included and netted-out in the incremental cost comparison of the preliminary economic analysis.

*d. Description of potential net benefits of the rule.* Because implementation costs are relatively minimal or have otherwise been netted-out from the cost savings analysis as explained above, the $0.36 to $0.56 million in average annual national cost savings benefits identified above, also represent the potential net benefits associated with implementation of this rule.

*B. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant adverse economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small

entities. The following discussion explains EPA's determination.

The Agency has determined that today's proposed rule will not have a significant adverse economic impact on a substantial number of small entities, since the rule has direct effects only on state agencies. Otherwise, the proposal is expected to provide net annual benefits (in the form of administrative paperwork burden reduction cost savings) from the voluntary participation by eligible facilities in the private sector. Therefore, we did not prepare an RFA. Based on the foregoing discussion, I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities.

*C. 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 UMRA, we 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 which must have a written statement, 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 us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes an explanation with the final rule. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must develop, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The proposed rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not authorized for the RCRA program and therefore will not be implementing these rules.

*D. 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. *1935.01*) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by e-mail 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.*

Section 270.275 requires that applicants for a standardized permit submit to the permitting agency information that will be used as the basis of the standardized permit application. This information includes:

- Part A permit information required by section 270.13;
- A summary of the pre-application public meeting and other materials required by section 124.31;
- Documentation of compliance with the location standards of sections 267.18 and 270.14(b)(11);
- Information that allows the Director to carry out his obligations under other Federal laws required in § 270.3;
- Solid waste management unit information required by § 270.14(d); and
- A signed certification of the facility's compliance with part 267, as specified at § 270.280.

EPA needs this information to comprehensively evaluate the potential risk posed by facilities seeking permits. This information aids EPA in meeting its goal of ascertaining and minimizing risks to human health and the environment from hazardous waste management facilities.

In addition, facilities that store or treat hazardous waste under a standardized permit must keep at their facilities general types of information (§ 267.290), as well as unit-specific information for containers (§ 267.300), tanks (§ 267.305), equipment subject to part 264, subpart BB (§ 270.310), and tanks and containers subject to part 264, subpart CC (§ 270.315). EPA anticipates that the owner or operator will use this information to ensure that tanks, containers, and other equipment are in good condition and that operating requirements are being satisfied, and to prevent placing in proximity wastes that are incompatible with other wastes that are likely to ignite or explode. EPA needs this information to evaluate compliance of facilities with the permitting standards. These requirements contribute to EPA's goal of insuring that hazardous waste management facilities are operated in a manner fully protective of human health and the environment.

Information collection requirements in the standardized permit proposal are authorized by sections 2002 and 3007 of RCRA, as amended. In particular, section 2002 gives the Administrator the authority to promulgate such regulations as are necessary to carry out the functions of this subchapter. Section 3007 gives EPA the authority to compel anyone who generates, stores, treats, transports, disposes of or otherwise handles or has handled hazardous wastes to ''furnish information related to such wastes'' and make such information available to the government for ''the purposes of * * *enforcing the provisions of this chapter.'' EPA believes the information collection requirements in the proposal are consistent with the Agency's responsibility to protect human health and the environment.

Section 3007(b) of RCRA and 40 CFR part 2, subpart B, which define EPA's general policy on public disclosure of information, contain provisions for confidentiality. However, the Agency does not anticipate that businesses will assert a claim of confidentiality covering all or part of the information that would be requested pursuant to the proposed information collection requirements. If such a claim were asserted, EPA must and will treat the information in accordance with the regulations cited above. EPA also will assure that this information collection complies with the Privacy Act of 1974 and OMB Circular 108. Further, no questions of a sensitive nature are included in the proposed information collection requirements.

EPA estimates that a total of 175 (permitted, interim status, and new) captive TSDFs per year will apply for a

RCRA standardized permit in the initial few years after its implementation. EPA estimates that the annual respondent burden to be approximately 13,367 hours, at an annual cost of $1,307,512. Assuming each eligible TSDF responds once annually (i.e. process a RCRA permit action), the average burden per response would be 76 hours. (Note that this burden estimate does not net-out the baseline burden of the existing RCRA permit program, as was done in the economic analysis summarized a few sections above).

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, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW, 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 October 12, 2001, a comment to OMB is best assured of having its full effect if OMB receives it by November 13, 2001. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

*E. Executive Order 13045: Children's Health*

''Protection of Children from Environmental Health Risks and Safety Risks'' (62 F.R. 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

*F. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pubic Law No. 104–113, section 12(d)(15 U.S.C. 272 **note**) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, we are not considering the use of any voluntary consensus standards.

*G. Executive Order 12898: Environmental Justice*

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, we have initiated efforts to incorporate environmental justice into our policies and programs. We are committed to addressing environmental justice concerns and have assumed a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. Our goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of our policies, programs, and activities, and that all people live in clean and sustainable communities. To address this goal, we considered the impacts of this rule on low-income populations and minority populations.

We concluded that today's final rule will potentially advance environmental justice goals because the public involvement process set forth in today's rule improves the opportunity for all potentially affected segments of the population to participate in public hearings and/or to provide comment on health and environmental concerns that may arise pursuant to a proposed Agency action under this rule.

*H. 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. There is no impact to tribal governments as the result of the standard permit. 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.

*I. 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 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.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed 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. Rather, it would provide more flexibility for States to implement already-existing requirements. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Nevertheless, EPA worked closely with state governments in the development of this proposed rule. We distributed drafts of the proposed rule to California and Wisconsin for their review and comment. We also distributed copies of the proposed rule to the Association of State and Territorial Solid Waste Management Officials. These states and state organizations provided meaningful and timely input to the agency in the development of this proposal.

*J. Executive Order 13211: Energy Effects*

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects

**XIII. List of References**


1. The EPA Permit Improvement Team Final Draft of Concept Paper on Environmental Permitting and Task Force Recommendations. EPA, April 1996.
2. *The Nation's Hazardous Waste Management Program at a Crossroads: The RCRA Implementation Study.* EPA/530–SW–90–069, Office of Solid Waste and Emergency Response, July 1990.
3. *RCRA Part A Application.* EPA/8700–23, October 1999.
4. *RCRA Public Participation Manual.* EPA/530–R–96–007, Office of Solid Waste and Emergency Response, September 1996.
5. Summary of Standardized Permit Forum Meeting held in Arlington, Virginia. October 1997.
6. *Closure Cost Estimates for Standard Permits, Background Document—Option 5.* EPA, December 1998.
7. *Closure Cost Estimates for Standard Permits, Background Document—Option 4.* EPA, December 1998.
8. *Economics Background Document: Estimate of Potential National Cost Savings for the Industrial Hazardous Waste ''Standardized'' RCRA Permit Proposal,* EPA Office of Solid Waste, Economics, Methods & Risk Analysis Division, 03 May 2000, 73pp.
9. EPA Memorandum: *Coordination between RCRA Corrective Action and Closure and CERCLA Site Activities,* From: Steven A. Herman and Elliott P. Laws, To: RCRA/CERCLA National Policy Manages Region I-X, 24 September 1996.
10. EPA Memorandum: *Interim Approaches for Regional Relations with State Voluntary Cleanup Programs,* From Elliot P. Laws and Steven A. Herman, To: Superfund National Policy Members, 14 November 1996.
11. Final Post Closure Rule, 63 FR 56710, October 22, 1998.
12. Advance Notice of Proposed Rulemaking on RCRA Corrective Action Program, 61 FR 19432, May 1, 1996.


**List of Subjects**

*40 CFR Part 124*

Administrative practice and procedure, Hazardous waste, RCRA permits.

*40 CFR Part 260*

Hazardous waste.

*40 CFR Part 267*

Corrective action, Financial assurance, Hazardous waste, Reporting and recordkeeping requirements, Standardized permit requirements.

*40 CFR Part 270*

Administrative practice and procedure, Hazardous waste, Permit application and modification procedures, RCRA permits, Standardized permit requirements.

Dated: September 20, 2001.

**Christine Todd Whitman,**

*Administrator.*

For reasons stated in the preamble, title 40 chapter I of the Code of Federal Regulations is proposed to be amended as follows:

## PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

**Authority:** Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.*

2. Section 124.1 is amended by revising paragraph (b) to read as follows:

**§ 124.1 Purpose and scope.**

* * * * *

(b) This part 124 is organized into six subparts. Subpart A contains general procedural requirements applicable to all permit programs covered by these regulations. Subparts B through G supplement these general provisions

with requirements that apply to only one or more of the programs. Subpart A describes the steps EPA will follow in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment and holding public hearings on draft permits. Subpart A also covers assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of the final permit decision. Subpart B contains public participation requirements applicable to all RCRA hazardous waste management facilities. Subpart C contains definitions and specific procedural requirements for PSD permits. Subpart D applies to NPDES permits until an evidentiary hearing begins, when subpart E procedures take over for EPA-issued NPDES permits and EPA-terminated RCRA permits. Subpart F, which is based on the ''initial licensing'' provisions of the Administrative Procedure Act (APA), can be used instead of subparts A through E in appropriate cases. Subpart G contains specific procedural requirements for RCRA standardized permits, which, in some instances, change how the General Program Requirements of subpart A apply in the context of the RCRA standardized permit.

* * * * *

3. Section 124.2 is amended by revising the definition of ''permit'' in paragraph (a) and adding a definition for a standardized permit in alphabetical order as follows:

**§ 124.2 Definitions.**

(a) * * *

*Permit* means an authorization, license or equivalent control document issued by EPA or an ''approved State'' to implement the requirements of this part and parts 122, 123, 144, 145, 233, 270, and 271 of this chapter. ''Permit'' includes RCRA ''permit by rule'' (§ 270.60), UIC area permit (§ 144.33), RCRA standardized permit (§ 270.67), NPDES or 404 ''general permit'' (§§ 270.61, 144.34, and 233.38). Permit does not include RCRA interim status (§ 270.70), UIC authorization by rule (§ 144.21), or any permit which has not yet been the subject of final agency action, such as a ''draft permit'' or a ''proposed permit.''

* * * * *

*Standardized permit* (RCRA) means a RCRA permit authorizing management of hazardous waste issued under subpart G of this part and 40 part 270, subpart I. The standardized permit may have two parts: A uniform portion issued in all cases and a supplemental portion issued at the Director's discretion.

* * * * *

4. Section 124.5(c) is amended by revising paragraph (c) heading and paragraph (c)(1) as follows:

**§ 124.5 Modification, revocation and reissuance, or termination of permits.**

* * * * *

(c) (Applicable to State programs, see 40 CFR 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)). (1) If the Director tentatively decides to modify or revoke and reissue a permit under 40 CFR 122.62 (NPDES), 144.39 (UIC), 233.14 (404), or 270.41 (other than 270.41(b)(3)) or 270.42(c) (RCRA), he or she shall prepare a draft permit under § 124.6 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, other than under 40 CFR 270.41(b)(3), the Director shall require the submission of a new application. In the case of revoked and reissued permits under 40 CFR 270.41(b)(3), the Director and the permittee shall comply with the appropriate requirements in 40 CFR part 124, subpart G for RCRA standardized permits.

* * * * *

5. Section 124.31 is amended by revising paragraphs (a), (b), and (c) as follows:

**§ 124.31 Pre-application public meeting and notice.**

(a) *Applicability.* The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units over which EPA has permit issuance authority. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a ''significant change'' is any change that would qualify as a class 3 permit modification under 40 CFR 270.42. For the purposes of this section only, ''hazardous waste management units over which EPA has permit issuance authority'' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section shall also apply to hazardous waste management facilities for which facility owners or operators are seeking coverage under a RCRA standardized permit (see 40 part 270, subpart I). The requirements of this section do not apply to permit modifications under 40 CFR 270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Prior to the submission of a part B RCRA permit application for a facility, or to the submission of a written notice of intent to be covered by a RCRA standardized permit (see 40 CFR part 270, subpart I), the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

(c) The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under paragraph (b) of this section, and copies of any written comments or materials submitted at the meeting, to the permitting agency as a part of the part B application, in accordance with 40 CFR 270.14(b), or with the written notice of intent to be covered by a RCRA standardized permit (see 40 CFR part 270, subpart I).

* * * * *

6. Section 124.32 is amended by revising paragraph (a) as follows:

**§ 124.32 Public notice requirements at the application stage.**

(a) *Applicability.* The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units over which EPA has permit issuance authority. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units under 40 CFR 270.51. For the purposes of this section only, ''hazardous waste management units over which EPA has permit issuance authority'' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section do not apply to hazardous waste units for which facility owners or operators are seeking coverage under a RCRA standardized permit (see 40 CFR part 270, subpart I)). The requirements of this section do not apply to permit modifications under 40 CFR 270.42 or permit applications submitted for the sole purpose of conducting post-closure

activities or post-closure activities and corrective action at a facility.

* * * * *

7. Subpart G is added to read as follows:

## Subpart G—Procedures for RCRA Standardized Permit

Sec.

**General Information About Standardized Permits**

124.200 What is a RCRA standardized permit?
124.201 Who is eligible for a standardized permit?

**Applying for a Standardized Permit**

124.202 How do I as a facility owner or operator apply for a standardized permit?
124.203 How may I switch from my individual RCRA permit to a standardized permit?

**Issuing a Standardized Permit**

124.204 What must I do as the Director of the regulatory agency to prepare a draft standardized permit?
124.205 What must I do as the Director of the regulatory agency to prepare a final standardized permit?
124.206 In what situations may I require a facility owner or operator to apply for an individual permit?

**Opportunities for Public Involvement in the Standardized Permit Process**

124.207 What are the requirements for public notices?
124.208 What are the opportunities for public comments and hearings on draft permit decisions?
124.209 What are the requirements for responding to comments?
124.210 May I, as an interested party in the permit process, appeal a final standardized permit?

**Maintaining a Standardized Permit**

124.211 What types of changes may I make to my standardized permit?
124.212 What procedures must I follow to make routine changes?
124.213 What procedures must I follow to make significant changes?

## Subpart G—Procedures for RCRA Standardized Permit

### General Information About Standardized Permits

#### § 124.200 What is a RCRA standardized permit?

The standardized permit is a special form of RCRA permit, that may consist of two parts: A uniform portion that the Director issues in all cases, and a supplemental portion that the Director issues at his or her discretion. We formally define the term ''Standardized permit'' in § 124.2.

(a) *What comprises the uniform portion?* The uniform portion of a standardized permit consists of terms and conditions, relevant to the unit(s) you are operating at your facility, that EPA has promulgated in 40 CFR part 267 (Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standardized Permit). If you intend to operate under the standardized permit, you must comply with these nationally applicable terms and conditions.

(b) *What comprises the supplemental portion?* The supplemental portion of a standardized permit consists of site-specific terms and conditions, beyond those of the uniform portion, that the Director may impose on your particular facility, as necessary to protect human health and the environment. If the Director issues you a supplemental portion, you must comply with the site-specific terms and conditions it imposes.

(1) If the Director determines that it is necessary, he or she must include terms and conditions in your supplemental portion to institute corrective action under 40 CFR 267.101 (or State equivalent) or to otherwise protect human health and the environment.

(2) Unless otherwise specified, these supplemental permit terms and conditions apply to your facility in addition to the terms and conditions of the uniform portion of the standardized permit and not in place of any of those terms and conditions.

#### § 124.201 Who is eligible for a standardized permit?

If you generate hazardous waste and then non-thermally treat or store the hazardous waste in tanks, containers, or containment buildings, you may be eligible for a standardized permit. We will inform you of your eligibility when we make a decision on your permit.

### Applying for a Standardized Permit

#### § 124.202 How do I as a facility owner or operator apply for a standardized permit?

(a) You must follow the requirements in this subpart as well as those in § 124.31, 40 CFR 270.10 and 40 CFR part 270, subpart I.

(b) You must submit to the Director a written notice of your intent to operate under the standardized permit. You must also include the information and certifications required under 40 CFR part 270, subpart I.

#### § 124.203 How may I switch from my individual RCRA permit to a standardized permit?

You may request that your individual permit be revoked and reissued as a standardized permit, in accordance with § 124.5.

### Issuing a Standardized Permit

#### § 124.204 What must I do as the Director of the regulatory agency to prepare a draft standardized permit?

(a) You must review the notice of intent and supporting information submitted by the facility owner or operator.

(b) You must determine whether the facility is or is not eligible to operate under the standardized permit.

(1) If the facility is eligible for the standardized permit, you must propose terms and conditions, if any, to include in a supplemental portion. If you determine that these terms and conditions are necessary to protect human health and the environment but for some reason cannot be imposed, you must tentatively deny coverage under the standardized permit.

(2) If the facility is not eligible for the standardized permit, you must tentatively deny coverage under the standardized permit.

(c) You must prepare your draft permit decision within 120 days after receiving a notice of intent and supporting documents from a facility owner or operator. Your tentative determination under this section to deny or grant coverage under the standardized permit, including any proposed site-specific conditions in a supplemental portion, constitutes a draft permit decision.

(d) Many requirements in subpart A of this part apply to processing the standardized permit application and preparing your draft permit decision. For example, your draft permit decision must be accompanied by a statement of basis or fact sheet and must be based on the administrative record. In preparing your draft permit decision, the following provisions of subpart A of this part apply (subject to the following modifications):

(1) Section 124.1 *Purpose and Scope.* All paragraphs.

(2) Section 124.2 *Definitions.* All paragraphs.

(3) Section 124.3 *Application for a permit.* All paragraphs except paragraphs (c), (d), (f) and (g) of this section apply.

(4) Section 124.4 *Consolidation of permit processing.* All paragraphs apply, however, in the context of the RCRA standardized permit use the reference to § 124.208 instead of the reference to § 124.10.

(5) Section 124.6 *Draft permits.* This section does not apply to the RCRA standardized permit; procedures in this subpart apply instead.

(6) Section 124.7 *Statement of basis.* The entire section applies.

(7) Section 124.8 *Fact sheet.* All paragraphs apply, however, in the context of the RCRA standardized permit use the reference to § 124.208 instead of the reference to § 124.10.

(8) Section 124.9 *Administrative record for draft permits when EPA is the permitting authority.* All paragraphs apply, however, in the context of the RCRA standardized permit use the reference to § 124.204(c) instead of § 124.6.

(9) Section 124.10 *Public notice of permit actions and public comment period.* Only §§ 124.10(c)(1)(ix) and (c)(1)(x)(A) apply to the RCRA standardized permit. Most of § 124.10 does not apply to the RCRA standardized permit; §§ 124.207, 124.208, and 124.209 apply instead.

**§ 124.205 What must I do as the Director of the regulatory agency to prepare a final standardized permit?**

As Director of the regulatory agency you must consider all comments received during the public comment period (see § 124.208) in making your final permit decision. In addition, many requirements in subpart A apply of this part to the public comment period, public hearings, and preparation of your final permit decision. In preparing a final permit decision, the following provisions of subpart A of this part apply (subject to the following modifications):

(a) Section 124.1 *Purpose and Scope.* All paragraphs.

(b) Section 124.2 *Definitions.* All paragraphs.

(c) Section 124.11 *Public comments and requests for public hearings.* This section does not apply to the RCRA standardized permit; the procedures in § 124.208 apply instead.

(d) Section 124.12 *Public hearings.* Paragraphs (b), (c), and (d) apply.

(e) Section 124.13 *Obligation to raise issues and provide information during the public comment period.* The entire section applies, however, in the context of the RCRA standardized permit use references to § 124.208 instead of references to § 124.10.

(f) Section124.14 *Reopening of the public comment period.* All paragraphs apply, however, in the context of the RCRA standardized permit, use the following references: in § 124.14(b)(1) use reference to § 124.204 instead of § 124.6; in § 124.14(b)(3) use reference to § 124.208 instead of § 124.10; in § 124.14(c) use references to § 124.207 instead of § 124.10.

(g) Section 124.15 *Issuance and effective date of permit.* All paragraphs apply, however, in the context of the RCRA standardized permit use the reference to § 124.208 instead of § 124.10.

(h) Section 124.16 *Stays of contested permit conditions.* All paragraphs apply.

(i) Section 124.17 *Response to comments.* This section does not apply to the RCRA standardized permit; procedures in § 124.209 apply instead.

(j) Section 124.18 *Administrative record for final permit when EPA is the permitting authority.* All paragraphs apply, however, use references to § 124.209 instead of § 124.17.

(k) Section 124.19 *Appeal of RCRA, UIC, and PSD permits.* All paragraphs apply.

(l) Section 124.20 *Computation of time.* All paragraphs apply.

**§ 124.206 In what situations may I require a facility owner or operator to apply for an individual permit?**

(a) If you determine that a facility is not eligible for the standardized permit, you must inform the facility owner or operator that they must apply for an individual permit.

(b) You may require any facility that has a standardized permit to apply for and obtain an individual RCRA permit. Any interested person may petition you to take action under this paragraph. Cases where you may require an individual RCRA permit include, but are not limited to, the following:

(1) The facility is not in compliance with the terms and conditions of the standardized RCRA permit.

(2) Circumstances have changed since the time the facility owner or operator applied for the standardized permit, so that the facility's hazardous waste management practices are no longer appropriately controlled under the standardized permit.

(c) You may require any facility authorized by a standardized permit to apply for an individual RCRA permit only if you have notified the facility owner or operator in writing that an individual permit application is required. You must include in this notice a brief statement of the reasons for your decision, a statement setting a deadline for the owner or operator to file the application, and a statement that on the effective date of the individual RCRA permit the standardized permit as it applies to their facility automatically terminates. You may grant additional time upon request from the facility owner or operator.

(d) When you issue an individual RCRA permit to an owner or operator otherwise subject to a standardized RCRA permit, the standardized permit for their facility will automatically cease to apply on the effective date of the individual permit.

**Opportunities for Public Involvement in the Standardized Permit Process**

**§ 124.207 What are the requirements for public notices?**

(a) You, as the Director, must provide public notice of your draft permit decision and must provide an opportunity for the public to submit comments and request a hearing on that decision. You must provide the public notice to:

(1) The applicant;

(2) Any other agency which you know has issued or is required to issue a RCRA permit for the same facility or activity (including EPA when the draft permit is prepared by the State);

(3) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected States;

(4) To everyone on the facility mailing list developed according to the requirements in § 124.10(c)(1)(ix); and

(5) To any units of local government having jurisdiction over the area where the facility is proposed to be located and to each State agency having any authority under State law with respect to the construction or operation of the facility.

(b) You must issue the public notice according to the following methods:

(1) Publication in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations;

(2) When the program is being administered by an approved State, in a manner constituting legal notice to the public under State law; and

(3) Any other method reasonably calculated to give actual notice of the draft permit decision to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(c) You must include the following information in the public notice:

(1) The name and telephone number of the contact person at the facility.

(2) The name and telephone number of your contact office, and a mailing address to which people may direct comments, information, opinions, or inquiries.

(3) An address to which people may write to be put on the facility mailing list.

(4) The location where people may view and make copies of the draft standardized permit and the notice of intent and supporting documents.

(5) A brief description of the facility and proposed operations, including the

address or a map (for example, a sketched or copied street map) of the facility location on the front page of the notice.

(6) The date that the facility owner or operator submitted the notice of intent and supporting documents.

(d) At the same time that you issue the public notice under this section, you must place the draft standardized permit (including both the uniform portion and the supplemental portion, if any), the notice of intent and supporting documents, and the statement of basis or fact sheet in a location accessible to the public in the vicinity of the facility or at your office.

**§ 124.208 What are the opportunities for public comments and hearings on draft permit decisions?**

(a) The public notice that you issue under § 124.207 must allow at least 45 days for people to submit written comments on your draft permit decision. This time is referred to as the public comment period. You must automatically extend the public comment period to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(b) During the public comment period, any interested person may submit written comments on the draft permit and may request a public hearing. If someone wants to request a public hearing, they must submit their request in writing to you. Their request must state the nature of the issues they propose to raise during the hearing.

(c) You must hold a public hearing whenever you receive a written notice of opposition to a standardized permit and a request for a hearing within the public comment period under paragraph (a) of this section. You may also hold a public hearing at your discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(d) Whenever possible, you must schedule a hearing under this section at a location convenient to the nearest population center to the facility. You must give public notice of the hearing at least 30 days before the date set for the hearing. (You may give the public notice of the hearing at the same time you provide public notices of the draft permit, and you may combine the two notices).

(e) You must give public notice of the hearing according to the methods in § 124.207(a) and (b). The hearing must be conducted according to the procedures in § 124.12(b), (c), and (d).

(f) In their written comments and during the public hearing, if held, interested parties may provide comments on the draft permit decision. These comments may include, but are not limited to, the facility's eligibility for the standardized permit, the tentative supplemental conditions you proposed, and the need for additional supplemental conditions.

**§ 124.209 What are the requirements for responding to comments?**

(a) At the time you issue a final standardized permit, you must also respond to comments received during the public comment period on the draft permit. Your response must:

(1) Specify which additional conditions (i.e., those in the supplemental portion), if any, you changed in the final permit, and the reasons for the change.

(2) Briefly describe and respond to all significant comments on the facility's ability to meet the general requirements (i.e., those terms and conditions in the uniform portion) and on any additional conditions necessary to protect human health and the environment raised during the public comment period or during the hearing.

(3) Be available to the public.

(b) You may request additional information from the facility owner or operator or inspect the facility if you need additional information to adequately respond to significant comments or to make decisions about conditions you may need to add to the supplemental portion of the standardized permit.

(c) If you are the Director of an EPA permitting agency, you must include in the administrative record for your final permit decision any documents cited in the response to comments. If new points are raised or new material supplied during the public comment period, you may document your response to those matters by adding new materials to the administrative record.

**§ 124.210 May I, as an interested party in the permit process, appeal a final standardized permit?**

You may petition for administrative review of the Director's final permit decision, including his or her decision that the facility is eligible for the standardized permit, according to the procedures of § 124.19. However, the terms and conditions of the uniform portion of the standardized permit are not subject to administrative review under this provision.

**Maintaining a Standardized Permit**

**§ 124.211 What types of changes may I make to my standardized permit?**

You may make both routine and significant changes. For the purposes of this section:

(a) ''Routine changes'' are any changes that qualify as a class 1 or 2 permit modification under 40 CFR 270.42, Appendix I, and

(b) ''Significant changes'' are any changes that

(1) Qualify as a class 3 permit modification under 40 CFR 270.42, Appendix I,

(2) Are not explicitly identified in 40 CFR 270.42, Appendix I, or

(3) Amend any terms or conditions in the supplemental portion of your standardized permit.

**§ 124.212 What procedures must I follow to make routine changes?**

(a) You can make routine changes without obtaining approval from the Director.

(b) If the routine changes you make amend the information you submitted under 40 CFR 270.275 with your notice of intent to operate under the standardized permit, then before you make the routine changes you must:

(1) Submit to the Director the revised information pursuant to 40 CFR 270.275(a), and

(2) Provide notice of the changes to the facility mailing list and to state and local governments in accordance with the procedures in § 124.10(c)(1)(ix) and (x).

**§ 124.213 What procedures must I follow to make significant changes?**

(a) You must first provide notice of and conduct a public meeting.

(1) *Public Meeting.* You must hold a meeting with the public to solicit questions from the community and inform the community of your proposed modifications to your hazardous waste management activities. You must post a sign-in sheet or otherwise provide a voluntary opportunity for people attending the meeting to provide their names and addresses.

(2) *Public Notice.* At least 30 days before you plan to hold the meeting you must issue a public notice in accordance with the requirements of § 124.31(d).

(b) After holding the public meeting, you must submit a modification request to the Director that:

(1) Describes the exact change(s) you want and whether they are changes to information you provide under 40 CFR 270.275 or to terms and conditions in the supplemental portion of your standardized permit;

(2) Explains why the modification is needed, and

(3) Includes a summary of the public meeting under paragraph (a) of this section, along with the list of attendees and their addresses and copies of any written comments or materials they submitted at the meeting.

(c) Once the Director receives your modification request, he or she must make a tentative determination within 120 days to approve or disapprove your request.

(d) After the Director makes this tentative determination, the procedures in § 124.205 and §§ 124.207 through 124.210 for processing an initial request for coverage under the standardized permit apply to making the final determination on the modification request.

## PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

8. The authority citation for Part 260 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, and 6974.

9. In § 260.10, the first sentence of paragraph (2) of the definition of ''facility'' is revised to read as follows:

### § 260.10 Definitions

* * * * *

*Facility* * * *

(2) For the purpose of implementing corrective action under 40 CFR 264.101 or 267.101, all contiguous property under the control of the owner or operator seeking a permit under subtitle C of RCRA. * * *

* * * * *

10. Part 267 is added to read as follows:

## PART 267—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT

### Subpart A—General

Sec.

267.1 What are the purpose, scope and applicability of this part?
267.2 What is the relationship to interim status standards?
267.3 How does this part affect an imminent hazard action?

### Subpart B—General Facility Standards

267.10 Does this subpart apply to me?
267.11 What must I do to comply with this subpart?
267.12 How do I obtain an identification number?
267.13 What are my waste analysis requirements?
267.14 What are my security requirements?
267.15 What are my general inspection requirements?
267.16 What training must my employees have?
267.17 What are the requirements for managing ignitable, reactive, or incompatible wastes?
267.18 What are the standards for selecting the location of my facility?

### Subpart C—Preparedness and Prevention

267.30 Does this subpart apply to me?
267.31 What are the general design and operation standards?
267.32 What equipment am I required to have?
267.33 What are the testing and maintenance requirements for the equipment?
267.34 When must personnel have access to communication equipment or an alarm system?
267.35 How do I ensure access for personnel and equipment during emergencies?
267.36 What arrangements must I make with local authorities for emergencies?

### Subpart D—Contingency Plan and Emergency Procedures

267.50 Does this subpart apply to me?
267.51 What is the purpose of the contingency plan and how do I use it?
267.52 What must be in the contingency plan?
267.53 Who must have copies of the contingency plan?
267.54 When must I amend the contingency plan?
267.55 What is the role of the emergency coordinator?
267.56 What are the required emergency procedures for the emergency coordinator?
267.57 What must the emergency coordinator do after an emergency?
267.58 What notification and recordkeeping must I do after an emergency?

### Subpart E—Recordkeeping, Reporting, and Notifying

267.70 Does this subpart apply to me?
267.71 What information must I keep?
267.72 Who sees the records and how long do I keep them?
267.73 What reports must I prepare and to whom who do I send them?
267.74 What notifications must I make?

### Subpart F—Releases from Solid Waste Management Units

267.90 Who must comply with this section?
267.91–267.100 [Reserved]
267.101 What must I do to address corrective action for solid waste management units?

### Subpart G—Closure

267.110 Does this subpart apply to me?
267.111 What general standards must I meet when I stop operating the unit?
267.112 What procedures must I follow?
267.113 Will the public have the opportunity to comment on the plan?
267.114 What happens if the plan is not approved?
267.115 After I stop operating, how long until I must close?
267.116 What must I do with contaminated equipment, structure, and soils?
267.117 How do I certify closure?

### Subpart H—Financial Requirements

267.140 Who must comply with this subpart, and briefly, what do they have to do?
267.141 Definitions of terms as used in this subpart.
267.142 Cost estimate for closure.
267.143 Financial assurance for closure.
267.144–267.146 [Reserved]
267.147 Liability requirements.
267.148 Incapacity of owners or operators, guarantors, or financial institutions.
267.149 [Reserved]
267.150 State assumption of responsibility.

### Subpart I—Use and Management of Containers

267.170 Does this subpart apply to me?
267.171 What standards apply to the containers?
267.172 What are the inspection requirements?
267.173 What standards apply to the container storage areas?
267.174 What special requirements must I meet for ignitable or reactive waste?
267.175 What special requirements must I meet for incompatible wastes?
267.176 What must I do when I want to stop using the containers?
267.177 What air emission standards apply?

### Subpart J—Tank Systems

267.190 Does this subpart apply to me?
267.191 What are the required design and construction standards for new tank systems or components?
267.192 What handling and inspection procedures must I follow during installation of new tank systems?
267.193 What testing must I do?
267.194 What installation requirements must I follow?
267.195 What are the secondary containment requirements?
267.196 What are the required devices for secondary containment and what are their design, operating and installation requirements?
267.197 What are the requirements for ancillary equipment?
267.198 What are the general operating requirements for my tank systems?
267.199 What inspection requirements must I meet?
267.200 What must I do in case of a leak or a spill?
267.201 What must I do when I stop operating the tank system?
267.202 What special requirements must I meet for ignitable or reactive wastes?
267.203 What special requirements must I meet for incompatible wastes?
267.204 What air emission standards apply?

### Subparts K Through CC [Reserved]

### Subpart DD—Containment buildings

267.1100 Does this subpart apply to me?
267.1101 What design and operating standards must my containment building meet?

267.1102 What other requirements must I meet to prevent releases?
267.1103 What additional design and operating standards apply if liquids will be in my containment building?
267.1104 How may I obtain a waiver from secondary containment requirements?
267.1105 What do I do if my containment building contains areas both with and without secondary containment?
267.1106 What do I do if I detect a release?
267.1107 Can a containment building itself be considered secondary containment?
267.1108 What must I do when I stop operating the containment building?

**Authority:** 42 U.S.C. 6902, 6912(a), 6924–6926, and 6930.

## Subpart A—General

### § 267.1 What are the purpose, scope and applicability of this part?

(a) The purpose of this part is to establish minimum national standards which define the acceptable management of hazardous waste under a 40 CFR part 270, subpart I standardized permit.

(b) This part applies to owners and operators of facilities who treat or store hazardous waste under a 40 CFR part 270, subpart I standardized permit, except as provided otherwise in 40 CFR part 261, subpart A, or 40 CFR 264.1(f) and (g).

### § 267.2 What is the relationship to interim status standards?

If you are a facility owner or operator who has fully complied with the requirements for interim status—as defined in section 3005(e) of RCRA and regulations under 40 CFR 270.70—you must comply with the regulations specified in 40 CFR part 265 instead of the regulations in this part, until final administrative disposition of the standardized permit application is made, except as provided under 40 CFR part 264, subpart S.

### § 267.3 How does this part affect an imminent hazard action?

Notwithstanding any other provisions of this part, enforcement actions may be brought pursuant to section 7003 of RCRA.

## Subpart B—General Facility Standards

### § 267.10 Does this subpart apply to me?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart I standardized permit, except as provided in § 267.1(b).

### § 267.11 What must I do to comply with this subpart?

To comply with this subpart, you must obtain an identification number, and follow the requirements below for waste analysis, security, inspections, training, special waste handling, and location standards.

### § 267.12 How do I obtain an identification number?

You must apply to EPA for an EPA identification number following the EPA notification procedures and using EPA form 8700–12. You may obtain information and required forms from your state hazardous waste regulatory agency or from your EPA regional office.

### § 267.13 What are my waste analysis requirements?

(a) Before you treat or store any hazardous wastes, you must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information needed to treat or store the waste to comply with this part and 40 CFR part 268.

(1) You may include data in the analysis that was developed under 40 CFR part 261, and published or documented data on the hazardous waste or on hazardous waste generated from similar processes.

(2) You must repeat the analysis as necessary to ensure that it is accurate and up to date. At a minimum, you must repeat the analysis if the process or operation generating the hazardous wastes has changed.

(b) You must develop and follow a written waste analysis plan that describes the procedures you will follow to comply with paragraph (a) of this section. You must keep this plan at the facility. At a minimum, the plan must specify all of the following:

(1) The hazardous waste parameters that you will analyze and the rationale for selecting these parameters (that is, how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this section).

(2) The test methods you will use to test for these parameters.

(3) The sampling method you will use to obtain a representative sample of the waste to be analyzed. You may obtain a representative sample using either:

(i) One of the sampling methods described in appendix I of 40 CFR part 261; or

(ii) An equivalent sampling method.

(4) How frequently you will review or repeat the initial analysis of the waste to ensure that the analysis is accurate and up to date.

(5) Where applicable, the methods you will use to meet the additional waste analysis requirements for specific waste management methods as specified in 40 CFR 264.17, 264.1034(d), 264.1063(d), and 264.1083.

### § 267.14 What are my security requirements?

(a) You must prevent, and minimize the possibility for, livestock and unauthorized people from entering the active portion of your facility, unless you are exempt from the requirements because:

(1) Physical contact with the waste, structures, or equipment within the active portion of the facility will not injure people or livestock; and

(2) Disturbing the waste or equipment will not cause a violation of the requirements of this part.

(b) You must keep records at the facility justifying the reasons for your waiver under paragraphs (a)(1) and (2) of this section.

(c) Unless you are exempt under paragraphs (a)(1) and (2) of this section, your facility must have:

(1) A 24-hour surveillance system (for example, television monitoring or surveillance by guards or facility personnel) that continuously monitors and controls entry onto the active portion of the facility; or

(2) An artificial or natural barrier (for example, a fence in good repair or a fence combined with a cliff) that completely surrounds the active portion of the facility; and

(3) A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (for example, an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

(d) Unless you are exempt under paragraphs (a)(1) and (2) of this section, you must post a sign at each entrance to the active portion of a facility, and at other prominent locations, in sufficient numbers to be seen from any approach to this active portion. The sign must bear the legend ''Danger—Unauthorized Personnel Keep Out.'' The legend must be in English and in any other language predominant in the area surrounding the facility (for example, facilities in counties bordering the Canadian province of Quebec must post signs in French, and facilities in counties bordering Mexico must post signs in Spanish), and must be legible from a distance of at least 25 feet. You may use existing signs with a legend other than ''Danger—Unauthorized Personnel Keep Out'' if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

**§ 267.15 What are my general inspection requirements?**

(a) You must inspect your facility for malfunctions and deterioration, operator errors, and discharges that may be causing, or may lead to:

(1) Release of hazardous waste constituents to the environment; or

(2) A threat to human health. You must conduct these inspections often enough to identify problems in time to correct them before they result in harm to human health or the environment.

(b) You must develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

(1) You must keep this schedule at the facility.

(2) The schedule must identify the equipment and devices you will inspect and what problems you look for, such as malfunctions or deterioration of equipment (for example, inoperative sump pump, leaking fitting, etc.).

(3) The frequency of your inspections may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies required in §§ 267.174, 267.193, 267.195, 267.1103, and 40 CFR 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089, where applicable.

(c) You must remedy any deterioration or malfunction of equipment or structures that the inspection reveals in time to prevent any environmental or human health hazard. Where a hazard is imminent or has already occurred, you must take remedial action immediately.

(d) You must record all inspections. You must keep these records for at least three years from the date of inspection. At a minimum, you must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

**§ 267.16 What training must my employees have?**

(a) Your facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part. You must ensure that this program includes all the elements described in the documents that are required under paragraph (d)(3) of this section.

(1) A person trained in hazardous waste management procedures must direct this program, and must teach facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to their employment positions.

(2) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by including instruction on emergency procedures, emergency equipment, and emergency systems, including all of the following, where applicable:

(i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment.

(ii) Key parameters for automatic waste feed cut-off systems.

(iii) Communications or alarm systems.

(iv) Response to fires or explosions.

(v) Response to ground water contamination incidents.

(vi) Shutdown of operations.

(b) Facility personnel must successfully complete the program required in paragraph (a) of this section within six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of your standardized permit must not work in unsupervised positions until they have completed the training requirements of paragraph (a) of this section.

(c) Facility personnel must take part in an annual review of the initial training required in paragraph (a) of this section.

(d) You must maintain the following documents and records at your facility:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) A written job description for each position listed under paragraph (d)(1) of this section. This description must include the requisite skill, education, or other qualifications, and duties of employees assigned to each position;

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of this section;

(4) Records that document that facility personnel have received and completed the training or job experience required under paragraphs (a), (b), and (c) of this section.

(e) You must keep training records on current personnel until your facility closes. You must keep training records on former employees for at least three years from the date the employee last worked at your facility. Personnel training records may accompany personnel transferred within your company.

**§ 267.17 What are the requirements for managing ignitable, reactive, or incompatible wastes?**

(a) You must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste by following these requirements:

(1) You must separate these wastes and protect them from sources of ignition or reaction such as: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (for example, from heat-producing chemical reactions), and radiant heat.

(2) While ignitable or reactive waste is being handled, you must confine smoking and open flames to specially designated locations.

(3) ''No Smoking'' signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(b) If you treat or store ignitable or reactive waste, or mix incompatible waste or incompatible wastes and other materials, you must take precautions to prevent reactions that:

(1) Generate extreme heat or pressure, fire or explosions, or violent reactions.

(2) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment.

(3) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions.

(4) Damage the structural integrity of the device or facility.

(5) Threaten human health or the environment in any similar way.

(c) You must document compliance with paragraph (a) or (b) of this section. You may base this documentation on references to published scientific or engineering literature, data from trial tests (for example bench scale or pilot scale tests), waste analyses (as specified in § 267.13), or the results of the treatment of similar wastes by similar

treatment processes and under similar operating conditions.

**§ 267.18 What are the standards for selecting the location of my facility?**

(a) You may not locate portions of new facilities where hazardous waste will be treated or stored within 61 meters (200 feet) of a fault that has had displacement in Holocene time.

(1) ''Fault'' means a fracture along which rocks on one side have been displaced with respect to those on the other side.

(2) ''Displacement'' means the relative movement of any two sides of a fault measured in any direction.

(3) ''Holocene'' means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene to the present.

**Note to paragraph (a)(3):** Procedures for demonstrating compliance with this standard are specified in 40 CFR 270.14(b)(11). Facilities which are located in political jurisdictions other than those listed in appendix VI of 40 CFR part 264, are assumed to be in compliance with this requirement.

(b) If your facility is located in a 100-year flood plain, it must be designed, constructed, operated, and maintained to prevent washout or any hazardous waste by a 100-year flood, unless you can demonstrate to the Director's satisfaction that you will safely remove the waste, before flood waters can reach the facility, to a location where the wastes will not be vulnerable to flood waters.

(1) ''100-year flood plain'' means any land area that is subject to a one percent or greater chance of flooding in any given year from any source.

(2) ''Washout'' means the movement of hazardous waste from the active portion of the facility as a result of flooding.

(3) ''100-year flood'' means a flood that has a one percent chance of being equaled or exceeded in any given year.

## Subpart C—Preparedness and Prevention

**§ 267.30 Does this subpart apply to me?**

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart I standardized permit, except as provided in § 267.1(b).

**§ 267.31 What are the general design and operation standards?**

You must design, construct, maintain, and operate your facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment.

**§ 267.32 What equipment am I required to have?**

Your facility must be equipped with all of the following, unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:

(a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel.

(b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams.

(c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment.

(d) Water at adequate volume and pressure to supply water hose streams, or foam-producing equipment, or automatic sprinklers, or water spray systems.

**§ 267.33 What are the testing and maintenance requirements for the equipment?**

You must test and maintain all required facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, as necessary, to assure its proper operation in time of emergency.

**§ 267.34 When must personnel have access to communication equipment or an alarm system?**

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless the device is not required under § 267.32.

(b) If just one employee is on the premises while the facility is operating, that person must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless not required under § 267.32.

**§ 267.35 How do I ensure access for personnel and equipment during emergencies?**

You must maintain enough aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency.

**§ 267.36 What arrangements must I make with local authorities for emergencies?**

(a) You must attempt to make the following arrangements, as appropriate for the type of waste handled at your facility and the potential need for the services of these organizations:

(1) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes.

(2) Agreements designating primary emergency authority to a specific police and a specific fire department where more than one police and fire department might respond to an emergency, and agreements with any others to provide support to the primary emergency authority.

(3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers.

(4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.

(b) If State or local authorities decline to enter into such arrangements, you must document the refusal in the operating record.

## Subpart D—Contingency Plan and Emergency Procedures

**§ 267.50 Does this subpart apply to me?**

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart I standardized permit, except as provided in § 267.1(b).

**§ 267.51 What is the purpose of the contingency plan and how do I use it?**

(a) You must have a contingency plan for your facility. You must design the plan to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) You must implement the provisions of the plan immediately

whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

**§ 267.52 What must be in the contingency plan?**

(a) Your contingency plan must:

(1) Describe the actions facility personnel will take to comply with §§ 267.51 and 267.56 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(2) Describe all arrangements agreed upon under § 267.36 by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services.

(3) List names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see § 267.55), and you must keep the list up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

(4) Include a current list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. In addition, you must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(5) Include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. You must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

(b) If you have already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan under 40 CFR part 112, or some other emergency or contingency plan, you need only amend that plan to incorporate hazardous waste management provisions that will comply with the requirements of this part.

**§ 267.53 Who must have copies of the contingency plan?**

(a) You must maintain a copy of the plan with all revisions at the facility; and

(b) You must submit a copy with all revisions to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

**§ 267.54 When must I amend the contingency plan?**

You must review, and immediately amend the contingency plan, if necessary, whenever:

(a) The facility permit is revised.

(b) The plan fails in an emergency.

(c) You change the facility (in its design, construction, operation, maintenance, or other circumstances) in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency.

(d) You change the list of emergency coordinators.

(e) You change the list of emergency equipment.

**§ 267.55 What is the role of the emergency coordinator?**

At least one employee must be either on the facility premises or on call at all times (that is, available to respond to an emergency by reaching the facility within a short period of time) who has the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

**§ 267.56 What are the required emergency procedures for the emergency coordinator?**

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately:

(1) Activate internal facility alarm or communication systems, where applicable, to notify all facility personnel, and

(2) Notify appropriate State or local agencies with designated response roles if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator must:

(1) Immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis.

(2) Assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion. For example the assessment would consider the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-off from water or chemical agents used to control fire and heat-induced explosions.

(c) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he must report his findings as follows:

(1) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate officials decide whether local areas should be evacuated; and

(2) He must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll-free number 800/424–8802). The report must include:

(i) Name and telephone number of the reporter.

(ii) Name and address of facility.

(iii) Time and type of incident (for example, a release or a fire).

(iv) Name and quantity of material(s) involved, to the extent known.

(v) The extent of injuries, if any.

(vi) The possible hazards to human health or the environment outside the facility.

(d) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing release waste, and removing or isolating containers.

(e) If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, when appropriate.

**§ 267.57 What must the emergency coordinator do after an emergency?**

(a) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that

results from a release, fire, or explosion at the facility.

(b) The emergency coordinator must ensure that, in the affected area(s) of the facility:

(1) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed.

(2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

#### § 267.58 What notification and recordkeeping must I do after an emergency?

(a) You must notify the Regional Administrator, and appropriate State and local authorities, that the facility is in compliance with § 267.57 (b) before operations are resumed in the affected area(s) of the facility.

(b) You must note the time, date, and details of any incident that requires implementing the contingency plan in the operating record. Within 15 days after the incident, you must submit a written report on the incident to the Regional Administrator. You must include the following in the report:

(1) The name, address, and telephone number of the owner or operator.

(2) The name, address, and telephone number of the facility.

(3) The date, time, and type of incident (e.g., fire, explosion).

(4) The name and quantity of material(s) involved.

(5) The extent of injuries, if any.

(6) An assessment of actual or potential hazards to human health or the environment, where this is applicable.

(7) The estimated quantity and disposition of recovered material that resulted from the incident.

## Subpart E—Recordkeeping, Reporting, and Notifying

#### § 267.70 Does this subpart apply to me?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart I standardized permit, except as provided in § 267.1(b). In addition, you must comply with the manifest requirements of 40 CFR part 262 whenever a shipment of hazardous waste is initiated from your facility.

#### § 267.71 What information must I keep?

(a) You must keep a written operating record at your facility.

(b) You must record the following information, as it becomes available, and maintain the operating record until you close the facility:

(1) A description and the quantity of each type of hazardous waste generated, and the method(s) and date(s) of its storage and/or treatment at the facility as required by Appendix I of 40 CFR part 264;

(2) The location of each hazardous waste within the facility and the quantity at each location;

(3) Records and results of waste analyses and waste determinations you perform as specified in §§ 267.13, 267.17, and 40 CFR 264.1034, 264.1063, 264.1083, and 268.7;

(4) Summary reports and details of all incidents that require you to implement the contingency plan as specified in § 267.858(b));

(5) Records and results of inspections as required by § 267.15(d) (except you need to keep these data for only three years);

(6) Monitoring, testing or analytical data, and corrective action when required by subpart F of this part and §§ 267.191, 267.193, 267.195, and 40 CFR 264.1034(c) through 264.1034(f), 264.1035, 264.1063(d) through 264.1063(i), 264.1064, 264.1088, 264.1089, and 264.1090;

(7) All closure cost estimates under § 267.142;

(8) Your certification, at least annually, that you have a program in place to reduce the volume and toxicity of hazardous waste that you generate to the degree that you determine to be economically practicable; and that the proposed method of treatment or storage is that practicable method currently available to you that minimizes the present and future threat to human health and the environment;

(9) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by you under 40 CFR 268.7; and

(10) For an on-site storage facility, the information in the notice (except the manifest number), and the certification and demonstration if applicable, required by you under 40 CFR 268.7.

#### § 267.72 Who sees the records and how long do I keep them?

(a) You must furnish all records, including plans, required under this part upon the request of any officer, employee, or representative of EPA who is duly designated by the Administrator, and make them available at all reasonable times for inspection.

(b) The retention period for all records required under this part is extended automatically during the course of any unresolved enforcement action involving the facility or as requested by the Administrator.

#### § 267.73 What reports must I prepare and to whom who do I send them?

You must prepare a biennial report and other reports listed in paragraph (b) of this section.

(a) *Biennial report.* You must prepare and submit a single copy of a biennial report to the Regional Administrator by March 1 of each even numbered year. The biennial report must be submitted on EPA form 8700–13B. The report must cover facility activities during the previous calendar year and must include:

(1) The EPA identification number, name, and address of the facility;

(2) The calendar year covered by the report;

(3) The method of treatment or storage for each hazardous waste;

(4) The most recent closure cost estimate under § 267.142; and,

(5) A description of the efforts undertaken during the year to reduce the volume and toxicity of generated waste.

(6) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.

(7) The certification signed by you.

(b) *Additional reports.* In addition to submitting the biennial reports, you must also report to the Regional Administrator:

(1) Releases, fires, and explosions as specified in § 267.58(b) ;

(2) Facility closures specified in § 267.117; and,

(3) As otherwise required by subparts I, J, and DD of this part and part 264, subparts AA, BB, CC.

#### § 267.74 What notifications must I make?

Before transferring ownership or operation of a facility during its operating life, you must notify the new owner or operator in writing of the requirements of this part and 40 CFR part 270, subpart I.

## Subpart F—Releases from Solid Waste Management Units

#### § 267.90 Who must comply with this section?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart I standardized permit, except as provided in § 267.1(b), or unless your facility already has a permit that imposes requirements for corrective action under 40 CFR 264.101.

**§§ 267.91–267.100 [Reserved]**

**§ 267.101 What must I do to address corrective action for solid waste management units?**

(a) You must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.

(b) The Regional Administrator will specify corrective action in the supplemental portion of your standardized permit in accordance with this section and 40 CFR part 264, subpart S. The Regional Administrator will include in the supplemental portion of your standardized permit schedules of compliance for corrective action (where corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing corrective action.

(c) You must implement corrective action beyond the facility property boundary, where necessary to protect human health and the environment, unless you demonstrate to the satisfaction of the Regional Administrator that, despite your best efforts, you were unable to obtain the necessary permission to undertake such actions. You are not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off -site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. You must provide assurances of financial responsibility for such corrective action.

(d) You do not have to comply with this section if you are the owner or operator of a remediation waste site unless your site is part of a facility that is subject to a permit for treating, storing, or disposing of hazardous wastes that are not remediation wastes.

## Subpart G—Closure

**§ 267.110 Does this subpart apply to me?**

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart I standardized permit, except as provided in § 267.1(b).

**§ 267.111 What general standards must I meet when I stop operating the unit?**

You must close the storage and treatment units in a manner that:

(a) Minimizes the need for further maintenance; and

(b) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and

(c) Meets the closure requirements of this subpart and the requirements of §§ 267.176, 267.201, and 267.1108.

**§ 267.112 What procedures must I follow?**

To close a facility, you must have an approved closure plan and follow notification requirements.

(a) Submit a written closure plan.

(1) You must have a written closure plan. You must submit the plan at least 180 days prior to closure. The Director must approve the closure plan before closure work at the facility begins, and the plan will become a condition of any RCRA permit.

(2) The Director's approval of the plan must ensure that the approved plan is consistent with §§ 267.111 through 267.115, 267.176, 267.201, and 267.1108.

(b) Satisfy the requirements for content of closure plan. The closure plan must identify steps necessary to perform partial and/or final closure of the facility. The closure plan must include, at least:

(1) A description of how each hazardous waste management unit at the facility subject to this subpart will be closed following § 267.111.

(2) A description of how final closure of the facility will be conducted in accordance with § 267.111. The description must identify the maximum extent of the operations which will be unclosed during the active life of the facility.

(3) An estimate of the maximum inventory of hazardous wastes ever on site during the active life of the facility and a detailed description of the methods you will use during partial and/or final closure, such as methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type(s) of off-site hazardous waste management units to be used, if applicable.

(4) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial or final closure. These might include procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard;

(5) A detailed description of other activities necessary during the closure period to ensure that partial or final closure satisfies the closure performance standards.

(6) A schedule for closure of each hazardous waste management unit, and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities that allow tracking of progress of partial or final closure.

(c) You may submit a written request to the Director for a permit modification, following applicable procedures in 40 CFR 124.211 to amend the closure plan at any time before the notification of final closure of the facility. You must include a copy of the amended closure plan with the written request for review or approval by the Director. The Director will approve, disapprove, or modify this amended plan in accordance with the procedures in 40 CFR 124.211 and 270.320.

(d) *Notification before final closure.* (1) You must notify the Director in writing at least 45 days before the date that you expect to begin final closure of a treatment or storage tank, container storage, or containment building.

(2) The date when you ''expect to begin closure'' must be no later than 30 days after the date that any hazardous waste management unit receives the known final volume of hazardous wastes.

(3) If your facility's permit is terminated, or if you are otherwise ordered, by judicial decree or final order under Section 3008 of RCRA, to cease receiving hazardous wastes or to close, then the requirements of this paragraph (d) do not apply. However, you must close the facility following the deadlines established in § 267.115.

**§ 267.113 Will the public have the opportunity to comment on the plan?**

(a) The Director will provide you and the public, through a newspaper notice, the opportunity to submit written comments on the plan and to request modifications to the plan no later than 30 days from the date of the notice. The Director will also, in response to a request or at his/her own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the closure plan.

(b) The Director will give public notice of the hearing 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.

(c) The Director will approve, modify, or disapprove the plan within 60 days of its receipt.

**§ 267.114 What happens if the plan is not approved?**

(a) If the Director does not approve the plan, he must provide you with a detailed written statement of reasons for the refusal and you must then modify the plan or submit a new plan for approval within 30 days after receiving this written statement. The Director will approve or modify this new plan in writing within 60 days.

(b) If the Director modifies the plan, this modified plan becomes the approved closure plan. The Director must assure that the approved plan is consistent with §§ 267.111 through 267.115, §§ 267.176, 267.201, and 267.1108. The Director must mail a copy of the modified plan with a detailed statement of reasons for the modifications to you.

**§ 267.115 After I stop operating, how long until I must close?**

(a) Within 90 days after the final volume of hazardous waste is sent to a unit, you must treat or remove from the unit all hazardous wastes following the approved closure plan.

(b) You must complete final closure activities following the approved closure plan within 180 days after the final volume of hazardous wastes is sent to the unit.

(c) Nothing in this section precludes you from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved final closure plan at any time before or after notification of final closure.

**§ 267.116 What must I do with contaminated equipment, structure, and soils?**

You must properly dispose of or decontaminate all contaminated equipment, structures, and soils during the partial and final closure periods. By removing any hazardous wastes or hazardous constituents during partial and final closure, you may become a generator of hazardous waste and must handle that waste following all applicable requirements of 40 CFR part 262.

**§ 267.117 How do I certify closure?**

Within 60 days of the completion of final closure of each unit under a part 270 subpart I standardized permit, you must submit to the Director, by registered mail, a certification that each hazardous waste management unit or facility, as applicable, has been closed following the specifications in the closure plan. Both you and an independent registered professional engineer must sign the certification. You must furnish documentation supporting the independent registered professional engineer's certification to the Director upon request until he releases you from the financial assurance requirements for closure under § 267.143(i).

## Subpart H—Financial Requirements

**§ 267.140 Who must comply with this subpart, and briefly, what do they have to do?**

(a) The regulations in this subpart apply to owners and operators who treat or store hazardous waste under a standardized permit, except as provided in § 267.1(b), or paragraph (d) of this section.

(b) The owner or operator must:

(1) Prepare a closure cost estimate as required in § 267.142,

(2) Demonstrate financial assurance for closure as required in § 267.143, and

(3) Demonstrate financial assurance for liability as required in § 267.147.

(c) The owner or operator must notify the Regional Administrator if the owner or operator is named as a debtor in a bankruptcy proceeding under Title 11 (Bankruptcy), U. S. Code. (See also § 267.148)

(d) States and the Federal government are exempt from the requirements of this subpart.

**§ 267.141 Definitions of terms as used in this subpart.**

(a) *Closure plan* means the plan for closure prepared in accordance with the requirements of § 267.112.

(b) *Current closure cost estimate* means the most recent of the estimates prepared in accordance with § 267.142 (a), (b), and (c).

(c) [Reserved]

(d) *Parent corporation* means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a ''subsidiary'' of the parent corporation.

(e) [Reserved]

(f) The following terms are used in the specifications for the financial tests for closure and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices:

(1) *Assets* means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(2) *Current plugging and abandonment cost estimate* means the most recent of the estimates prepared in accordance with § 144.62(a), (b), and (c) of this chapter.

(3) *Independently audited* refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(4) *Liabilities* means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(5) *Tangible net worth* means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(g) In the liability insurance requirements the terms *bodily injury and property damage* shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The Agency intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of this part and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

(1) *Accidental occurrence* means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(2) *Legal defense costs* means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(3) *Sudden accidental occurrence* means an occurrence which is not continuous or repeated in nature.

(h) *Substantial business relationship* means the extent of a business relationship necessary under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A ''substantial business relationship'' must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the applicable EPA Regional Administrator.

**§ 267.142 Cost estimate for closure.**

(a) The owner or operator must have at the facility a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 267.111 through 267.115 and applicable closure requirements in §§ 267.176, 267.201, 267.1108.

(1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive; and

(2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in § 267.141(d).) The owner or operator may use costs for on-site disposal if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes that might have economic value.

(5) Within 30 days after submitting a closure plan under § 267.112, revise the closure cost estimate so that it is in accordance with the plan.

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 267.143. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator as specified in § 267.143(f)(2)(iii). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross Domestic Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in paragraphs (b)(1) and (2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(c) The owner or operator must keep the following at the facility during the operating life of the facility: The latest closure cost estimate prepared in accordance with paragraph (a) of this section and, when this estimate has been adjusted in accordance with paragraph (b) of this section, the latest adjusted closure cost estimate.

**§ 267.143 Financial assurance for closure.**

The owner or operator must establish financial assurance for closure of each storage or treatment unit that he owns or operates. In establishing financial assurance for closure, the owner or operator must choose from the financial assurance mechanisms in paragraphs (a), (b), (c), (d), (e), (f), and (g) of this section. The owner or operator can also use a combination of mechanisms for a single facility if they meet the requirement in paragraph (h) of this section, or may use a single mechanism for multiple facilities as in paragraph (i) of this section. The Regional Administrator will release the owner or operator from the requirements of this section after the owner or operator meets the criteria under paragraph (j) of this section.

(a) *Closure Trust Fund.* Owners and operators can use the ''closure trust fund,'' that is specified in 40 CFR 264.143(a)(1), (2),and (a)(6) through (11). For purposes of this paragraph, the following provisions also apply:

(1) Payments into the trust fund for a new facility must be made annually by the owner or operator over the remaining operating life of the facility as estimated in the closure plan, or over 3 years, whichever period is shorter. This period of time is hereafter referred to as the ''pay-in period.''

(2) For a new facility, the first payment into the closure trust fund must be made before the facility may accept the initial placement of waste. A receipt from the trustee must be submitted by the owner or operator to the Regional Administrator before this initial storage of waste. The first payment must be at least equal to the current closure cost estimate, divided by the number of years in the pay-in period, except as provided in paragraph (h) of this section for multiple mechanisms. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The owner or operator determines the amount of each subsequent payment by subtracting the current value of the trust fund from the current closure cost estimate, and dividing this difference by the number of years remaining in the pay-in period. Mathematically, the formula is: Next Payment = (Current Closure Estimate—Current Value of the Trust Fund) Divided by Years Remaining in the Pay-In Period.

(3) The owner or operator of a facility existing on the effective date of this paragraph can establish a trust fund to meet this paragraph's financial assurance requirements. If the value of the trust fund is less than the current closure cost estimate when a final approval of the permit is granted for the facility, the owner or operator must pay the difference into the trust fund within 60 days.

(4) The owner or operator may accelerate payments into the trust fund or deposit the full amount of the closure cost estimate when establishing the trust fund. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in paragraph (a)(2) or (a)(3) of this section.

(5) The owner or operator must submit a trust agreement with the wording specified in 40 CFR 264.151(a)(1).

(b) *Surety bond guaranteeing payment into a closure trust fund.* Owners and operators can use the ''surety bond guaranteeing payment into a closure trust fund,'' as specified in 40 CFR 264.143(b), including the use of the surety bond instrument specified at 40 CFR 264.151(b), and the standby trust specified at 40 CFR 264.143(b)(3).

(c) *Surety bond guaranteeing performance of closure.* Owners and operators can use the ''surety bond guaranteeing performance of closure,'' as specified in 40 CFR 264.143(c), the submission and use of the surety bond instrument specified at 40 CFR 264.151(c), and the standby trust specified at 40 CFR 264.143(c)(3).

(d) *Closure letter of credit.* Owners and operators can use the ''closure letter of credit'' specified in 40 CFR 264.143(d), the submission and use of the irrevocable letter of credit instrument specified in 40 CFR 264.151(d), and the standby trust specified in 40 CFR 264.143(d)(3).

(e) *Closure insurance.* Owners and operators can use ''closure insurance,'' as specified in 40 CFR 264.143(e), utilizing the certificate of insurance for closure specified at 40 CFR 264.151(e).

(f) *Corporate financial test.* An owner or operator that satisfies the requirements of this paragraph may

demonstrate financial assurance up to the amount specified in this paragraph:

(1) *Financial component.* (i) The owner or operator must satisfy one of the following three conditions:

(A) A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; or

(B) A ratio of less than 1.5 comparing total liabilities to net worth; or

(C) A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities.

(ii) The tangible net worth of the owner or operator must be greater than:

(A) The sum of the current environmental obligations (see paragraph (f)(2)(i)(A)(*1*) of this section), including guarantees, covered by a financial test plus $10 million except as provided in paragraph (f)(1)(ii)(B) of this section.

(B) $10 million in tangible net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the environmental obligations (see paragraph (f)(2)(i)(A)(*1*) of this section) covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the Regional Administrator.

(iii) The owner or operator must have assets located in the United States amounting to at least the sum of environmental obligations covered by a financial test as described in paragraph (f)(2)(i)(A)(*1*) of this section.

(2) *Recordkeeping and reporting requirements.* (i) The owner or operator must submit the following items to the Regional Administrator:

(A) A letter signed by the owner's or operator's chief financial officer that:

(*1*) Lists all the applicable current types, amounts, and sums of environmental obligations covered by a financial test. These obligations include both obligations in the programs which EPA directly operates and obligations where EPA has delegated authority to a State or approved a State's program. These obligations include, but are not limited to:

(*i*) Liability, closure, post-closure and corrective action cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR 264.101, 264.142, 264.144, 264.147, 265.142, 265.144, and 265.147.;

(*ii*) Cost estimates required for municipal solid waste management facilities under 40 CFR 258.71, 258.72, and 258.73;

(*iii*) Current plugging cost estimates required for UIC facilities under 40 CFR 144.62;

(*iv*) Cost estimates required for petroleum underground storage tank facilities under 40 CFR 280.93;

(*v*) Cost estimates required for PCB storage facilities under 40 CFR 761.65;

(*vi*) Any financial assurance required under, or as part of an action undertaken under, the Comprehensive Environmental Response, Compensation, and Liability Act; and

(*vii*) Any other environmental obligations that are assured through a financial test.

(*2*) Provides evidence demonstrating that the firm meets the conditions of either paragraph (f)(1)(i)(A) or (f)(1)(i)(B) or (f)(1)(i)(C) of this section and paragraphs (f)(1)(ii) and (f)(1)(iii) of this section.

(B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Regional Administrator may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Regional Administrator deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the Regional Administrator does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section within 30 days after the notification of disallowance.

(C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that owner or operator satisfies paragraph (f)(1)(i)(B) or (f)(1)(i)(C) of this section that are different from data in the audited financial statements referred to in paragraph (f)(2)(i)(B) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(D) If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in paragraph (f)(1)(ii)(B) of this section, then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least $10 million plus the amount of any guarantees provided.

(ii) The owner or operator of a new facility must submit the items specified in paragraph (f)(2)(i) of this section to the Regional Administrator at least 60 days before placing waste in the facility.

(iii) After the initial submission of items specified in paragraph (f)(2)(i) of this section, the owner or operator must send updated information to the Regional Administrator within 90 days following the close of the owner or operator's fiscal year. The Regional Administrator may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in paragraph (f)(2)(i) of this section.

(iv) The owner or operator is no longer required to submit the items specified in this paragraph (f)(2) of this section or comply with the requirements of this paragraph (f) when:

(A) The owner or operator substitutes alternate financial assurance as specified in this section that is not subject to these recordkeeping and reporting requirements; or

(B) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with paragraph (j) of this section.

(v) An owner or operator who no longer meets the requirements of paragraph (f)(1) of this section cannot use the financial test to demonstrate financial assurance. Instead an owner or operator who no longer meets the requirements of paragraph (f)(1)of this section, must:

(A) Send notice to the Regional Administrator of intent to establish alternate financial assurance as

specified in this section. The owner or operator must send this notice by certified mail within 90 days following the close of the owner or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this section.

(B) Provide alternative financial assurance within 120 days after the end of such fiscal year.

(vi) The Regional Administrator may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (f)(1) of this section, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in paragraph (f)(2) of this section. If the Regional Administrator finds that the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must provide alternate financial assurance that meets the requirements of this section.

(g) *Corporate guarantee.* (1) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a ''substantial business relationship'' with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph (f) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording in 40 CFR 264.151(h). The certified copy of the guarantee must accompany the letter from the guarantor's chief financial officer and accountants' opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee. If the guarantor is a firm with a ''substantial business relationship'' with the owner or operator, this letter must describe this ''substantial business relationship'' and the value received in consideration of the guarantee.

(2) For a new facility the guarantee must be effective and the guarantor must submit the items in paragraph (g)(1) of this section and the items specified in paragraph (f)(2)(i) of this section to the Regional Administrator at least 60 days before the owner or operator places waste in the facility.

(3) The terms of the guarantee must provide that:

(i) If the owner or operator fails to perform closure at a facility covered by the guarantee, the guarantor will:

(A) Perform, or pay a third party to perform closure (performance guarantee); or

(B) Establish a fully funded trust fund as specified in paragraph (a) of this section in the name of the owner or operator (payment guarantee).

(ii) The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this Subpart unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the Regional Administrator. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Regional Administrator as evidenced by the return receipts.

(iii) If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the Regional Administrator, obtain alternate financial assurance, and submit documentation for that alternate financial assurance to the Regional Administrator. If the owner or operator fails to provide alternate financial assurance and obtain the written approval of such alternative assurance from the Regional Administrator within the 90-day period, the guarantor must provide that alternate assurance in the name of the owner or operator and submit the necessary documentation for the alternative assurance to the Regional Administrator within 120 days of the cancellation notice.

(4) If a corporate guarantor no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must, within 90 days, obtain alternative assurance, and submit the assurance to the Regional Administrator for approval. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within the next 30 days, and submit it to the Regional Administrator for approval.

(5) The guarantor is no longer required to meet the requirements of this paragraph (g) when:

(i) The owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The owner or operator is released from the requirements of this section in accordance with paragraph (j) of this section.

(h) *Use of Multiple Financial Mechanisms.* An owner or operator may use more than one mechanism at a particular facility to satisfy the requirements of this section. The acceptable mechanisms are trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance, the financial test, and the guarantee, except owners or operators cannot combine the financial test with the guarantee. The mechanisms must be as specified in paragraphs (a), (b), (d), (e), (f), and (g) of this section, except it is the combination of mechanisms rather than a single mechanism that must provide assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use the trust fund as the standby trust for the other mechanisms. A single trust fund can be established for two or more mechanisms. The Regional Administrator may use any or all of the mechanisms to provide for closure of the facility.

(i) *Use of a financial mechanism for multiple facilities.* An owner or operator may use a financial mechanism for multiple facilities, as specified in § 264.143(h) of this chapter.

(j) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been completed in accordance with the approved closure plan. The Regional Administrator shall provide the owner or operator with a detailed written statement of any such reasons to believe that closure has not been conducted in accordance with the approved closure plan.

**§ 267.144—267.146 [Reserved]**

**§ 267.147 Liability requirements.**

(a) *Coverage for sudden accidental occurrences.* An owner or operator of a hazardous waste treatment or storage facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or

group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (a) (1) through (a)(7) of this section:

(1) *Trust fund for liability coverage.* An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in 40 CFR 264.147(j).

(2) *Surety bond for liability coverage.* An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in 40 CFR 264.147(i).

(3) *Letter of credit for liability coverage.* An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in 40 CFR 264.147(h).

(4) *Insurance for liability coverage.* An owner or operator may meet the requirements of this section by obtaining liability insurance as specified in 40 CFR 264.147(a)(1).

(5) *Financial test for liability coverage.* An owner or operator may meet the requirements of this section by passing a financial test as specified in paragraph (f) of this section.

(6) *Guarantee for liability coverage.* An owner or operator may meet the requirements of this section by obtaining a guarantee as specified in paragraph (g) of this section.

(7) *Combination of mechanisms.* An owner or operator may demonstrate the required liability coverage through the use of combinations of mechanisms as allowed by 40 CFR 264.147(a)(6).

(8) An owner or operator shall notify the Regional Administrator in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (a)(1) through (a)(7) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (a)(1) through (a)(7) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (a)(1) through (a)(7) of this section.

(b)—(d) [Reserved]

(e) *Period of coverage.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage from that facility, unless the Regional Administrator has reason to believe that closure has not been in accordance with the approved closure plan.

(f) *Financial test for liability coverage.* An owner or operator that satisfies the requirements of this paragraph (f) may demonstrate financial assurance for liability up to the amount specified in this paragraph (f):

(1) *Financial component.* (i) If using the financial test for only liability coverage, the owner or operator must have tangible net worth greater than the sum of the liability coverage to be demonstrated by this test plus $10 million.

(ii) The owner or operator must have assets located in the United States amounting to at least the amount of liability covered by this financial test.

(iii) An owner or operator who is demonstrating coverage for liability and any other environmental obligations, including closure under § 267.143(f), through a financial test must meet the requirements of § 267.143(f).

(2) *Recordkeeping and reporting requirements.* (i) The owner or operator must submit the following items to the Regional Administrator:

(A) A letter signed by the owner's or operator's chief financial officer that provides evidence demonstrating that the firm meets the conditions of paragraphs (f)(1)(i) and (f)(1)(ii) of this section.

(B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Regional Administrator may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Regional Administrator deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the Regional Administrator does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section within 30 days after the notification of disallowance.

(C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that owner or operator satisfies paragraphs (f)(1)(i) and (ii) of this section that are different from data in the audited financial statements referred to in paragraph (f)(2)(i)(B) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(ii) The owner or operator of a new facility must submit the items specified in paragraph (f)(2)(i) of this section to the Regional Administrator at least 60 days before placing waste in the facility.

(iii) After the initial submission of items specified in paragraph (f)(2)(i) of this section, the owner or operator must send updated information to the Regional Administrator within 90 days following the close of the owner or operator's fiscal year. The Regional Administrator may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in paragraph (f)(2)(i) of this section.

(iv) The owner or operator is no longer required to submit the items specified in this paragraph (f)(2) or comply with the requirements of this paragraph (f) when:

(A) The owner or operator substitutes alternate financial assurance as specified in this section that is not

subject to these recordkeeping and reporting requirements; or

(B) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with paragraph (j) of this section.

(v) An owner or operator who no longer meets the requirements of paragraph (f)(1) of this section cannot use the financial test to demonstrate financial assurance. An owner or operator who no longer meets the requirements of paragraph (f)(1) of this section, must:

(A) Send notice to the Regional Administrator of intent to establish alternate financial assurance as specified in this section. The owner or operator must send this notice by certified mail within 90 days following the close the owner or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this section.

(B) Provide alternative financial assurance within 120 days after the end of such fiscal year.

(vi) The Regional Administrator may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (f)(1) of this section, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in paragraph (f)(2) of this section. If the Regional Administrator finds that the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must provide alternate financial assurance that meets the requirements of this section.

(g) *Guarantee for liability coverage.* (1) Subject to paragraph (g)(2) of this section, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as ''guarantee.'' The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a ''substantial business relationship'' with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (f)(3) of this section. The wording of the guarantee must be identical to the wording specified in 40 CFR 264.151(h)(2). A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(2) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a ''substantial business relationship'' with the owner or operator, this letter must describe this ''substantial business relationship'' and the value received in consideration of the guarantee.

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden accidental occurrences arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

(ii) [Reserved].

(2)(i) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of the State in which the guarantor is incorporated; and each State in which a facility covered by the guarantee is located have submitted a written statement to EPA that a guarantee executed as described in this section and 40 CFR 264.151(h)(2) is a legally valid and enforceable obligation in that State.

(ii) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if:

(A) The non-U.S. corporation has identified a registered agent for service of process in each State in which a facility covered by the guarantee is located and in the State in which it has its principal place of business; and

(B) The Attorney General or Insurance Commissioner of each State in which a facility covered by the guarantee is located and the State in which the guarantor corporation has its principal place of business, has submitted a written statement to EPA that a guarantee executed as described in this section and 40 CFR 264.151(h)(2) is a legally valid and enforceable obligation in that State.

**§ 267.148 Incapacity of owners or operators, guarantors, or financial institutions.**

(a) An owner or operator must notify the Regional Administrator by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in §§ 267.143(g) and 267.147(g) must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee (§ 264.151(h)).

(b) An owner or operator who fulfills the requirements of § 267.143 or § 267.147 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

**§ 267.149 [Reserved]**

**§ 267.150 State assumption of responsibility.**

(a) If a State either assumes legal responsibility for an owner's or operator's compliance with the closure care or liability requirements of this part or assures that funds will be available from State sources to cover those requirements, the owner or operator will be in compliance with the requirements of § 267.143 or § 267.147 if the Regional Administrator determines that the State's assumption of responsibility is at least equivalent to the financial mechanisms specified in this subpart. The Regional Administrator will evaluate the equivalency of State guarantees principally in terms of certainty of the availability of funds for the required closure care activities or liability coverage and the amount of funds that will be made available. The Regional Administrator may also consider other factors as he deems appropriate. The owner or operator must submit to the Regional Administrator a letter from the State describing the nature of the State's assumption of responsibility together with a letter from the owner or operator requesting that the State's assumption of responsibility be considered acceptable for meeting the requirements of this subpart. The letter from the State must include, or have attached to it, the following information: the facility's EPA Identification Number, name, and address, and the amount of funds for closure care or liability coverage that are guaranteed by the State. The Regional Administrator will notify the owner or

operator of his determination regarding the acceptability of the State's guarantee in lieu of financial mechanisms specified in this subpart. The Regional Administrator may require the owner or operator to submit additional information as is deemed necessary to make this determination. Pending this determination, the owner or operator will be deemed to be in compliance with the requirements of § 267.143 or § 267.147, as applicable.

(b) If a State's assumption of responsibility is found acceptable as specified in paragraph (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this subpart by use of both the State's assurance and additional financial mechanisms as specified in this subpart. The amount of funds available through the State and Federal mechanisms must at least equal the amount required by this subpart.

## Subpart I—Use and Management of Containers

### § 267.170 Does this subpart apply to me?

This subpart applies to you if you own or operator a facility that treats or stores hazardous waste in containers under a 40 CFR part 270, subpart I standardized permit, except as provided in § 267.1(b).

### § 267.171 What standards apply to the containers?

Standards apply to the condition of the containers, to the compatibility of waste with the containers, and to the management of the containers.

(a) *Condition of containers.* If a container holding hazardous waste is not in good condition( for example, it exhibits severe rusting or apparent structural defects) or if it begins to leak, you must either:

(1) Transfer the hazardous waste from this container to a container that is in good condition; or

(2) Manage the waste in some other way that complies with the requirements of this part.

(b) *Compatibility of waste with containers.* To ensure that the ability of the container to contain the waste is not impaired, you must use a container made of or lined with materials that are compatible and will not react with the hazardous waste to be stored.

(c) *Management of containers.* (1) You must always keep a container holding hazardous waste closed during storage, except when you add or remove waste.

(2) You must never open, handle, or store a container holding hazardous waste in a manner that may rupture the container or cause it to leak.

### § 267.172 What are the inspection requirements?

At least weekly, you must inspect areas where you store containers , looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

### § 267.173 What standards apply to the container storage areas?

(a) You must design and operate a containment system for your container storage areas according to the requirements in paragraph (b) of this section, except as otherwise provided by paragraph (c) of this section.

(b) The design and operating requirements for a containment system are:

(1) A base must underlie the containers that is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed.

(2) The base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids.

(3) The containment system must have sufficient capacity to contain 10% of the volume of containers, or the volume of the largest container, whichever is greater. This requirement does not apply to containers that do not contain free liquids.

(4) You must prevent run-on into the containment system unless the collection system has sufficient excess capacity, in addition to that required in paragraph (b)(3) of this section, to contain the liquid.

(5) You must remove any spilled or leaked waste and accumulated precipitation rom the sump or collection area as promptly as is necessary to prevent overflow of the collection system.

(c) Except as provided in paragraph (d) of this section, you do not need a containment system as defined in paragraph (b) of this section for storage areas that store containers holding only wastes with no free liquids, if:

(1) The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation, or

(2) The containers are elevated or are otherwise protected from contact with accumulated liquid.

(d) You must have a containment system defined by paragraph (b) of this section for storage areas that store containers holding FO20, FO21, FO22, FO23, FO26, and FO27 wastes , even if the wastes do not contain free liquids.

### § 267.174 What special requirements must I meet for ignitable or reactive waste?

You must locate containers holding ignitable or reactive waste at least 15 meters (50 feet) from your facility property line. You must also follow the general requirements for ignitable or reactive wastes that are specified in § 267.17(a).

### § 267.175 What special requirements must I meet for incompatible wastes?

(a) You must not place incompatible wastes, or incompatible wastes and materials (see appendix V to 40 CFR part 264 for examples), in the same container, unless you comply with § 267.17(b).

(b) You must not place hazardous waste in an unwashed container that previously held an incompatible waste or material.

(c) You must separate a storage container holding a hazardous waste that is incompatible with any waste or with other materials stored nearby in other containers, piles, open tanks, or surface impoundments from the other materials, or protect the containers by means of a dike, berm, wall, or other device.

### § 267.176 What must I do when I want to stop using the containers?

You must remove all hazardous waste and hazardous waste residues from the containment system. You must decontaminate or remove remaining containers, liners, bases, and soil containing, or contaminated with, hazardous waste or hazardous waste residues.

### § 267.177 What air emission standards apply?

You must manage all hazardous waste placed in a container according to the requirements of subparts AA, BB, and CC of 40 CFR part 264. Under a standardized permit, the following control devices are permissible: Thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit.

## Subpart J—Tank Systems

### § 267.190 Does this subpart apply to me?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste in above-ground or on-ground tanks under a 40 CFR part 270, subpart I standardized permit, except as provided in § 267.1(b).

(a) You do not have to meet the secondary containment requirements in

§ 267.195 if your tank systems do not contain free liquids and are situated inside a building with an impermeable floor. You must demonstrate the absence or presence of free liquids in the stored/treated waste, using Method 9095 (Paint Filter Liquids Test) as described in ''Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods,'' EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11.

(b) You do not have to meet the secondary containment requirements of § 267.195(a) if your tank system, including sumps, as defined in 40 CFR 260.10, is part of a secondary containment system to collect or contain releases of hazardous wastes.

**§ 267.191 What are the required design and construction standards for new tank systems or components?**

You must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. You must obtain a written assessment, reviewed and certified by an independent, qualified registered professional engineer, following 40 CFR 270.11(d), attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include, at a minimum, the following information:

(a) Design standard(s) for the construction of tank(s) and/or the ancillary equipment.

(b) Hazardous characteristics of the waste(s) to be handled.

(c) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of:

(1) Factors affecting the potential for corrosion, such as:

(i) Soil moisture content.

(ii) Soil pH.

(iii) Soil sulfides level.

(iv) Soil resistivity.

(v) Structure to soil potential.

(vi) Influence of nearby underground metal structures (for example, piping).

(vii) Existence of stray electric current.

(viii) Existing corrosion-protection measures (for example, coating, cathodic protection).

(2) The type and degree of external corrosion protection needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:

(i) Corrosion-resistant materials of construction such as special alloys, fiberglass reinforced plastic, etc.

(ii) Corrosion-resistant coating (such as epoxy, fiberglass, etc.) with cathodic protection (for example, impressed current or sacrificial anodes) and

(iii) Electrical isolation devices such as insulating joints, flanges, etc.

(d) Design considerations to ensure that:

(1) Tank foundations will maintain the load of a full tank.

(2) Tank systems will be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone, or is located within a seismic fault zone subject to the standards of § 267.18(a).

(3) Tank systems will withstand the effects of frost heave.

**§ 267.192 What handling and inspection procedures must I follow during installation of new tank systems?**

(a) You must ensure that you follow proper handling procedures to prevent damage to a new tank system during installation. Before placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified, registered professional engineer, either of whom is trained and experienced in the proper installation of tank systems or components, must inspect the system for the presence of any of the following items:

(1) Weld breaks.

(2) Punctures.

(3) Scrapes of protective coatings.

(4) Cracks.

(5) Corrosion.

(6) Other structural damage or inadequate construction/installation.

(b) You must remedy all discrepancies before the tank system is placed in use.

**§ 267.193 What testing must I do?**

You must test all new tanks and ancillary equipment for tightness before you place them in use. If you find a tank system that is not tight, you must perform all repairs necessary to remedy the leak(s) in the system before you cover, enclose, or place the tank system into use.

**§ 267.194 What installation requirements must I follow?**

(a) You must support and protect ancillary equipment against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

(b) You must provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided under § 267.191(c), to ensure the integrity of the tank system during use of the tank system. An independent corrosion expert must supervise the installation of a corrosion protection system that is field fabricated to ensure proper installation.

(c) You must obtain, and keep at the facility, written statements by those persons required to certify the design of the tank system and to supervise the installation of the tank system as required in §§ 267.192, 267.193, and paragraphs (a) and (b) of this section. The written statement must attest that the tank system was properly designed and installed and that you made repairs under § 267.192 and 267.193. These written statements must also include the certification statement as required in 40 CFR 270.11(d).

**§ 267.195 What are the secondary containment requirements?**

To prevent the release of hazardous waste or hazardous constituents to the environment, you must provide secondary containment that meets the requirements of this section for all new and existing tank systems.

(a) Secondary containment systems must be:

(1) Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater, or surface water at any time during the use of the tank system; and

(2) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(b) To meet the requirements of paragraph (a) of this section, secondary containment systems must be, at a minimum:

(1) Constructed of or lined with materials that are compatible with the wastes(s) to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic).

(2) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift.

(3) Provided with a leak-detection system that is designed and operated so

that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or at the earliest practicable time.

(4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. You must remove spilled or leaked waste and accumulated precipitation from the secondary containment system within 24 hours, or as promptly as possible to prevent harm to human health and the environment.

**§ 267.196 What are the required devices for secondary containment and what are their design, operating and installation requirements?**

(a) Secondary containment for tanks must include one or more of the following:

(1) A liner (external to the tank).

(2) A vault.

(3) A double-walled tank.

(4) An equivalent device; you must maintain documentation of equivalency at the facility.

(b) External liner systems must be:

(1) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary.

(2) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. The additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

(3) Free of cracks or gaps.

(4) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank(s) (that is, capable of preventing lateral as well as vertical migration of the waste).

(c) Vault systems must be:

(1) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary.

(2) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

(3) Constructed with chemical-resistant water stops in place at all joints (if any).

(4) Provided with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of waste into the concrete.

(5) Provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being stored or treated:

(i) Meets the definition of ignitable waste under 40 CFR 261.21.

(ii) Meets the definition of reactive waste under 40 CFR 261.21, and may form an ignitable or explosive vapor.

(6) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(d) Double-walled tanks must be:

(1) Designed as an integral structure (that is, an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell.

(2) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell.

(3) Provided with a built-in continuous leak detection system capable of detecting a release within 24 hours, or at the earliest practicable time.

**§ 267.197 What are the requirements for ancillary equipment?**

You must provide ancillary equipment with secondary containment (for example, trench, jacketing, double-walled piping) that meets the requirements of § 267.196 (a) and (b), except for:

(a) Piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis.

(b) Welded flanges, welded joints, and welded connections, that are visually inspected for leaks on a daily basis.

(c) Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis.

(d) Pressurized aboveground piping systems with automatic shut-off devices (for example, excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices) that are visually inspected for leaks on a daily basis.

**§ 267.198 What are the general operating requirements for my tank systems?**

(a) You must not place hazardous wastes or treatment reagents in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.

(b) You must use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include, at a minimum:

(1) Spill prevention controls (for example, check valves, dry disconnect couplings).

(2) Overfill prevention controls (for example, level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank).

(3) Sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) You must comply with the requirements of § 267.200 if a leak or spill occurs in the tank system.

**§ 267.199 What inspection requirements must I meet?**

You must comply with the following requirements for scheduling, conducting, and documenting inspections.

(a) Develop and follow a schedule and procedure for inspecting overfill controls.

(b) Inspect at least once each operating day:

(1) Aboveground portions of the tank system to detect corrosion or releases of waste.

(2) Data gathered from monitoring and leak detection equipment (for example, pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

(3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (for example, dikes) to detect erosion or signs of releases of hazardous waste (for example, wet spots, dead vegetation).

(c) Inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(1) Confirm that the cathodic protection system is operating properly within six months after initial installation and annually thereafter.

(2) Inspect and/or test all sources of impressed current, as appropriate, at least every other month.

(d) Document, in the operating record of the facility, an inspection of those items in paragraphs (a) through (c) of this section.

**§ 267.200 What must I do in case of a leak or a spill?**

If there has been a leak or a spill from a tank system or secondary containment system, or if either system is unfit for use, you must remove the system from service immediately, and you must satisfy the following requirements:

(a) Immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) Remove the waste from the tank system or secondary containment system.

(1) If the release was from the tank system, you must, within 24 hours after detecting the leak, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

(2) If the material released was to a secondary containment system, you must remove all released materials within 24 hours or as quickly as possible to prevent harm to human health and the environment.

(c) Immediately conduct a visual inspection of the release and, based upon that inspection:

(1) Prevent further migration of the leak or spill to soils or surface water.

(2) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) Report any release to the environment, except as provided in paragraph (d)(2) of this section, to the Regional Administrator within 24 hours of its detection. If you have reported the release pursuant to 40 CFR part 302, that report will satisfy this requirement.

(1) You need not report on a leak or spill of hazardous waste if it is:

(i) Less than or equal to a quantity of one (1) pound, and

(ii) Immediately contained and cleaned up.

(2) Within 30 days of detection of a release to the environment, you must submit a report to the Regional Administrator containing the following information:

(i) The likely route of migration of the release.

(ii) The characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate).

(iii) The results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, you must submit these data to the Regional Administrator as soon as they become available.

(iv) The proximity to downgradient drinking water, surface water, and populated areas.

(v) A description of response actions taken or planned.

(e) Either close the system or make necessary repairs.

(1) Unless you satisfy the requirements of paragraphs (e)(2) and (3) of this section, you must close the tank system according to § 267.201.

(2) If the cause of the release was a spill that has not damaged the integrity of the system, you may return the system to service as soon as you remove the released waste and make any necessary repairs.

(3) If the cause of the release was a leak from the primary tank system into the secondary containment system, you must repair the system before returning the tank system to service.

(f) If you have made extensive repairs to a tank system in accordance with paragraph (e) of this section (for example, installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), you may not return the tank system to service unless the repair is certified by an independent, qualified, registered, professional engineer in accordance with 40 CFR 270.11(d).

(1) The engineer must certify that the repaired system is capable of handling hazardous wastes without release for the intended life of the system.

(2) You must submit this certification to the Regional Administrator within seven days after returning the tank system to use.

#### § 267.201 What must I do when I stop operating the tank system?

When you close a tank system, you must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless 40 CFR 261.3(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in subparts G and H of this part.

#### § 267.202 What special requirements must I meet for ignitable or reactive wastes?

(a) You may not place ignitable or reactive waste in tank systems, unless:

(1) You treat, render, or mix the waste before or immediately after placement in the tank system so that:

(i) You comply with § 267.17(b), and

(ii) The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under §§ 261.21 or 261.23 of this chapter, or

(2) You store or treat the waste in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(3) You use the tank system solely for emergencies.

(b) If you store or treat ignitable or reactive waste in a tank, you must comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2–1 through 2–6 of the National Fire Protection Association's ''Flammable and Combustible Liquids Code,'' (1977 or 1981), (incorporated by reference, see 40 CFR 260.11).

#### § 267.203 What special requirements must I meet for incompatible wastes?

(a) You may not place incompatible wastes, or incompatible wastes and materials, in the same tank system, unless you comply with § 267.17(b).

(b) You may not place hazardous waste in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless you comply with § 267.17(b).

#### § 267.204 What air emission standards apply?

You must manage all hazardous waste placed in a tank following the requirements of subparts AA, BB, and CC of 40 CFR part 264. Under a standardized permit, the following control devices are permissible: thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit.

### Subparts K through CC [Reserved]

### Subpart DD—Containment buildings

#### § 267.1100 Does this subpart apply to me?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste in containment buildings under a 40 CFR part 270, subpart I standardized permit, except as provided in § 267.1(b). Storage and/or treatment in your containment building is not land disposal as defined in 40 CFR 268.2 if your unit meets the requirements of §§ 267.1101, 267.1102, and 267.1103.

#### § 267.1101 What design and operating standards must my containment building meet?

Your containment buildings must comply with the design and operating standards in this section. EPA will consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirements of this section.

(a) The containment building must be completely enclosed with a floor, walls,

and a roof to prevent exposure to the elements, (e.g., precipitation, wind, run-on), and to assure containment of managed wastes.

(b) The floor and containment walls of the unit, including the secondary containment system, if required under § 267.1103, must be designed and constructed of manmade materials of sufficient strength and thickness to:

(1) Support themselves, the waste contents, and any personnel and heavy equipment that operates within the unit.

(2) Prevent failure due to:

(i) Pressure gradients, settlement, compression, or uplift.

(ii) Physical contact with the hazardous wastes to which they are exposed

(iii) Climatic conditions.

(iv) Stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls.

(v) Collapse or other failure.

(c) All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes.

(d) You must not place incompatible hazardous wastes or treatment reagents in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(e) A containment building must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

(f) If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:

(1) They provide an effective barrier against fugitive dust emissions under § 267.1102(d).

(2) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

(g) You must inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring equipment and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(h) You must obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of §§ 267.1102, 267.1103, and paragraphs (a) through (f) of this section.

### § 267.1102 What other requirements must I meet to prevent releases?

You must use controls and practices to ensure containment of the hazardous waste within the unit; and must, at a minimum:

(a) Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier.

(b) Maintain the level of the stored/treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded.

(c) Take measures to prevent personnel or by equipment used in handling the waste from tracking hazardous waste out of the unit. You must designate an area to decontaminate equipment, and you must collect and properly manage any rinsate.

(d) Take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see 40 CFR part 60, appendix A, Method 22—Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares). In addition, you must operate and maintain all associated particulate collection devices (for example, fabric filter, electrostatic precipitator) with sound air pollution control practices. You must effectively maintain this state of no visible emissions at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit.

### § 267.1103 What additional design and operating standards apply if liquids will be in my containment building?

If your containment building will be used to manage hazardous wastes containing free liquids or treated with free liquids, as determined by the paint filter test, by a visual examination, or by other appropriate means, you must include:

(a) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (for example, a geomembrane covered by a concrete wear surface).

(b) A liquid collection and removal system to minimize the accumulation of liquid on the primary barrier of the containment building.

(1) The primary barrier must be sloped to drain liquids to the associated collection system; and

(2) You must collect and remove liquids and waste to minimize hydraulic head on the containment system at the earliest practicable time.

(c) A secondary containment system, including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practical time.

(1) You may meet the requirements of the leak detection component of the secondary containment system by installing a system that is, at a minimum:

(i) Constructed with a bottom slope of 1 percent or more; and

(ii) Constructed of a granular drainage material with a hydraulic conductivity of $1 \times 10^{-2}$ cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of $3 \times 10^{-5}$ $m^2$/sec or more.

(2) If you will be conducting treatment in the building, you must design the area in which the treatment will be conducted to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

(3) You must construct the secondary containment system using materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building.

### § 267.1104 How may I obtain a waiver from secondary containment requirements?

Notwithstanding any other provision of this subpart the Regional Administrator may waive requirements for secondary containment for a permitted containment building where you:

(a) Demonstrate that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and

(b) Containment of managed wastes and dust suppression liquids can be assured without a secondary containment system.

### § 267.1105 What do I do if my containment building contains areas both with and without secondary containment?

For these containment buildings, you must:

(a) Design and operate each area in accordance with the requirements enumerated in §§ 267.1101 through 267.1103.

(b) Take measures to prevent the release of liquids or wet materials into areas without secondary containment.

(c) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

**§ 267.1106 What do I do if I detect a release?**

Throughout the active life of the containment building, if you detect a condition that could lead to or has caused a release of hazardous waste, you must repair the condition promptly, in accordance with the following procedures.

(a) Upon detection of a condition that has lead to a release of hazardous waste (for example, upon detection of leakage from the primary barrier) you must:

(1) Enter a record of the discovery in the facility operating record;

(2) Immediately remove the portion of the containment building affected by the condition from service;

(3) Determine what steps you must take to repair the containment building, to remove any leakage from the secondary collection system, and to establish a schedule for accomplishing the cleanup and repairs; and

(4) Within 7 days after the discovery of the condition, notify the Regional Administrator of the condition, and within 14 working days, provide a written notice to the Regional Administrator with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

(b) The Regional Administrator will review the information submitted, make a determination regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify you of the determination and the underlying rationale in writing.

(c) Upon completing all repairs and cleanup, you must notify the Regional Administrator in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with paragraph (a)(4) of this section.

**§ 267.1107 Can a containment building itself be considered secondary containment?**

Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions.

(a) A containment building can serve as an external liner system for a tank, provided it meets the requirements of § 267.196(a).

(b) The containment building must also meet the requirements of § 267.195(a), (b)(1) and (2) to be considered an acceptable secondary containment system for a tank.

**§ 267.1108 What must I do when I stop operating the containment building?**

When you close a containment building, you must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.) contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless 40 CFR 261.3(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings must meet all of the requirements specified in subparts G and H of this part.

## PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

11. The authority citation for part 270 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

### Subpart A—General Information

12. Section 270.1(b) is amended by adding a sentence after the second sentence of paragraph (b) to read as follows:

**§ 270.1 Purpose and scope of these regulations.**

* * * * *

(b) * * * Facilities that generate hazardous waste and then non-thermally treat or store the hazardous waste in tanks, containers, or containment buildings, may be eligible for a standardized permit under subpart I of this part. * * *

* * * * *

13. Section 270.2 is amended by revising the definition for ''Permit'' and adding a definition for ''Standardized permit'' in alphabetical order to read as follows:

**§ 270.2 Definitions.**

* * * * *

*Permit* means an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of this part and parts 271 and 124 of this chapter. Permit includes permit by rule (§ 270.60), emergency permit (§ 270.61) and standardized permit (subpart I of this part). Permit does not include RCRA interim status (subpart G of this part), or any permit which has not been the subject of final agency action, such as a draft permit or a proposed permit.

* * * * *

*Standardized permit* means a RCRA permit issued under part 124, subpart G of this chapter and subpart I of this part authorizing the facility owner or operator to manage hazardous waste. The standardized permit may have two parts: a uniform portion issued in all cases and a supplemental portion issued at the Director's discretion.

* * * * *

### Subpart B—Permit Application

14. Section 270.10 is amended by revising paragraphs (a) and (h) to read as follows:

**§ 270.10 General application requirements.**

(a) *Applying for a permit.* Below is information on how to obtain a permit and where to find requirements for specific permits:

(1) If you are covered by RCRA permits by rule (§ 270.60), you need not apply.

(2) If you currently have interim status, you must apply for permits when required by the Director.

(3) If you are required to have a permit (including new applicants and permittees with expiring permits) you must complete, sign, and submit an application to the Director as described in this section and §§ 270.70 through 270.73.

(4) If you are seeking an emergency permit, the procedures for application, issuance, and administration are found exclusively in § 270.61.

(5) If you are seeking a research, development, and demonstration permit, the procedures for application, issuance, and administration are found exclusively in § 270.65.

(6) If you are seeking a standardized permit, the procedures for application and issuance are found in part 124, subpart G of this chapter and subpart I of this part.

* * * * *

(h) *Reapplying for a permit.* If you have an effective permit and you want to reapply for a new one, you have two options:

(1) You may submit a new application at least 180 days before the expiration date of the effective permit, unless the Direction allows a later date; or

(2) If you intend to be covered by a standardized permit, you may submit a Notice of Intent as described in § 270.51(e)(1) at least 180 days before the expiration date of the effective

permit, unless the Director allows a later date. (The Director may not allow you to submit applications or Notices of Intent later than the expiration date of the existing permit, except as allowed by § 270.51(e)(2)).

* * * * *

## Subpart D—Changes to Permits

15. Section 270.40(b) is amended by revising the first sentence of paragraph (b) to read as follows:

### § 270.40 Transfer of permits.

* * * * *

(b) Changes in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval of the Director in accordance with § 270.42 or as a routine change under 40 CFR 124.212.

* * * * *

16. Section 270.41 is amended by revising the next to last sentence of the introductory paragraph and adding paragraph (b)(3) to read as follows:

### § 270.41 Modification or revocation and reissuance of permits.

* * * If a permit modification is requested by the permittee, the Director shall approve or deny the request according to the procedures of § 270.42, or § 270.320 and 40 CFR part 124, subpart G. * * * *

* * * * *

(b) * * *

(3) The Director has received notification under 40 CFR 124.202 (b) of a facility owner or operator's intent to be covered by a standardized permit.

* * * * *

## Subpart E—Expiration and Continuation of Permits

17. Section 270.51 is amended by adding paragraph (e) as follows:

### § 270.51 Continuation of expiring permits.

* * * * *

(e) *Standardized permits.* (1) The conditions of your expired standardized permit continue until the effective date of your new permit (see 40 CFR 124.15) if all of the following are true:

(i) If EPA is the permit-issuing authority.

(ii) If you submit a timely and complete notice of intent under 40 CFR 124.202(b) requesting coverage under a RCRA standardized permit; and

(iii) If the Director, through no fault on your part, does not issue your permit before your previous permit expires (for example, where it is impractical to make the permit effective by that date because of time or resource constraints).

(2) In some cases, the Director may notify you that you are not eligible for a standardized permit (see 40 CFR 124.206). In those cases, the conditions of your expired permit will continue if you submit the information specified in paragraph (a)(1) of this section (that is, a complete application for a new permit) within 60 days after you receive our notification that you are not eligible for a standardized permit.

## Subpart F—Special Forms of Permits

18. Add § 270.67 to subpart F to read as follows:

### § 270.67 RCRA standardized permits for storage and treatment units.

RCRA standardized permits are special forms of permits for facility owners or operators that generate hazardous waste and then non-thermally treat or store the hazardous waste in tanks, containers, or containment buildings. Standardized permit facility owners or operators are regulated under subpart I of this part, part 124 subpart G of this chapter, and part 267 of this chapter.

19. Subpart I is added to part 270 to read as follows:

## Subpart I—RCRA Standardized Permits for Storage and Treatment Units

Sec.

**General Information About Standardized Permits**

270.250 What is a RCRA standardized permit?
270.255 Who is eligible for a standardized permit?
270.260 What requirements of Part 270 apply to a standardized permit?

**Applying for a Standardized Permit**

270.270 How do I apply for a standardized permit?
270.275 What information must I submit to the permitting agency to support my standardized permit application?
270.280 What are the certification requirements?
270.285 What happens if my facility is not in compliance with 40 CFR part 267 requirements at the time I submit my notice of intent?

**Information That Must Be Kept at Your Facility**

270.290 What general types of information must I keep at my facility?
270.300 What container information must I keep at my facility?
270.305 What tank information must I keep at my facility?
270.310 What equipment information must I keep at my facility?
270.315 What air emissions control information must I keep at my facility?

**Modifying a Standardized Permit**

270.320 How do I modify my RCRA standardized permit?

## Subpart I—RCRA Standardized Permits for Storage and Treatment Units

### General Information About Standardized Permits

#### § 270.250 What is a RCRA standardized permit?

A RCRA standardized permit (RCRA) is a special type of permit that authorizes you to manage hazardous waste. It is issued under 40 CFR part 124, subpart G and subpart I of this part.

#### § 270.255 Who is eligible for a standardized permit?

If you generate hazardous waste and then non-thermally treat or store the hazardous waste in tanks, containers, or containment buildings, you may be eligible for a standardized permit. We will inform you of your eligibility when we make a decision on your permit application.

#### § 270.260 What requirements of part 270 apply to a standardized permit?

The following subparts and sections of this part 270 apply to a standardized permit:

(a) Subpart A—General Information: all sections.

(b) Subpart B—Permit Application: §§ 270.10, 270.11, 270.12, 270.13 and 270.29.

(c) Subpart C—Permit Conditions : all sections.

(d) Subpart D—Changes to Permit: §§ 270.40, 270.41, and 270.43.

(e) Subpart E—Expiration and Continuation of Permits: all sections.

(f) Subpart F—Special Forms of Permits: § 270.67.

(g) Subpart G—Interim Status: all sections.

(h) Subpart H—Remedial Action Plans: does not apply.

(i) Subpart I—Standardized Permits: all sections.

### Applying for a Standardized Permit

#### § 270.270 How do I apply for a standardized permit?

You apply for a standardized permit by following the procedures in 40 CFR part 124, subpart G and this subpart.

#### § 270.275 What information must I submit to the permitting agency to support my standardized permit application?

The information in paragraphs (a) through (f) of this section will be the basis of your standardized permit application. You must submit it to the Director when you submit your Notice

of Intent under 40 CFR 124.202(b) requesting coverage under a RCRA standardized permit:

(a) The Part A information described in § 270.13.

(b) A meeting summary and other materials required by 40 CFR 124.31.

(c) Documentation of compliance with the location standards of 40 CFR 267.18 and § 270.14(b)(11).

(d) Information that allows the Director to carry out our obligations under other Federal laws required in § 270.3.

(e) Solid waste management unit information required by § 270.14(d).

(f) A certification meeting the requirements of § 270.280 and an audit of the facility's compliance status with 40 CFR part 267 as required by § 270.280.

#### § 270.280 What are the certification requirements?

You must submit a signed certification based on your audit of your facility's compliance with 40 CFR part 267.

(a) Your certification must read:

I certify under penalty of law that:

(1) My facility (include paragraph (a)(1)(i) or (ii) of this section, whichever applies):

(i) Complies with all applicable requirements of 40 CFR part 267 and will continue to comply until the expiration of the permit; or

(ii) Will come into compliance before permit issuance with all applicable requirements of 40 CFR part 267 and will then continue to comply until expiration of the permit.

(2) I will make all information that I am required to maintain at my facility by §§ 270.290 through 277.315 readily available for review by the permitting agency and the public; and,

(3) I will continue to make all information required by §§ 270.290 through 277.315 available until the permit expires. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation.

(b) You must sign this certification following the requirements of § 270.11(a)(1) through (3).

(c) This certification must be based upon an audit that you conduct of your facility's compliance status with 40 CFR part 267. You must submit this audit to the Director with the 40 CFR 124.202(b) notice of intent.

#### § 270.285 What happens if my facility is not in compliance with 40 CFR part 267 requirements at the time I submit my notice of intent?

(a) If your facility is not in compliance with applicable requirements of 40 CFR part 267 at the time you submit your Notice of Intent, you must submit a compliance schedule to the Director. This schedule must include an enforceable sequence of actions with milestones, leading to compliance with the requirements for which your facility is in noncompliance at the time your Notice of Intent submittal.

(b) Before the Director issues your permit, your facility must be in compliance with applicable 40 CFR part 267 requirements.

### Information That Must Be Kept at Your Facility

#### § 270.290 What general types of information must I keep at my facility?

You must keep the following information at your facility:

(a) A general description of the facility.

(b) Chemical and physical analyses of the hazardous waste and hazardous debris handled at the facility. At a minimum, these analyses must contain all the information you must know to treat or store the wastes properly under the requirements of 40 CFR part 267.

(c) A copy of the waste analysis plan required by 40 CFR 267.13(b).

(d) A description of the security procedures and equipment required by 40 CFR 267.14, or a justification demonstrating the reasons for your waiver from these requirements.

(e) A copy of the general inspection schedule required by 40 CFR 267.15(b). You must include in the inspection schedule applicable requirements of 40 CFR 267.174, 267.193, 267.195, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1088.

(f) A justification of any modification of the preparedness and prevention requirements of 40 CFR part 267, subpart C.

(g) A copy of the contingency plan required by 40 CFR part 267, subpart D.

(h) A description of procedures, structures, or equipment used at the facility to:

(1) Prevent hazards in unloading operations (for example, use ramps, special forklifts),

(2) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, with berms, dikes, trenches),

(3) Prevent contamination of water supplies,

(4) Mitigate effects of equipment failure and power outages,

(5) Prevent undue exposure of personnel to hazardous waste (for example, requiring protective clothing), and

(6) Prevent releases to atmosphere,

(i) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required by 40 CFR 267.17.

(j) Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes; describe access road surfacing and load bearing capacity; show traffic control signals).

(k) [Reserved]

(l) An outline of both the introductory and continuing training programs you will use to prepare employees to operate or maintain your facility safely as required by 40 CFR 267.16. A brief description of how training will be designed to meet actual job tasks under 40 CFR 267.16(a)(3) requirements.

(m) A copy of the closure plan required by 40 CFR 267.112. Include, where applicable, as part of the plans, specific requirements in 40 CFR 267.176, 267.201, and 267.1108.

(n) [Reserved]

(o) The most recent closure cost estimate for your facility prepared under 40 CFR 267.142 and a copy of the documentation required to demonstrate financial assurance under 40 CFR 267.143. For a new facility, you may gather the required documentation 60 days before the initial receipt of hazardous wastes.

(p) [Reserved]

(q) Where applicable, a copy of the insurance policy or other documentation that complies with the liability requirements of 40 CFR 267.147. For a new facility, documentation showing the amount of insurance meeting the specification of 40 CFR 267.147(a) that you plan to have in effect before initial receipt of hazardous waste for treatment or storage.

(r) Where appropriate, proof of coverage by a State financial mechanism as required by 40 CFR 267.149 or 267.150.

(s) A topographic map showing a distance of 1000 feet around your facility at a scale of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet). The map must show elevation contours. The contour interval must show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meters (2 feet), if relief is less than 6.1 meters (20 feet). If your facility is in a mountainous area, you should use large contour intervals to adequately show topographic profiles of facilities. The map must clearly show the following:

(1) Map scale and date.
(2) 100-year floodplain area.
(3) Surface waters including intermittent streams.
(4) Surrounding land uses (residential, commercial, agricultural, recreational).
(5) A wind rose (i.e., prevailing wind-speed and direction).
(6) Orientation of the map (north arrow).
(7) Legal boundaries of your facility site.
(8) Access control (fences, gates).
(9) Injection and withdrawal wells both on-site and off-site.
(10) Buildings; treatment, storage, or disposal operations; or other structure (recreation areas, runoff control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities, etc.)
(11) Barriers for drainage or flood control.
(12) Location of operational units within your facility, where hazardous waste is (or will be) treated or stored. (Include equipment cleanup areas).

**§ 270.300 What container information must I keep at my facility?**

If you store or treat hazardous waste in containers, you must keep the following information at your facility:
(a) A description of the containment system to demonstrate compliance with container storage area provisions of 40 CFR 267.173. This description must show the following:
(1) Basic design parameters, dimensions, and materials of construction.
(2) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system.
(3) Capacity of the containment system relative to the number and volume of containers to be stored.
(4) Provisions for preventing or managing run-on.
(5) How accumulated liquids can be analyzed and removed to prevent overflow.
(b) For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with 40 CFR 267.173(c), including:
(1) Test procedures and results or other documentation or information to show that the wastes do not contain free liquids.
(2) A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.
(c) Sketches, drawings, or data demonstrating compliance with 40 CFR 267.174 (location of buffer zone (15m or 50ft) and containers holding ignitable or reactive wastes) and 40 CFR 267.175(c) (location of incompatible wastes in relation to each other), where applicable.
(d) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with 40 CFR 267.175 (a) and (b), and 267.17 (b) and (c).
(e) Information on air emission control equipment as required by § 270.315.

**§ 270.305 What tank information must I keep at my facility?**

If you use tanks to store or treat hazardous waste, you must keep the following information at your facility:
(a) A written assessment that is reviewed and certified by an independent, qualified, registered professional engineer on the structural integrity and suitability for handling hazardous waste of each tank system, as required under 40 CFR 267.191 and 267.192.
(b) Dimensions and capacity of each tank.
(c) Description of feed systems, safety cutoff, bypass systems, and pressure controls (e.g., vents).
(d) A diagram of piping, instrumentation, and process flow for each tank system.
(e) A description of materials and equipment used to provide external corrosion protection, as required under 40 CFR 267.191.
(f) For new tank systems, a detailed description of how the tank system(s) will be installed in compliance with 40 CFR 267.192 and 267.194.
(g) Detailed plans and description of how the secondary containment system for each tank system is or will be designed, constructed, and operated to meet the requirements of 40 CFR 267.195 and 267.196.
(h) [Reserved].
(i) Description of controls and practices to prevent spills and overflows, as required under 40 CFR 267.198.
(j) For tank systems in which ignitable, reactive, or incompatible wastes are to be stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of 40 CFR 267.202 and 267.203.
(k) Information on air emission control equipment as required by § 270.315.

**§ 270.310 What equipment information must I keep at my facility?**

If your facility has equipment to which 40 CFR part 264, subpart BB applies, you must keep the following information at your facility:
(a) For each piece of equipment to which 40 CFR part 264 subpart BB applies:
(1) Equipment identification number and hazardous waste management unit identification.
(2) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan).
(3) Type of equipment (e.g., a pump or a pipeline valve).
(4) Percent by weight of total organics in the hazardous waste stream at the equipment.
(5) Hazardous waste state at the equipment (e.g., gas/vapor or liquid).
(6) Method of compliance with the standard (e.g., monthly leak detection and repair, or equipped with dual mechanical seals).
(b) For facilities that cannot install a closed-vent system and control device to comply with 40 CFR Part 264, subpart BB on the effective date that the facility becomes subject to the subpart BB provisions, an implementation schedule as specified in 40 CFR 264.1033(a)(2).
(c) Documentation that demonstrates compliance with the equipment standards in 40 CFR 264.1052 and 264.1059. This documentation must contain the records required under 40 CFR 264.1064.
(d) Documentation to demonstrate compliance with 40 CFR 264.1060 must include the following information:
(1) A list of all information references and sources used in preparing the documentation.
(2) Records, including the dates, of each compliance test required by 40 CFR 264.1033(j).
(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of ''ATPI Course 415: Control of Gaseous Emissions'' (incorporated by reference as specified in 40 CFR 260.11) or other engineering texts acceptable to the Director that present basic control device design information. The design analysis must address the vent stream characteristics and control device operation parameters as specified in 40 CFR 264.1035(b)(4)(iii).
(4) A statement you signed and dated certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is

operating at the highest load or capacity level reasonable expected to occur.

(5) A statement you signed and dated certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater.

#### § 270.315 What air emissions control information must I keep at my facility?

If you have air emission control equipment subject to 40 CFR part 264, subpart CC, you must keep the following information at your facility:

(a) Documentation for each floating roof cover installed on a tank subject to 40 CFR 264.1084(d)(1) or (d)(2) that includes information you prepared or the cover manufacturer/vendor provided describing the cover design, and your certification that the cover meets applicable design specifications listed in 40 CFR 264.1084(e)(1) or (f)(1).

(b) Identification of each container area subject to the requirements of 40 CFR part 264, subpart CC and your certification that the requirements of this subpart are met.

(c) Documentation for each enclosure used to control air pollutant emissions from tanks or containers under requirements of 40 CFR 264.1084(d)(5) or 264.1086(e)(1)(ii). You must include records for the most recent set of calculations and measurements you performed to verify that the enclosure meets the criteria of a permanent total enclosure as specified in ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' under 40 CFR 52.741, appendix B.

(d) [Reserved]

(e) Documentation for each closed-vent system and control device installed under requirements of 40 CFR 264.1087 that includes design and performance information as specified in § 270.24 (c) and (d).

(f) An emission monitoring plan for both Method 21 in 40 CFR Part 60, appendix A and control device monitoring methods. This plan must include the following information: monitoring point(s), monitoring methods for control devices, monitoring frequency, procedures for documenting exceedences, and procedures for mitigating noncompliances.

### Modifying a Standardized Permit

#### § 270.320 How do I modify my RCRA standardized permit?

You can modify your RCRA standardized permit by following the procedures found in 40 CFR 124.211 through 124.213.

[FR Doc. 01–24204 Filed 10–11–01; 8:45 am]

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Federal Register

**Friday,**
**October 12, 2001**

## Part III

# Office of Management and Budget

**14 CFR Chapter VI and Part 1300**
**Regulations for Air Carrier Guarantee Loan Program Under Section 101(a)(1) of the Air Transportation Safety and System Stabilization Act; Final Rule**

**OFFICE OF MANAGEMENT AND BUDGET**

**14 CFR Chapter VI and Part 1300**

## Regulations for Air Carrier Guarantee Loan Program Under Section 101(a)(1) of the Air Transportation Safety and System Stabilization Act

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Final rule.

**SUMMARY:** These regulations are issued under Section 102(c)(2)(B) of the Air Transportation Safety and System Stabilization Act. That section states that ''the Director of the Office of Management and Budget shall issue regulations setting forth procedures for application and minimum requirements * * * for the issuance of Federal credit instruments under Section 101(a)(1)'' of the Act. Section 101(a)(1) authorizes the Air Transportation Stabilization Board, which is established by section 102(b)(1) of the Act, to issue Federal credit instruments (as defined in section 107(2) of the Act) that, in the aggregate, do not exceed $10 billion. The purpose of these Federal credit instruments is to assist air carriers who suffered losses due to the terrorist attacks of September 11, 2001, and to whom credit is not otherwise reasonably available, in order to facilitate a safe, efficient, and viable commercial aviation system in the United States. The Act was signed into law on September 22, 2001, and directs the Office of Management and Budget (''OMB'') to issue implementing regulations ''[n]ot later than 14 days after the date of enactment of this Act.'' Consistent with this requirement, these regulations are issued on a final basis and are effective upon publication.

**EFFECTIVE DATE:** October 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Clare Doherty, Office of Management and Budget, Washington, DC 20503. Telephone (202) 395–5704.

**SUPPLEMENTARY INFORMATION:** On the morning of September 11, 2001, terrorists hijacked four commercial passenger airliners. Two of the planes crashed into the World Trade Center in New York City, causing the two towers to collapse and killing more than 5,000 people. A third plane crashed into the Pentagon, killing nearly 200 people. The fourth plane, apparently heading toward another target, crashed in western Pennsylvania, killing its crew and dozens of passengers. In response to these terrorist attacks, the Federal Aviation Administration issued a Federal ground stop order on September 11, 2001, prohibiting all flights to, from, and within the United States. Airports did not reopen until September 13 (except for Reagan National Airport, which partially reopened on October 4, 2001). Consumer demand for passenger air services has declined significantly since the terrorist attacks.

In response to the terrorist attacks, Congress passed and President Bush signed into law on September 18, 2001, the Emergency Supplemental Appropriations Act for Recovery From and Response to Terrorist Attacks on the United States (Public Law 107–38). The Emergency Supplemental Appropriations Act provided $40 billion for the Federal response to the terrorist attacks, assistance to the victims of the attacks, and other consequences of the attacks.

The U.S. commercial aviation industry suffered severe losses as a result of the terrorist attacks. As noted in the legislative history of the Act, these losses have placed the financial survival of many air carriers at risk, in part because these carriers do not have adequate access to credit markets. To address this problem, Congress passed and President Bush signed into law on September 22, 2001, the Air Transportation Safety and System Stabilization Act (Public Law 107–42) (the ''Act'').

The Act addresses airline stabilization, aviation insurance, tax provisions, victim compensation, and air transportation safety. Section 101(a)(2) of the Act provides $5 billion to compensate air carriers for the direct losses incurred as a result of the Federal ground stop order and incremental losses that they incur through December 31, 2001, as a result of the terrorist attacks. Section 101(a)(1) of the Act authorizes the issuance to air carriers of Federal credit instruments that, in the aggregate, shall not exceed $10 billion. The purpose of these Federal credit instruments is to assist air carriers who suffered losses due to the terrorist attacks of September 11, 2001, and to whom credit is not otherwise reasonably available, in order to facilitate a safe, efficient, and viable commercial aviation system in the United States. These final regulations are issued to implement section 101(a)(1) of the statute.

The Air Transportation Stabilization Board (the ''Board''), which is established by Section 102(b) of the Act, is empowered to enter into agreements to issue these loan guarantees and other Federal credit instruments authorized under section 102(b) of the Act. The Board is composed of the Chairman of the Board of Governors of the Federal Reserve System (who is Chairman of the Board), the Secretary of Transportation, the Secretary of the Treasury, and the Comptroller General (who is a nonvoting member), or their designees. Title I of the Act establishes a number of conditions and restrictions for the issuance of loan guarantees and other Federal credit instruments.

Section 102(c)(2)(B) of the Act directs the Director of OMB to ''issue regulations setting forth procedures for application and minimum requirements * * * for the issuance of Federal credit instruments under Section 101(a)(1)'' of the Act. Consistent with this requirement, OMB issues these regulations on a final basis, effective upon publication. Based on the very short deadline imposed upon it by the statute, OMB has determined it is appropriate to publish these rules without first obtaining public comment. Section 553(a) of the Administrative Procedure Act (''APA'') exempts from its rulemaking requirements those agency actions that concern ''loans, grants, benefits, or contracts.'' 5 U.S.C. 553(a). This loan guarantee program falls squarely within this exception to the requirements otherwise imposed by section 553.

Moreover, to the extent that section 553's notice-and-comment requirements may apply to this action, we conclude that there is ''good cause'' under sections 553(b)(B) and 553(d), to issue the rule without prior public comment, effective immediately. The tight timeframe dictated by the statute makes compliance with these requirements impracticable and contrary to the public interest. *See Methodist Hospital* v. *Shalala,* 38 F.3d 1225, 1235 (D.C. Cir. 1994); *Petry* v. *Block,* 737 F.2d 1193, 1203 (D.C. Cir. 1984); *Valiant Steel & Equipment* v. *Goldschmidt*, 499 F. Supp. 410, 412 (D.D.C. 1980). In requiring OMB to issue the regulations within 14 days, Congress plainly intended to ensure that the loan guarantee program be implemented as swiftly as possible. The public interest is therefore served by having these regulations become effective upon publication, so that the Board can begin operations, and air carriers can submit applications to the Board at their earliest convenience.

### Regulatory Impact

*A. Executive Order 12866*

OMB's Office of Information and Regulatory Affairs (''OIRA'') has determined that this rule is an economically significant regulatory action under Executive Order 12866, Regulatory Planning and Review, based

on its finding that the rule will have an annual effect on the economy of $100 million or more. The Director of OMB is required to issue implementing regulations under the Act not later than 14 days after the enactment of this statute. In accordance with the procedures regarding such emergency regulatory actions as discussed in section 6(a)(3)(D) of Executive Order 12866, OMB has, to the extent practicable, complied with the requirements of this Executive Order.

This rule establishes the application procedure and minimum requirements that will apply to up to $10 billion in loan guarantees (or other Federal credit instruments) to air carriers to compensate them for the losses they incurred as a result of the terrorist attacks on the United States that occurred on September 11, 2001. The loan guarantees will translate into a ''credit subsidy'' of some amount not yet determined. This program is expected to generate social benefits by mitigating the costs incurred by the airline industry as a result of the September 11 attacks. Such costs include the transaction costs associated with business closings due to short-run financial or economic dislocations caused by the September 11 attacks, which could be followed by start-up costs when demand for air service increases and other financial problems resulting from the terrorist attacks ease. Such transaction costs for the airline industry may be more significant than for other industries, and society will benefit to the extent these costs are avoided through the loan guarantee program. In addition to the benefits that will result from the loan guarantee program, there will be some administrative costs of this rule to participants in the loan guarantee program. There are also unknown opportunity costs associated with this rule, because it may mean that finite resources, which would have been spent elsewhere absent this rule, are allocated to loan guarantees. There is also a risk of loss to the Federal government in the event of default on loans.

*B. Other Regulatory Analyses*

This rule is not a ''significant energy action'' under Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required. This rule will not effect a taking of private property or otherwise have implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This rule does not concern an environmental risk to health or risk to safety that may disproportionately affect children under Executive Order 13045, Protection of Children from Environmental Risks and Safety Risks.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. OMB has conducted a review of this final rule and certifies that it will not have a significant impact on a substantial number of small entities.

It is possible that small entities will seek Federal credit instruments under this program. However, the cost to these entities of applying for this assistance program should be minimal since borrowers will normally have available the information needed to prepare applications for funding. In addition, participation in this program is voluntary. As such, OMB concludes that this rule will not have a significant impact on a substantial number of small entities.

*D. Congressional Review Act*

This is a major rule under Section 804(2) of the Congressional Review Act (5 U.S.C. 801 *et seq.*). Under the Congressional Review Act, major rules, in general, can not take effect until 60 days after the rule is published in the **Federal Register**. However, Section 808(2) of the Congressional Review Act states that agencies may waive this effective date requirement for ''good cause'' and establish an earlier effective date. As explained above, to the extent that section 553's notice-and-comment requirements apply to this rulemaking, OMB has determined that there is ''good cause'' to issue this final rule without seeking prior public comment, effective immediately upon publication, because OMB is statutorily required to issue the regulations within 14 days of the enactment of the Act, and because it is important that the loan guarantee program began operations as soon as possible. For these same reasons, there is ''good cause'' under section 808(2) to make this rule effective immediately upon publication.

*E. Paperwork Reduction Act*

The information collection requirements of this rule have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) under emergency approval procedures at 5 CFR 1320.13. The OMB control number assigned to this collection is 0348–0059. OMB estimates that there may be up to 150 respondents under this program and estimates that the total annual burden to the public of the information collection activities associated with this rule would be 6,000 hours using that high-end estimate of respondents. Based on a cost of $50 per hour, the monetized hour cost of this information collection is $300,000. The Paperwork Reduction Act provides that 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.

*F. Unfunded Mandates Reform Act*

This rule is not subject to the analytical requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1531–1538, because it will not result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100 million or more in any one year.

*G. Federalism and Indian Tribal Implications*

Executive Order 13132, entitled, ''Federalism,'' was issued on August 4, 1999, and took effect November 2, 1999. OMB has reviewed this rule for federalism implications, and certifies that this rule will not have a substantial effect on the States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Also, this rule does not have tribal implications under Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments.'' The rule 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 responsibility between the Federal Government and Indian tribes.

*H. National Environmental Policy Act*

OMB has determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, Public Law 91–190 (NEPA). If necessary, loans sought to be guaranteed under the program will be assessed by the Board to determine appropriate compliance with NEPA. In this regard, we note that the Board is authorized to

issue supplemental regulations for the air carrier loan guarantee program.

**List of Subjects in 14 CFR Part 1300**

Air carriers, Disaster assistance, Loan programs—transportation, Reporting and recordkeeping requirements.

Dated: October 5, 2001.

**Mitchell E. Daniels, Jr.,**

*Director, Office of Management and Budget.*

For the reasons set forth in the preamble, the Office of Management and Budget establishes in title 14 of the Code of Federal Regulations a new chapter VI consisting of part 1300 to read as follows:

**Chapter VI—Office of Management and Budget**

## PART 1300—AVIATION DISASTER RELIEF—AIR CARRIER GUARANTEE LOAN PROGRAM

**Subpart A—General**

Sec.
1300.1 Purpose.
1300.2 Definitions.

**Subpart B—Minimum Requirements and Application Procedures**

1300.10 General standard for Board issuance of Federal credit instruments.
1300.11 Eligible borrower.
1300.12 Eligible lender.
1300.13 Guarantee amount.
1300.14 Guarantee percentage.
1300.15 Loan terms.
1300.16 Application process.
1300.17 Application evaluation.
1300.18 Issuance of the guarantee.
1300.19 Assignment or transfer of loans.
1300.20 Lender responsibilities.
1300.21 Guarantee.
1300.22 Termination of obligations.
1300.23 Participation in guaranteed loans.

**Authority:** Title I of Pub. L. 107–42, 115 Stat. 230 (49 U.S.C. 40101 note).

### Subpart A—General

#### § 1300.1 Purpose.

This part is issued by the Office of Management and Budget, (OMB) pursuant to Title I of the Air Transportation Safety and System Stabilization Act, Public Law 107–42, 115 Stat. 230 (''Act''). Specifically, Section 102(c)(2)(B) directs OMB to issue regulations setting forth procedures for application and minimum requirements for the issuance of Federal credit instruments under section 101(a)(1) of the Act.

#### § 1300.2 Definitions.

(a) *Act* means the Air Transportation Safety and System Stabilization Act, Public Law 107–42, 115 Stat. 230 (49 U.S.C. 40101 note).

(b) *Administer*, *administering* and *administration*, mean the lender's actions in making, disbursing, servicing (including, but not limited to care, preservation and maintenance of collateral), monitoring, collecting, and liquidating a loan and security.

(c) *Agent* means that lender authorized to take such actions, exercise such powers, and perform such duties on behalf and in representation of all lenders party to a guarantee of a single loan, as is required by, or necessarily incidental to, the terms and conditions of the guarantee.

(d) *Air carrier* means an air carrier as defined in 49 U.S.C. 40102.

(e) *Applicant* means one or more air carriers applying for a Federal credit instrument issued by the Board under the program.

(f) The *Board*, for purposes of any operational and decisionmaking functions in connection with individual loan guarantees, means the voting members of the Air Transportation Stabilization Board established under Section 102 of the Act. The voting members of the Board are the Chairman of the Board of Governors of the Federal Reserve System (who is the Chairman of the Board), the Secretary of the Treasury and the Secretary of Transportation, or their designees. The Comptroller General, who is a nonvoting member, will not participate in the review, operations, or deliberations of the Board in connection with individual loan guarantees, or otherwise participate in the Board's exercise of any executive power, but may provide such audit, evaluation and other support to the Board as the Board may request, consistent with applicable auditing standards.

(g) *Borrower* means an ''Obligor,'' as defined in Section 102(a)(4) of the Act, and includes an air carrier that is primarily liable for payment of the principal of and interest on a Federal credit instrument, which party may be a corporation, partnership, joint venture, trust, or governmental entity, agency, or instrumentality.

(h) *Federal credit instrument*, as defined in Section 107(2) of the Act, means any guarantee or other pledge by the Board issued under the program to pledge the full faith and credit of the United States to pay all or part of any of the principal of and interest on a loan issued by a borrower and funded by a lender.

(i) *Financial obligation*, as defined in Section 102(a)(2) of the Act, means any note, bond, debenture, or other debt obligation issued by a borrower in connection with financing under the program.

(j) *Guarantee* means the written agreement between the Board and one or more lenders, pursuant to which the Federal government guarantees repayment of a specified percentage of the principal of and/or interest on the loan. Unless otherwise specified, guarantee includes any other pledge issued under a Federal credit instrument.

(k) *Lender* means any non-Federal qualified institutional buyer, as defined in Section 102(a)(3) of the Act, that funds a financial obligation subject to a guarantee issued by the Board. With respect to a guarantee of a single loan to which more than one lender is a party, the term lender means agent.

(l) *Loan*, unless otherwise specified, includes any financial obligation (i.e., note, bond, debenture, or other debt obligation) issued by a borrower.

(m) *Loan documents* mean the loan agreement and all other instruments, and all documentation between the lender and the borrower evidencing the making, disbursing, securing, collecting, or otherwise administering of the loan. (References to loan documents also include comparable agreements, instruments, and documentation for other financial obligations for which a guarantee is requested or issued.)

(n) *Program* means the air carrier guarantee loan program established by section 101(a)(1) and the related provisions of Title I of the Act.

(o) *Security* means all property, real or personal, required by the provisions of the guarantee or by the loan documents to secure repayment of any indebtedness of the borrower under the loan documents or guarantee.

### Subpart B—Minimum Requirements and Application Procedures

#### § 1300.10 General standards for Board issuance of Federal credit instruments.

(a) In accordance with section 102(c)(1) of the Act, the Board may enter into agreements with one or more borrowers to issue Federal credit instruments only if the Board determines, in its discretion and in accordance with the minimum requirements set forth in this part, that—

(1) The borrower is an air carrier for which credit is not reasonably available at the time of the transaction;

(2) The intended obligation by the borrower is prudently incurred; and

(3) Such agreement is a necessary part of maintaining a safe, efficient, and viable commercial aviation system in the United States.

(b) In accordance with section 102(c)(2)(A) of the Act, the Board shall enter into an agreement to issue a Federal credit instrument in such form

and on such terms and conditions and subject to such covenants, representations, warranties, and requirements (including requirements for audits) as the Board determines are appropriate for satisfying the requirements of this part and any supplemental requirements issued by the Board under section 102(c)(2)(B) of the Act.

(c) In accordance with section 102(d)(1) of the Act, in entering into agreements to issue Federal credit instruments, the Board shall, to the extent feasible and practicable and in accordance with the requirements in this part, ensure that the Federal Government is compensated for the risk assumed in making guarantees.

(d) In accordance with Section 102(d)(2) of the Act, the Board is authorized to enter into contracts under which the Federal Government, contingent on the financial success of the air carrier, would participate in the gains of the air carrier or its security holders through the use of such instruments as warrants, stock options, common or preferred stock, or other appropriate equity instruments, except that the Board shall not accept an equity interest in an air carrier that gives the Federal Government voting rights.

(e) In accordance with Section 104(a) of the Act, the Board may only issue a Federal credit instrument to an air carrier after the air carrier enters into a legally binding agreement with the Board regarding certain employee compensation.

### § 1300.11 Eligible borrower.

(a) An eligible borrower must be an air carrier that can demonstrate, to the satisfaction of the Board, that:

(1) It has incurred (or is incurring) losses as a result of the terrorist attacks on the United States that occurred on September 11, 2001, which may include losses due to the unavailability of credit or the decrease in demand for that air carrier's services;

(2) It is not under bankruptcy protection or receivership when the application is submitted or when the Board issues the guarantee, unless the guarantee and the underlying financial obligation is to be part of a bankruptcy court-certified reorganization plan;

(3) It has agreed to permit such audits and reviews prior to the issuance of a guarantee, as the Board may deem appropriate, by an independent auditor acceptable to the Board;

(4) It has agreed to permit such audits and reviews during the period the loan is outstanding and three years after payment in full of the guaranteed loan, as the Board may deem appropriate, by an independent auditor acceptable to the Board or by the Comptroller General;

(5) In conducting audits and reviews pursuant to paragraphs (a) (3) and (4) of this section, it has agreed to provide access to the officers and employees, books, records, accounts, documents, correspondence, and other information of the borrower, its subsidiaries, affiliates, financial advisers, consultants, and independent certified accountants that the Board or the Comptroller General consider necessary.

(b) Status as an eligible borrower under this section does not ensure that the Board will issue the guarantee sought or preclude the Board from declining to issue a guarantee.

### § 1300.12 Eligible lender.

(a) A lender eligible to receive a Federal credit instrument approved by the Board must be a non-Federal qualified institutional buyer as defined in Section 102(a)(3) of the Act.

(b) If more than one institution participates as a lender in a single loan for which a Federal credit instrument is requested, each one of the institutions on the application must meet the requirements to be an eligible lender. An application for a guarantee of a single loan, for which there is more than one lender, must identify one of the institutions to act as agent for all. This agent is responsible for administering the loan and shall have those duties and responsibilities required of an agent, as set forth in the guarantee.

(c) Each lender, irrespective of any indemnities or other agreements between the lenders and the agent, shall be bound by all actions, and/or failures to act, of the agent. The Board shall be entitled to rely upon such actions and/or failures to act of the agent as binding the lenders.

(d) Status as an eligible lender under this section does not assure that the Board will issue the guarantee sought, or otherwise preclude the Board from declining to issue a guarantee.

### § 1300.13 Guarantee amount.

(a) Under Section 101(a)(1) of the Act, the Board is authorized to enter into agreements to issue Federal credit instruments that, in the aggregate, do not exceed $10 billion.

(b) The loan amount guaranteed to a single air carrier may not exceed that amount that, in the Board's sole discretion, the air carrier (or its successor) needs in order for it to provide commercial air services.

### § 1300.14 Guarantee percentage.

A guarantee issued by the Board must be less than 100 percent of the amount of principal and accrued interest of the loan guaranteed.

### § 1300.15 Loan terms.

(a) A loan guaranteed under the program shall be due and payable in full no later than seven years from the date on which the first disbursement of the loan is made.

(b) Loans guaranteed under the program must bear a rate of interest determined by the Board to be reasonable. In determining the reasonableness of an interest rate, the Board shall consider the percentage of the guarantee, any collateral, other loan terms, and current average yields on outstanding obligations of the United States with maturity comparable to the term of the loan guaranteed. The Board may reject an application to guarantee a loan if it determines the interest rate on such loan to be unreasonable.

(c) An eligible lender may assess and collect from the borrower such other fees and costs associated with the application and origination of the loan as are reasonable and customary, taking into consideration the amount and complexity of the credit. The Board may take such other fees and costs into consideration when determining whether to offer a guarantee to the lender.

### § 1300.16 Application process.

(a) Applications are to be submitted by the borrower. Borrowers may submit applications to the Board any time after October 12, 2001 through June 28, 2002. All applications must be received by the Board no later than 5 p.m. EDT, June 28, 2002, in the Board's offices. Borrowers should submit an original application and four copies. Applications will not be accepted via facsimile machine transmission or electronic mail. No application will be accepted for review if it is not received by the Board on or before June 28, 2002.

(b) Applications shall contain the following:

(1) A completed Form ''Application for Air Carrier Guaranteed Loan';

(2) All loan documents that will be signed by the lender and the borrower, if the application is approved, including all terms and conditions of, and security or additional security (if any), to assure the borrower's performance under, the loan;

(3) A certification by the borrower that the borrower meets each of the requirements of the program as set forth in the Act, the regulations in this part, and any supplemental requirements issued by the Board;

(4) A certification by the lender that the lender meets each of the

requirements of the program as set forth in the Act, the regulations in this part, and any supplemental requirements issued by the Board, and that the lender will provide the loan under the terms outlined in the loan documents if the Board approves the requested guarantee;

(5) A statement that the borrower is not under bankruptcy protection or receivership when the application is submitted, unless the guarantee and the underlying financial obligation is to be part of a bankruptcy court-certified reorganization plan;

(6) Consolidated financial statements of the borrower for the previous five years that have been audited by an independent certified public accountant, including any associated notes, as well as any interim financial statements and associated notes for the current fiscal year;

(7) Copies of the financial evaluations and forecasts concerning the air carrier's air service operations that were prepared by or for the air carrier within the three months prior to September 11, 2001;

(8) The borrower's business plan on which the loan is based that includes the following:

(i) A description of how the loan fits within the borrower's business plan, the purposes for which the borrower will use the loan, and an analysis showing that the loan is prudently incurred. If loan funds are to be used to purchase an existing firm (or the substantial assets of an existing firm), the business plan of the combined entity shall contain a discussion of the way in which any required regulatory or judicial approvals will be obtained, including antitrust approval for any proposed acquisition;

(ii) A discussion of a complete cost accounting and a range of revenue, operating cost, and credit assumptions;

(iii) A discussion of the financing plan on which the loan is based, showing that the operational needs of the borrower will be met during the term of the plan;

(iv) An analysis demonstrating that, at the time of the application, there is a reasonable assurance that the borrower will be able to repay the loan according to its terms, and a complete description of the operational and financial assumptions on which this demonstration is based;

(v) A discussion of the borrower's five-year history and five-year projection for revenue, cash flow, average realized prices, and average realized operating costs and a demonstration that the borrower will be able to continue operations if the requested guarantee is approved; and

(vi) If appropriate, a description of a plan to restructure the borrower's obligations, contracts, and costs. In preparing this description, the borrower shall jointly develop, with its existing secured and unsecured creditors, employees, or vendors, an agreed-upon plan to restructure the borrower's obligations, contracts and costs and incorporate this into the business plan submitted;

(9) A description of the losses that the borrower incurred (or is incurring) as a result of the terrorist attacks on the United States that occurred on September 11, 2001, including losses due to the unavailability of credit on reasonable terms or a decrease in demand for the air carrier's services;

(10) An analysis that demonstrates that the issuance of the guaranteed loan is a necessary part of maintaining a safe, efficient, and viable commercial aviation system in the United States and that credit is not reasonably available at the time of the transaction;

(11) A description of all security (if any) for the loan, including, as applicable, current appraisals of real and personal property, copies of any appropriate environmental site assessments, and current personal and corporate financial statements of any guarantors for the same period as required for the borrower. Appraisals of real property shall be prepared by State licensed or certified appraisers, and be consistent with the ''Uniform Standards of Professional Appraisal Practice,'' promulgated by the Appraisal Standards Board of the Appraisal Foundation. Financial statements of guarantors shall be prepared by independent certified public accountants;

(12) If appropriate, a description of the Federal government's ability to participate, contingent on the financial success of the borrower, in the gains of the borrower or its security holders through the use of such instruments as warrants, stock options, common or preferred stock, or other appropriate equity instruments; and

(13) Any other information requested by the Board.

(c) The collections of information in this section and elsewhere in this part that are subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) have been approved by OMB and assigned control number 0348–0059. Under the Paperwork Reduction Act, 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.

**§ 1300.17 Application evaluation.**

(a) Eligibility screening. Applications will be reviewed to determine whether the lender and borrower are eligible, the information required under § 1300.16(b) is complete, and the proposed loan complies with applicable statutes and regulations. The Board may at any time reject an application that does not meet these requirements.

(b) Evaluation criteria. Applications that are determined to be eligible pursuant to paragraph (a) of this section shall be subject to a substantive review by the Board. In addition to the general standards for Board issuance of Federal credit instruments set forth in § 1300.10, the Board shall consider the following evaluation factors:

(1) Reasonable assurance that the borrower will be able to repay the loan by the date specified in the loan document, which shall be no later than seven years from the date on which the first disbursement of the loan is made;

(2) The adequacy of the proposed provisions to protect the Federal Government, including sufficiency of any security provided by the borrower and the percentage of guarantee requested;

(3) The ability of the lender to administer the loan in full compliance with the requisite standard of care. In making this determination, the Board will assess:

(i) The lender's level of regulatory capital, in the case of banking institutions, or net worth, in the case of other institutions;

(ii) Whether the lender possesses the ability to administer the loan, including its experience with loans to air carriers; and

(iii) Any other matter the Board deems material to its assessment of the lender; and

(4) The ability of the borrower to demonstrate, to the Board's satisfaction, one or more of the following criteria. The Board shall give preference to applications that satisfy one or more of these criteria, giving greater preference to those applications that meet the greatest number of these criteria, as follows:

(i) A demonstration that the air carrier has presented a plan demonstrating that its business plan is financially sound;

(ii) A demonstration of greater participation in the loan by non-Federal entities;

(iii) A demonstration of greater participation in the loan by private entities, as opposed to public non-Federal entities;

(iv) A demonstration that the proposed instruments would ensure that the Federal Government will, contingent

on the financial success of the air carrier, participate in the gains of the air carrier and its security holders;

(v) A demonstration of concessions by the air carrier's security holders, other creditors, or employees that will improve the financial condition of the air carrier in a manner that will enable it to repay the loan in accordance with its terms and provide commercial air services on a financially sound basis after repayment;

(vi) A demonstration that guaranteed loan proceeds will be used for a purpose other than the payment or refinancing of existing debt;

(vii) A demonstration that the proposed instruments contain financial structures that minimize the Federal government's risk and cost associated with making loan guarantees. Examples include, but are not limited to, requests for guarantees that contain the following:

(A) A maturity period that is less than the maximum permitted under the rules in this part;

(B) Pledges of collateral;

(C) Agreements by the borrower's parent or other entities to reimburse the Federal government for any payments that the Federal government may make under the guarantee;

(D) A grant to the Federal government of favorable priority in the event of bankruptcy reflecting other creditors' agreement to subordinate their debts as a condition of the loan guarantee;

(E) Limitation of the borrower's issuance of dividends and/or the borrower's payments to its parent or subsidiaries or related companies;

(F) Limitation of the borrower's ability to incur additional debt, and/or the borrower's ability to incur capital expenditures, beyond that set forth in the business and financial plans that the Borrower submitted with the application;

(G) A demonstration of reasonable liquidity;

(H) A demonstration of favorable debt ratios; and

(I) A demonstration that any proceeds raised from private sector financing subsequent to disbursement of the federally guaranteed loan be used to repay the federally guaranteed loan.

(c) No guarantee will be made if either the borrower or lender has an outstanding delinquent Federal debt, including tax liabilities, until:

(1) The delinquent debt has been paid in full;

(2) A negotiated repayment schedule is established; or

(3) Other arrangements, satisfactory to the agency responsible for collecting the debt are made.

(d) Decisions by the Board. The Board shall approve or deny applications received on or before June 28, 2002, in a timely manner as such applications are received. The Board may limit the amount of a loan guarantee made to initial applicants to ensure that sufficient funds remain available for subsequent applicants. The Board shall notify the borrower in writing of the approval or denial of an application. Approvals for loan guarantees shall be conditioned upon compliance with § 1300.18.

### § 1300.18 Issuance of the guarantee.

(a) The Board's decisions to approve any application for a guarantee under § 1300.17 is conditioned upon:

(1) The lender and borrower obtaining any required regulatory or judicial approvals;

(2) Evidence showing, to the Board's satisfaction, that the lender and borrower are legally authorized to enter into the loan under the terms and conditions submitted to the Board in the application;

(3) The Board's receipt of the loan documents and any related instruments, in form and substance satisfactory to the Board, and the guarantee, all properly executed by the lender, borrower, and any other required party other than the Board; and

(4) No material adverse change in the borrower's ability to repay the loan or any of the representations and warranties made in the application between the date of the Board's approval and the date the guarantee is to be issued.

(b) The Board may withdraw its approval of an application and rescind its offer of guarantee if the Board determines that the lender or the borrower cannot, or is unwilling to, provide adequate documentation and proof of compliance with paragraph (a) of this section within the time provided for in the offer.

(c) Only after receipt of all the documentation required by this section, will the Board sign and deliver the guarantee.

(d) A borrower receiving a loan guaranteed by the Board under this program shall pay an annual fee, in an amount and payable as determined by the Board. At the time that the guarantee is issued, the Board shall ensure that this annual fee will escalate for each year that the loan is outstanding and that such annual escalation reflects the borrower's potential ability to obtain credit in the private credit markets, in addition to any other factors the Board may deem appropriate.

### § 1300.19 Assignment or transfer of loans.

Neither the loan documents nor the guarantee of the Board, or any interest therein, may be modified, assigned, conveyed, sold or otherwise transferred by the lender, in whole or in part, without the prior written approval of the Board.

### § 1300.20 Lender responsibilities.

The lender shall have such obligations and duties to the Board as are set forth in the guarantee.

### § 1300.21 Guarantee.

The Board shall adopt a form of guarantee to be used by the Board under the program. Modifications to the provisions of the form of guarantee must be approved and adopted by the Board.

### § 1300.22 Termination of obligations.

The Board shall have such rights to terminate the guarantee as are set forth in the guarantee.

### § 1300.23 Participation in guaranteed loans.

(a) Subject to paragraph (b) of this section, a lender may distribute the risk of a portion of a loan guaranteed under the program by sale of participations therein if:

(1) Neither the loan note nor the guarantee is assigned, conveyed, sold, or transferred in whole or in part;

(2) The lender remains solely responsible for the administration of the loan; and

(3) The Board's ability to assert any and all defenses available to it under the guarantee and the law is not adversely affected.

(b) The following categories of entities may purchase participations in loans guaranteed under the program:

(1) Eligible lenders;

(2) Private investment funds and insurance companies that do not usually invest in commercial loans;

(3) Air Carrier company suppliers or customers, who are interested in participating as a means of commencing or solidifying the supplier or customer relationship with the borrower; or

(4) Any other entity approved by the Board on a case-by-case basis.

[FR Doc. 01–25648 Filed 10–11–01; 8:45 am]

BILLING CODE 3110–01–P

Federal Register

**Friday,**
**October 12, 2001**

## Part IV

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Parts 61, 63, 121, 135, and 142**
**Temporary Extension of Time Allowed for Certain Training and Testing; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 61, 63, 121, 135, and 142**

**[Docket No. FAA–2001–10797; SFAR 93]**

**RIN 2120–AH 51**

## Temporary Extension of Time Allowed for Certain Training and Testing

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action extends the time allowed to meet certain qualification requirements. The action is being taken because the affected persons may not have been able to timely fulfill requirements due to the circumstances in the wake of the September 11, 2001 terrorist attacks. The action will temporarily extend the time allowed to complete the requirements needed to remain qualified or to become qualified to perform certain functions.

**DATES:** This action is effective October 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Kent Stephens, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9518.

**SUPPLEMENTARY INFORMATION:**

### Availability of This Action

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov./search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search''.

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's Web page at *http://www.faa.gov/avr/armhome.htm* or the **Federal Register's** Web page at *http://www.access.gpo.gov.su_docs/aces/aces140html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this final rule.

### Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information advice about compliance with statutes and regulations within the FAA's jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAA's Web page at *http://www.faa.gov/avr/arm/sbrefa.htm* and send electronic inquiries to the following Internet address: *9-AWA-SBREFA@faa.gov.*

### Background

In the wake of the September 11, 2001, terrorist attacks against four U.S. commercial aircraft resulting in the tragic loss of human life at the World Trade Center, the Pentagon, and southwest Pennsylvania, the U.S. airline transportation system was severely hampered in conducting normal operations.

Part 121 and 135 check airmen (simulator), part 121 and 135 flight instructors (simulator), part 121 aircraft dispatchers and part 142 training center instructors are required to successfully complete certain qualification requirements, inflight line observation programs, or operating familiarization, as part of their periodic qualifications. The FAA realizes that due to the critical circumstances and disruption of airline operations, it may have been impossible for some of these persons who needed to complete the necessary requirements during the month of September to do so. Accordingly, the FAA is issuing this SFAR to allow those persons additional time to complete the inflight requirements.

This action will not adversely affect aviation safety. It will only allow certain individuals, who do not directly operate the aircraft, additional time to complete the inflight requirements. This one-time 60-day extension does not change the 12-calendar month requirement for aircraft dispatchers or the anniversary month for check airmen, flight instructors, or training center instructors. Therefore, if you were due to complete one of the specified requirements in September 2000 you will be due again to meet that requirement in September 2002, regardless of this extension for 2001.

Certain applicants for a certificate or rating under parts 61 must pass a required knowledge test within the 24-calendar-month period preceding the month the applicant completes the practical test, if a knowledge test is required. This action extends the validity of those aeronautical knowledge test results with an expiration date of September 30, 2001 to November 30, 2001.

### Justification for Immediate Adoption

Because the circumstances described herein warrant immediate action, the Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, the Administrator finds that the urgent need for this relief is good cause under 5 U.S.C. 553(d) for making this rule effective upon publication.

### International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extend practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that relate to this SFAR.

### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no new requirements for information collection associated with this SFAR.

### Regulatory Analyses

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. This rulemaking action is not a significant regulatory action under section 3(f) of Executive order 12866, Regulatory Planning and Review. The Office of Management and Budget ha not review it under that Order. It is not significant under the Department of Transportation (DOT) Regulatory Policies and Procedures. The FAA expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. 601–612, directs the FAA to fit regulatory requirements to the scale of the business, organizations,

and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a ''significant economic impact on a substantial number of small entities'' as defined in the Act. If we find that the action will have a significant impact, we must do a ''regulatory flexibility analysis.''

This final rule temporarily extends the time certain training and testing requirements must be completed. Its economic impact is minimal. Therefore, we certify that this action will not have a significant economic impact on a substantial number of small entities.

**Trade Impact Assessment**

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking and has determined that it will not have an effect on any trade-sensitive activity.

**Unfunded Mandates Assessment**

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

**Executive Order 13132, Federalism**

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

**Environmental Analysis**

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j) this rulemaking action qualifies for a categorical exclusion.

**Energy Impact**

The energy impact of this SFAR has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that this SFAR is not a major regulatory action under the provisions of the EPCA.

**List of Subjects**

*14 CFR Part 61*

Airmen, Reporting and recordkeeping requirements.

*14 CFR Part 63*

Airmen.

*14 CFR Part 121*

Airmen, Air carriers, Aviation safety.

*14 CFR Part 135*

Aircraft, Aviation safety.

*14 CFR Part 142*

Airmen, Schools, Educational facilities.

**The Amendment**

For the reasons stated in the preamble, the Federal Aviation Administration amends 14 CFR chapter I as follows:

## PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

## PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

## PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG AND SUPPLEMENTAL OPERATIONS

## PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

## PART 142—TRAINING CENTERS

1. The authority citation for part 61 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

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

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

3. The authority citation for part 121 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

4. The authority citation for part 135 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44705, 44709, 44711–44713, 44715–44717, 44722.

5. The authority citation for part 142 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113m, 40119, 44101, 44701–44703, 44705, 44707, 44709–44711, 45102–45103, 45301–45302.

6. Add Special Federal Aviation Regulation (SFAR) No. 93 to parts 61, 63, 121, 135, and 142 to read as follows:

**Special Federal Aviation Regulation No. 93—Temporary Extension of Time To Allow for Certain Training and Testing**

1. *Applicability.* This SFAR applies to all part 121 and 135 check airmen (simulator) and flight instructors (simulator), part 121 aircraft dispatchers, and part 142 training center instructors who were required to complete qualification requirements, an inflight line observation program, or operating familiarization in September 2001 to become qualified, or remain qualified, to perform their assigned duties. It also applies to persons who have satisfactorily accomplished the part 61 aeronautical knowledge test or the part 63 written test, either one of which has an expiration date of September 2001 for pilot, flight instructor, or flight engineer certification.

2. *Special Qualification Requirements.* The sections of 14 CFR that prescribes these requirements are sections 61.39(a)(1); 63.35(d); 121.411(f); 121.412(f); 121.463(a)(2); 121.463(c); 135.337(f); 135.338(f); 142.53(b)(2) and (b)(3).

3. *Extension of Time to Fulfill Certain Qualification Requirements.* Persons identified in paragraph 1 of this SFAR who had until the end of September 2001 to complete the specified qualification requirements in September 2001 will be deemed to have completed those requirements in September 2001

provided they satisfactorily complete those requirements by November 30, 2001. For those persons identified in paragraph 1, who are qualifying for the first time to be a check airmen (simulator), flight instructor (simulator), aircraft dispatcher, or training center instructor, they must fulfill the applicable qualification requirements before they may serve as a check airmen (simulator), flight instructor (simulator), aircraft dispatcher, or training center instructor, as appropriate. This extension does not change the 12-calendar-month requirement for aircraft dispatchers or the anniversary month for check airmen, flight instructors and training center instructors. Therefore, if you were due for qualification in September 2001 you will be due for qualification September 2002, regardless of this extension for 2001.

4. *Termination Date.* This Special Federal Aviation Regulation expires November 30, 2001.

Issued in Washington, DC, on October 5, 2001.

**Jane F. Garvey,**

*Administrator.*

[FR Doc. 01–25724 Filed 10–9–01; 4:16 am]

BILLING CODE 4910–13–M

Federal Register

Friday,
October 12, 2001

# Part V

# Department of the Interior

## Fish and Wildlife Service

**50 CFR Part 10**

**General Provisions; Revised List of Migratory Birds; Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 10**

**RIN 1018–AB72**

## General Provisions; Revised List of Migratory Birds

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We propose to revise the List of Migratory Birds by (1) adding 1 species that belongs to a family covered by the Canadian and Mexican treaties and that is now known to occur and breed regularly in the United States; (2) adding 2 species covered by the Japanese and Russian treaties that were mistakenly omitted from previous lists; (3) adding 1 species of regular occurrence in the United States that now belongs to a protected family as a result of a recent taxonomic revision; (4) adding 26 newly recognized species; (5) removing 1 species that is no longer considered valid; (6) changing the English (common) and scientific names of 78 species to conform with modern nomenclature; and (7) correcting an error in the common (English) name of 1 species. The net result of these proposed changes is the addition of 29 species (25 by name only), which will bring the total number of protected species to 861; only 4 of the 29 proposed additions are not currently covered by the existing list as former subspecies of a listed species.

**DATES:** Comments must be submitted on or before November 13, 2001.

**ADDRESSES:** Written comments may be mailed to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 634, Arlington, VA 22203. Alternatively, comments may be e-mailed, with Migratory Birds in the subject line, to John L. Trapp (*john_trapp@fws.gov*). The complete file for this rule will be available for public inspection during normal business hours, by appointment, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jon Andrew, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, telephone: (703) 358–1714.

**SUPPLEMENTARY INFORMATION:**

### What Statutory Authority Does the Service Have for This Rulemaking?

We have statutory authority and responsibility for enforcing the Migratory Bird Treaty Act (MBTA) in 16 U.S.C. 703–711, the Fish and Wildlife Improvement Act of 1978, 16 U.S.C. 712, and 16 U.S.C. 742a–j. The MBTA implements treaties between the United States and four neighboring countries for the protection of migratory birds, as follows:

(1) Canada: Convention for the Protection of Migratory Birds, August 16, 1916, United States-Great Britain (on behalf of Canada), 39 Stat. 1702, T.S. No. 628;

(2) Mexico: Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States-United Mexican States (=Mexico), 50 Stat. 1311, T.S. No. 912;

(3) Japan: Convention for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment, March 4, 1972, United States-Japan, 25 U.S.T., 3329 T.I.A.S. No. 7990; and

(4) Russia: Convention for the Conservation of Migratory Birds and Their Environment, United States-Union of Soviet Socialist Republics (=Russia), November 26, 1976, 92 Stat. 3110, T.I.A.S. 9073, 16 U.S.C. 703–712.

### What Is the Purpose of The Proposed Rulemaking?

Our purpose is to inform the public of the species protected by regulations designed to enforce the terms of the MBTA. These regulations are found in Title 50, Code of Federal Regulations (CFR), Parts 10, 20, and 21. We regulate most aspects of the taking, possession, transportation, sale, purchase, barter, exportation, and importation of migratory birds. An accurate and up-to-date list of species protected by the MBTA is essential for regulatory purposes.

### Why Is The Proposed Amendment to the List of Migratory Birds Necessary?

The proposed amendment is needed to (1) add a species that belongs to a protected family and that is now known to occur and breed regularly in the United States, (2) add two species covered by the Japanese and Russian treaties that were mistakenly omitted from previous lists, (3) add a species of regular occurrence in the United States that now belongs to a protected family as a result of recent taxonomic revisions, (4) add 26 newly recognized species by name, (5) remove a species that is no longer considered valid, (6) change the common (English) and scientific names of 78 species to conform with modern nomenclature, and (7) correct an error in the existing list. Twenty-nine species will be added by name, but in fact only four will be newly covered (the other 25 having previously been covered as subspecies of a listed species).

The List of Migratory Birds (50 CFR 10.13) was last revised on April 5, 1985 (50 FR 13710). In a proposed rule published May 9, 1995 (60 FR 24686), we suggested adding 20 species, removing 1 species, and revising the common (English) or scientific names of 23 previously listed species to conform with the most recent nomenclature. The proposed amendments were a response to five published supplements to the 6th (1983) edition of the American Ornithologists' Union's (AOU's) *Check-list of North American birds*. Knowing that additional amendments would be necessary following the anticipated publication of a 7th edition of the *Check-list*, we elected to delay publication of a final rule until after the appearance of the revised *Check-list*. The 1995 proposed rule generated just two public comments, from the American Ornithologists' Union and the Association of Scientific Collections. The comments of those organizations, mostly editorial in nature, are incorporated into this document, as appropriate.

Following publication of the 7th edition of the *Check-list* in July 1998, administrative workloads and staff shortages prevented work on a final rule until September 2000. Because of the 5-year delay since publication of the proposed rule, plus the many new changes necessitated by the 7th edition of the *Check-list*, we are issuing another proposed rule. This will provide the public with an opportunity to review and comment on all of the desired changes that have come to light since publication of the 1995 proposed rule.

### What Scientific Authorities Does the Service Use To Amend the List of Migratory Birds?

Although bird names (common and scientific) are relatively stable, there is still a need for standardized usage to avoid confusion in communications. We follow the *Check-list of North American birds* (AOU 1998), as amended (AOU 1999, 2000), on matters of taxonomy, nomenclature, and the sequence of species and other higher taxonomic categories (orders, families, subfamilies). For the few species that occur outside the geographic area covered by the *Check-list* (AOU 1998, 1999, and 2000), we follow Monroe and Sibley (1993). Citations for these authorities follow:

American Ornithologists' Union. 1998. *Check-list of North American birds*. 7th Edition. American Ornithologists' Union, Washington, DC. 829 pp.

American Ornithologists' Union. 1999. Notice from the Committee on Classification and Nomenclature. Auk 116: 282–283.
American Ornithologists' Union. 2000. Forty-second supplement to the American Ornithologists' Union *Check-list of North American birds.* Auk 117: 847–858.
Monroe, B. L., Jr., and C. G. Sibley. 1993. *A world checklist of birds.* Yale University Press, New Haven, Conn. 393 pp.

**What Criteria Does the Service Use To Identify Species Eligible for Protection by the MBTA?**

The treaties with Canada and Mexico indicate, by scientific names of families or groups or by the common (English) names of species or groups of species, which birds were intended to be covered. We generally do not include species of purely accidental or casual occurrence in the United States, even if they belong to one of the named families or groups. Similarly, we do not list species whose occurrence in the United States is strictly the result of intentional human introduction(s).

The Japanese and Russian treaties list individual species of birds that are covered. For 35 of these species, the scientific (genus or species) name currently recognized by scientific authorities (AOU 1998 and 1999, Monroe and Sibley 1993) differs from that which appears in the treaties. The following cross-reference provides a linkage between the scientific names used in this list and those that appear in the appendices to the Japanese and Russian treaties. The first name is the modern equivalent adopted here, and the second name is that which appears in one or another of the treaties. These changes do not revise the appendices to either the Japanese or the Russian treaty (indicated by J or R):

*Accipiter gularis* (Japanese Sparrowhawk) is listed as *Accipiter virgatus* (J & R);
*Actitis hypoleucos* (Common Sandpiper) is listed as *Tringa hypoleucos* (J & R);
*Aethia psittacula* (Parakeet Auklet) is listed as *Cyclorrhynchus psittacula* (R);
*Anas americana* (American Wigeon) is listed as *Mareca americana* (J);
*Anas clypeata* (Northern Shoveler) is listed as *Spatula clypeata* (J);
*Anas penelope* (Eurasian Wigeon) is listed as *Mareca penelope* (J);
*Anthus rubescens* (American Pipit) is listed as *Anthus spinoletta* (J & R);
*Branta bernicla* (Brant) incorporates *Branta nigricans* (R);
*Calidris alba* (Sanderling) is listed as *Crocethia alba* (J);
*Calidris subminuta* (Long-toed Stint) is listed as part of *Calidris minutilla* (J);
*Carduelis flammea* (Common Redpoll) is listed as *Acanthis flammea* (J);
*Carduelis hornemanni* (Hoary Redpoll) is included as part of *Carduelis flammea* (J), and is listed as *Acanthis hornemanni* (R);
*Charadrius morinellus* (Eurasian Dotterel) is listed as *Eudromias morinellus* (J & R);
*Chen canagica* (Emperor Goose) is listed as *Anser canagicus* (J), and *Philacte canagica* (R);
*Chen caerulescens* (Snow Goose) is listed as *Anser caerulescens* (J);
*Cygnus columbianus* (Tundra Swan) incorporates *Cygnus bewickii* (R);
*Egretta sacra* (Pacific Reef-Egret) is listed as *Demigretta sacra* (J);
*Fratercula cirrhata* (Tufted Puffin) is listed as *Lunda cirrhata* (J & R);
*Gallinago gallinago* (Common Snipe) is listed as *Capella gallinago* (R);
*Gallinago megala* (Swinhoe's Snipe) is listed as *Capella megala* (R);
*Gallinago stenura* (Pin-tailed Snipe) is listed as *Capella stenura* (R);
*Heterosceles brevipes* (Gray-tailed Tattler) is included as part of *Tringa incana* (J);
*Heterosceles incanus* (Wandering Tattler) is listed as *Tringa incana* (J);
*Luscinia calliope* (Siberian Rubythroat) is listed as *Erithacus calliope* (J);
*Melanitta fusca* (White-winged Scoter) incorporates *Melanitta deglandi* (J);
*Mergellus albellus* (Smew) is listed as *Mergus albellus* (J & R);
*Milvus migrans* (Black Kite) is listed as *Milvus korschun* (R);
*Motacilla lugens* (Black-backed Wagtail) is included as part of *Motacilla alba* (J & R);
*Numenius borealis* (Eskimo Curlew) is included as part of *Numenius minutus* (J);
*Phalaropus lobatus* (Red-necked Phalarope) is listed as *Lobipes lobatus* (R);
*Phoebastria albatrus* (Short-tailed Albatross) is listed as *Diomedea albatrus* (J & R);
*Phoebastria immutabilis* (Laysan Albatross) is listed as *Diomedea immutabilis* (J & R);
*Phoebastria nigripes* (Black-footed Albatross) is listed as *Diomedea nigripes* (J & R);
*Pterodroma hypoleuca* (Bonin Petrel) is listed as *Pterodroma leucoptera* (R);
*Tachycineta bicolor* (Tree Swallow) is listed as *Iridoprocne bicolor* (R); and
*Turdus obscurus* (Eyebrowed Thrush) is listed as *Turdus pallidus* (R)

**How Will the Changes Proposed Here Affect the List of Migratory Birds?**

The proposed amendments address a grand total of 109 species and would result in a net addition of 30 species to the List of Migratory Birds, bringing the species total to 862. Only four species, though, are not already covered. Under these amendments, as proposed:

(1) One species would be added because of recent evidence that it occurs regularly in the United States:

Tanager, Flame-colored, *Piranga bidentata*

(2) Two species would be added because they are included in the Appendix of the Russian treaty and in the Annex to the Japanese treaty, respectively; the omission of these species in previous lists is considered an oversight:

Duck, Spot-billed, *Anas poecilorhyncha;* and
Gull, Black-tailed, *Larus crassirostris*

(3) One species would be added because it occurs regularly in the United States, and recent taxonomic changes place it in a family (Sylviidae) covered by the Canadian and Mexican treaties:

Millerbird, *Acrocephalus familiaris*

(4) Twenty-six species would be added because of recent taxonomic changes; what was once considered a single species is now recognized by authorities as two or more species. These additions will not change the protective status of these taxa, only the names by which they are known:

Coot, Hawaiian, *Fulica alai* (formerly included in *Fulica americana,* American Coot);
Flicker, Gilded, *Colaptes chrysoides* (formerly included in *Colaptes auratus,* Northern Flicker);
Flycatcher, Cordilleran, *Empidonax occidentalis* (formerly included in *Empidonax difficilis,* Western Flycatcher);
Gnatcatcher, California, *Polioptila californica* (formerly included in *Polioptila melanura,* Black-tailed Gnatcatcher);
Golden-Plover, Pacific, *Pluvialis fulva* (formerly included in *Pluvialis dominica,* Lesser Golden-Plover);
Grebe, Clark's, *Aechmophorus clarkii* (formerly included in *Aechmophorus occidentalis,* Western Grebe);
Kamao, *Myadestes myadestinus* (formerly included in *Phaeornis obscurus,* Hawaiian Thrush);
Loon, Pacific, *Gavia pacifica* (formerly included in *Gavia arctica,* Arctic Loon);
Olomao, *Myadestes lanaiensis* (formerly included in *Phaeornis obscurus,* Hawaiian Thrush);
Oriole, Bullock's, *Icterus bullockii* (formerly included in *Icterus galbula,* Northern Oriole);
Petrel, White-necked, *Pterodroma cervicalis* (formerly included in *Pterodroma externa,* White-necked Petrel, currently known as Juan Fernandez Petrel);
Rosy-Finch, Black, *Leucosticte atrata* (formerly included in *Leucosticte arctoa,* Rosy Finch);
Rosy-Finch, Brown-capped, *Leucosticte australis* (formerly included in *Leucosticte arctoa,* Rosy Finch);
Rosy-Finch, Gray-crowned, *Leucosticte tephrocotis* (formerly included in *Leucosticte arctoa,* Rosy Finch);
Sapsucker, Red-naped, *Sphyrapicus nuchalis* (formerly included in *Sphyrapicus varius,* Yellow-bellied Sapsucker);
Scrub-Jay, Island, *Aphelocoma insularis* (formerly included in *Aphelocoma coerulescens,* Scrub Jay);
Scrub-Jay, Western, *Aphelocoma californica* (formerly included in *Aphelocoma coerulescens,* Scrub Jay);
Sparrow, Nelson's Sharp-tailed, *Ammodramus nelsoni* (formerly included in *Ammodramus caudacutus,* Sharp-tailed Sparrow);
Thrush, Bicknell's, *Catharus bicknelli* (formerly included in *Catharus minimus,* Gray-cheeked Thrush);

Titmouse, Juniper, *Baeolophus ridgwayi* (formerly included in *Parus inornatus,* Plain Titmouse);
Towhee, California, *Pipilo crissalis* (formerly included in *Pipilo fuscus,* Brown Towhee);
Towhee, Spotted, *Pipilo maculatus* (formerly included in *Pipilo erythrophthalmus,* Rufous-sided Towhee);
Vireo, Cassin's, *Vireo cassinii* (formerly included in *Vireo solitarius,* Solitary Vireo);
Vireo, Plumbeous, *Vireo plumbeus* (formerly included in *Vireo solitarius,* Solitary Vireo);
Vireo, Yellow-green, *Vireo flavoviridis* (formerly included in *Vireo olivaceus,* Red-eyed Vireo); and
Woodpecker, Arizona, *Picoides arizonae* (formerly included in *Picoides stricklandi,* Strickland's Woodpecker)

(5) One species would be removed because of uncertainty about its biological authenticity (but remain protected as the Black Rosy-Finch, Gray-crowned Rosy-Finch, and Brown-capped Rosy-Finch; see above):

Finch, Rosy, *Leucosticte arctoa*

(6) The common (English) or scientific (genus or species) names of 78 species will be revised to conform with the most recent nomenclature. These revisions will not change the protective status of any of these taxa, only the names by which they are known:

Albatross, Black-footed, *Diomedea nigripes,* will be changed to *Phoebastria nigripes;*
Albatross, Laysan, *Diomedea immutabilis,* will be changed to *Phoebastria immutabilis;*
Albatross, Short-tailed, *Diomedea albatrus,* will be changed to *Phoebastria albatrus;*
Albatross, Yellow-nosed, *Diomedea chlororhynchos,* will be changed to *Thalassarche chlororhynchos;*
Auklet, Parakeet, *Cyclorrhynchus psittacula,* will be changed to *Aethia psittacula;*
Barn-Owl, Common, will be changed to Owl, Barn;
Bittern, Chinese, will be changed to Bittern, Yellow;
Caracara, Crested, *Polyborus plancus,* will be changed to *Caracara cheriway* (this supersedes the proposed change to *Caracara plancus*);
Chickadee, Black-capped, *Parus atricapillus,* will be changed to *Poecile atricapilla;*
Chickadee, Boreal, *Parus hudsonicus,* will be changed to *Poecile hudsonica;*
Chickadee, Carolina, *Parus carolinensis,* will be changed to *Poecile carolinensis;*
Chickadee, Chestnut-backed, *Parus rufescens,* will be changed to *Poecile rufescens;*
Chickadee, Mexican, *Parus sclateri,* will be changed to *Poecile sclateri;*
Chickadee, Mountain, *Parus gambeli,* will be changed to *Poecile gambeli;*
Cormorant, Olivaceous, *Phalacrocorax olivaceus,* will be changed to Cormorant, Neotropic, *Phalacrocorax brasilianus;*
Crow, Mexican, will be changed to Crow, Tamaulipas;
Curlew, Least, will be changed to Curlew, Little;
Duck, Masked, *Oxyura dominica,* will be changed to *Nomonyx dominica;*
Egret, Great, *Casmerodius albus,* will be changed to *Ardea alba;*
Egret, Plumed, *Egretta intermedia,* will be changed to Egret, Intermediate, *Mesophoyx intermedia;*
Flycatcher, Olive-sided, *Contopus borealis,* will be changed to *Contopus cooperi;*
Flycatcher, Western, will be changed to Flycatcher, Pacific-slope;
Gannet, Northern, *Sula bassanus*, will be changed to *Morus bassanus*;
Golden-Plover, Lesser, will be changed to Golden-Plover, American;
Goose, Hawaiian, *Nesochen sandvicensis*, will be changed to *Branta sandvicensis*;
Goose, Ross', will be changed to Goose, Ross's;
Gull, Common Black-headed, will be changed to Gull, Black-headed;
Gull, Ross', will be changed to Gull, Ross's;
Hawk, Asiatic Sparrow, will be changed to Sparrowhawk, Japanese;
Hawk, Gray, *Buteo nitidus*, will be changed to *Asturina nitida*;
Hawk, Harris', will be changed to Hawk, Harris's;
Hawk-Owl, Northern, will be changed to Owl, Northern Hawk;
Heron, Green-backed, *Butorides striatus*, will be changed to Heron, Green, *Butorides virescens*;
Heron, Pacific Reef, *Egretta sacra*, will be changed to Reef-Egret, Pacific;
Hoopoe will be changed to Hoopoe, Eurasian;
Jay, Gray-breasted, will be changed to Jay, Mexican;
Jay, Scrub, will be changed to Scrub-Jay, Florida;
Kite, American Swallow-tailed, will be changed to Kite, Swallow-tailed;
Kite, Black-shouldered, *Elanus caeruleus*, will be changed to Kite, White-tailed, *Elanus leucurus*;
Magpie, Black-billed, *Pica pica*, will be changed to *Pica hudsonia*;
Murrelet, Xantus', will be changed to Murrelet, Xantus's;
Night-Heron, Japanese, *Nycticorax goisagi*, will be changed to *Gorsachius goisagi*
Night-Heron, Malay, *Nycticorax melanolophus*, will be changed to Night-Heron, Malayan, *Gorsachius melanolophus*;
Night-Heron, Yellow-crowned, *Nycticorax violaceus*, will be changed to *Nyctanassa violacea*;
Oldsquaw will be changed to Duck, Long-tailed;
Oriole, Black-cowled, will be changed to Oriole, Greater Antillean;
Oriole, Northern, will be changed to Oriole, Baltimore;
Petrel, White-necked, *Pterodroma externa*, will be changed to Petrel, Juan Fernandez;
Pipit, Water, *Anthus spinoletta*, will be changed to Pipit, American, *Anthus rubescens*;
Reed-Bunting, Common, will be changed to Bunting, Reed;
Reed-Bunting, Pallas', will be changed to Bunting, Pallas's;
Skua, Great, *Catharacta skua*, will be changed to *Stercorarius skua*;
Skua, South Polar, *Catharacta maccormicki*, will be changed to *Stercorarius maccormicki*;
Skylark, Eurasian, will be changed to Lark, Sky;
Sparrow, Five-striped, *Amphispiza quinquestriata*, will be changed to *Aimophila quinquestriata*;
Sparrow, Harris', will be changed to Sparrow, Harris's;
Sparrow, Sharp-tailed, *Ammodramus caudacutus*, will be changed to Sparrow, Saltmarsh Sharp-tailed;
Starling, Ashy, will be changed to Starling, White-cheeked;
Starling, Violet-backed, will be changed to Starling, Chestnut-cheeked;
Storm-Petrel, Sooty, will be changed to Storm-Petrel, Tristram's;
Swallow, Cave, *Hirundo fulva*, will be changed to *Petrochelidon fulva;*
Swallow, Cliff, *Hirundo pyrrhonota*, will be changed to *Petrochelidon pyrrhonota*;
Swift, Antillean Palm, will be changed to Palm-Swift, Antillean;
Tanager, Stripe-headed, *Spindalis zena*, will be changed to *Spindalis*, Puerto Rican, *Spindalis portoricensis*;
Teal, Falcated, will be changed to Duck, Falcated;
Thrush, Eye-browed, will be changed to Thrush, Eyebrowed;
Thrush, Hawaiian, *Phaeornis obscurus*, will be changed to Omao, *Myadestes obscurus*;
Thrush, Small Kauai, *Phaeornis palmeri*, will be changed to Puaiohi, *Myadestes palmeri*;
Tit, Siberian, *Parus cinctus*, will be changed to Chickadee, Gray-headed, *Poecile cincta*;
Titmouse, Bridled, *Parus wollweberi*, will be changed to *Baeolophus wollweberi*;
Titmouse, Plain, *Parus inornatus*, will be changed to Titmouse, Oak, *Baeolophus inornatus*;
Titmouse, Tufted, *Parus bicolor*, will be changed to *Baeolophus bicolor*;
Towhee, Brown, will be changed to Towhee, Canyon;
Towhee, Rufous-sided, will be changed to Towhee, Eastern;
Tree-Pipit, Olive, will be changed to Pipit, Olive-backed;
Vireo, Solitary, will be changed to Vireo, Blue-headed;
Warbler, Elfin Woods, will be changed to Warbler, Elfin-woods; and
Woodpecker, Lewis', will be changed to Woodpecker, Lewis's.

(7) The common (English) name of one species will be revised to correct a misspelling:

Redstart, Slaty-throated, will be changed to Redstart, Slate-throated.

For ease of comparison, the proposed changes are summarized in the following table:

| Remove | Add (alphabetically) |
|---|---|
| Albatross, Black-footed, *Diomedea nigripes* | Albatross, Black-footed, *Phoebastria nigripes.* |
| Albatross, Laysan, *Diomedea immutabilis* | Albatross, Laysan, *Phoebastria immutabilis.* |
| Albatross, Short-tailed, *Diomedea albatrus* | Albatross, Short-tailed, *Phoebastria albatrus.* |
| Albatross, Yellow-nosed, *Diomedea chlororhynchos* | Albatross, Yellow-nosed, *Thalassarche chlororhynchos.* |
| Auklet, Parakeet, *Cyclorrhynchus psittacula* | Auklet, Parakeet, *Aethia psittacula.* |
| Barn-Owl, Common, *Tyto alba*. | |
| Bittern, Chinese, *Ixobrychus sinensis* | Bittern, Yellow, *Ixobrychus sinensis.* |
| | Bunting, Pallas's, *Emberiza pallasi.* |
| | Bunting, Reed, *Emberiza schoeniculus.* |
| Caracara, Crested, *Polyborus plancus* | Caracara, Crested, *Caracara cheriway.* |
| Chickadee, Black-capped, *Parus atricapillus* | Chickadee, Black-capped, *Poecile atricapillus.* |
| Chickadee, Boreal, *Parus hudsonicus* | Chickadee, Boreal, *Poecile hudsonicus.* |
| Chickadee, Carolina, *Parus carolinensis* | Chickadee, Carolina, *Poecile carolinensis.* |
| Chickadee, Chestnut-backed, *Parus rufescens* | Chickadee, Chestnut-backed, *Poecile rufescens.* |
| | Chickadee, Gray-headed, *Poecile cincta.* |
| Chickadee, Mexican, *Parus sclateri* | Chickadee, Mexican, *Poecile sclateri.* |
| Chickadee, Mountain, *Parus gambeli* | Chickadee, Mountain, *Poecile gambeli.* |
| | Coot, Hawaiian, *Fulica alai.* |
| Cormorant, Olivaceous, *Phalacrocorax olivaceus* | Cormorant, Neotropic, *Phalacrocorax brasilianus.* |
| Crow, Mexican, *Corvus imparatus* | Crow, Tamaulipas, *Corvus imparatus.* |
| Curlew, Least, *Numenius minutus* | Curlew, Little, *Numenius minutus.* |
| | Duck, Falcated, *Anas falcata.* |
| | Duck, Long-tailed, *Clangula hyemalis.* |
| Duck, Masked, *Oxyura dominica* | Duck, Masked, *Nomonyx dominica.* |
| | Duck, Spot-billed, *Anas poecilorhyncha.* |
| Egret, Great, *Casmerodius albus* | Egret, Great, *Ardea alba.* |
| Egret, Plumed, *Egretta intermedia* | Egret, Intermediate, *Mesophoyx intermedia.* |
| Finch, Rosy, *Leucosticte arctoa*. | |
| | Flicker, Gilded, *Colaptes chrysoides.* |
| | Flycatcher, Cordilleran, *Empidonax occidentalis.* |
| Flycatcher, Olive-sided, *Contopus borealis* | Flycatcher, Olive-sided, *Contopus cooperi.* |
| Flycatcher, Western, *Empidonax difficilis* | Flycatcher, Pacific-slope, *Empidonax difficilis.* |
| Gannet, Northern, *Sula bassanus* | Gannet, Northern, *Morus bassanus.* |
| | Gnatcatcher, California, *Polioptila californica.* |
| Golden-Plover, Lesser, *Pluvialis dominica* | Golden-Plover, American, *Pluvialis dominica.* |
| | Golden-Plover, Pacific, *Pluvialis fulva.* |
| Goose, Hawaiian, *Nesochen sandvicensis* | Goose, Hawaiian, *Branta sandvicensis.* |
| Goose, Ross', *Chen rossii* | Goose, Ross's, *Chen rossii.* |
| | Grebe, Clark's, *Aechmophorus clarkii.* |
| Gull, Common Black-headed, *Larus ridibundus* | Gull, Black-headed, *Larus ridibundus.* |
| | Gull, Black-tailed, *Larus crassirostris.* |
| Gull, Ross', *Rhodostethia rosea* | Gull, Ross's, *Rhodostethia rosea.* |
| Hawk, Asiatic Sparrow, *Accipiter gularis*. | |
| Hawk, Gray, *Buteo nitidus* | Hawk, Gray, *Asturina nitida.* |
| Hawk, Harris', *Parabuteo unicinctus* | Hawk, Harris's, *Parabuteo unicinctus.* |
| Hawk-Owl, Northern, *Surnia ulula*. | |
| Heron, Green-backed, *Butorides striatus* | Heron, Green, *Butorides virescens.* |
| Heron, Pacific Reef, *Egretta sacra*. | |
| Hoopoe, *Upupa epops* | Hoopoe, Eurasian, *Upupa epops.* |
| Jay, Gray-breasted, *Aphelocoma ultramarina* | Jay, Mexican, *Aphelocoma ultramarina.* |
| Jay, Scrub, *Aphelocoma coerulescens*. | |
| | Kamao, *Myadestes myadestinus.* |
| Kite, American Swallow-tailed, *Elanoides forficatus* | Kite, Swallow-tailed, *Elanoides forficatus.* |
| Kite, Black-shouldered, *Elanus caeruleus* | Kite, White-tailed, *Elanus leucurus.* |
| | Lark, Sky, *Alauda arvensis.* |
| | Loon, Pacific, *Gavia pacifica.* |
| Magpie, Black-billed, *Pica pica* | Magpie, Black-billed, *Pica hudsonia.* |
| | Millerbird, *Acrocephalus familiaris.* |
| Murrelet, Xantus', *Synthliboramphus hypoleucus* | Murrelet, Xantus's, *Synthliboramphus hypoleucus.* |
| Night-Heron, Japanese, *Nycticorax goisagi* | Night-Heron, Japanese, *Gorsachius goisagi.* |
| Night-Heron, Malay, *Nycticorax melanolophus* | Night-Heron, Malayan, *Gorsachius melanolophus.* |
| Night-Heron, Yellow-crowned, *Nycticorax-violaceus* | Night-Heron, Yellow-crowned, *Nyctanassa violacea.* |
| Oldsquaw, *Clangula hyemalis*. | |
| | Olomao, *Myadestes lanaiensis.* |
| | Omao, *Myadestes obscurus.* |
| Oriole, Black-cowled, *Icterus dominicensis*. | |
| Oriole, Northern, *Icterus galbula* | Oriole, Baltimore, *Icterus galbula.* |
| | Oriole, Bullock's, *Icterus bullockii.* |
| | Oriole, Greater Antillean, *Icterus dominicensis.* |
| | Owl, Barn, *Tyto alba.* |
| | Owl, Northern Hawk, *Surnia ulula.* |
| | Palm-Swift, Antillean, *Tachornis phoenicobia.* |
| Petrel, White-necked, *Pterodroma externa* | Petrel, Juan Fernandez, *Pterodroma externa.* |
| | Petrel, White-necked, *Pterodroma cervicalis.* |

| Remove | Add (alphabetically) |
|---|---|
| Pipit, Water, *Anthus spinoletta* | Pipit, American, *Anthus rubescens.* |
| | Pipit, Olive-backed, *Anthus hodgsoni.* |
| | Puaiohi, *Myadestes palmeri.* |
| Redstart, Slaty-throated, *Myioborus miniatus* | Redstart, Slate-throated, *Myioborus miniatus.* |
| Reed-Bunting, Common, *Emberiza schoeniculus*. | |
| Reed-Bunting, Pallas', *Emberiza pallasi*. | |
| | Reef-Egret, Pacific, *Egretta sacra.* |
| | Rosy-Finch, Black, *Leucosticte atrata.* |
| | Rosy-Finch, Brown-capped, *Leucosticte australis.* |
| | Rosy-Finch, Gray-crowned, *Leucosticte tephrocotis.* |
| | Sapsucker, Red-naped, *Sphyrapicus nuchalis.* |
| | Scrub-Jay, Florida, *Aphelocoma coerulescens.* |
| | Scrub-Jay, Island, *Aphelocoma insularis.* |
| | Scrub-Jay, Western, *Aphelocoma californica.* |
| Skua, Great, *Catharacta skua* | Skua, Great, *Stercorarius skua.* |
| Skua, South Polar, *Catharacta maccormicki* | Skua, South Polar, *Stercorarius maccormicki.* |
| Skylark, Eurasian, *Alauda arvensis*. | |
| Sparrow, Five-striped, *Amphispiza quinquestriata* | Sparrow, Five-striped, *Aimophila quinquestriata.* |
| Sparrow, Harris', *Zonotrichia querula* | Sparrow, Harris's, *Zonotrichia querula.* |
| | Sparrow, Nelson's Sharp-tailed, *Ammodramus nelsoni.* |
| Sparrow, Sharp-tailed, *Ammodramus caudacutus* | Sparrow, Saltmarsh Sharp-tailed, *Ammodramus caudacutus.* |
| | Sparrowhawk, Japanese, *Accipiter gularis.* |
| | Spindalis, Puerto Rican, *Spindalis portoricensis.* |
| Starling, Ashy, *Sturnus cineraceus* | Starling, White-cheeked, *Sturnus cineraceus.* |
| Starling, Violet-backed, *Sturnus philippensis* | Starling, Chestnut-cheeked, *Sturnus philippensis.* |
| Storm-Petrel, Sooty, *Oceanodroma tristrami* | Storm-Petrel, Tristram's, *Oceanodroma tristrami.* |
| Swallow, Cave, *Hirundo fulva* | Swallow, Cave, *Petrochelidon fulva.* |
| Swallow, Cliff, *Hirundo pyrrhonota* | Swallow, Cliff, *Petrochelidon pyrrhonota.* |
| Swift, Antillean Palm, *Tachornis phoenicobia*. | |
| Tanager, Stripe-headed, *Spindalis zena*. | |
| | Tanager, Flame-colored, *Piranga bidentata.* |
| Teal, Falcated, *Anas falcata*. | |
| | Thrush, Bicknell's, *Catharus bicknelli.* |
| Thrush, Eye-browed, *Turdus obscurus* | Thrush, Eyebrowed, *Turdus obscurus.* |
| Thrush, Hawaiian, *Phaeornis obscurus*. | |
| Thrush, Small Kauai, *Phaeornis palmeri*. | |
| Tit, Siberian, *Parus cinctus*. | |
| Titmouse, Bridled, *Parus wollweberi* | Titmouse, Bridled, *Baeolophus wollweberi.* |
| | Titmouse, Juniper, *Baeolophus ridgwayi.* |
| Titmouse, Plain, *Parus inornatus* | Titmouse, Oak, *Baelophus inornatus.* |
| Titmouse, Tufted, *Parus bicolor* | Titmouse, Tufted, *Baelophus bicolor.* |
| | Towhee, California, *Pipilo crissalis.* |
| Towhee, Brown, *Pipilo fuscus* | Towhee, Canyon, *Pipilo fuscus.* |
| Towhee, Rufous-sided, *Pipilo erythrophthalmus* | Towhee, Eastern, *Pipilo erythrophthalmus.* |
| | Towhee, Spotted, *Pipilo maculatus.* |
| Tree-Pipit, Olive, *Anthus hodgsoni*. | |
| Vireo, Solitary, *Vireo solitarius* | Vireo, Blue-headed, *Vireo solitarius.* |
| | Vireo, Cassin's, *Vireo cassinii.* |
| | Vireo, Plumbeous, *Vireo plumbeus.* |
| | Vireo, Yellow-green, *Vireo flavoviridis.* |
| Warbler, Elfin Woods, *Dendroica angelae* | Warbler, Elfin-woods, *Dendroica angelae.* |
| | Woodpecker, Arizona, *Picoides arizonae.* |
| Woodpecker, Lewis', *Melanerpes lewis* | Woodpecker, Lewis's, *Melanerpes lewis.* |

**How Do the Changes Proposed Here Differ From Those Discussed in the 1995 Proposed Rule?**

The proposal to add Green Sandpiper (*Tringa ochropus*) and Oriental Turtle-Dove (*Streptopelia orientalis*) on the basis of recent distributional records is withdrawn pending additional evidence that they occur regularly in the United States. We propose adding the Flame-colored Tanager to the list on the basis of recent evidence that it occurs and breeds regularly in the United States, and because it belongs to a family (Thraupidae) covered by the Canadian and Mexican treaties.

As a result of taxonomic and nomenclatural changes incorporated into the 7th edition of the *Check-list of North American birds*, as amended (AOU 1998, 1999, and 2000), we propose adding 11 more newly recognized species (Arizona Woodpecker, Bicknell's Thrush, Bullock's Oriole, Cassin's Vireo, Gilded Flicker, Plumbeous Vireo, Island Scrub-Jay, Juniper Titmouse, Nelson's Sharp-tailed Sparrow, Spotted Towhee, and Western Scrub-Jay). These birds were formerly covered by the MBTA as subspecies of other species.

We also propose to revise the common (English) or scientific names of an additional 57 species previously listed in 50 CFR 10.13. The proposal to shorten the English name of the Common Pauraque (*Nyctidromus albicollis*) to Pauraque is no longer necessary due to a name change adopted by the AOU (2000).

**How Is the List of Migratory Birds Organized?**

The species are listed in two formats to suit the needs of different segments of the public: alphabetically in Section 10.13(c)(1) and taxonomically in Section

10.13(c)(2). In the alphabetical listing, species will be listed by common (English) name groups, with the scientific name of each species following the English name. This format, which is similar to that used in modern telephone directories, will be most useful to members of the lay public. In the taxonomic listing, species will be listed in phylogenetic sequence by scientific name, with the English name following the scientific name. To help clarify species relationships, we will also list the higher level taxonomic categories of Order, Family, and Subfamily. This format, which follows the sequence adopted by the AOU (1998), will be most useful to ornithologists and other scientists.

**What Species Are Not Protected by the Migratory Bird Treaty Act?**

The U.S. Fish and Wildlife Service and our predecessors have interpreted the MBTA and the underlying treaties as applying only to species of natural (but not accidental or casual) occurrence in North America or United States territory outside North America, and not to non-native species. One of the reasons for this is that the MBTA and the treaties are silent regarding the inclusion of non-native species and none of the four treaties expressly lists any non-native species. The treaties list only species, families, or groups of birds containing members native to the United States.

An example is the fact that the treaty with Canada, in elaborating on a family that is large enough to include species not native to North America, references only those species or groups of species that are native to North America. Also, this treaty does not list any of the many groups of insectivorous birds that are native only to areas outside North America; rather, all of the groups of this type that are listed occur in North America. The later treaties also are consistent with this interpretation. The treaties with Japan and Russia actually list the species covered (as opposed to listing families or groups) and all of the species exist naturally in United States territory.

This interpretation is also based on the overall purposes and goals of the treaties, which are to protect birds from extinction, protect their value as a food supply, and protect agricultural interests and forests from pests controlled by birds. If the MBTA were applied to protect introduced non-native birds it would likely not further any of these goals. Moreover, it would promote competition with native species for resources needed for survival.

A species is not protected by the MBTA if it falls into one or more of the following categories:

(1) Species intentionally or unintentionally introduced into the United States, even those that belong to a family or group covered by the Canadian or Mexican treaties. Examples include Mute Swan (*Cygnus olor*), a member of the family Anatidae, and Rock Dove (*Columba livia*), a member of the family Columbidae.

(2) Species that may have been sighted but are of purely accidental occurrence in the United States, unless either the Japanese or Russian treaty (both of which list birds by individual species) specifically includes it. Examples include Green Sandpiper and Japanese Turtle-Dove.

(3) Members of families or groups not specified by the Canadian or Mexican treaties. Examples include species in the families Phasianidae (grouse and turkeys), Odontophoridae (quail), Psittacidae (parrots), Todidae (todies), Meliphagidae (honeyeaters), Monarchidae (monarchs), Timaliidae (wrentits), and Coerebidae (bananaquits); and the subfamily Drepanidinae (Hawaiian honeycreepers).

**Does the Proposed Rule Comply With NEPA?**

This regulation is categorically excluded from further National Environmental Policy Act requirements under Part 516 of the Department Manual, Chapter 2, Appendix 1.10.

**Does the Proposed Rule Comply With the Endangered Species Act?**

Yes. A number of species appearing on the List of Migratory Birds are also designated as endangered or threatened under provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531, *et seq.*; see 50 CFR 17.11). No legal complications arise from the dual listing since the two lists are developed under separate authorities and for different purposes.

**What About Other Required Determinations?**

Because the proposed revision to the List of Migratory Birds will merely re-describe the birds already protected by Federal treaties with Canada, Japan, Mexico, and Russia, we determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This document has not been reviewed by the Office of Management and Budget under Executive Order 12866. In accordance with the criteria in Executive Order 12866, this proposed rule is not a significant regulatory action.

This proposed rule is not a major rule under the terms of 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

The proposed rule does not contain information collection requirements that must be approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

We find and certify, in compliance with the requirements of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1502 *et seq.*), that the proposed rule is not a significant regulatory action and will not impose a cost of $100 million or more in any given year on local or State government or private entities.

As noted above, the proposed rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 13132.

We have determined that these regulations will meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988 for civil justice reform.

This rule will not have significant takings implications for private property, as defined in Executive Order 12630. A takings implication assessment is not required because migratory birds are a Federally managed resource under laws implementing international treaties and are not personal property.

Regarding Government-to-Government relationships with Tribes (59 FR 22951) and Executive Order 13175, the proposed revisions to existing regulations are purely administrative in nature. They will have no effect on Federally recognized Tribes or Tribal trust resources.

**Public Comments Invited**

We invite interested parties to submit written comments, suggestions, or objections regarding this proposal to one of the locations identified in the **ADDRESSES** section above. Following review and consideration of the comments, we will issue a final rule on these proposed amendments to the List of Migratory Birds.

**Author**

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**List of Subjects in 50 CFR Part 10**

Exports, Fish, Imports, Law enforcement, Plants, Transportation, Wildlife.

**Regulation Promulgation**

For the reasons discussed in the preamble, we propose to amend title 50, chapter I, subchapter B, part 10 of the Code of Federal Regulations, as follows:

## PART 10—[PROPOSED]

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

**Authority:** 18 U.S.C. 42; 16 U.S.C. 703–712; 16 U.S.C. 668a–d; 19 U.S.C. 1202; 16 U.S.C. 1531–1543; 16 U.S.C. 1361–1384, 1401–1407; 16 U.S.C. 742a–742j–l; 16 U.S.C. 3371–3378.

2. Revise Section 10.13 to read as follows:

### § 10.13 List of Migratory Birds.

(a) *What is the legal authority for this list?* The Migratory Bird Treaty Act (MBTA) in 16 U.S.C. 703–711, the Fish and Wildlife Improvement Act of 1978, 16 U.S.C. 712, and 16 U.S.C. 742a–j. The MBTA implements treaties between the United States and four neighboring countries for the protection of migratory birds, as follows:

(1) Canada: Convention for the Protection of Migratory Birds, August 16, 1916, United States-Great Britain (on behalf of Canada), 39 Stat. 1702, T.S. No. 628;

(2) Mexico: Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States-United Mexican States (=Mexico), 50 Stat. 1311, T.S. No. 912;

(3) Japan: Convention for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment, March 4, 1972, United States-Japan, 25 U.S.T., 3329 T.I.A.S. No. 7990; and

(4) Russia: Convention for the Conservation of Migratory Birds and Their Environment, United States-Union of Soviet Socialist Republics (=Russia), November 26, 1976, 92 Stat. 3110, T.I.A.S. 9073, 16 U.S.C. 703, 712.

(b) *What is the purpose of this list?* The purpose is to inform the public of the species protected by regulations designed to enforce the terms of the MBTA. These regulations are found in Parts 10, 20, and 21 of this Chapter. We regulate most aspects of the taking, possession, transportation, sale, purchase, barter, exportation, and importation of migratory birds.

(c) *What species are protected as migratory birds?* The species are listed in two formats to suit the varying needs of the user: alphabetically in paragraph (c)(1) of this section and taxonomically in section (c)(2). Taxonomy and nomenclature follow the 7th (1998) edition of the American Ornithologists' Union's *Check-list of North American birds,* as amended. Species not listed here, and therefore not protected by the MBTA, include any species introduced in the United States or any of its territory by humans, regardless of whether the introduction was intentional or unintentional. Also generally not listed and thus not protected are species of purely accidental or casual occurrence in the United States or its territory unless it is a particular species specifically referenced in a treaty. A species of accidental or casual occurrence is one whose the normal range is far enough removed from the United States as to make regular occurrence unlikely or ''improbable'' (The A.O.U. Check-list of North American birds, 6th edition, 1983:xxv).

(1) *Alphabetical listing.* Species are listed alphabetically by common (English) name groups, with the scientific name of each species following the common name.

ACCENTOR, Siberian, *Prunella montanella*
ALBATROSS, Black-footed, *Phoebastria nigripes*
  Laysan, *Phoebastria immutabilis*
  Short-tailed, *Phoebastria albatrus*
  Yellow-nosed, *Thalassarche chlororhynchos*
ANHINGA, *Anhinga anhinga*
ANI, Groove-billed, *Crotophaga sulcirostris*
  Smooth-billed, *Crotophaga ani*
AUKLET, Cassin's, *Ptychoramphus aleuticus*
  Crested, *Aethia cristatella*
  Least, *Aethia pusilla*
  Parakeet, *Aethia psittacula*
  Rhinoceros, *Cerorhinca monocerata*
  Whiskered, *Aethia pygmaea*
AVOCET, American, *Recurvirostra americana*
BEARDLESS-TYRANNULET, *Northern, Camptostoma imberbe*
BECARD, Rose-throated, *Pachyramphus aglaiae*
BITTERN, American, *Botaurus lentiginosus*
  Least, *Ixobrychus exilis*
  Schrenk's, *Ixobrychus eurhythmus*
  Yellow, *Ixobrychus sinensis*
BLACK-HAWK, Common, *Buteogallus anthracinus*
BLACKBIRD, Brewer's, *Euphagus cyanocephalus*
  Red-winged, *Agelaius phoeniceus*
  Rusty, *Euphagus carolinus*
  Tawny-shouldered, *Agelaius humeralis*
  Tricolored, *Agelaius tricolor*
  Yellow-headed, *Xanthocephalus xanthocephalus*
  Yellow-shouldered, *Agelaius xanthomus*
BLUEBIRD, Eastern, *Sialia sialis*
  Mountain, *Sialia currucoides*
  Western, *Sialia mexicana*
BLUETHROAT, *Luscinia svecica*
BOBOLINK, *Dolichonyx oryzivorus*
BOOBY, Blue-footed, *Sula nebouxii*
  Brown, *Sula leucogaster*
  Masked, *Sula dactylatra*
  Red-footed, *Sula sula*
BRAMBLING, *Fringilla montifringilla*
BRANT, *Branta bernicla*
BUFFLEHEAD, *Bucephala albeola*
BULLFINCH, Eurasian, *Pyrrhula pyrrhula*
  Puerto Rican, *Loxigilla portoricensis*
BUNTING, Indigo, *Passerina cyanea*
  Lark, *Calamospiza melanocorys*
  Lazuli, *Passerina amoena*
  McKay's, *Plectrophenax hyperboreus*
  Painted, *Passerina ciris*
  Pallas's, *Emberiza pallasi*
  Reed, *Emberiza schoeniculus*
  Rustic, *Emberiza rustica*
  Snow, *Plectrophenax nivalis*
  Varied, *Passerina versicolor*
BUSHTIT, *Psaltriparus minimus*
CANVASBACK, *Aythya valisneria*
CARACARA, Crested, *Caracara cheriway*
CARDINAL, Northern, *Cardinalis cardinalis*
CARIB, Green-throated, *Eulampis holosericeus*
CATBIRD, Gray, *Dumetella carolinensis*
CHAT, Yellow-breasted, *Icteria virens*
CHICKADEE, Black-capped, *Poecile atricapilla*
  Boreal, *Poecile hudsonica*
  Carolina, *Poecile carolinensis*
  Chestnut-backed, *Poecile rufescens*
  Gray-headed, *Poecile cincta*
  Mexican, *Poecile sclateri*
  Mountain, *Poecile gambeli*
CHUCK-WILL'S-WIDOW, *Caprimulgus carolinensis*
CONDOR, California, *Gymnogyps californianus*
COOT, American, *Fulica americana*
  Caribbean, *Fulica caribaea*
  Eurasian, *Fulica atra*
  Hawaiian, *Fulica alai*
CORMORANT, Brandt's, *Phalacrocorax penicillatus*
  Double-crested, *Phalacrocorax auritus*
  Great, *Phalacrocorax carbo*
  Neotropic, *Phalacrocorax brasilianus*
  Pelagic, *Phalacrocorax pelagicus*
  Red-faced, *Phalacrocorax urile*
COWBIRD, Bronzed, *Molothrus aeneus*
  Brown-headed, *Molothrus ater*
  Shiny, *Molothrus bonariensis*
CRAKE, Corn, *Crex crex*
  Yellow-breasted, *Porzana flaviventer*
CRANE, Common, *Grus grus*
  Sandhill, *Grus canadensis*

Whooping, *Grus americana*
CREEPER, Brown, *Certhia americana*
CROSSBILL, Red, *Loxia curvirostra*
White-winged, *Loxia leucoptera*
CROW, American, *Corvus brachyrhynchos*
Fish, *Corvus ossifragus*
Hawaiian, *Corvus hawaiiensis*
Northwestern, *Corvus caurinus*
Tamaulipas, *Corvus imparatus*
White-necked, *Corvus leucognaphalus*
CUCKOO, Black-billed, *Coccyzus erythropthalmus*
Common, *Cuculus canorus*
Mangrove, *Coccyzus minor*
Oriental, *Cuculus saturatus*
Yellow-billed, *Coccyzus americanus*
CURLEW, Bristle-thighed, *Numenius tahitiensis*
Eskimo, *Numenius borealis*
Far Eastern, *Numenius madagascariensis*
Little, *Numenius minutus*
Long-billed, *Numenius americanus*
DICKCISSEL, *Spiza americana*
DIPPER, American, *Cinclus mexicanus*
DOTTEREL, Eurasian, *Charadrius morinellus*
DOVE, Inca, *Columbina inca*
Mourning, *Zenaida macroura*
White-tipped, *Leptotila verreauxi*
White-winged, *Zenaida asiatica*
Zenaida, *Zenaida aurita*
DOVEKIE, *Alle alle*
DOWITCHER, Long-billed, *Limnodromus scolopaceus*
Short-billed, *Limnodromus griseus*
DUCK, American Black, *Anas rubripes*
Falcated, *Anas falcata*
Harlequin, *Histrionicus histrionicus*
Hawaiian, *Anas wyvilliana*
Laysan, *Anas laysanensis*
Long-tailed, *Clangula hyemalis*
Masked, *Nomonyx dominica*
Mottled, *Anas fulvigula*
Ring-necked, *Aythya collaris*
Ruddy, *Oxyura jamaicensis*
Spot-billed, *Anas poecilorhyncha*
Tufted, *Aythya fuligula*
Wood, *Aix sponsa*
DUNLIN, *Calidris alpina*
EAGLE, Bald, *Haliaeetus leucocephalus*
Golden, *Aquila chrysaetos*
White-tailed, *Haliaeetus albicilla*
EGRET, Cattle, *Bubulcus ibis*
Chinese, *Egretta eulophotes*
Great, *Ardea alba*
Intermediate, *Mesophoyx intermedia*
Reddish, *Egretta rufescens*
Snowy, *Egretta thula*
EIDER, Common, *Somateria mollissima*
King, *Somateria spectabilis*
Spectacled, *Somateria fischeri*
Steller's, *Polysticta stelleri*
ELAENIA, Caribbean, *Elaenia martinica*
EMERALD, Puerto Rican, *Chlorostilbon maugaeus*
EUPHONIA, Antillean, *Euphonia musica*
FALCON, Aplomado, *Falco femoralis*
Peregrine, *Falco peregrinus*
Prairie, *Falco mexicanus*
FIELDFARE, *Turdus pilaris*
FINCH, Cassin's, *Carpodacus cassinii*
House, *Carpodacus mexicanus*
Purple, *Carpodacus purpureus*
FLAMINGO, Greater, *Phoenicopterus ruber*
FLICKER, Gilded, *Colaptes chrysoides*
Northern, *Colaptes auratus*
FLYCATCHER, Acadian, *Empidonax virescens*
Alder, *Empidonax alnorum*
Ash-throated, *Myiarchus cinerascens*
Brown-crested, *Myiarchus tyrannulus*
Buff-breasted, *Empidonax fulvifrons*
Cordilleran, *Empidonax occidentalis*
Dusky, *Empidonax oberholseri*
Dusky-capped, *Myiarchus tuberculifer*
Fork-tailed, *Tyrannus savana*
Gray, *Empidonax wrightii*
Gray-spotted, *Muscicapa griseisticta*
Great Crested, *Myiarchus crinitus*
Hammond's, *Empidonax hammondii*
Least, *Empidonax minimus*
Narcissus, *Muscicapa narcissina*
Nutting's, *Myiarchus nuttingi*
Olive-sided, *Contopus cooperi*
Pacific-slope, *Empidonax difficilis*
Puerto Rican, *Myiarchus antillarum*
Scissor-tailed, *Tyrannus forficatus*
Sulphur-bellied, *Myiodynastes luteiventris*
Vermilion, *Pyrocephalus rubinus*
Willow, *Empidonax traillii*
Yellow-bellied, *Empidonax flaviventris*
FRIGATEBIRD, Great, *Fregata minor*
Lesser, *Fregata ariel*
Magnificent, *Fregata magnificens*
FULMAR, Northern, *Fulmarus glacialis*
GADWALL, *Anas strepera*
GALLINULE, Purple, *Porphyrula martinica*
GANNET, Northern, *Morus bassanus*
GARGANEY, *Anas querquedula*
GNATCATCHER, Black-capped, *Polioptila nigriceps*
Black-tailed, *Polioptila melanura*
Blue-gray, *Polioptila caerulea*
California, *Polioptila californica*
GODWIT, Bar-tailed, *Limosa lapponica*
Black-tailed, *Limosa limosa*
Hudsonian, *Limosa haemastica*
Marbled, *Limosa fedoa*
GOLDEN-PLOVER, American, *Pluvialis dominica*
Pacific, *Pluvialis fulva*
GOLDENEYE, Barrow's, *Bucephala islandica*
Common, *Bucephala clangula*
GOLDFINCH, American, *Carduelis tristis*
Lawrence's, *Carduelis lawrencei*
Lesser, *Carduelis psaltria*
GOOSE, Barnacle, *Branta leucopsis*
Bean, *Anser fabalis*
Canada, *Branta canadensis*
Emperor, *Chen canagica*
Greater White-fronted, *Anser albifrons*
Hawaiian, *Branta sandvicensis*
Ross's, *Chen rossii*
Snow, *Chen caerulescens*
GOSHAWK, Northern, *Accipiter gentilis*
GRACKLE, Boat-tailed, *Quiscalus major*
Common, *Quiscalus quiscula*
Great-tailed, *Quiscalus mexicanus*
Greater Antillean, *Quiscalus niger*
GRASSHOPPER-WARBLER, Middendorff's, *Locustella ochotensis*
GRASSQUIT, Black-faced, *Tiaris bicolor*
Yellow-faced, *Tiaris olivacea*
GREBE, Clark's, *Aechmophorus clarkii*
Eared, *Podiceps nigricollis*
Horned, *Podiceps auritus*
Least, *Tachybaptus dominicus*
Pied-billed, *Podilymbus podiceps*
Red-necked, *Podiceps grisegena*
Western, *Aechmophorus occidentallis*
GREENFINCH, Oriental, *Carduelis sinica*
GREENSHANK, Common, *Tringa nebularia*
GROSBEAK, Black-headed, *Pheucticus melanocephalus*
Blue, *Guiraca caerulea*
Crimson-collared, *Rhodothraupis celaeno*
Evening, *Coccothraustes vespertinus*
Pine, *Pinicola enucleator*
Rose-breasted, *Pheucticus ludovicianus*
Yellow, *Pheucticus chrysopeplus*
GROUND-DOVE, Common, *Columbina passerina*
Ruddy, *Columbina talpacoti*
GUILLEMOT, Black, *Cepphus grylle*
Pigeon, *Cepphus columba*
GULL, Black-headed, *Larus ridibundus*
Black-tailed, *Larus crassirostris*
Bonaparte's, *Larus philadelphia*
California, *Larus californicus*
Franklin's, *Larus pipixcan*
Glaucous, *Larus hyperboreus*
Glaucous-winged, *Larus glaucescens*
Great Black-backed, *Larus marinus*
Heermann's, *Larus heermanni*
Herring, *Larus argentatus*
Iceland, *Larus glaucoides*
Ivory, *Pagophila eburnea*
Laughing, *Larus atricilla*
Lesser Black-headed, *Larus fuscus*
Little, *Larus minutus*
Mew, *Larus canus*
Ring-billed, *Larus delawarensis*
Ross's, *Rhodostethia rosea*
Sabine's, *Xema sabini*
Slaty-backed, *Larus schistisagus*
Thayer's, *Larus thayeri*
Western, *Larus occidentalis*
Yellow-footed, *Larus livens*
GYRFALCON, *Falco rusticolus*
HARRIER, Northern, *Circus cyaneus*
HAWFINCH, *Coccothraustes coccothraustes*
HAWK, Broad-winged, *Buteo platypterus*

Cooper's, *Accipiter cooperii*
Ferruginous, *Buteo regalis*
Gray, *Asturina nitidus*
Harris's, *Parabuteo unicinctus*
Hawaiian, *Buteo solitarius*
Red-shouldered, *Buteo lineatus*
Red-tailed, *Buteo jamaicensis*
Rough-legged, *Buteo lagopus*
Sharp-shinned, *Accipiter striatus*
Short-tailed, *Buteo brachyurus*
Swainson's, *Buteo swainsoni*
White-tailed, *Buteo albicaudatus*
Zone-tailed, *Buteo albonotatus*
HAWK-CUCKOO, Hodgson's, *Cuculus fugax*
HERON, Great Blue, *Ardea herodias*
Green, *Butorides virescens*
Little Blue, *Egretta caerulea*
Tricolored, *Egretta tricolor*
HOOPOE, Eurasian, *Upupa epops*
HOUSE-MARTIN, Common, *Delichon urbica*
HUMMINGBIRD, Allen's, *Selasphorus sasin*
Anna's, *Calypte anna*
Antillean Crested, *Orthorhynchus cristatus*
Berylline, *Amazilia beryllina*
Black-chinned, *Archilochus alexandri*
Blue-throated, *Lampornis clemenciae*
Broad-billed, *Cynanthus latirostris*
Broad-tailed, *Selasphorus platycercus*
Buff-bellied, *Amazilia yucatanensis*
Calliope, *Stellula calliope*
Costa's, *Calypte costae*
Lucifer, *Calothorax lucifer*
Magnificent, *Eugenes fulgens*
Ruby-throated, *Archilochus colubris*
Rufous, *Selasphorus rufus*
Violet-crowned, *Amazilia violiceps*
White-eared, *Hylocharis leucotis*
IBIS, Glossy, *Plegadis falcinellus*
Scarlet, *Eudocimus ruber*
White, *Eudocimus albus*
White-faced, *Plegadis chihi*
JABIRU, *Jabiru mycteria*
JACANA, Northern, *Jacana spinosa*
JAEGER, Long-tailed, *Stercorarius longicaudus*
Parasitic, *Stercorarius parasiticus*
Pomarine, *Stercorarius pomarinus*
JAY, Blue, *Cyanocitta cristata*
Brown, *Cyanocorax morio*
Gray, *Perisoreus canadensis*
Green, *Cyanocorax yncas*
Mexican, *Aphelocoma ultramarina*
Pinyon, *Gymnorhinus cyanocephalus*
Steller's, *Cyanocitta stelleri*
JUNCO, Dark-eyed, *Junco hyemalis*
Yellow-eyed, *Junco phaeonotus*
KAMAO, *Myadestes myadestinus*
KESTREL, American, *Falco sparverius*
Eurasian, *Falco tinnunculus*
KILLDEER, *Charadrius vociferus*
KINGBIRD, Cassin's, *Tyrannus vociferans*
Couch's, *Tyrannus couchii*
Eastern, *Tyrannus tyrannus*
Gray, *Tyrannus dominicensis*
Loggerhead, *Tyrannus caudifasciatus*
Thick-billed, *Tyrannus crassirostris*
Tropical, *Tyrannus melancholicus*
Western, *Tyrannus verticalis*
KINGFISHER, Belted, *Ceryle alcyon*
Green, *Chloroceryle americana*
Ringed, *Ceryle torquata*
KINGLET, Golden-crowned, *Regulus satrapa*
Ruby-crowned, *Regulus calendula*
KISKADEE, Great, *Pitangus sulphuratus*
KITE, Black, *Milvus migrans*
Hook-billed, *Chondrohierax uncinatus*
Mississippi, *Ictinia mississippiensis*
Snail, *Rostrhamus sociabilis*
Swallow-tailed, *Elanoides forficatus*
White-tailed, *Elanus leucurus*
KITTIWAKE, Black-legged, *Rissa tridactyla*
Red-legged, *Rissa brevirostris*
KNOT, Great, *Calidris tenuirostris*
Red, *Calidris canutus*
LAPWING, Northern, *Vanellus vanellus*
LARK, Horned, *Eremophila alpestris*
Sky, *Alauda arvensis*
LIMPKIN, *Aramus guarauna*
LIZARD-CUCKOO, Puerto Rican, *Saurothera vieilloti*
LONGSPUR, Chestnut-collared, *Calcarius ornatus*
Lapland, *Calcarius lapponicus*
McCown's, *Calcarius mccownii*
Smith's, *Calcarius pictus*
LOON, Arctic, *Gavia arctica*
Common, *Gavia immer*
Pacific, *Gavia pacifica*
Red-throated, *Gavia stellata*
Yellow-billed, *Gavia adamsii*
MAGPIE, Black-billed, *Pica hudsonia*
Yellow-billed, *Pica nuttalli*
MALLARD, *Anas platyrhynchos*
MANGO, Antillean, *Anthracothorax dominicus*
Green, *Anthracothorax viridis*
MARTIN, Caribbean, *Progne dominicensis*
Cuban, *Progne cryptoleuca*
Gray-breasted, *Progne chalybea*
Purple, *Progne subis*
MEADOWLARK, Eastern, *Sturnella magna*
Western, *Sturnella neglecta*
MERGANSER, Common, *Mergus merganser*
Hooded, *Lophodytes cucullatus*
Red-breasted, *Mergus serrator*
MERLIN, *Falco columbarius*
MILLERBIRD, *Acrocephalus familiaris*
MOCKINGBIRD, Northern, *Mimus polyglottos*
MOORHEN, Common, *Gallinula chloropus*
MURRE, Common, *Uria aalge*
Thick-billed, *Uria lomvia*
MURRELET, Ancient, *Synthliboramphus antiquus*
Craveri's, *Synthliboramphus craveri*
Kittlitz's, *Brachyramphus brevirostris*
Marbled, *Brachyramphus marmoratus*
Xantus's, *Synthliboramphus hypoleucus*
NEEDLETAIL, White-throated, *Hirundapus caudacutus*
NIGHT-HERON, Black-crowned, *Nycticorax nycticorax*
Japanese, *Gorsachius goisagi*
Malayan, *Gorsachius melanolophus*
Yellow-crowned, *Nyctanassa violacea*
NIGHTHAWK, Antillean, *Chordeiles gundlachii*
Common, *Chordeiles minor*
Lesser, *Chordeiles acutipennis*
NIGHTJAR, Buff-collared, *Caprimulgus ridgwayi*
Puerto Rican, *Caprimulgus noctitherus*
Jungle, *Caprimulgus indicus*
NODDY, Black, *Anous minutus*
Blue-gray, *Procelsterna cerulea*
Brown, *Anous stolidus*
Lesser, *Anous tenuirostris*
NUTCRACKER, Clark's, *Nucifraga columbiana*
NUTHATCH, Brown-headed, *Sitta pusilla*
Pygmy, *Sitta pygmaea*
Red-breasted, *Sitta canadensis*
White-breasted, *Sitta carolinensis*
OLOMAO, *Myadestes lanaiensis*
OMAO, *Myadestes obscurus*
ORIOLE, Altamira, *Icterus gularis*
Audubon's, *Icterus graduacauda*
Baltimore, *Icterus galbula*
Black-vented, *Icterus wagleri*
Bullock's, *Icterus bullockii*
Greater Antillean, *Icterus dominicensis*
Hooded, *Icterus cucullatus*
Orchard, *Icterus spurius*
Scott's, *Icterus parisorum*
Streak-backed, *Icterus pustulatus*
OSPREY, *Pandion haliaetus*
OVENBIRD, *Seiurus aurocapillus*
OWL, Barn, *Tyto alba*
Barred, *Strix varia*
Boreal, *Aegolius funereus*
Burrowing, *Athene cunicularia*
Elf, *Micrathene whitneyi*
Flammulated, *Otus flammeolus*
Great Gray, *Strix nebulosa*
Great Horned, *Bubo virginianus*
Long-eared, *Asio otus*
Northern Hawk, *Surnia ulula*
Northern Saw-whet, *Aegolius acadicus*
Short-eared, *Asio flammeus*
Snowy, *Nyctea scandiaca*
Spotted, *Strix occidentalis*
OYSTERCATCHER, American, *Haematopus palliatus*
Black, *Haematopus bachmani*
PALM-SWIFT, Antillean, *Tachornis phoenicobia*
PARULA, Northern, *Parula americana*
Tropical, *Parula pitiayumi*
PAURAQUE, Common, *Nyctidromus albicollis*

PELICAN, American White, *Pelecanus erythrorhynchos*
Brown, *Pelecanus occidentalis*
PETREL, Black-capped, *Pterodroma hasitata*
Bonin, *Pterodroma hypoleuca*
Bulwer's, *Bulweria bulwerii*
Cook's, *Pterodroma cookii*
Dark-rumped, *Pterodroma phaeopygia*
Herald, *Pterodroma arminjoniana*
Juan Fernandez, *Pterodroma externa*
Kermadec, *Pterodroma neglecta*
Mottled, *Pterodroma inexpectata*
Murphy's, *Pterodroma ultima*
White-necked, *Pterodroma cervicalis*
PEWEE, Greater, *Contopus pertinax*
Lesser Antillean, *Contopus latirostris*
PHAINOPEPLA, *Phainopepla nitens*
PHALAROPE, Red, *Phalaropus fulicaria*
Red-necked, *Phalaropus lobatus*
Wilson's, *Phalaropus tricolor*
PHOEBE, Black, *Sayornis nigricans*
Eastern, *Sayornis phoebe*
Say's, *Sayornis saya*
PIGEON, Band-tailed, *Columba fasciata*
Plain, *Columba inornata*
Red-billed, *Columba flavirostris*
Scaly-naped, *Columba squamosa*
White-crowned, *Columba leucocephala*
PINTAIL, Northern, *Anas acuta*
White-cheeked, *Anas bahamensis*
PIPIT, American, *Anthus rubescens*
Olive-backed, *Anthus hodgsoni*
Pechora, *Anthus gustavi*
Red-throated, *Anthus cervinus*
Sprague's, *Anthus spragueii*
PLOVER, Black-bellied, *Pluvialis squatarola*
Common Ringed, *Charadrius hiaticula*
Greater Sand, *Charadrius leschenaultii*
Little Ringed, *Charadrius dubius*
Mongolian, *Charadrius mongolus*
Mountain, *Charadrius montanus*
Piping, *Charadrius melodus*
Semipalmated, *Charadrius semipalmatus*
Snowy, *Charadrius alexandrinus*
Wilson's, *Charadrius wilsonia*
POCHARD, Baer's, *Aythya baeri*
Common, *Aythya ferina*
POORWILL, Common, *Phalaenoptilus nuttallii*
PUAIOHI, *Myadestes palmeri*
PUFFIN, Atlantic, *Fratercula arctica*
Horned, *Fratercula corniculata*
Tufted, *Fratercula cirrhata*
PYGMY-OWL, Ferruginous, *Glaucidium brasilianum*
Northern, *Glaucidium gnoma*
PYRRHULOXIA, *Cardinalis sinuatus*
QUAIL-DOVE, Bridled, *Geotrygon mystacea*
Key West, *Geotrygon chrysia*
Ruddy, *Geotrygon montana*
RAIL, Black, *Laterallus jamaicensis*
Clapper, *Rallus longirostris*
King, *Rallus elegans*
Virginia, *Rallus limicola*
Yellow, *Coturnicops noveboracensis*
RAVEN, Chihuahuan, *Corvus cryptoleucus*
Common, *Corvus corax*
RAZORBILL, *Alca torda*
REDHEAD, *Aythya americana*
REDPOLL, Common, *Carduelis flammea*
Hoary, *Carduelis hornemanni*
REDSHANK, Spotted, *Tringa erythropus*
REDSTART, American, *Setophaga ruticilla*
Painted, *Myioborus pictus*
Slate-throated, *Myioborus miniatus*
REEF-EGRET, Pacific, *Egretta sacra*
ROADRUNNER, Greater, *Geococcyx californianus*
ROBIN, American, *Turdus migratorius*
Clay-colored, *Turdus grayi*
Rufous-backed, *Turdus rufopalliatus*
ROSEFINCH, Common, *Carpodacus erythrinus*
ROSY-FINCH, Black, *Leucosticte atrata*
Brown-capped, *Leucosticte australis*
Gray-crowned, *Leucosticte tephrocotis*
RUBYTHROAT, Siberian, *Luscinia calliope*
RUFF, *Philomachus pugnax*
SANDERLING, *Calidris alba*
SANDPIPER, Baird's, *Calidris bairdii*
Broad-billed, *Limicola falcinellus*
Buff-breasted, *Tryngites subruficollis*
Common, *Actitis hypoleucos*
Curlew, *Calidris ferruginea*
Least, *Calidris minutilla*
Marsh, *Tringa stagnatilis*
Pectoral, *Calidris melanotos*
Purple, *Calidris maritima*
Rock, *Calidris ptilocnemis*
Semipalmated, *Calidris pusilla*
Sharp-tailed, *Calidris acuminata*
Solitary, *Tringa solitaria*
Spoonbill, *Eurynorhynchus pygmeus*
Spotted, *Actitis macularia*
Stilt, *Calidris himantopus*
Terek, *Xenus cinereus*
Upland, *Bartramia longicauda*
Western, *Calidris mauri*
White-rumped, *Calidris fuscicollis*
Wood, *Tringa glareola*
SAPSUCKER, Red-breasted, *Sphyrapicus ruber*
Red-naped, *Sphyrapicus nuchalis*
Williamson's, *Sphyrapicus thyroideus*
Yellow-bellied, *Sphyrapicus varius*
SCAUP, Greater, *Aythya marila*
Lesser, *Aythya affinis*
SCOTER, Black, *Melanitta nigra*
Surf, *Melanitta perspicillata*
White-winged, *Melanitta fusca*
SCREECH-OWL, Eastern, *Otus asio*
Puerto Rican, *Otus nudipes*
Western, *Otus kennicottii*
Whiskered, *Otus trichopsis*
SCRUB-JAY, Florida, *Aphelocoma coerulescens*
Island, *Aphelocoma insularis*
Western, *Aphelocoma californica*
SEA-EAGLE, Steller's, *Haliaeetus pelagicus*
SEEDEATER, White-collared, *Sporophila torqueola*
SHEARWATER, Audubon's, *Puffinus lherminieri*
Black-vented, *Puffinus opisthomelas*
Buller's, *Puffinus bulleri*
Christmas, *Puffinus nativitatis*
Cory's, *Calonectris diomedea*
Flesh-footed, *Puffinus carneipes*
Greater, *Puffinus gravis*
Little, *Puffinus assimilis*
Manx, *Puffinus puffinus*
Pink-footed, *Puffinus creatopus*
Short-tailed, *Puffinus tenuirostris*
Sooty, *Puffinus griseus*
Townsend's, *Puffinus auricularis*
Wedge-tailed, *Puffinus pacificus*
SHOVELER, Northern, *Anas clypeata*
SHRIKE, Loggerhead, *Lanius ludovicianus*
Northern, *Lanius excubitor*
SISKIN, Pine, *Carduelis pinus*
SKIMMER, Black, *Rhynchops niger*
SKUA, Great, *Stercorarius skua*
South Polar, *Stercorarius maccormicki*
SMEW, *Mergellus albellus*
SNIPE, Common, *Gallinago gallinago*
Jack, *Lymnocryptes minimus*
Pin-tailed, *Gallinago stenura*
Swinhoe's, *Gallinago megala*
SOLITAIRE, Townsend's, *Myadestes townsendi*
SORA, *Porzana carolina*
SPARROW, American Tree, *Spizella arborea*
Bachman's, *Aimophila aestivalis*
Baird's, *Ammodramus bairdii*
Black-chinned, *Spizella atrogularis*
Black-throated, *Amphispiza bilineata*
Botteri's, *Aimophila botterii*
Brewer's, *Spizella breweri*
Cassin's, *Aimophila cassinii*
Chipping, *Spizella passerina*
Clay-colored, *Spizella pallida*
Field, *Spizella pusilla*
Five-striped, *Aimophila quinquestriata*
Fox, *Passerella iliaca*
Golden-crowned, *Zonotrichia atricapilla*
Grasshopper, *Ammodramus savannarum*
Harris's, *Zonotrichia querula*
Henslow's, *Ammodramus henslowii*
Lark, *Chondestes grammacus*
Le Conte's, *Ammodramus leconteii*
Lincoln's, *Melospiza lincolnii*
Nelson's Sharp-tailed, *Ammodramus nelsoni*
Olive, *Arremonops rufivirgatus*
Rufous-crowned, *Aimophila ruficeps*
Rufous-winged, *Aimophila carpalis*
Sage, *Amphispiza belli*
Savannah, *Passerculus sandwichensis*
Seaside, *Ammodramus maritimus*
Saltmarsh Sharp-tailed,

*Ammodramus caudacutus*
Song, *Melospiza melodia*
Swamp, *Melospiza georgiana*
Vesper, *Pooecetes gramineus*
White-crowned, *Zonotrichia leucophrys*
White-throated, *Zonotrichia albicollis*
Worthen's, *Spizella wortheni*
SPARROWHAWK, Japanese, *Accipiter gularis*
SPINDALIS, Puerto Rican, *Spindalis portoricensis*
SPOONBILL, Roseate, *Ajaia ajaja*
STARLING, Chestnut-cheeked, *Sturnus philippensis*
White-cheeked, *Sturnus cineraceus*
STARTHROAT, Plain-capped, *Heliomaster constantii*
STILT, Black-necked, *Himantopus mexicanus*
STINT, Little, *Calidris minuta*
Long-toed, *Calidris subminuta*
Red-necked, *Calidris ruficollis*
Temminck's, *Calidris temminckii*
STORK, Wood, *Mycteria americana*
STORM-PETREL, Ashy, *Oceanodroma homochroa*
Band-rumped, *Oceanodroma castro*
Black, *Oceanodroma melania*
Fork-tailed, *Oceanodroma furcata*
Leach's, *Oceanodroma leucorhoa*
Least, *Oceanodroma microsoma*
Tristram's, *Oceanodroma tristrami*
Wedge-rumped, *Oceanodroma tethys*
White-faced, *Pelagodroma marina*
Wilson's, *Oceanites oceanicus*
SURFBIRD, *Aphriza virgata*
SWALLOW, Bahama, *Tachycineta cyaneoviridis*
Bank, *Riparia riparia*
Barn, *Hirundo rustica*
Cave, *Petrochelidon fulva*
Cliff, *Petrochelidon pyrrhonota*
Northern Rough-winged, *Stelgidopteryx serripennis*
Tree, *Tachycineta bicolor*
Violet-green, *Tachycineta thalassina*
SWAN, Trumpeter, *Cygnus buccinator*
Tundra, *Cygnus columbianus*
Whooper, *Cygnus cygnus*
SWIFT, Black, *Crypseloides niger*
Chimney, *Chaetura pelagica*
Common, *Apus apus*
Fork-tailed, *Apus pacificus*
Vaux's, *Chaetura vauxi*
White-collared, *Streptoprocne zonaris*
White-throated, *Aeronautes saxatalis*
TANAGER, Flame-colored, *Piranga bidentata*
Hepatic, *Piranga flava*
Puerto Rican, *Neospingus speculiferus*
Scarlet, *Piranga olivacea*
Summer, *Piranga rubra*
Western, *Piranga ludoviciana*
TATTLER, Gray-tailed, *Heteroscelus brevipes*
Wandering, *Heteroscelus incanus*
TEAL, Baikal, *Anas formosa*
Blue-winged, *Anas discors*
Cinnamon, *Anas cyanoptera*
Green-winged, *Anas crecca*
TERN, Aleutian, *Sterna aleutica*
Arctic, *Sterna paradisaea*
Black, *Chlidonias niger*
Black-naped, *Sterna sumatrana*
Bridled, *Sterna anaethetus*
Caspian, *Sterna caspia*
Common, *Sterna hirundo*
Elegant, *Sterna elegans*
Forster's, *Sterna forsteri*
Gray-backed, *Sterna lunata*
Gull-billed, *Sterna nilotica*
Least, *Sterna antillarum*
Little, *Sterna albifrons*
Roseate, *Sterna dougallii*
Royal, *Sterna maxima*
Sandwich, *Sterna sandvicensis*
Sooty, *Sterna fuscata*
White, *Gygis alba*
White-winged, *Chlidonias leucopterus*
THRASHER, Bendire's, *Toxostoma bendirei*
Brown, *Toxostoma rufum*
California, *Toxostoma redivivum*
Crissal, *Toxostoma crissale*
Curve-billed, *Toxostoma curvirostre*
Le Conte's, *Toxostoma lecontei*
Long-billed, *Toxostoma longirostre*
Pearly-eyed, *Margarops fuscatus*
Sage, *Oreoscoptes montanus*
THRUSH, Aztec, *Ridgwayia pinicola*
Bicknell's, *Catharus bicknelli*
Blue Rock, *Monticola solitarius*
Dusky, *Turdus naumanni*
Eyebrowed, *Turdus obscurus*
Gray-cheeked, *Catharus minimus*
Hermit, *Catharus guttatus*
Red-legged, *Turdus plumbeus*
Swainson's, *Catharus ustulatus*
Varied, *Ixoreus naevius*
Wood, *Hylocichla mustelina*
TITMOUSE, Bridled, *Baeolophus wollweberi*
Juniper, *Baeolophus ridgwayi*
Oak, *Baeolophus inornatus*
Tufted, *Baeolophus bicolor*
TOWHEE, Abert's, *Pipilo aberti*
California, *Pipilo crissalis*
Canyon, *Pipilo fuscus*
Eastern, *Pipilo erythrophthalmus*
Green-tailed, *Pipilo chlorurus*
Spotted, *Pipilo maculatus*
TROGON, Eared, *Euptilotus neoxenus*
Elegant, *Trogon elegans*
TROPICBIRD, Red-billed, *Phaethon aethereus*
Red-tailed, *Phaethon rubricauda*
White-tailed, *Phaethon lepturus*
TURNSTONE, Black, *Arenaria melanocephala*
Ruddy, *Arenaria interpres*
VEERY, *Catharus fuscescens*
VERDIN, *Auriparus flaviceps*
VIOLET-EAR, Green, *Colibri thalassinus*
VIREO, Bell's, *Vireo bellii*
Black-capped, *Vireo atricapillus*
Black-whiskered, *Vireo altiloquus*
Blue-headed, *Vireo solitarius*
Cassin's, *Vireo cassinii*
Gray, *Vireo vicinior*
Hutton's, *Vireo huttoni*
Philadelphia, *Vireo philadelphicus*
Plumbeous, *Vireo plumbeus*
Puerto Rican, *Vireo latimeri*
Red-eyed, *Vireo olivaceus*
Warbling, *Vireo gilvus*
White-eyed, *Vireo griseus*
Yellow-green, *Vireo flavoviridis*
Yellow-throated, *Vireo flavifrons*
VULTURE, Black, *Coragyps atratus*
Turkey, *Cathartes aura*
WAGTAIL, Black-backed, *Motacilla lugens*
Gray, *Motacilla cinerea*
White, *Motacilla alba*
Yellow, *Motacilla flava*
WARBLER, Adelaide's, *Dendroica adelaidae*
Arctic, *Phylloscopus borealis*
Bachman's, *Vermivora bachmanii*
Bay-breasted, *Dendroica castanea*
Black-and-white, *Mniotilta varia*
Black-throated Blue, *Dendroica caerulescens*
Black-throated Gray, *Dendroica nigrescens*
Black-throated Green, *Dendroica virens*
Blackburnian, *Dendroica fusca*
Blackpoll, *Dendroica striata*
Blue-winged, *Vermivora pinus*
Canada, *Wilsonia canadensis*
Cape May, *Dendroica tigrina*
Cerulean, *Dendroica cerulea*
Chestnut-sided, *Dendroica pensylvanica*
Colima, *Vermivora crissalis*
Connecticut, *Oporornis agilis*
Elfin-woods, *Dendroica angelae*
Golden-cheeked, *Dendroica chrysoparia*
Golden-crowned, *Basileuterus culicivorus*
Golden-winged, *Vermivora chrysoptera*
Grace's, *Dendroica graciae*
Hermit, *Dendroica occidentalis*
Hooded, *Wilsonia citrina*
Kentucky, *Oporornis formosus*
Kirtland's, *Dendroica kirtlandii*
Lucy's, *Vermivora luciae*
MacGillivray's, *Oporornis tolmiei*
Magnolia, *Dendroica magnolia*
Mourning, *Oporornis philadelphia*
Nashville, *Vermivora ruficapilla*
Olive, *Peucedramus taeniatus*
Orange-crowned, *Vermivora celata*
Palm, *Dendroica palmarum*
Pine, *Dendroica pinus*
Prairie, *Dendroica discolor*
Prothonotary, *Protonotaria citrea*
Red-faced, *Cardellina rubrifrons*
Rufous-capped, *Basileuterus rufifrons*
Swainson's, *Limnothlypis swainsonii*
Tennessee, *Vermivora peregrina*
Townsend's, *Dendroica townsendi*

Virginia's, *Vermivora virginiae*
Willow, *Phylloscopus trochilus*
Wilson's, *Wilsonia pusilla*
Worm-eating, *Helmitheros vermivorus*
Yellow, *Dendroica petechia*
Yellow-rumped, *Dendroica coronata*
Yellow-throated, *Dendroica dominica*
WATERTHRUSH, Louisiana, *Seiurus motacilla*
Northern, *Seiurus noveboracensis*
WAXWING, Bohemian, *Bombycilla garrulus*
Cedar, *Bombycilla cedrorum*
WHEATEAR, Northern, *Oenanthe oenanthe*
WHIMBREL, *Numenius phaeopus*
WHIP-POOR-WILL, *Caprimulgus vociferus*
WHISTLING-DUCK, Black-bellied, *Dendrocygna autumnalis*
Fulvous, *Dendrocygna bicolor*
West Indian, *Dendrocygna arborea*
WIGEON, American, *Anas americana*
Eurasian, *Anas penelope*
WILLET, *Catoptrophorus semipalmatus*
WOOD-PEWEE, Eastern, *Contopus virens*
Western, *Contopus sordidulus*
WOODCOCK, American, *Scolopax minor*
Eurasian, *Scolopax rusticola*
WOODPECKER, Acorn, *Melanerpes formicivorus*
Arizona, *Picoides arizonae*
Black-backed, *Picoides arcticus*
Downy, *Picoides pubescens*
Gila, *Melanerpes uropygialis*
Golden-fronted, *Melanerpes aurifrons*
Hairy, *Picoides villosus*
Ivory-billed, *Campephilus principalis*
Ladder-backed, *Picoides scalaris*
Lewis's, *Melanerpes lewis*
Nuttall's, *Picoides nuttallii*
Pileated, *Dryocopus pileatus*
Puerto Rican, *Melanerpes portoricensis*
Red-bellied, *Melanerpes carolinus*
Red-cockaded, *Picoides borealis*
Red-headed, *Melanerpes erythrocephalus*
Strickland's, *Picoides stricklandi*
Three-toed, *Picoides tridactylus*
White-headed, *Picoides albolarvatus*
WOODSTAR, Bahama, *Calliphlox evelynae*
WREN, Bewick's *Thryothorus bewickii*
Cactus, *Campylorhynchus brunneicapillus*
Canyon, *Catherpes mexicanus*
Carolina, *Thryothorus ludovicianus*
House, *Troglodytes aedon*
Marsh, *Cistothorus palustris*
Rock, *Salpinctes obsoletus*
Sedge, *Cistothorus platensis*
Winter, *Troglodytes troglodytes*
WRYNECK, Eurasian, *Jynx torquilla*
YELLOWLEGS, Greater, *Tringa melanoleuca*
Lesser, *Tringa flavipes*
YELLOWTHROAT, Common, *Geothlypis trichas*
Gray-crowned, *Geothlypis poliocephala*

(2) *Taxonomic listing.* Species are listed in phylogenetic sequence by scientific name, with the common (English) name following the scientific name. To help clarify species relationships, we also list the higher-level taxonomic categories of Order, Family, and Subfamily.

Order GAVIIFORMES
Family GAVIIDAE
*Gavia stellata*, Red-throated Loon
*Gavia arctica*, Arctic Loon
*Gavia pacifica*, Pacific Loon
*Gavia immer*, Common Loon
*Gavia adamsii*, Yellow-billed Loon
Order PODICIPEDIFORMES
Family PODICIPEDIDAE
*Tachybaptus dominicus*, Least Grebe
*Podilymbus podiceps*, Pied-billed Grebe
*Podiceps auritus*, Horned Grebe
*Podiceps grisegena*, Red-necked Grebe
*Podiceps nigricollis*, Eared Grebe
*Aechmophorus occidentallis*, Western Grebe
*Aechmophorus clarkii*, Clark's Grebe
Order PROCELLARIFORMES
Family DIOMEDEIDAE
*Thalassarche chlororhynchos*, Yellow-nosed Albatross
*Phoebastria immutabilis*, Laysan Albatross
*Phoebastria nigripes*, Black-footed Albatros
*Phoebastria albatrus*, Short-tailed Albatross
Family PROCELLARIIDAE
*Fulmarus glacialis*, Northern Fulmar
*Pterodroma neglecta*, Kermadec Petrel
*Pterodroma arminjoniana*, Herald Petrel
*Pterodroma ultima*, Murphy's Petrel
*Pterodroma inexpectata*, Mottled Petrel
*Pterodroma hasitata*, Black-capped Petrel
*Pterodroma externa*, Juan Fernandez Petrel
*Pterodroma phaeopygia*, Dark-rumped Petrel
*Pterodroma cervicalis*, White-necked Petrel
*Pterodroma hypoleuca*, Bonin Petrel
*Pterodroma cookii*, Cook's Petrel
*Bulweria bulwerii*, Bulwer's Petrel
*Calonectris diomedea*, Cory's Shearwater
*Puffinus creatopus*, Pink-footed Shearwater
*Puffinus carneipes*, Flesh-footed Shearwater
*Puffinus gravis*, Greater Shearwater
*Puffinus pacificus*, Wedge-tailed Shearwater
*Puffinus bulleri*, Buller's Shearwater
*Puffinus griseus*, Sooty Shearwater
*Puffinus tenuirostris*, Short-tailed Shearwater
*Puffinus nativitatis*, Christmas Shearwater
*Puffinus puffinus*, Manx Shearwater
*Puffinus auricularis*, Townsend's Shearwater
*Puffinus opisthomelas*, Black-vented Shearwater
*Puffinus lherminieri*, Audubon's Shearwater
*Puffinus assimilis*, Little Shearwater
Family HYDROBATIDAE
*Oceanites oceanicus*, Wilson's Storm-Petrel
*Pelagodroma marina*, White-faced Storm-Petrel
*Oceanodroma furcata*, Fork-tailed Storm-Petrel
*Oceanodroma leucorhoa*, Leach's Storm-Petrel
*Oceanodroma homochroa*, Ashy Storm-Petrel
*Oceanodroma castro*, Band-rumped Storm-Petrel
*Oceanodroma tethys*, Wedge-rumped Storm-Petrel
*Oceanodroma melania*, Black Storm-Petrel
*Oceanodroma tristrami*, Tristram's Storm-Petrel
*Oceanodroma microsoma*, Least Storm-Petrel
Order PELECANIFORMES
Family PHAETHONTIDAE
*Phaethon lepturus,* White-tailed Tropicbird
*Phaethon aethereus,* Red-billed Tropicbird
*Phaethon rubricauda,* Red-tailed Tropicbird
Family SULIDAE
*Sula dactylatra,* Masked Booby
*Sula nebouxii,* Blue-footed Booby
*Sula leucogaster,* Brown Booby
*Sula sula,* Red-footed Booby
*Morus bassanus,* Northern Gannet
Family PELECANIDAE
*Pelecanus erythrorhynchos,* American White Pelican
*Pelecanus occidentalis,* Brown Pelican
Family PHALACROCORACIDAE
*Phalacrocorax penicillatus,* Brandt's Cormorant
*Phalacrocorax brasilianus,* Neotropic Cormorant
*Phalacrocorax auritus,* Double-crested Cormorant
*Phalacrocorax carbo,* Great Cormorant
*Phalacrocorax urile,* Red-faced Cormorant
*Phalacrocorax pelagicus,* Pelagic Cormorant
Family ANHINGIDAE
*Anhinga anhinga,* Anhinga
Family FREGATIDAE

*Fregata magnificens,* Magnificent Frigatebird
*Fregata minor,* Great Frigatebird
*Fregata ariel,* Lesser Frigatebird
Order CICONIIFORMES
Family ARDEIDAE
*Botaurus lentiginosus,* American Bittern
*Ixobrychus sinensis,* Yellow Bittern
*Ixobrychus exilis,* Least Bittern
*Ixobrychus eurhythmus,* Schrenk's Bittern
*Ardea herodias,* Great Blue Heron
*Ardea alba,* Great Egret
*Mesophoyx intermedia,* Intermediate Egret
*Egretta eulophotes,* Chinese Egret
*Egretta sacra,* Pacific Reef-Egret
*Egretta thula,* Snowy Egret
*Egretta caerulea,* Little Blue Heron
*Egretta tricolor,* Tricolored Heron
*Egretta rufescens,* Reddish Egret
*Bubulcus ibis,* Cattle Egret
*Butorides virescens,* Green Heron
*Nycticorax nycticorax,* Black-crowned Night-Heron
*Nyctanassa violacea,* Yellow-crowned Night-Heron
*Gorsachius goisagi,* Japanese Night-Heron
*Gorsachius melanolophus,* Malayan Night-Heron
Family THRESKIORNITHIDAE
Subfamily Threskiornithinae
*Eudocimus albus,* White Ibis
*Eudocimus ruber,* Scarlet Ibis
*Plegadis falcinellus,* Glossy Ibis
*Plegadis chihi,* White-faced Ibis
Subfamily Plataleinae
*Ajaia ajaja,* Roseate Spoonbill
Family CICONIIDAE
*Jabiru mycteria,* Jabiru
*Mycteria americana,* Wood Stork
Family CATHARTIDAE
*Coragyps atratus,* Black Vulture
*Cathartes aura,* Turkey Vulture
*Gymnogyps californianus,* California Condor
Order PHOENICOPTERIFORMES
Family PHOENICOPTERIDAE
*Phoenicopterus ruber,* Greater Flamingo
Order ANSERIFORMES
Family ANATIDAE
Subfamily Dendrocygninae
*Dendrocygna autumnalis,* Black-bellied Whistling-Duck
*Dendrocygna arborea,* West Indian Whistling-Duck
*Dendrocygna bicolor,* Fulvous Whistling-Duck
Subfamily Anserinae
*Anser fabalis,* Bean Goose
*Anser albifrons,* Greater White-fronted Goose
*Chen canagica,* Emperor Goose
*Chen caerulescens,* Snow Goose
*Chen rossii,* Ross's Goose
*Branta canadensis,* Canada Goose
*Branta sandvicensis,* Hawaiian Goose
*Branta bernicla,* Brant
*Branta leucopsis,* Barnacle Goose
*Cygnus buccinator,* Trumpeter Swan
*Cygnus columbianus,* Tundra Swan
*Cygnus cygnus,* Whooper Swan
Subfamily Anatinae
*Aix sponsa,* Wood Duck
*Anas strepera,* Gadwall
*Anas falcata,* Falcated Duck
*Anas penelope,* Eurasian Wigeon
*Anas americana,* American Wigeon
*Anas rubripes,* American Black Duck
*Anas platyrhynchos,* Mallard
*Anas fulvigula,* Mottled Duck
*Anas wyvilliana,* Hawaiian Duck
*Anas laysanensis,* Laysan Duck
*Anas poecilorhyncha,* Spot-billed Duck
*Anas discors,* Blue-winged Teal
*Anas cyanoptera,* Cinnamon Teal
*Anas clypeata,* Northern Shoveler
*Anas bahamensis,* White-cheeked Pintail
*Anas acuta,* Northern Pintail
*Anas querquedula,* Garganey
*Anas formosa,* Baikal Teal
*Anas crecca,* Green-winged Teal
*Aythya valisneria,* Canvasback
*Aythya americana,* Redhead
*Aythya ferina,* Common Pochard
*Aythya baeri,* Baer's Pochard
*Aythya collaris,* Ring-necked Duck
*Aythya fuligula,* Tufted Duck
*Aythya marila,* Greater Scaup
*Aythya affinis,* Lesser Scaup
*Polysticta stelleri,* Steller's Eider
*Somateria fischeri,* Spectacled Eider
*Somateria spectabilis,* King Eider
*Somateria mollissima,* Common Eider
*Histrionicus histrionicus,* Harlequin Duck
*Melanitta perspicillata,* Surf Scoter
*Melanitta fusca,* White-winged Scoter
*Melanitta nigra,* Black Scoter
*Clangula hyemalis,* Long-tailed Duck
*Bucephala albeola,* Bufflehead
*Bucephala clangula,* Common Goldeneye
*Bucephala islandica,* Barrow's Goldeneye
*Mergellus albellus,* Smew
*Lophodytes cucullatus,* Hooded Merganser
*Mergus merganser,* Common Merganser
*Mergus serrator,* Red-breasted Merganser
*Nomonyx dominica,* Masked Duck
*Oxyura jamaicensis,* Ruddy Duck
Order FALCONIFORMES
Family ACCIPITRIDAE
Subfamily Pandioninae
*Pandion haliaetus,* Osprey
Subfamily Accipitrinae
*Chondrohierax uncinatus,* Hook-billed Kite
*Elanoides forficatus,* Swallow-tailed Kite
*Elanus leucurus,* White-tailed Kite
*Rostrhamus sociabilis,* Snail Kite
*Ictinia mississippiensis,* Mississippi Kite
*Milvus migrans,* Black Kite
*Haliaeetus leucocephalus,* Bald Eagle
*Haliaeetus albicilla,* White-tailed Eagle
*Haliaeetus pelagicus,* Steller's Sea-Eagle
*Circus cyaneus,* Northern Harrier
*Accipiter gularis,* Japanese Sparrowhawk
*Accipiter striatus,* Sharp-shinned Hawk
*Accipiter cooperii,* Cooper's Hawk
*Accipiter gentilis,* Northern Goshawk
*Asturina nitida,* Gray Hawk
*Buteogallus anthracinus,* Common Black-Hawk
*Parabuteo unicinctus,* Harris's Hawk
*Buteo lineatus,* Red-shouldered Hawk
*Buteo platypterus,* Broad-winged Hawk
*Buteo brachyurus,* Short-tailed Hawk
*Buteo swainsoni,* Swainson's Hawk
*Buteo albicaudatus,* White-tailed Hawk
*Buteo albonotatus,* Zone-tailed Hawk
*Buteo solitarius,* Hawaiian Hawk
*Buteo jamaicensis,* Red-tailed Hawk
*Buteo regalis,* Ferruginous Hawk
*Buteo lagopus,* Rough-legged Hawk
*Aquila chrysaetos,* Golden Eagle
Family FALCONIDAE
Subfamily Caracarinae
*Caracara cheriway,* Crested Caracara
Subfamily Falconinae
*Falco tinnunculus,* Eurasian Kestrel
*Falco sparverius,* American Kestrel
*Falco columbarius,* Merlin
*Falco femoralis,* Aplomado Falcon
*Falco rusticolus,* Gyrfalcon
*Falco peregrinus,* Peregrine Falcon
*Falco mexicanus,* Prairie Falcon
Order GRUIFORMES
Family RALLIDAE
*Coturnicops noveboracensis,* Yellow Rail
*Laterallus jamaicensis*, Black Rail
*Crex crex*, Corn Crake
*Rallus longirostris*, Clapper Rail
*Rallus elegans*, King Rail
*Rallus limicola*, Virginia Rail
*Porzana carolina*, Sora
*Porzana flaviventer*, Yellow-breasted Crake
*Porphyrula martinica*, Purple Gallinule
*Gallinula chloropus*, Common Moorhen
*Fulica atra*, Eurasian Coot
*Fulica alai*, Hawaiian Coot
*Fulica americana*, American Coot
*Fulica caribaea*, Caribbean Coot
Family ARAMIDAE
*Aramus guarauna*, Limpkin
Family GRUIDAE
*Grus canadensis*, Sandhill Crane

*Grus grus*, Common Crane
*Grus americana*, Whooping Crane
Order CHARADRIIFORMES
Family CHARADRIIDAE
Subfamily Vanellinae
*Vanellus vanellus*, Northern Lapwing
Subfamily Charadriinae
*Pluvialis squatarola*, Black-bellied Plover
*Pluvialis dominica*, American Golden-Plover
*Pluvialis fulva*, Pacific Golden-Plover
*Charadrius mongolus*, Mongolian Plover
*Charadrius leschenaultii*, Greater Sand Plover
*Charadrius alexandrinus*, Snowy Plover
*Charadrius wilsonia*, Wilson's Plover
*Charadrius hiaticula*, Common Ringed Plover
*Charadrius semipalmatus*, Semipalmated Plover
*Charadrius melodus*, Piping Plover
*Charadrius dubius*, Little Ringed Plover
*Charadrius vociferus*, Killdeer
*Charadrius montanus*, Mountain Plover
*Charadrius morinellus*, Eurasian Dotterel
Family HAEMATOPODIDAE
*Haematopus palliatus*, American Oystercatcher
*Haematopus bachmani*, Black Oystercatcher
Family RECURVIROSTRIDAE
*Himantopus mexicanus*, Black-necked Stilt
*Recurvirostra americana*, American Avocet
Family JACANIDAE
*Jacana spinosa*, Northern Jacana
Family SCOLOPACIDAE
Subfamily Scolopacinae
*Tringa nebularia*, Common Greenshank
*Tringa melanoleuca*, Greater Yellowlegs
*Tringa flavipes*, Lesser Yellowlegs
*Tringa stagnatilis*, Marsh Sandpiper
*Tringa erythropus*, Spotted Redshank
*Tringa glareola*, Wood Sandpiper
*Tringa solitaria*, Solitary Sandpiper
*Catoptrophorus semipalmatus*, Willet
*Heteroscelus incanus*, Wandering Tattler
*Heteroscelus brevipes*, Gray-tailed Tattler
*Actitis hypoleucos*, Common Sandpiper
*Actitis macularia*, Spotted Sandpiper
*Xenus cinereus*, Terek Sandpiper
*Bartramia longicauda*, Upland Sandpiper
*Numenius minutus*, Little Curlew
*Numenius borealis*, Eskimo Curlew
*Numenius phaeopus*, Whimbrel
*Numenius tahitiensis*, Bristle-thighed Curlew
*Numenius madagascariensis*, Far Eastern Curlew
*Numenius americanus*, Long-billed Curlew
*Limosa limosa*, Black-tailed Godwit
*Limosa haemastica*, Hudsonian Godwit
*Limosa lapponica*, Bar-tailed Godwit
*Limosa fedoa*, Marbled Godwit
*Arenaria interpres*, Ruddy Turnstone
*Arenaria melanocephala*, Black Turnstone
*Aphriza virgata*, Surfbird
*Calidris tenuirostris*, Great Knot
*Calidris canutus*, Red Knot
*Calidris alba*, Sanderling
*Calidris pusilla*, Semipalmated Sandpiper
*Calidris mauri*, Western Sandpiper
*Calidris ruficollis*, Red-necked Stint
*Calidris minuta*, Little Stint
*Calidris temminckii*, Temminck's Stint
*Calidris subminuta*, Long-toed Stint
*Calidris minutilla*, Least Sandpiper
*Calidris fuscicollis*, White-rumped Sandpiper
*Calidris bairdii*, Baird's Sandpiper
*Calidris melanotos*, Pectoral Sandpiper
*Calidris acuminata*, Sharp-tailed Sandpiper
*Calidris maritima*, Purple Sandpiper
*Calidris ptilocnemis*, Rock Sandpiper
*Calidris alpina*, Dunlin
*Calidris ferruginea*, Curlew Sandpiper
*Calidris himantopus*, Stilt Sandpiper
*Eurynorhynchus pygmeus*, Spoonbill Sandpiper
*Limicola falcinellus*, Broad-billed Sandpiper
*Tryngites subruficollis*, Buff-breasted Sandpiper
*Philomachus pugnax*, Ruff
*Limnodromus griseus*, Short-billed Dowitcher
*Limnodromus scolopaceus*, Long-billed Dowitcher
*Lymnocryptes minimus*, Jack Snipe
*Gallinago gallinago*, Common Snipe
*Gallinago stenura*, Pin-tailed Snipe
*Gallinago megala*, Swinhoe's Snipe
*Scolopax rusticola*, Eurasian Woodcock
*Scolopax minor*, American Woodcock
Phalaropodinae
*Phalaropus tricolor*, Wilson's Phalarope
*Phalaropus lobatus*, Red-necked Phalarope
*Phalaropus fulicaria*, Red Phalarope
Family LARIDAE
Subfamily Stercorariinae
*Stercorarius skua*, Great Skua
*Stercorarius maccormicki*, South Polar Skua
*Stercorarius pomarinus*, Pomarine Jaeger
*Stercorarius parasiticus*, Parasitic Jaeger
*Stercorarius longicaudus*, Long-tailed Jaeger
Subfamily Larinae
*Larus atricilla*, Laughing Gull
*Larus pipixcan*, Franklin's Gull
*Larus minutus*, Little Gull
*Larus ridibundus*, Black-headed Gull
*Larus philadelphia*, Bonaparte's Gull
*Larus heermanni*, Heermann's Gull
*Larus crassirostris*, Black-tailed Gull
*Larus canus*, Mew Gull
*Larus delawarensis*, Ring-billed Gull
*Larus californicus*, California Gull
*Larus argentatus*, Herring Gull
*Larus thayeri*, Thayer's Gull
*Larus glaucoides*, Iceland Gull
*Larus fuscus*, Lesser Black-backed Gull
*Larus schistisagus*, Slaty-backed Gull
*Larus livens*, Yellow-footed Gull
*Larus occidentalis*, Western Gull
*Larus glaucescens*, Glaucous-winged Gull
*Larus hyperboreus*, Glaucous Gull
*Larus marinus*, Great Black-backed Gull
*Xema sabini*, Sabine's Gull
*Rissa tridactyla*, Black-legged Kittiwake
*Rissa brevirostris*, Red-legged Kittiwake
*Rhodostethia rosea*, Ross's Gull
*Pagophila eburnea*, Ivory Gull
Subfamily Sterninae
*Sterna nilotica*, Gull-billed Tern
*Sterna caspia*, Caspian Tern
*Sterna maxima*, Royal Tern
*Sterna elegans*, Elegant Tern
*Sterna sandvicensis*, Sandwich Tern
*Sterna dougallii*, Roseate Tern
*Sterna hirundo*, Common Tern
*Sterna paradisaea*, Arctic Tern
*Sterna forsteri*, Forster's Tern
*Sterna albifrons*, Little Tern
*Sterna antillarum*, Least Tern
*Sterna sumatrana*, Black-naped Tern
*Sterna aleutica*, Aleutian Tern
*Sterna lunata*, Gray-backed Tern
*Sterna anaethetus*, Bridled Tern
*Sterna fuscata*, Sooty Tern
*Chlidonias leucopterus*, White-winged Tern
*Chlidonias niger*, Black Tern
*Anous stolidus*, Brown Noddy
*Anous minutus*, Black Noddy
*Anous tenuirostris*, Lesser Noddy
*Procelsterna cerulea*, Blue-gray Noddy
*Gygis alba*, White Tern
Subfamily Rynchopinae
*Rynchops niger*, Black Skimmer
Family ALCIDAE
*Alle alle*, Dovekie
*Uria aalge*, Common Murre
*Uria lomvia*, Thick-billed Murre
*Alca torda*, Razorbill
*Cepphus grylle*, Black Guillemot

*Cepphus columba*, Pigeon Guillemot
*Brachyramphus marmoratus*, Marbled Murrelet
*Brachyramphus brevirostris*, Kittlitz's Murrelet
*Synthliboramphus hypoleucus,* Xantus's Murrelet
*Synthliboramphus craveri*, Craveri's Murrelet
*Synthliboramphus antiquus*, Ancient Murrelet
*Ptychoramphus aleuticus*, Cassin's Auklet
*Aethia psittacula*, Parakeet Auklet
*Aethia pusilla*, Least Auklet
*Aethia pygmaea*, Whiskered Auklet
*Aethia cristatella*, Crested Auklet
*Cerorhinca monocerata*, Rhinoceros Auklet
*Fratercula arctica*, Atlantic Puffin
*Fratercula corniculata*, Horned Puffin
*Fratercula cirrhata*, Tufted Puffin
Order COLUMBIFORMES
Family COLUMBIDAE
*Columba squamosa*, Scaly-naped Pigeon
*Columba leucocephala*, White-crowned Pigeon
*Columba flavirostris*, Red-billed Pigeon
*Columba inornata*, Plain Pigeon
*Columba fasciata*, Band-tailed Pigeon
*Zenaida asiatica*, White-winged Dove
*Zenaida aurita*, Zenaida Dove
*Zenaida macroura*, Mourning Dove
*Columbina inca*, Inca Dove
*Columbina passerina*, Common Ground-Dove
*Columbina talpacoti*, Ruddy Ground-Dove
*Leptotila verreauxi*, White-tipped Dove
*Geotrygon chrysia*, Key West Quail-Dove
*Geotrygon mystacea*, Bridled Quail-Dove
*Geotrygon montana*, Ruddy Quail-Dove
Order CUCULIFORMES
Family CUCULIDAE
Subfamily Cuculinae
*Cuculus canorus*, Common Cuckoo
*Cuculus saturatus*, Oriental Cuckoo
*Cuculus fugax*, Hodgson's Hawk-Cuckoo
Subfamily Coccyzinae
*Coccyzus erythropthalmus*, Black-billed Cuckoo
*Coccyzus americanus*, Yellow-billed Cuckoo
*Coccyzus minor*, Mangrove Cuckoo
*Saurothera vieilloti*, Puerto Rican Lizard-Cuckoo
Subfamily Neomorphinae
*Geococcyx californianus*, Greater Roadrunner
Subfamily Crotophaginae
*Crotophaga ani*, Smooth-billed Ani
*Crotophaga sulcirostris*, Groove-billed Ani
Order STRIGIFORMES
Family TYTONIDAE
*Tyto alba*, Barn Owl
Family STRIGIDAE
*Otus flammeolus*, Flammulated Owl
*Otus kennicottii*, Western Screech-Owl
*Otus asio*, Eastern Screech-Owl
*Otus trichopsis*, Whiskered Screech-Owl
*Otus nudipes*, Puerto Rican Screech-Owl
*Bubo virginianus*, Great Horned Owl
*Nyctea scandiaca*, Snowy Owl
*Surnia ulula*, Northern Hawk Owl
*Glaucidium gnoma*, Northern Pygmy-Owl
*Glaucidium brasilianum*, Ferruginous Pygmy-Owl
*Micrathene whitneyi*, Elf Owl
*Athene cunicularia*, Burrowing Owl
*Strix occidentalis*, Spotted Owl
*Strix varia*, Barred Owl
*Strix nebulosa*, Great Gray Owl
*Asio otus*, Long-eared Owl
*Asio flammeus*, Short-eared Owl
*Aegolius funereus*, Boreal Owl
*Aegolius acadicus*, Northern Saw-whet Owl
Order CAPRIMULGIFORMES
Family CAPRIMULGIDAE
Subfamily Chordeilinae
*Chordeiles acutipennis*, Lesser Nighthawk
*Chordeiles minor*, Common Nighthawk
*Chordeiles gundlachii*, Antillean Nighthawk
Subfamily Capimulginae
*Nyctidromus albicollis*, Common Pauraque
*Phalaenoptilus nuttallii*, Common Poorwill
*Caprimulgus carolinensis*, Chuck-will's-widow
*Caprimulgus ridgwayi*, Buff-collared Nightjar
*Caprimulgus vociferus*, Whip-poor-will
*Caprimulgus noctitherus*, Puerto Rican Nightjar
*Caprimulgus indicus*, Jungle Nightjar
Order APODIFORMES
Family APODIDAE
Subfamily Cypseloidinae
*Crypseloides niger*, Black Swift
*Streptoprocne zonaris*, White-collared Swift
Subfamily Chaeturinae
*Chaetura pelagica*, Chimney Swift
*Chaetura vauxi*, Vaux's Swift
*Hirundapus caudacutus*, White-throated Needletail
Subfamily Apodinae
*Apus apus*, Common Swift
*Apus pacificus*, Fork-tailed Swift
*Aeronautes saxatalis*, White-throated Swift
*Tachornis phoenicobia*, Antillean Palm-Swift
Family TROCHILIDAE
Subfamily Trochilinae
*Colibri thalassinus*, Green Violet-ear
*Anthracothorax dominicus*, Antillean Mango
*Anthracothorax viridis*, Green Mango
*Eulampis holosericeus*, Green-throated Carib
*Orthorhynchus cristatus*, Antillean Crested Hummingbird
*Chlorostilbon maugaeus*, Puerto Rican Emerald
*Cynanthus latirostris*, Broad-billed Hummingbird
*Hylocharis leucotis*, White-eared Hummingbird
*Amazilia beryllina*, Berylline Hummingbird
*Amazilia yucatanensis*, Buff-bellied Hummingbird
*Amazilia violiceps*, Violet-crowned Hummingbird
*Lampornis clemenciae*, Blue-throated Hummingbird
*Eugenes fulgens*, Magnificent Hummingbird
*Heliomaster constantii*, Plain-capped Starthroat
*Calliphlox evelynae*, Bahama Woodstar
*Calothorax lucifer*, Lucifer Hummingbird
*Archilochus colubris*, Ruby-throated Hummingbird
*Archilochus alexandri*, Black-chinned Hummingbird
*Calypte anna*, Anna's Hummingbird
*Calypte costae*, Costa's Hummingbird
*Stellula calliope*, Calliope Hummingbird
*Selasphorus platycercus*, Broad-tailed Hummingbird
*Selasphorus rufus*, Rufous Hummingbird
*Selasphorus sasin*, Allen's Hummingbird
Order TROGONIFORMES
Family TROGONIDAE
Subfamily Trogoninae
*Trogon elegans*, Elegant Trogon
*Euptilotus neoxenus*, Eared Trogon
Order UPUPIFORMES
Family UPUPIDAE
*Upupa epops*, Eurasian Hoopoe
Order CORACIIFORMES
Family ALCEDINIDAE
Subfamily Cerylinae
*Ceryle torquata*, Ringed Kingfisher
*Ceryle alcyon*, Belted Kingfisher
*Chloroceryle americana*, Green Kingfisher
Order PICIFORMES
Family PICIDAE
Subfamily Jynginae
*Jynx torquilla*, Eurasian Wryneck
Subfamily Picinae
*Melanerpes lewis*, Lewis's

Woodpecker
*Melanerpes portoricensis*, Puerto Rican Woodpecker
*Melanerpes erythrocephalus*, Red-headed Woodpecker
*Melanerpes formicivorus*, Acorn Woodpecker
*Melanerpes uropygialis*, Gila Woodpecker
*Melanerpes aurifrons*, Golden-fronted Woodpecker
*Melanerpes carolinus*, Red-bellied Woodpecker
*Sphyrapicus thyroideus*, Williamson's Sapsucker
*Sphyrapicus varius*, Yellow-bellied Sapsucker
*Sphyrapicus nuchalis*, Red-naped Sapsucker
*Sphyrapicus ruber*, Red-breasted Sapsucker
*Picoides scalaris*, Ladder-backed Woodpecker
*Picoides nuttallii*, Nuttall's Woodpecker
*Picoides pubescens*, Downy Woodpecker
*Picoides villosus*, Hairy Woodpecker
*Picoides arizonae*, Arizona Woodpecker
*Picoides stricklandi*, Strickland's Woodpecker
*Picoides borealis*, Red-cockaded Woodpecker
*Picoides albolarvatus*, White-headed Woodpecker
*Picoides tridactylus*, Three-toed Woodpecker
*Picoides arcticus*, Black-backed Woodpecker
*Colaptes auratus*, Northern Flicker
*Colaptes chrysoides*, Gilded Flicker
*Dryocopus pileatus*, Pileated Woodpecker
*Campephilus principalis*, Ivory-billed Woodpecker
Order PASSERIFORMES
Family TYRANNIDAE
Subfamily Elaeniinae
*Camptostoma imberbe*, Northern Beardless-Tyrannulet
*Elaenia martinica*, Caribbean Elaenia
Subfamily Fluvicolinae
*Contopus cooperi*, Olive-sided Flycatcher
*Contopus pertinax*, Greater Pewee
*Contopus sordidulus,* Western Wood-Pewee
*Contopus virens,* Eastern Wood-Pewee
*Contopus latirostris,* Lesser Antillean Pewee
*Empidonax flaviventris,* Yellow-bellied Flycatcher
*Empidonax virescens,* Acadian Flycatcher
*Empidonax alnorum,* Alder Flycatcher
*Empidonax traillii,* Willow Flycatcher
*Empidonax minimus,* Least Flycatcher
*Empidonax hammondii,* Hammond's Flycatcher
*Empidonax wrightii,* Gray Flycatcher
*Empidonax oberholseri,* Dusky Flycatcher
*Empidonax difficilis,* Pacific-slope Flycatcher
*Empidonax occidentalis,* Cordilleran Flycatcher
*Empidonax fulvifrons,* Buff-breasted Flycatcher
*Sayornis nigricans,* Black Phoebe
*Sayornis phoebe,* Eastern Phoebe
*Sayornis saya,* Say's Phoebe
*Pyrocephalus rubinus,* Vermilion Flycatcher
Subfamily Tyranninae
*Myiarchus tuberculifer,* Dusky-capped Flycatcher
*Myiarchus cinerascens,* Ash-throated Flycatcher
*Myiarchus nuttingi,* Nutting's Flycatcher
*Myiarchus crinitus,* Great Crested Flycatcher
*Myiarchus tyrannulus,* Brown-crested Flycatcher
*Myiarchus antillarum,* Puerto Rican Flycatcher
*Pitangus sulphuratus,* Great Kiskadee
*Myiodynastes luteiventris,* Sulphur-bellied Flycatcher
*Tyrannus melancholicus,* Tropical Kingbird
*Tyrannus couchii,* Couch's Kingbird
*Tyrannus vociferans,* Cassin's Kingbird
*Tyrannus crassirostris,* Thick-billed Kingbird
*Tyrannus verticalis,* Western Kingbird
*Tyrannus tyrannus,* Eastern Kingbird
*Tyrannus dominicensis,* Gray Kingbird
*Tyrannus caudifasciatus,* Loggerhead Kingbird
*Tyrannus forficatus,* Scissor-tailed Flycatcher
*Tyrannus savana,* Fork-tailed Flycatcher
*Pachyramphus aglaiae,* Rose-throated Becard
Family LANIIDAE
*Lanius ludovicianus,* Loggerhead Shrike
*Lanius excubitor,* Northern Shrike
Family VIREONIDAE
*Vireo griseus,* White-eyed Vireo
*Vireo latimeri,* Puerto Rican Vireo
*Vireo bellii,* Bell's Vireo
*Vireo atricapillus,* Black-capped Vireo
*Vireo vicinior,* Gray Vireo
*Vireo flavifrons,* Yellow-throated Vireo
*Vireo plumbeus,* Plumbeous Vireo
*Vireo cassinii,* Cassin's Vireo
*Vireo solitarius,* Blue-headed Vireo
*Vireo huttoni,* Hutton's Vireo
*Vireo gilvus,* Warbling Vireo
*Vireo philadelphicus,* Philadelphia Vireo
*Vireo olivaceus,* Red-eyed Vireo
*Vireo flavoviridis,* Yellow-green Vireo
*Vireo altiloquus,* Black-whiskered Vireo
Family CORVIDAE
*Perisoreus canadensis,* Gray Jay
*Cyanocitta stelleri,* Steller's Jay
*Cyanocitta cristata,* Blue Jay
*Cyanocorax yncas,* Green Jay
*Cyanocorax morio,* Brown Jay
*Aphelocoma coerulescens,* Florida Scrub-Jay
*Aphelocoma insularis,* Island Scrub-Jay
*Aphelocoma californica,* Western Scrub-Jay
*Aphelocoma ultramarina,* Mexican Jay
*Gymnorhinus cyanocephalus,* Pinyon Jay
*Nucifraga columbiana,* Clark's Nutcracker
*Pica hudsonia,* Black-billed Magpie
*Pica nuttalli,* Yellow-billed Magpie
*Corvus brachyrhynchos,* American Crow
*Corvus caurinus,* Northwestern Crow
*Corvus leucognaphalus,* White-necked Crow
*Corvus imparatus,* Tamaulipas Crow
*Corvus ossifragus,* Fish Crow
*Corvus hawaiiensis,* Hawaiian Crow
*Corvus cryptoleucus,* Chihuahuan Raven
*Corvus corax,* Common Raven
Family ALAUDIDAE
*Alauda arvensis,* Sky Lark
*Eremophila alpestris,* Horned Lark
Family HIRUNDINIDAE
Subfamily Hirundininae
*Progne subis,* Purple Martin
*Progne cryptoleuca,* Cuban Martin
*Progne dominicensis,* Caribbean Martin
*Progne chalybea,* Gray-breasted Martin
*Tachycineta bicolor,* Tree Swallow
*Tachycineta thalassina,* Violet-green Swallow
*Tachycineta cyaneoviridis,* Bahama Swallow
*Stelgidopteryx serripennis,* Northern Rough-winged Swallow
Riparia riparia, Bank Swallow
*Petrochelidon pyrrhonota,* Cliff Swallow
*Petrochelidon fulva,* Cave Swallow
*Hirundo rustica,* Barn Swallow
*Delichon urbica,* Common House-Martin
Family PARIDAE
*Poecile carolinensis,* Carolina Chickadee
*Poecile atricapilla,* Black-capped Chickadee
*Poecile gambeli,* Mountain Chickadee
*Poecile sclateri,* Mexican Chickadee

*Poecile rufescens,* Chestnut-backed Chickadee
*Poecile hudsonica,* Boreal Chickadee
*Poecile cincta,* Gray-headed Chickadee
*Baeolophus wollweberi,* Bridled Titmouse
*Baeolophus inornatus,* Oak Titmouse
*Baeolophus ridgwayi,* Juniper Titmouse
*Baeolophus bicolor,* Tufted Titmouse
Family REMIZIDAE
*Auriparus flaviceps,* Verdin
Family AEGITHALIDAE
*Psaltriparus minimus,* Bushtit
Family SITTIDAE
Subfamily Sittinae
*Sitta canadensis,* Red-breasted Nuthatch
*Sitta carolinensis,* White-breasted Nuthatch
*Sitta pygmaea,* Pygmy Nuthatch
*Sitta pusilla,* Brown-headed Nuthatch
Family CERTHIIDAE
Subfamily Certhiinae
*Certhia americana,* Brown Creeper
Family TROGLODYTIDAE
*Campylorhynchus brunneicapillus,* Cactus Wren
*Salpinctes obsoletus,* Rock Wren
*Catherpes mexicanus,* Canyon Wren
*Thryothorus ludovicianus,* Carolina Wren
*Thryothorus bewickii,* Bewick's Wren
*Troglodytes aedon,* House Wren
*Troglodytes troglodytes,* Winter Wren
*Cistothorus platensis,* Sedge Wren
*Cistothorus palustris,* Marsh Wren
Family CINCLIDAE
*Cinclus mexicanus,* American Dipper
Family REGULIDAE
*Regulus satrapa,* Golden-crowned Kinglet
*Regulus calendula,* Ruby-crowned Kinglet
Family SYLVIIDAE
Subfamily Sylviinae
*Locustella ochotensis,* Middendorff's Grasshopper-Warbler
*Acrocephalus familiaris,* Millerbird
*Phylloscopus borealis,* Arctic Warbler
*Phylloscopus trochilus,* Willow Warbler
Subfamily Polioptilinae
*Polioptila caerulea,* Blue-gray Gnatcatcher
*Polioptila californica,* California Gnatcatcher
*Polioptila melanura,* Black-tailed Gnatcatcher
*Polioptila nigriceps,* Black-capped Gnatcatcher
Family MUSCICAPIDAE
*Muscicapa narcissina,* Narcissus Flycatcher
*Muscicapa griseisticta,* Gray-spotted Flycatcher
Family TURDIDAE
*Luscinia calliope,* Siberian Rubythroat
*Luscinia svecica,* Bluethroat
*Monticola solitarius,* Blue Rock Thrush
*Oenanthe oenanthe,* Northern Wheatear
*Sialia sialis,* Eastern Bluebird
*Sialia mexicana,* Western Bluebird
*Sialia currucoides,* Mountain Bluebird
*Myadestes townsendi,* Townsend's Solitaire
*Myadestes myadestinus,* Kamao
*Myadestes lanaiensis,* Olomao
*Myadestes obscurus,* Omao
*Myadestes palmeri,* Puaiohi
*Catharus fuscescens,* Veery
*Catharus minimus,* Gray-cheeked Thrush
*Catharus bicknelli,* Bicknell's Thrush
*Catharus ustulatus,* Swainson's Thrush
*Catharus guttatus,* Hermit Thrush
*Hylocichla mustelina,* Wood Thrush
*Turdus obscurus,* Eyebrowed Thrush
*Turdus naumanni,* Dusky Thrush
*Turdus pilaris,* Fieldfare
*Turdus grayi,* Clay-colored Robin
*Turdus rufopalliatus,* Rufous-backed Robin
*Turdus migratorius,* American Robin
*Turdus plumbeus,* Red-legged Thrush
*Ixoreus naevius,* Varied Thrush
*Ridgwayia pinicola,* Aztec Thrush
Family MIMIDAE
*Dumetella carolinensis,* Gray Catbird
*Mimus polyglottos,* Northern Mockingbird
*Oreoscoptes montanus,* Sage Thrasher
*Toxostoma rufum,* Brown Thrasher
*Toxostoma longirostre,* Long-billed Thrasher
*Toxostoma bendirei,* Bendire's Thrasher
*Toxostoma curvirostre,* Curve-billed Thrasher
*Toxostoma redivivum,* California Thrasher
*Toxostoma crissale,* Crissal Thrasher
*Toxostoma lecontei,* Le Conte's Thrasher
*Margarops fuscatus,* Pearly-eyed Thrasher
Family STURNIDAE
*Sturnus philippensis,* Chestnut-cheeked Starling
*Sturnus cineraceus,* White-cheeked Starling
Family PRUNELLIDAE
*Prunella montanella,* Siberian Accentor
Family MOTACILLIDAE
*Motacilla flava,* Yellow Wagtail
*Motacilla cinerea,* Gray Wagtail
*Motacilla alba,* White Wagtail
*Motacilla lugens,* Black-backed Wagtail
*Anthus hodgsoni,* Olive-backed Pipit
*Anthus gustavi,* Pechora Pipit
*Anthus cervinus,* Red-throated Pipit
*Anthus rubescens,* American Pipit
*Anthus spragueii,* Sprague's Pipit
Family BOMBYCILLIDAE
*Bombycilla garrulus,* Bohemian Waxwing
*Bombycilla cedrorum,* Cedar Waxwing
Family PTILOGONATIDAE
*Phainopepla nitens,* Phainopepla
Family PEUCEDRAMIDAE
*Peucedramus taeniatus,* Olive Warbler
Family PARULIDAE
*Vermivora bachmanii,* Bachman's Warbler
*Vermivora pinus,* Blue-winged Warbler
*Vermivora chrysoptera,* Golden-winged Warbler
*Vermivora peregrina,* Tennessee Warbler
*Vermivora celata,* Orange-crowned Warbler
*Vermivora ruficapilla,* Nashville Warbler
*Vermivora virginiae,* Virginia's Warbler
*Vermivora crissalis,* Colima Warbler
*Vermivora luciae,* Lucy's Warbler
*Parula americana,* Northern Parula
*Parula pitiayumi,* Tropical Parula
*Dendroica petechia,* Yellow Warbler
*Dendroica pensylvanica,* Chestnut-sided Warbler
*Dendroica magnolia,* Magnolia Warbler
*Dendroica tigrina,* Cape May Warbler
*Dendroica caerulescens,* Black-throated Blue Warbler
*Dendroica coronata,* Yellow-rumped Warbler
*Dendroica nigrescens,* Black-throated Gray Warbler
*Dendroica chrysoparia,* Golden-cheeked Warbler
*Dendroica virens,* Black-throated Green Warbler
*Dendroica townsendi,* Townsend's Warbler
*Dendroica occidentalis,* Hermit Warbler
*Dendroica fusca,* Blackburnian Warbler
*Dendroica dominica,* Yellow-throated Warbler
*Dendroica graciae,* Grace's Warbler
*Dendroica adelaidae,* Adelaide's Warbler
*Dendroica pinus,* Pine Warbler
*Dendroica kirtlandii,* Kirtland's Warbler
*Dendroica discolor,* Prairie Warbler
*Dendroica palmarum,* Palm Warbler
*Dendroica castanea,* Bay-breasted Warbler
*Dendroica striata,* Blackpoll Warbler
*Dendroica cerulea,* Cerulean Warbler
*Dendroica angelae,* Elfin-woods Warbler

*Mniotilta varia,* Black-and-white Warbler
*Setophaga ruticilla,* American Redstart
*Protonotaria citrea,* Prothonotary Warbler
*Helmitheros vermivorus,* Worm-eating Warbler
*Limnothlypis swainsonii,* Swainson's Warbler
*Seiurus aurocapillus,* Ovenbird
*Seiurus noveboracensis,* Northern Waterthrush
*Seiurus motacilla,* Louisiana Waterthrush
*Oporornis formosus,* Kentucky Warbler
*Oporornis agilis,* Connecticut Warbler
*Oporornis philadelphia,* Mourning Warbler
*Oporornis tolmiei,* MacGillivray's Warbler
*Geothlypis trichas,* Common Yellowthroat
*Geothlypis poliocephala,* Gray-crowned Yellowthroat
*Wilsonia citrina,* Hooded Warbler
*Wilsonia pusilla,* Wilson's Warbler
*Wilsonia canadensis,* Canada Warbler
*Cardellina rubrifrons,* Red-faced Warbler
*Myioborus pictus,* Painted Redstart
*Myioborus miniatus,* Slate-throated Redstart
*Basileuterus culicivorus,* Golden-crowned Warbler
*Basileuterus rufifrons,* Rufous-capped Warbler
*Icteria virens,* Yellow-breasted Chat
Family THRAUPIDAE
*Neospingus speculiferus,* Puerto Rican Tanager
*Piranga flava,* Hepatic Tanager
*Piranga rubra,* Summer Tanager
*Piranga olivacea,* Scarlet Tanager
*Piranga ludoviciana,* Western Tanager
*Piranga bidentata,* Flame-colored Tanager
*Spindalis portoricensis,* Puerto Rican Spindalis
*Euphonia musica,* Antillean Euphonia
Family EMBERIZIDAE
*Sporophila torqueola,* White-collared Seedeater
*Tiaris olivacea,* Yellow-faced Grassquit
*Tiaris bicolor,* Black-faced Grassquit
*Loxigilla portoricensis,* Puerto Rican Bullfinch
*Arremonops rufivirgatus,* Olive Sparrow
*Pipilo chlorurus,* Green-tailed Towhee
*Pipilo maculatus,* Spotted Towhee
*Pipilo erythrophthalmus,* Eastern Towhee
*Pipilo fuscus,* Canyon Towhee
*Pipilo crissalis,* California Towhee
*Pipilo aberti,* Abert's Towhee
*Aimophila carpalis,* Rufous-winged Sparrow
*Aimophila cassinii,* Cassin's Sparrow
*Aimophila aestivalis,* Bachman's Sparrow
*Aimophila botterii,* Botteri's Sparrow
*Aimophila ruficeps,* Rufous-crowned Sparrow
*Aimophila quinquestriata,* Five-striped Sparrow
*Spizella arborea,* American Tree Sparrow
*Spizella passerina,* Chipping Sparrow
*Spizella pallida,* Clay-colored Sparrow
*Spizella breweri,* Brewer's Sparrow
*Spizella pusilla,* Field Sparrow
*Spizella wortheni,* Worthen's Sparrow
*Spizella atrogularis,* Black-chinned Sparrow
*Pooecetes gramineus,* Vesper Sparrow
*Chondestes grammacus,* Lark Sparrow
*Amphispiza bilineata,* Black-throated Sparrow
*Amphispiza belli,* Sage Sparrow
*Calamospiza melanocorys,* Lark Bunting
*Passerculus sandwichensis,* Savannah Sparrow
*Ammodramus savannarum,* Grasshopper Sparrow
*Ammodramus bairdii,* Baird's Sparrow
*Ammodramus henslowii,* Henslow's Sparrow
*Ammodramus leconteii,* Le Conte's Sparrow
*Ammodramus nelsoni,* Nelson's Sharp-tailed Sparrow
*Ammodramus caudacutus,* Saltmarsh Sharp-tailed Sparrow
*Ammodramus maritimus,* Seaside Sparrow
*Passerella iliaca,* Fox Sparrow
*Melospiza melodia,* Song Sparrow
*Melospiza lincolnii,* Lincoln's Sparrow
*Melospiza georgiana,* Swamp Sparrow
*Zonotrichia albicollis,* White-throated Sparrow
*Zonotrichia querula,* Harris's Sparrow
*Zonotrichia leucophrys,* White-crowned Sparrow
*Zonotrichia atricapilla,* Golden-crowned Sparrow
*Junco hyemalis,* Dark-eyed Junco
*Junco phaeonotus,* Yellow-eyed Junco
*Calcarius mccownii,* McCown's Longspur
*Calcarius lapponicus,* Lapland Longspur
*Calcarius pictus,* Smith's Longspur
*Calcarius ornatus,* Chestnut-collared Longspur
*Emberiza rustica,* Rustic Bunting
*Emberiza pallasi,* Pallas's Bunting
*Emberiza schoeniculus,* Reed Bunting
*Plectrophenax nivalis,* Snow Bunting
*Plectrophenax hyperboreus,* McKay's Bunting
Family CARDINALIDAE
*Rhodothraupis celaeno,* Crimson-collared Grosbeak
*Cardinalis cardinalis,* Northern Cardinal
*Cardinalis sinuatus,* Pyrrhuloxia
*Pheucticus chrysopeplus,* Yellow Grosbeak
*Pheucticus ludovicianus,* Rose-breasted Grosbeak
*Pheucticus malanocephalus,* Black-headed Grosbeak
*Guiraca caerulea,* Blue Grosbeak
*Passerina amoena,* Lazuli Bunting
*Passerina cyanea,* Indigo Bunting
*Passerina versicolor,* Varied Bunting
*Passerina ciris,* Painted Bunting
*Spiza americana,* Dickcissel
Family ICTERIDAE
*Dolichonyx oryzivorus,* Bobolink
*Agelaius phoeniceus,* Red-winged Blackbird
*Agelaius tricolor,* Tricolored Blackbird
*Agelaius humeralis,* Tawny-shouldered Blackbird
*Agelaius xanthomus,* Yellow-shouldered Blackbird
*Sturnella magna,* Eastern Meadowlark
*Sturnella neglecta,* Western Meadowlark
*Xanthocephalus xanthocephalus,* Yellow-headed Blackbird
*Euphagus carolinus,* Rusty Blackbird
*Euphagus cyanocephalus,* Brewer's Blackbird
*Quiscalus quiscula,* Common Grackle
*Quiscalus major,* Boat-tailed Grackle
*Quiscalus mexicanus,* Great-tailed Grackle
*Quiscalus niger,* Greater Antillean Grackle
*Molothrus bonariensis,* Shiny Cowbird
*Molothrus aeneus,* Bronzed Cowbird
*Molothrus ater,* Brown-headed Cowbird
*Icterus wagleri,* Black-vented Oriole
*Icterus dominicensis,* Greater Antillean Oriole
*Icterus spurius,* Orchard Oriole
*Icterus cucullatus,* Hooded Oriole
*Icterus pustulatus,* Streak-backed Oriole
*Icterus bullockii,* Bullock's Oriole
*Icterus gularis,* Altamira Oriole
*Icterus graduacauda,* Audubon's Oriole
*Icterus galbula,* Baltimore Oriole
*Icterus parisorum,* Scott's Oriole
Family FRINGILLIDAE
Subfamily Fringillinae
*Fringilla montifringilla,* Brambling
SubFamily Carduelinae
*Leucosticte tephrocotis,* Gray-crowned Rosy-Finch
*Leucosticte atrata,* Black Rosy-Finch
*Leucosticte australis,* Brown-capped Rosy-Finch

*Pinicola enucleator,* Pine Grosbeak
*Carpodacus erythrinus,* Common Rosefinch
*Carpodacus purpureus,* Purple Finch
*Carpodacus cassinii,* Cassin's Finch
*Carpodacus mexicanus,* House Finch
*Loxia curvirostra,* Red Crossbill
*Loxia leucoptera,* White-winged Crossbill
*Carduelis flammea,* Common Redpoll
*Carduelis hornemanni,* Hoary Redpoll
*Carduelis pinus,* Pine Siskin
*Carduelis psaltria,* Lesser Goldfinch
*Carduelis lawrencei,* Lawrence's Goldfinch
*Carduelis tristis,* American Goldfinch
*Carduelis sinica,* Oriental Greenfinch
*Pyrrhula pyrrhula,* Eurasian Bullfinch
*Coccothraustes vespertinus,* Evening Grosbeak
*Coccothraustes coccothraustes,* Hawfinch

Dated: September 19, 2001.

**Joseph E. Doddridge,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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**Friday,**
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## Part VI

# The President

**Proclamation 7484—General Pulaski Memorial Day, 2001**

Federal Register
Vol. 66, No. 198
Friday, October 12, 2001

# Presidential Documents

**Title 3—**

**The President**

**Proclamation 7484 of October 10, 2001**

## General Pulaski Memorial Day, 2001

**By the President of the United States of America**

**A Proclamation**

I came here, where freedom is being defended,
to serve it, and to live and die for it.

-General Casimir Pulaski in a letter to General George Washington

Every year, on October 11, we honor the memory of Brigadier General Casimir Pulaski, a courageous soldier of liberty who bravely gave his life 222 years ago fighting for America's independence. The stories of General Pulaski's heroism during the Revolutionary War have been a source of inspiration for many generations of Americans, and his gallant sacrifice serves as a poignant reminder of the price patriots paid to obtain our liberty.

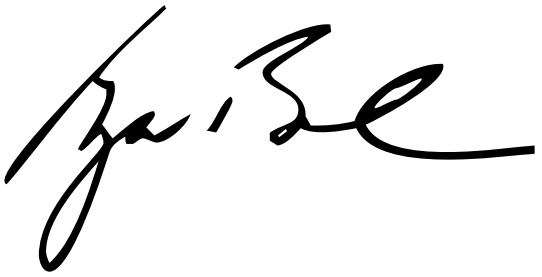
Pulaski, who was born in Poland in 1745, joined his first fight against tyranny and oppression at age 21, defending his beloved Poland against Prussian and Imperial Russian invaders. In numerous battles, Pulaski achieved fame as a calvary officer, earning promotion to commander of an army of Polish freedom fighters. But the aggressors ultimately overcame the Poles, and Pulaski was forced into exile. In 1777, Pulaski offered his services to America's fight for freedom and set sail from France to join the war for independence.

Far from his native land, Pulaski showed the same courageous combativeness on American soil that had gained him fame at home. Distinguishing himself in battle after battle, Pulaski earned a commission from the Continental Congress as a Brigadier General, and he was assigned by General Washington to command the Continental Army's calvary. In 1779, during the siege of Savannah, General Pulaski made the ultimate sacrifice, giving his life in battle so that our Nation might win its freedom. General Pulaski's valiant leadership earned him recognition as the ''Father of the American cavalry''.

Ever since his heroic death, America has honored General Pulaski's memory in many ways, including the naming of counties, towns, and streets after him. Since 1910, a statue of General Pulaski has stood in Washington, D.C., permanently memorializing his patriotic contributions and noble sacrifice. Today, as we respond to the atrocities committed against the United States on September 11, we have been deeply moved by the tremendous outpouring of sympathy, support, and solidarity from our Polish friends, from the highest levels of the government to the thousands of Poles who placed flowers and candles at our Embassy gate. Our two nations, united by the virtues and ideals that General Pulaski embodied, will always remain friends and allies.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Thursday, October 11, 2001, as General Pulaski Memorial Day. I encourage all Americans to commemorate this occasion with appropriate programs and activities paying tribute to Casimir Pulaski and honoring all those who defend the freedom of our great Nation.

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



[FR Doc. 01–25940
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Federal Register

**Friday,**
**October 12, 2001**

## Part VII

# Department of Defense

### Department of the Navy

### Meeting of the Naval Research Advisory Committee; Notice

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Meeting of the Naval Research Advisory Committee

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice of closed meeting.

**SUMMARY:** The Naval Research Advisory Committee will meet to discuss basic and advanced research and technology. All sessions of the meetings will be devoted to briefings, discussions and technical examination of information related to the application of electric power to naval platforms, weapons and auxiliary systems; and life cycle technology insertion strategies for current and future Naval weapons platforms. These meetings will be closed to the public.

**DATES:** The meeting dates are Monday, October 1, 2001, through Friday, October 5, 2001, from 8 a.m. to 5 p.m.; Monday, October 8, 2001, through Thursday, October 11, 2001, from 8 a.m. to 5 p.m.; and Friday, October 12, 2001, from 8:30 a.m. to 12 p.m.

**ADDRESSES:** The meetings will be held at the Space and Naval Warfare Systems Center San Diego, 53560 Hull Street, San Diego, CA.

**FOR FURTHER INFORMATION CONTACT:** Diane Mason-Muir, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, telephone number (703) 696–6769.

**SUPPLEMENTARY INFORMATION:** This notice of closed meetings is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). All sessions of the meetings will be devoted to briefings, discussions and technical examination of information related to the application of electric power to naval platforms, weapons and auxiliary systems, including power network stability, integrated power systems, CVX power systems, CVNX/SSN power systems, fuel cells and superconductivity, high power microwave systems, rail gun technology, future radars, and lessons learned from the British Royal Navy Electric Ship Program; and life cycle technology insertion strategies for current and future Naval weapons platforms, including industrial technology insertion processes, submarine technologies, radar and communications systems, research and development programs, manufacturing technologies, avionics systems, simulation systems and venture capital initiatives.

These briefings and discussions will contain proprietary information and classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The proprietary, classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. section 552b(c)(1) and (4). Due to an unavoidable delay in administrative processing, the 15 days advance notice could not be provided.

Dated: October 9, 2001.

**T.J. Welsh,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 01–25914 Filed 10–11–01; 10:57 am]

**BILLING CODE 3810–FF–P**

# Reader Aids

**Federal Register**

Vol. 66, No. 198

Friday, October 12, 2001

## CUSTOMER SERVICE AND INFORMATION

### Federal Register/Code of Federal Regulations

| | |
|---|---|
| General Information, indexes and other finding aids | **202–523–5227** |
| **Laws** | **523–5227** |

### Presidential Documents

| | |
|---|---|
| Executive orders and proclamations | **523–5227** |
| **The United States Government Manual** | **523–5227** |

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| | |
|---|---|
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## FEDERAL REGISTER PAGES AND DATE, OCTOBER

| | |
|---|---|
| 49823–50094 | 1 |
| 50095–50286 | 2 |
| 50287–50524 | 3 |
| 50525–50808 | 4 |
| 50809–51290 | 5 |
| 51291–51554 | 9 |
| 51555–51818 | 10 |
| 51819–52014 | 11 |
| 52015–52306 | 12 |

## CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

### 3 CFR

**Proclamations:**

| | |
|---|---|
| 7471 | 50097 |
| 7472 | 50099 |
| 7473 | 50287 |
| 7474 | 50289 |
| 7475 | 50525 |
| 7476 | 50527 |
| 7477 | 51295 |
| 7478 | 51297 |
| 7479 | 51807 |
| 7480 | 51808 |
| 7481 | 51810 |
| 7482 | 52011 |
| 7483 | 52015 |
| 7484 | 52303 |

**Executive Orders:**

| | |
|---|---|
| 11145 (Amended by EO 13225) | 50291 |
| 11183 (Amended by EO 13225) | 50291 |
| 11287 (Amended by EO 13225) | 50291 |
| 12131 (Amended by EO 13225) | 50291 |
| 12382 (Amended by EO 13225) | 50291 |
| 12196 (Amended by EO 13225) | 50291 |
| 12216 (Amended by EO 13225) | 50291 |
| 12345 (Amended by EO 13225) | 50291 |
| 12367 (Amended by EO 13225) | 50291 |
| 12656 (Amended by EO 13228) | 51812 |
| 12882 (Revoked by EO 13226) | 50523 |
| 12900 (Amended by EO 13225) | 50291 |
| 12905 (Amended by EO 13225) | 50291 |
| 12907 (Revoked by EO 13226) | 50523 |
| 12994 (Amended by EO 13225) | 50291 |
| 13021 (Amended by EO 13225) | 50291 |
| 13045 (Amended by EO 13229) | 52013 |
| 13075 (Revoked by EO 13225) | 50291 |
| 13080 (Revoked by EO 13225) | 50291 |
| 13090 (Revoked by EO 13225) | 50291 |
| 13134 (Amended by EO 13225) | 50291 |
| 13138 (Amended by EO 13225) | 50523 |
| 13138 (Amended by EO 13226) | 50291 |
| 13168 (Revoked by EO 13225) | 50291 |
| 13225 | 50291 |
| 13226 | 50523 |
| 13227 | 51287 |
| 13228 | 51812 |
| 13229 | 52013 |

**Administrative Orders:**

Presidential Determinations:

| | |
|---|---|
| No. 2001–27 of September 18, 2001 | 50807 |
| No. 2001–28 of September 22, 2001 | 50095 |
| No. 2001–30 of September 28, 2001 | 51291 |
| No. 2001–31 of September 28, 2001 | 51293 |

### 5 CFR

| | |
|---|---|
| 1604 | 50712 |

### 7 CFR

**Proposed Rules:**

| | |
|---|---|
| 330 | 51340 |

### 10 CFR

**Proposed Rules:**

| | |
|---|---|
| 15 | 50860 |
| 431 | 50355 |

### 8 CFR

| | |
|---|---|
| 204 | 51819 |
| 212 | 51821 |

### 10 CFR

| | |
|---|---|
| 30 | 51823 |
| 70 | 51823 |
| 72 | 51823 |
| 150 | 51823 |

**Proposed Rules:**

| | |
|---|---|
| 50 | 51884, 52065 |

### 11 CFR

**Proposed Rules:**

| | |
|---|---|
| 100 | 50359 |
| 114 | 50359 |
| 117 | 50359 |

### 12 CFR

| | |
|---|---|
| 950 | 50293 |
| 951 | 50296 |
| 952 | 50293 |

**Proposed Rules:**

| | |
|---|---|
| Ch. IX | 50366 |

### 14 CFR

| | |
|---|---|
| Ch. VI | 52270 |

23.....50809, 50819
25.....51299, 52017
35.....50302
39 .....49823, 49825, 50304, 50306, 50307, 50529, 51555, 51843, 51849, 51853, 51856, 51857, 51860, 52020, 52023, 52027
61.....52278
63.....52278
71.....50101
73.....50310
91.....50531
97.....50821, 50823
121.....51546, 52278
135.....51546, 52278
142.....51546, 52278
382.....51556
1300.....51546, 52270

**Proposed Rules:**
39 .....50125, 50578, 50580, 50582, 50584, 50586, 50588, 50870, 50872, 50873, 50875, 50877, 50880, 50872, 50884, 50886, 50888, 50891, 50894, 50897, 50899, 50901, 50903, 50906, 50910, 50912, 50915, 50917, 51358, 51607, 51611, 52066, 52068, 52070, 52072, 52073
71.....52076

**15 CFR**

14.....49827
742.....50090
744.....50090

**Proposed Rules:**
990.....50919

**16 CFR**

6.....51862

**Proposed Rules:**
1633.....51886

**17 CFR**

230.....50102
232.....49829
239.....50102
240.....50103
270.....50102
274.....50102

**Proposed Rules:**
1.....50786
41.....50720, 50786
190.....50786
230.....50744
232.....50744
239.....50744
240 .....49877, 50744, 50786
242.....50720
249.....50744
269.....50744

**18 CFR**

**Proposed Rules:**
Ch. 1.....50591
37.....50919
161.....50919
250.....50919
284.....50919
358.....50919

**19 CFR**

10.....50534, 51864
122.....50103
163.....50534

**20 CFR**

655.....51095

**21 CFR**

101.....50824
1308.....51530, 51539

**Proposed Rules:**
589.....50929
1308.....51535

**22 CFR**

41.....49830

**24 CFR**

888.....50024
985.....50004

**25 CFR**

**Proposed Rules:**
580.....50127

**26 CFR**

301.....50541
602.....50541

**27 CFR**

9.....50564

**28 CFR**

2.....51301

**Proposed Rules:**
100.....50931

**29 CFR**

Ch. XL.....51864
102.....50310
1904.....52031

**Proposed Rules:**
470.....50010

**30 CFR**

210.....50827
218.....50827
920.....50827

**Proposed Rules:**
904.....50952
950.....51891

**31 CFR**

285.....51867
586.....50506
587.....50506

**33 CFR**

110.....50315
117 .....51302, 51313, 51304, 51305, 51557
160.....50565
165 .....50105, 50106, 50108, 50315, 51305, 51307, 51309, 51558, 51562, 52035, 52036, 52038, 52039, 52041, 52043

**Proposed Rules:**
117.....51614
155.....49877
156.....49877

**36 CFR**

**Proposed Rules:**
1234.....51740

**37 CFR**

**Proposed Rules:**
260.....51617

**38 CFR**

**Proposed Rules:**
3.....49886
4.....49886
17.....50594
20.....50318
36.....51893

**39 CFR**

**Proposed Rules:**
111.....51617

**40 CFR**

52 .....50319, 50829, 51312, 51566, 51568, 51570, 51572, 51574, 51576, 51578, 51868, 51869, 52044, 52050, 52055
60.....49830, 50110
61.....50110
62.....49834, 52060
63 .....50110, 50116, 50504
70 .....49837, 49839, 50321, 50325, 50574, 51312, 51318, 51581
180 .....50329, 50829, 51585, 51587
261.....50332
271.....49841, 50833
403.....50334

**Proposed Rules:**
51.....50135
52 .....50252, 50375, 51359, 51619
60.....49894
62.....49895, 52077
63.....50135, 50768
70 .....49895, 50136, 50375, 50378, 50379, 51359, 51360, 51620, 51895
89.....51098
90.....51098
91.....51098
93.....50954
94.....51098
124.....52192
136.....51518
141.....50961
142.....50961
228.....51628
260.....52192
261.....50379
267.....52192
270.....52192
271.....49896
281.....50963
300.....50380
1048.....51098
1051.....51098
1065.....51098
1068.....51098

**41 CFR**

61–250.....51998
101–46.....51095
102–39.....51095

**42 CFR**

51d.....51873

**Proposed Rules:**
81.....50967
82.....50978

**44 CFR**

64.....51320

**45 CFR**

Ch. V.....49844

**46 CFR**

32.....49877

**47 CFR**

0.....50833
1.....50834
2.....50834
22.....50841
24.....50841
27.....51594
64.....50841
73 .....50576, 50843, 51322

**Proposed Rules:**
2.....51905
21.....51905
64.....50139, 50140
73 .....50602, 50991, 51360, 51361, 51905
76.....51905

**48 CFR**

202.....49860
204.....49860
211.....49860
212.....49860, 49862
215.....49862
219.....49860, 49863
223.....49864
225.....49862
226.....50504
232.....49864
236.....49860
237.....49860
242.....49860
243.....49865
245.....49860
248.....49865
252 .....49860, 49862, 49864, 49865, 50504, 51515
253.....49862, 51515
442.....49866

**49 CFR**

27.....51556
325.....49867
355.....49867
356.....49867
360.....49867
365.....49867
366.....49867
367.....49867
370.....49867
371.....49867
372.....49867
373.....49867
374.....49867
375.....49867
376.....49867
377.....49867
378.....49867
379.....49867
381.....49867
383.....49867
384.....49867
385.....49867
386.....49867
387.....49867
388.....49867
389.....49867
390.....49867
391.....49867
392.....49867
393.....49867
395.....49867
396.....49867
397.....49867

398.....49867
399.....49867
572.....51880
**Proposed Rules:**
171.....50147
173.....50147
174.....50147
175.....50147
176.....50147
177.....50147
178.....50147
209.....51362
234.....51362
236.....51362
571.....51629
579.....51907
587.....51629

**50 CFR**

17 .....50340, 51322, 51598
18.....50843
223.....50350
600.....50851
660 .....49875, 50851, 52062
679.....50576, 50858
**Proposed Rules:**
10.....52282
17.....50383, 51362
20.....51919, 52077
21.....52077
222.....50148
223.....50148
229 .....49896, 50160, 50390
648.....51000
660.....51367
679 .....49908, 51001, 52090

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT OCTOBER 12, 2001

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:

Montana; published 8-13-01

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Centers for Medicare & Medicaid Services**

Medicare:

Medicare+Choice program—

Providers; recredentialing requirements; published 9-12-01

**OFFICE OF MANAGEMENT AND BUDGET**

**Management and Budget Office**

Air Transportation Safety and System Stabilization Act:

Aviation disaster relief; air carrier guarantee loan program; published 10-12-01

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Raytheon; published 9-6-01

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Exportation and importation of animals and animal products:

Bovine spongiform encephalopathy; importation prohibitions; comments due by 10-15-01; published 8-14-01 [FR 01-20399]

**COMMERCE DEPARTMENT**

**Census Bureau**

Age search program:

Program requirements; comments due by 10-17-01; published 9-17-01 [FR 01-23164]

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands groundfish; comments due by 10-15-01; published 8-15-01 [FR 01-20436]

Northeastern United States fisheries—

Small-mesh multispecies; default management measures date change; comments due by 10-17-01; published 9-17-01 [FR 01-23177]

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 10-16-01; published 10-1-01 [FR 01-24498]

Marine mammals:

Incidental taking—

Vandenberg Air Force Base, CA; missile and rocket launches, aircraft flight test operations, and helicopter operations; Pacific harbor seals; comments due by 10-15-01; published 9-14-01 [FR 01-23038]

Ocean and coastal resource management:

Marine sanctuaries—

Submarine cable permit; fair market value analysis; comments due by 10-16-01; published 9-28-01 [FR 01-24345]

**DEFENSE DEPARTMENT**

Federal Acquisition Regulation (FAR):

Claim and terms relating to termination; definitions; comments due by 10-15-01; published 8-15-01 [FR 01-20486]

Privacy Act; implementation

National Reconnaissance Office; comments due by 10-16-01; published 8-17-01 [FR 01-20367]

**DEFENSE DEPARTMENT**

**Navy Department**

Privacy Act; implementation; comments due by 10-16-01; published 8-17-01 [FR 01-20366]

**ENERGY DEPARTMENT**

**Energy Efficiency and Renewable Energy Office**

Consumer products; energy conservation program:

Energy conservation standards—

Central air conditioners and heat pumps; comments due by 10-19-01; published 9-27-01 [FR 01-24227]

Energy conservation:

Commercial and industrial equipment; energy efficiency program—

Underwriters Laboratories Inc.; electric motor efficiency; classification petition; comments due by 10-18-01; published 10-3-01 [FR 01-24682]

**ENVIRONMENTAL PROTECTION AGENCY**

Air pollutants, hazardous; national emission standards:

Hazardous waste combustors; comments due by 10-16-01; published 8-17-01 [FR 01-20897]

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs:

Stratospheric ozone protection—

Methyl bromide; quarantine and preshipment applications; exemptions; comments due by 10-17-01; published 7-19-01 [FR 01-17907]

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs: State authority delegations:

Pennsylvania; comments due by 10-15-01; published 9-13-01 [FR 01-22991]

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs; State authority delegations:

Pennsylvania; comments due by 10-15-01; published 9-13-01 [FR 01-22990]

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:

California; correction; comments due by 10-15-01; published 9-13-01 [FR 01-22999]

Superfund program:

Natonal oil and hazardous contingency plan—

National priorities list update; comments due by 10-17-01; published 9-17-01 [FR 01-22998]

**FARM CREDIT ADMINISTRATION**

Farm credit system:

Loan policies and operations—

Loans to designated parties; approval; comments due by 10-18-01; published 9-18-01 [FR 01-23208]

Organization, and loan policies and operations—

Farm credit status termination; comments due by 10-19-01; published 8-20-01 [FR 01-20907]

**FEDERAL COMMUNICATIONS COMMISSION**

Frequency allocations and radio treaty matters:

New advanced mobile and fixed terrestrial services; frequencies below 3 GHz; comments due by 10-19-01; published 10-11-01 [FR 01-25640]

Radio stations; table of assignments:

Michigan and Texas; comments due by 10-15-01; published 9-5-01 [FR 01-22207]

Texas; comments due by 10-15-01; published 9-5-01 [FR 01-22201]

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Community Reinvestment Act regulations; review; comments due by 10-17-01; published 7-19-01 [FR 01-18033]

**FEDERAL RESERVE SYSTEM**

Community Reinvestment Act regulations; review; comments due by 10-17-01; published 7-19-01 [FR 01-18033]

**GENERAL SERVICES ADMINISTRATION**

Federal Acquisition Regulation (FAR):

Claim and terms relating to termination; definitions; comments due by 10-15-01; published 8-15-01 [FR 01-20486]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Centers for Medicare & Medicaid Services**

Medicaid:

Managed care; comments due by 10-19-01; published 8-20-01 [FR 01-20715]

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

Public and Indian housing:

Public housing agency plans—
Poverty deconcentration; Established Income Range definition; amendments; comments due by 10-15-01; published 8-15-01 [FR 01-20565]

**INTERIOR DEPARTMENT**
**Fish and Wildlife Service**
Endangered and threatened species:
Critical habitat designations—
Monterey spineflower; comments due by 10-19-01; published 9-19-01 [FR 01-23248]
Robust spineflower; comments due by 10-19-01; published 9-19-01 [FR 01-23249]
Scotts Valley spineflower; comments due by 10-19-01; published 9-19-01 [FR 01-23247]

**INTERIOR DEPARTMENT**
**Minerals Management Service**
Outer Continental Shelf; oil, gas, and sulphur operations:
Offshore cranes; American Petroleum Institute's Specification 2C; incorporation by reference; comments due by 10-17-01; published 7-19-01 [FR 01-18022]

**JUSTICE DEPARTMENT**
**Immigration and Naturalization Service**
Immigration:
Legal Immigration Family Equity Act; implementation—
"K" nonimmigrant classification for spouses of U.S. citizens and their children; comments due by 10-15-01; published 8-14-01 [FR 01-20302]

**LIBRARY OF CONGRESS**
**Copyright Office, Library of Congress**
Copyright arbitration royalty panel rules and procedures:
Digital performance of sound recordings; reasonable rates and terms determination; comments due by 10-17-01; published 10-10-01 [FR 01-25392]

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**
Federal Acquisition Regulation (FAR):
Claim and terms relating to termination; definitions; comments due by 10-15-01; published 8-15-01 [FR 01-20486]

**NUCLEAR REGULATORY COMMISSION**
Production and utilization facilities; domestic licensing:
Light-water cooled nuclear power plants, components; construction and inservice inspection and testing; industry codes and standards; comments due by 10-17-01; published 8-3-01 [FR 01-19414]

**SMALL BUSINESS ADMINISTRATION**
Business loans:
Microloan program; comments due by 10-15-01; published 9-14-01 [FR 01-22959]

**SOCIAL SECURITY ADMINISTRATION**
Social security benefits, and organization and procedures:
Federal old age, survivors, and disability insurance—
Applications and related forms; comments due by 10-16-01; published 8-17-01 [FR 01-20156]

**TRANSPORTATION DEPARTMENT**
**Coast Guard**
Drawbridge operations:
Louisiana; comments due by 10-15-01; published 8-16-01 [FR 01-20317]
Regattas and marine parades:
Eighth Coast Guard District; comments due by 10-17-01; published 9-17-01 [FR 01-22812]

**TRANSPORTATION DEPARTMENT**
**Federal Aviation Administration**
Air carrier certification and operations:
Fractional aircraft ownership programs and on-demand operations; comments due by 10-16-01; published 7-18-01 [FR 01-17503]
Airworthiness directives:
BAE Systems (Operations) Ltd.; comments due by 10-15-01; published 9-14-01 [FR 01-23069]

**TRANSPORTATION DEPARTMENT**
**Federal Aviation Administration**
Airworthiness directives:
Boeing; comments due by 10-19-01; published 8-20-01 [FR 01-20807]

**TRANSPORTATION DEPARTMENT**
**Federal Aviation Administration**
Airworthiness directives:
Boeing; comments due by 10-19-01; published 9-4-01 [FR 01-22092]

**TRANSPORTATION DEPARTMENT**
**Federal Aviation Administration**
Airworthiness directives:
Bombardier; comments due by 10-15-01; published 9-14-01 [FR 01-23068]

**TRANSPORTATION DEPARTMENT**
**Federal Aviation Administration**
Airworthiness directives:
Dornier; comments due by 10-15-01; published 9-14-01 [FR 01-23070]
Honeywell; comments due by 10-15-01; published 8-16-01 [FR 01-20591]
McDonnell Douglas; comments due by 10-15-01; published 8-29-01 [FR 01-21751]

**TRANSPORTATION DEPARTMENT**
**Federal Aviation Administration**
Class E airspace; comments due by 10-15-01; published 8-29-01 [FR 01-21826]

**TRANSPORTATION DEPARTMENT**
**Federal Aviation Administration**
Class E airspace; comments due by 10-15-01; published 8-29-01 [FR 01-21819]

**TREASURY DEPARTMENT**
**Comptroller of the Currency**
Community Reinvestment Act regulations; review; comments due by 10-17-01; published 7-19-01 [FR 01-18033]

**TREASURY DEPARTMENT**
**Customs Service**
Administrative rulings; comments due by 10-17-01; published 8-28-01 [FR 01-21659]

**TREASURY DEPARTMENT**
**Thrift Supervision Office**
Community Reinvestment Act regulations; review; comments due by 10-17-01; published 7-19-01 [FR 01-18033]

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**H.R. 2510/P.L. 107–47**

Defense Production Act Amendments of 2001 (Oct. 5, 2001; 115 Stat. 260)

**Last List October 10, 2001**

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