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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 80

[Doc. No. FV–01–80–01]

RIN 0581–AC07

Regulations Governing the Fresh Russet Potato Diversion Program, 2000 Crop

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document finalizes procedures setting forth the terms of the Fresh Russet Potato Diversion Program for the 2000 crop. A proposed rule was published April 13, 2001.

EFFECTIVE DATE: November 23, 2001.

FOR FURTHER INFORMATION CONTACT: Susan Proden, Branch Chief, Room 2546—South Building, USDA or call (202) 720–4517. Information may also be obtained at the website: http://www.ams.usda.gov/fv/fvcomm.htm

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866. Therefore, it has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions, or which would otherwise impede its full implementation. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Paperwork Reduction Act

Information collection requirements required by this rule are not required before the regulations may be effective. However, the 30-day public comment period and OMB approval under the provisions of 44 U.S.C. Chapter 35 are still required after the rule is published, and the Information Collection Package and request for approval will be submitted to OMB.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service(AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionally burdened. The Small Business Administration (13 CFR 121.1) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000 and small agricultural service firms are defined as those, whose gross annual receipts are less than $5,000,000.

Because there is a preponderance of entities shipping fresh Russet potatoes that meet these gross revenue limitations it is anticipated that the majority of the program participants could be classified as small entities without substantial regulatory restriction. Therefore, the provisions of the RFA are not applicable and no Regulatory Flexibility analysis is required.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V published at 48 FR 29115 (June 24, 1983).

Executive Order 12612

It has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct, effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Background

On April 13, 2001 (66 FR 19099), a proposed rule was published to provide for a Potato Diversion Program for 2000 crop Fresh Russet Potatoes. The program was developed because of market conditions existing at that time. Authority for the program is contained in Section 32 of the Act of August 24, 1935, is amended (7 U.S.C. 612c) clause ''(2)'' of that section allows for diversion and clause ''(3)'' provides for payments to help farmers. Both apply. Because of crop-driven deadlines, disposition and application deadlines were set for time periods that have now expired. Several commentors asked for an extended comment period and such an extension was published on May 16, 2001 (66 FR 27405). Other commentors asked for higher payments. Because of the applications received, the program's authorization was increased to $12 million. Other commentors suggested that other varieties of potatoes be covered, that a particular diversion be authorized to a particular charitable organization, and that dehydrated potatoes be diverted. These comments were not adopted because of the particular market conditions that drove the development of the program and because the agency sought to avoid unduly limiting farmer flexibility in light of the statutory purposes at issue. Sections 80.3 through 80.16 have been removed because the deadlines for application and disposition have passed.

List of Subjects in 7 CFR Part 80

Administrative practice and procedures, Agriculture, Agricultural commodities, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7 chapter I is amended by revising part 80 to read as follows:

PART 80—FRESH RUSSET POTATO DIVERSION PROGRAM

Subpart A—Fresh Russet Potato Diversion Program

Sec.

80.1 Applicability and payments.
80.2 Administration and disputes.

Authority: 7 U.S.C. 612c.

Subpart A—Fresh Russet Potato Diversion Program

§ 80.1 Applicability and payments.

Payment be received or retained with respect to diversions of 2001 Fresh Russet potatoes as allowed by the Administrator of the Agricultural Marketing Service (AMS), of the Department of Agriculture (USDA) using standards set out for consideration in the relevant **Federal Register** notice published on April 13, 2001 (66 FR 19099) except that total funding for the program may be an amount up to $12 million. If a person has or will receive such a payment and there is a failure to comply with the conditions for payment or any condition for payment set out in the application, or that otherwise applies, all sums received by a person shall be returned with interest. No other claims for payment by producers or other persons under this part based upon their diversion of potatoes, shall be allowed except as approved by the Administrator of the Agricultural Marketing Service (AMS), of the Department of Agriculture (USDA). In all cases, the Administrator may set such other conditions for payment as may be allowable and serve the accomplishment of the goals of the program.

§ 80.2 Administration and disputes.

Administration of this part shall be under the supervision of the Deputy Administrator, Fruit and Vegetable Programs, AMS, and implemented for AMS through the Farm Service Agency (FSA) of USDA. Disputes shall be resolved by FSA by using regulations found in 7 CFR part 780.

Subpart B—[Reserved]

Dated: November 15, 2001.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 01–29110 Filed 11–20–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket Nos. 99AMS–FV–923–A1; FV00–923–1]

Sweet Cherries Grown in Designated Counties in Washington; Order Amending Marketing Agreement and Order No. 923

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing agreement and order (order) for Washington sweet cherries. The amendments were submitted by the Washington Cherry Marketing Committee (Committee), the agency responsible for local administration of the order. The changes will: Increase the production area to cover the area in the State of Washington east of the Cascade Mountain Range and allow for special purpose shipments of cherries to packing operations outside the production area; Increase representation on the Committee by adding an additional handler member; Provide for late payment and interest charges on delinquent assessments; Authorize establishment of container marking requirements; and Allow prospective Committee members and alternates to qualify for membership by filing a written acceptance of willingness to serve prior to selection. These changes were favored by sweet cherry growers in a mail referendum and will improve the operation and functioning of the Washington sweet cherry marketing order program. Proposed amendments to establish tenure requirements for Committee members and to require that continuance referenda be conducted every 6 years were not favored by sweet cherry growers in the mail referendum and are not being implemented.

EFFECTIVE DATE: December 21, 2001.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Northwest Marketing Field Office, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204; telephone (503) 326–2724 or Fax (503) 326–7440; or Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, Washington, D.C. 20250–0200; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax (202) 720–8938.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on November 3, 1999, and published in the November 8, 1999, issue of the **Federal Register** (64 FR 60733). Recommended Decision and Opportunity to File Written Exceptions issued on November 2, 2000, and published in the **Federal Register** on November 9, 2000 (65 FR 67584). USDA's Decision and Referendum Order issued March 1, 2001, and published in the **Federal Register** on March 6, 2001 (66 FR 13447).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

This final rule was formulated on the record of a public hearing held in Yakima, Washington, on November 16, 1999, to consider the proposed amendment of Marketing Agreement and Order No. 923, regulating the handling of Washington sweet cherries, hereinafter referred to collectively as the ''order.'' The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained amendment proposals submitted by the Committee and the U.S. Department of Agriculture.

The Committee's proposals were to: (1) Increase the production area to cover the area in the State of Washington east of the Cascade Mountain Range; redefine the districts established under the order; and authorize special purpose shipments, with appropriate safeguards, to facilitate the movement of cherries to packing facilities outside the production area; (2) increase representation on the Committee by adding one additional handler member; (3) authorize the Committee, with USDA approval, to collect late payment and interest charges on delinquent assessments; (4) authorize the Committee, with USDA approval, to establish container marking requirements; and (5) authorize Committee nominees to qualify as a

member or alternate by filing a written acceptance of willingness to serve prior to the selection.

Also, the Fruit and Vegetable Programs of the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), proposed three amendments: (1) Establish a limit on the number of consecutive terms a person may serve as a member of the Committee; (2) require that continuance referenda be conducted every 6 years to ascertain grower support for the order; and (3) adopt such changes as may be necessary to the order, if any of the above amendments are adopted, so that all of its provisions conform with those amendments. No conforming changes have been deemed necessary.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the AMS on November 2, 2000, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by December 11, 2000. None were filed.

A USDA's Decision and Referendum Order was issued on March 1, 2001, directing that a referendum be conducted during the period April 10 through April 27, 2001, among growers of sweet cherries to determine whether they favored the proposed amendments to the order. In the referendum, all of the amendments proposed by the Committee were favored by more than two-thirds of the growers voting in the referendum by number and volume. The proposals submitted by USDA regarding committee tenure requirements and periodic continuation referenda on the marketing order received majority support but failed to receive the required support for passage.

The amended marketing agreement was subsequently mailed to all sweet cherry handlers in the production area for their approval. The marketing agreement was approved by handlers representing more than 50 percent of the volume of sweet cherries handled by all handlers during the representative period of April 1, 2000, through March 31, 2001.

Small Business Considerations

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000. Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses.

The record indicates that there are approximately 75 handlers currently regulated under Marketing Order No. 923. There are two additional packing houses in the expanded production area that will be considered handlers. There are four packing operations in Oregon that pack Washington cherries for grower/handlers. In addition, there are about 1,600 cherry growers in the production area. This amount includes about 200 additional growers from the expanded production area. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

In 1998, Washington produced 96,000 tons of sweet cherries. The average price for fresh cherries in 1998 was $1,600 per ton. This computes to approximate revenues for the 1998 crop of $153,600,000. The record indicated that approximately 15 handlers handle the majority of the crop and could be classified as large businesses. Thus, a majority of sweet cherry handlers could be classified as small entities. The same is estimated with regard to the packing houses in Oregon.

Dividing total production from 1998 by the number of growers in the amended production area, the average grower produces about 60 tons of cherries annually. With an average price of $1,600 per ton for 1998 sweet cherries, average revenues would be $96,000. Thus, it is reasonable to conclude that most sweet cherry growers are small entities.

The amendments to the Washington sweet cherry marketing order will be beneficial to business entities, both large and small.

Industry Background

Sweet cherries rank second to apples as the most important fruit grown in Washington, with a value of production of $128.7 million. Washington growers produced 96,000 tons of sweet cherries in 1998, which is 46 percent of the nation's total.

The varieties of sweet cherries subject to regulation under the order are: Bing, Chelan, Lambert, Lapin, Rainier, and Sweetheart. Shipping of these cherries generally begins around June 15 and usually ends around August 15. The most active harvest period is from June 10 through July 20.

The order authorizes the use of grade, size and container regulations for the fresh shipment of sweet cherries from the production area. The regulations, specify certain size, maturity and pack requirements. The current regulations are based on Washington grade standards and apply to specific varieties. The purpose of these regulations is to ensure the shipment of high quality cherries. The order has allowed the industry to develop the reputation for shipping a quality product, which has allowed producers to ship and sell fruit in a more stable marketplace.

Washington is the leading producer of sweet cherries for fresh market sale. Washington's main competitors in domestic fresh markets are California and Oregon. From 1994 through 1998, Washington produced an average of 55,600 tons per year. This represents 59 percent of the total sweet cherries marketed fresh. California produced an average of 20,460 tons per year and Oregon produced 12,900 tons per year from 1994 through 1998.

Sweet cherries are also grown in Idaho, Montana and Utah, as well as Michigan, New York and Pennsylvania. Bearing acreage figures are not published for the States of Idaho and Montana. Utah's production area totals 600 acres, and has been declining. Bearing acreage figures are published for Michigan, New York and Pennsylvania, but the majority of sweet cherries grown in those states are not sold in fresh markets. The fruit in these States are produced and marketed during the summer months each year. While these States compete with Washington, Oregon and California in the marketing of fresh sweet cherries, their production is relatively small.

From 1964 through 1998, total U.S. production of sweet cherries increased 332 percent and fresh utilization increased 393 percent. This suggests that fresh shipments have been growing in importance, while the processing sector has remained relatively stable. Over the past five seasons, 66 percent of Washington's production moved into fresh markets.

Over the last 30 years, prices between the three primary growing States have been very competitive. Prices in California, Washington and Oregon have averaged $1,166, $1,028 and $798 per

ton, respectively. California prices are slightly higher than prices in Washington or Oregon. One of the reasons that California prices average higher than Washington's is that California shipments begin in the early part of May, when competition in the fresh fruit market is limited. Washington shipments do not start until the middle of June. Early-season shippers generally receive a premium for their product on the fresh market.

Fresh prices for Washington sweet cherries receive a premium over processing sweet cherries. From 1969 to 1998, fresh prices have increased more than 350 percent. Fresh cherry prices were $350 per ton in 1969 and were as high as $2,150 per ton in 1996. Prices were $1,600 per ton in 1998.

While California growers receive higher prices than Washington growers on average, Washington's value of production is much greater than California's or Oregon's. This is due to higher yields and larger production levels in Washington. This likely indicates that Washington growers have a comparative cost advantage over California or Oregon growers. In 1998, Washington reported its highest value of fresh production, $113.6 million. This compares to a 1998 value of fresh production of $17.9 million for California and $22.6 million for Oregon. The value of fresh production has increased more than 150 percent since 1991.

Exports play an important role in the marketing of Washington sweet cherries. With increasing bearing acres and production levels trending toward 100,000 tons in the near future, increasing levels of exports can be anticipated. However, competition in the export markets is expected to be high. California continues to export a large volume of their increasing production. In addition, China is estimated to have 25,000 acres of cherries planted. Spain, Greece, Turkey, Iran, Lebanon, Syria and some Eastern European countries have also increased production levels. These countries do not export sweet cherries into the U.S.

Exports of fresh Washington sweet cherries have been increasing, in particular during the 1997 and 1998 seasons. Exports reached a high of 21,148 tons in 1997. In 1998, exports increased 35 percent over the 1997 levels, achieving a new high of 28,560 tons.

Export markets demand a high quality product. With a limited shelf life, these fresh deliveries of sweet cherries require a high quality product. The shipment of low quality product could ruin years of market development in an export market. Grades and standards assure the shipment of high quality fruit into export markets, and small growers as well as large growers will benefit.

Production Area and Shipments Outside Production Area

When the marketing order was created in 1957, sweet cherries were primarily grown in only 6 counties in the State of Washington. The 6 counties that are currently regulated are Okanogan, Chelan, Douglas, Grant, Benton, and Yakima. The 14 additional counties being included with this action are Kittitas, Klickitat, Ferry, Stevens, Pend Oreille, Lincoln, Spokane, Adams, Whitman, Franklin, Walla Walla, Columbia, Garfield, and Asotin.

Cherry production has dramatically increased in areas within the State of Washington that are outside the current production area. As more land has come into irrigation and farmers look for alternative crops to grow, sweet cherry production is expected to increase in areas outside the current production area.

The amendment to increase the production area to cover the area in the State of Washington east of the Cascade Mountain Range, to redefine the districts in order to include the additional counties and to authorize special purpose shipments, with appropriate safeguards, allowing movement of cherries to packing operations outside the production area will improve the effectiveness of the marketing order by ensuring that the major cherry producing counties in Washington are covered under the marketing order. In addition, including counties with potential to produce significant amounts of sweet cherries helps to ensure that all major production will be covered under the marketing order in the future. The amendment also benefits growers, especially growers not currently regulated under the order, by allowing many of these growers to continue shipping their cherries to Oregon for packing.

The Committee has been discussing amending the order in this regard for many years. In 1990, a subcommittee composed of small and large growers and handlers was appointed to study the expansion of the production area. The Committee discussed expanding the production area with producers located outside the production area. Out of these discussions, it was determined that if the production area was expanded, the authority to grade and pack cherries outside the production area was also needed in order to allow growers in the proposed production area to avoid financial hardships by maintaining continuity in the packing of their cherries.

In March 1998, the Committee recommended numerous amendments to the marketing order, including covering the entire State of Washington in the production area. In August 1999, the Committee recommended modifying the recommendation on the production area proposal from regulating the entire State to only including the eastern part of the State.

Alternatives to the amendment on the expansion of the production area were considered by the Committee. These alternatives were: (1) including the entire State of Washington; (2) including the States of Washington and Oregon; and (3) including the States of Washington, Oregon, Idaho and Utah. Committee representatives communicated with growers and handlers in these regions. Public meetings on the subject were publicized in these growing areas and interested parties were encouraged to attend. Committee members also attended grower meetings in these areas to discuss expansion of the production area.

Regarding including the entire State of Washington, the Committee determined that due to weather conditions, it would be unlikely that cherries could be commercially produced in significant amounts west of the Cascade Mountain Range in Washington. Average production in this area is 50 tons per year. Testimony indicated that excessive rain causes serious quality problems with sweet cherries, such as cracking. Generally, weather conditions in eastern Washington are more favorable for growing sweet cherries, as well as other horticultural crops.

Representatives from Idaho and Utah believed that their production and marketing could be easily distinguished and segregated from Washington and Oregon production. In addition, it was believed the Idaho and Utah sweet cherry industry was not large enough to make an impact on Washington cherries. Statistical data presented at the hearing on the volume of cherries produced in Idaho and Utah supports this belief.

Oregon's sweet cherry industry primarily borders the State of Washington, but representatives from Oregon believed their industry should be kept separate from the Washington industry. The record evidence revealed that Oregon already has two organizations that represent the interests of sweet cherry growers, the Oregon Sweet Cherry Commission and the

Wasco County Fruit and Produce League. These organizations collect assessments based on cherry production. According to record testimony, the Oregon growers did not see the need to form another organization to protect their interests. In addition, testimony indicated that Oregon growers did not want to become a minor part of the Washington order.

An organization called the Northwest Cherry Growers also represents the States of Washington, Oregon, Idaho and Utah. This group is responsible for collecting assessments based on cherry tonnage and directing promotion programs for sweet cherries grown in these four states.

Based on record evidence, the Committee considered these various alternatives and concluded that the proposal it submitted on the expansion of the production area is the most reasonable alternative. The amended production area is the smallest regional area, which is practicable, while maintaining program effectiveness.

The record revealed that the cherry farm sizes in Washington range from 3 or 4 acres to several hundred acres. The average farm is approximately 40 acres. According to testimony, there are approximately 180 growers in the amended production area that are larger that the average farm. Some farms in the amended production area, particularly in Franklin County, are 50 to 200 acres. Although much of this acreage is currently non-producing, testimony indicated that the potential exists for significant production. Unlike the western part of the State where significant production is not anticipated, if those areas with significant production potential are not regulated, it could have a detrimental impact on the favorable Washington sweet cherry quality image.

Testimony was received at the hearing on the costs associated with the proposed amendments. This testimony indicated that costs associated with this proposal should be minor. The total annual cost of production for a mature orchard is $7,413.06 per acre. The current assessment of 75 cents per ton comprises less than 1 percent of total production costs. Any increase in assessments resulting from this amendment will not have a significant negative financial impact on growers or handlers. Testimony indicated that the annual assessment could even be reduced due to additional cherries being assessed with the expansion of the production area.

Applying grades and standards to the new production areas should provide benefits to small producers. The grades and standards allow small producers the opportunity to develop a reputation for producing and delivering a consistent, high quality product. These grades and standards provide incentives and rewards for the production of high quality product. In addition, the establishment of uniform grades and standards across all the production areas provides a level field for competition among both small and large growers. Testimony indicated that as production increases, quality issues become more important and production is expected to increase in excess of 100,000 tons for the first time in the industry's history.

The 1999–2000 budget for the Committee is $62,815, of which $3,388 is earmarked for compliance efforts. Testimony indicated that increased compliance and administrative costs necessary to monitor this proposal would not be significant. It was testified that the benefits of strengthening the market would outweigh any increase in costs. Adversely, if the production area is not redefined, testimony indicated that the Washington cherry image could be harmed, as more and more areas are growing cherries. In addition, indications are that a large number of non-bearing acres are coming into production inside and outside the current production area. Adding to the increase in production are growers of other crops, such as grain and apples, looking for alternative crops to grow in order to supplement incomes. Sweet cherries are an option these growers consider.

The Washington cherry market distinguishes itself from competitors. More product is available from Washington than the other cherry producing States. The Washington cherry market is more diverse and national in scope, and testimony indicated that buyers have confidence in Washington sweet cherries due to consistent quality. Testimony revealed that this distinction is a direct result of the establishment of minimum quality requirements under the marketing order. The amendment allowing cherry shipments outside the production area for packing provides safeguards to ensure that minimum quality requirements are met. If these facilities fail to abide by the applicable requirements, the committee can rescind their privileges and Washington cherries cannot be delivered to that facility.

When regulations are in place, all cherries in the production area are required to be inspected and certified as meeting established requirements. The Washington State Department of Agriculture's Fruit and Vegetable Inspection Program (WSDA), headquartered in Olympia, Washington collaborates with USDA–AMS, Fresh Products Branch to provide inspection to marketing order commodities in Washington. WSDA's district offices are located in Yakima, Wenatchee and Moses Lake. These main district offices have area offices in strategic locations to the various growing areas in the State. WSDA employs approximately 150–160 full-time inspection staff throughout the State. In addition, during peak harvest periods, temporary inspectors are hired.

The WSDA operates on a user-fee basis; no appropriated funds are received. Inspection fees pay for the program to operate. Except for random inspections conducted on fruit stands to comply with a cherry fruit fly quarantine program, WSDA provides inspections only upon request. The applicant indicates to WSDA what type of inspection is needed, such as compliance with a marketing order.

The fees for cherry inspections are 21 cents per hundred weight or $23/hour, whichever is greater, plus additional charges for travel time and mileage. The larger growers have individual inspectors stationed at their warehouses during the season. The time and mileage charges are more frequently assessed to the smaller grower/packer because of the small volumes inspected and remote locations. However, WSDA attempts to mitigate costs, especially to small growers and handlers. WSDA helps smaller growers mitigate these costs by meeting growers halfway between their orchard and the inspection office or WSDA authorizes the grower to bring the product to the inspection office.

Individual shipments not exceeding 100 pounds in the aggregate are exempt from the regulations, as well as cherries for home use and cherries not intended for re-sale. In addition, shipments for consumption by charitable institutions, for distribution by relief agencies or for commercial processing into products are exempt from regulation.

Testimony indicated that increased costs associated with more cherries being inspected in accordance with marketing order requirements would be offset by consistent quality and a stable market place. In addition, most handlers already pack their cherries and have them inspected in accordance with marketing order requirements, regardless of whether the cherries are grown inside or outside the current production area.

Minimum quality and size standards in the amended production area will help maintain the integrity of the product so that the commodity's overall

quality image is not diminished by a low quality sample. The principle objective of a grading system is to make the market work more efficiently. Minimum quality and size requirements improve information between buyers and sellers. Contracts could be made based on grade specifications, and buyers need not personally inspect each lot of product. Standardization of quality and size reduces uncertainty between buyers and sellers, and this helps reduce marketing costs. The goal of an effective grading system is to improve quality and size. Minimum quality and size standards help ensure that substandard produce does not find its way to the market and destroy consumer confidence and harm producer returns. Cherries that do not meet the grade and size requirements can be sold in the processed market.

In addition to proximity to their orchards, there are other reasons growers select certain packinghouses. Many growers select handlers based on the quality of pack, the packinghouse image and/or whether or not the handler is a cooperative. These options for growers would be limited if they were no longer able to have their cherries packed in Oregon.

Testimony indicated that existing packing facilities in the State of Washington could have difficulty handling the volume of Washington cherries if the production continues to increase. The amendment to allow shipments of Washington cherries outside the production area for packing specifically addresses this issue. This amendment provides flexibility in moving product in and out of the marketing order production area.

WSDA currently has an agreement with the Oregon Department of Agriculture covering the border area between both states, namely in the Bingen, Washington area, where Oregon Department of Agriculture conducts the inspections to Washington standards and marketing order specifications. Testimony indicated this agreement works well, as it assists the WSDA in supplying quality inspections in that area. Testimony indicated that the inspection office does not envision any oversight burden imposed by these proposals that it cannot meet. Safeguard provisions are incorporated into this amendment to ensure compliance with the amendment to authorize shipments outside the production area.

Because the production area is expanded, it is necessary to incorporate the additional counties regulated into the districts currently established under the order. The Committee discussed dividing the production area into three districts and distributing the counties and membership across these districts. The Committee was concerned that this would entail increasing Committee membership by more than one handler member as proposed and discussed in Material Issue No. 2. The record indicated that the Committee believed a 16 member Committee would be the most effective. Therefore, it was decided to distribute the counties proportionately among the two districts.

District 1 encompasses the northern part of the production area and District 2 encompasses the southern part. In 1997 production in District 1 was approximately 44,300 tons of sweet cherries and in District 2, 45,500 tons. In addition, tons packed in each district is close to equal. This distribution of counties among the two districts will provide for equal representation of handlers and growers from each district.

Committee Representation

The amendment to increase representation on the Committee by adding one additional handler member will improve representation on the Committee and allow the Committee to function more efficiently.

Record evidence supports increasing the membership on the Committee by one handler member. The Washington sweet cherry industry is growing. Bearing acres and production are increasing and markets, including exports, are expanding. Although the Committee's recommendation to increase the number of Committee members by one initially related to the expansion of the production area, the record testimony revealed that the Committee would prefer to have an additional handler member even if the production area was not expanded.

Increasing representation on the Committee allows additional input in Committee decisions. Having equal handler representation for each district is reasonable considering that the volume handled is similar in each district, regardless if the production area is expanded. Costs of adding an additional member to the Committee are minimal.

In its deliberations, the Committee discussed alternatives to address appropriate representation and districting should the production area be expanded. One alternative was to divide the area into three districts and distribute membership proportionately across these districts. This alternative would have likely entailed increasing membership by more than one. The Committee was concerned that increasing the number of members by more than one would hinder the decision-making capability of the Committee. The Committee agreed that 16 members was an appropriate number for the Committee to be most effective while adequately representing the expanded production area.

Late Payment and Interest Charges on Delinquent Assessments

The amendment to authorize the Committee, with AMS approval, to collect late payment and interest charges on delinquent assessments will encourage handlers to pay their assessments on time. Assessments not paid promptly add an undue burden on the Committee because the Committee has ongoing projects and programs funded by assessments that are functioning throughout the year. The addition of such a charge is consistent with standard business practices. No costs are associated for handlers who pay timely assessments.

Late payment and interest charges for delinquent assessments provides an incentive for handlers to pay on time. This should result in fewer funds needed by the Committee for collection activities. Also, the fees derived from late payment and interest charges partially compensates the Committee for its collection efforts.

Container Marking Requirements

The amendment to authorize the Committee, with AMS approval, to establish container marking requirements further expands and enhances the current container and pack requirements already being used. Uniform marking requirements will assist in avoiding confusion in the marketplace.

Testimony indicated that no significant costs would be incurred if this authority were implemented because handlers already have the equipment to mark containers. Container markings are currently accomplished by handlers, on an individual basis. The benefits of this amendment are in the form of uniform marking requirements for Washington sweet cherries.

Combining Forms Required by Committee Nominees

The amendment to authorize Committee nominees to qualify as a member or alternate by filing a written acceptance of willingness to serve prior to the selection allows the selection process to take place in a more timely fashion.

The amendment deletes the requirement that the selected member/alternate file a written acceptance after notification of selection and combines

the acceptance letter with the background statement submitted prior to selection. The nominee will, in effect, be indicating willingness to serve on the Committee prior to being selected.

Testimony indicated that there is no benefit in waiting for the nominee to sign the acceptance letter after being selected. No negative impacts are anticipated from implementing this amendment. However, the benefits are that the nominees are only required to sign and deliver one form. In addition, the Committee could obtain all pertinent information well ahead of the time for seating of the new Committee, thereby operating more efficiently.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the reporting and recordkeeping provisions that will be generated by the amendments have been approved by the Office of Management and Budget (OMB) under OMB control number 0581–0189. Specifically, if the production area is expanded, the overall burden of completion of all Committee generated forms and reports could increase due to additional handlers being regulated, as well as additional growers in the regulated area. Previous total burden hours were approximately 69 hours and only related to referenda and nominations. Sixty eight of these hours related to producer referenda for order amendments and handlers signing of marketing agreements. The other hour covered time spent by Committee members and alternates completing membership forms. Adding the additional growers and handlers from the expanded production area increases the overall burden for referenda documentation by approximately 22 hours. Adding an additional handler member will increase the overall burden to complete nomination forms from 1.25 hours to 1.33 hours.

The documentation required to implement the safeguard provisions for the four packing facilities in Oregon are yet to be established, but it is not anticipated that the overall burden will be dramatically increased. It is anticipated an application form will be developed for these packing operations. These provisions and any additional provisions modifying reporting and recordkeeping burdens that generate from these amendments will not be effective until receiving OMB approval. Current information collection requirements for part 923 are approved by OMB under OMB number 0581–0189.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule. All of these amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

While the implementation of these requirements may impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of these costs may be passed on to growers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the meetings regarding these proposals as well as the hearing date were widely publicized throughout the Washington sweet cherry production area and proposed production area and all interested persons were invited to attend the meetings and the hearing and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues. The Committee itself is composed of 15 members, of whom five are handlers and ten are producers. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

Civil Justice Reform

The amendments contained in this rule have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. The amendments will not preempt any State or local laws, regulations, or policies, unless they represent an irreconcilable conflict with the amendments.

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

Order Amending the Order Regulating the Handling of Sweet Cherries Grown in Designated Counties in Washington

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 923 (7 CFR part 923), regulating the handling of sweet cherries grown in designated counties in Washington.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as hereby amended, regulate the handling of sweet cherries grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing agreement and order, as hereby amended, are limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area

would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as hereby amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of sweet cherries grown in the production area; and

(5) All handling of sweet cherries grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping sweet cherries covered by the order as hereby amended) who, during the period April 1, 2000, through March 31, 2001, handled 50 percent or more of the volume of such cherries covered by said order, as hereby amended, have signed an amended marketing agreement; and

(2) The issuance of this amendatory order is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period April 1, 2000, through March 31, 2001 (which has been deemed to be a representative period), have been engaged within the production area in the production of such cherries, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

Order Relative to Handling of Sweet Cherries Grown in Designated Counties in Washington

It is therefore ordered, That on and after the effective date hereof, all handling of sweet cherries grown in designated counties in Washington shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing agreement and order amendments contained in USDA's Decision issued by the Administrator on March 1, 2001, and published in the **Federal Register** on March 6, 2001, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

List of Subjects in 7 CFR Part 923

Marketing agreements, Cherries, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR part 923 is amended as follows:

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 923 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Revise § 923.4 to read as follows:

§ 923.4 Production area.

Production area means the counties of Okanogan, Chelan, Kittitas, Yakima, Klickitat in the State of Washington and all of the counties in Washington lying east thereof.

3. Amend § 923.14 by revising paragraphs (a) and (b) to read as follows:

§ 923.14 District.

* * * * *

(a) *District 1* shall include the Counties of Chelan, Okanogan, Douglas, Grant, Lincoln, Spokane, Pend Oreille, Stevens, and Ferry.

(b) *District 2* shall include the counties of Kittitas, Yakima, Klickitat, Benton, Adams, Franklin, Walla Walla, Whitman, Columbia, Garfield and Asotin.

4. Amend § 923.20 as follows:

a. In the first sentence remove the word ''fifteen'' and add the word ''sixteen'' in its place;

b. In the third and fourth sentences remove the word ''five'' and add the word ''six'' in its place;

c. In the fifth sentence, remove the words ''four'' and ''six'' and add the word ''five'' in their place; and

d. In the sixth sentence, remove the word ''two'' and add the word ''three'' in its place.

5. Revise § 923.25 to read as follows:

§ 923.25 Acceptance.

Any person prior to selection as a member or an alternate member of the committee shall qualify by filing with USDA a written acceptance of willingness to serve on the committee.

6. Revise § 923.41 by adding a new paragraph (c) to read as follows:

§ 923.41 Assessments.

* * * * *

(c) If a handler does not pay any assessment within the time prescribed by the committee, the assessment may be subject to an interest or late payment charge, or both, as may be established by USDA as recommended by the committee.

§ 923.52 [Amended]

7. In § 923.52, paragraph (a)(3) is amended by adding the word ''markings,'' after the word ''dimensions,''.

8. Amend § 923.54 as follows:

a. Remove the words ''(including shipments to facilitate the conduct of marketing research and development projects established pursuant to § 923.45),'' in paragraph (b) and add a new sentence at the end of the paragraph; and

b. Add a new sentence at the end of paragraph (c) to read as follows:

§ 923.54 Special purpose shipments.

* * * * *

(b) * * * Specified purposes under this section may include shipments of cherries for grading or packing to specified locations outside the production area and shipments to facilitate the conduct of marketing research and development projects established pursuant to § 923.45.

(c) * * * The committee may rescind or deny to any packing facility the special purpose shipment certificate if proof satisfactory to the committee is obtained that cherries shipped for the purpose stated in this section were handled contrary to the provisions of this section.

Dated: November 15, 2001.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 01–29116 Filed 11–20–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV01–930–4 FR]

Tart Cherries Grown in the States of Michigan, et al.; Temporary Suspension of a Provision Regarding a Continuance Referendum Under the Tart Cherry Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule temporarily suspends an order provision which requires a continuance referendum to be conducted on the marketing order for tart cherries during March 2002. The suspension will enable the U.S. Department of Agriculture (USDA) to postpone conducting the continuance referendum until the completion of

amendatory order proceedings. The Cherry Industry Administrative Board (Board) recommended a delay in holding the continuance referendum to allow the industry to evaluate the results of any approved amendments.

EFFECTIVE DATE: This final rule becomes effective on December 21, 2001.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland, 20737, telephone: (301) 734–5243; Fax: (301) 734–5275; or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 720–2491; Fax: (202) 720–9038.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 930 (7 CFR part 930) (order) regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This action will temporarily suspend the provision in § 930.83(d) of the order which specifies when a continuance referendum should be conducted to determine if producers and processors favor continuance of the tart cherry marketing order. This action was unanimously recommended by the Committee at its January 25, 2001, meeting.

Section 930.83(d) of the order currently provides that USDA shall conduct a referendum within the month of March every six years after the order became effective to ascertain whether continuance of the order is favored by tart cherry producers and processors. The order became effective in September 1996. A continuance referendum is therefore scheduled to be conducted in March 2002.

Section 930.83(b) authorizes USDA to terminate or suspend the operation of any or all provisions of this part whenever USDA finds that such provisions do not tend to effectuate the declared policy of the Act.

In 1998, the Board recommended several proposed amendments to the tart cherry marketing order to improve the administration of the order and more accurately reflect how the program is operated. It also requested that public hearings be held on the proposed amendments. The amendatory process can be lengthy depending on the complexity of the amendments and the level of support for the amendments.

Under the applicable rules of practice (7 CFR part 900), the amendment process consists of several steps. The first step is the public hearing at which evidence (pro and con) is presented on the recommended amendments. After the public hearings are completed, a Recommended Decision, based on the evidence presented, is issued by USDA, with a request for written comments. Next, USDA considers the evidence of record including any exceptions to the Recommended Decision and then issues a USDA Decision and, if warranted, a Referendum Order. A Referendum Order would be issued if USDA determines that the amendments to the order would tend to effectuate the declared policy of the Act.

Initially, the Board intended to proceed with all of its proposed amendments in a single amendatory proceeding. However, after discussion with USDA, the Board agreed to split its proposed amendments to the order into two proceedings. The less complex amendments were handled first followed by the more complex amendments. An amendment referendum for the first series of amendments was held in January 2001. Those amendments were approved and published in the **Federal Register** on July 10, 2001 (66 FR 35891). The formal rulemaking process for the second series of amendments, has begun, and is expected to be completed in the spring of 2002.

The Board recommended that the provision requiring the March 2002 continuance refendum be temporarily suspended to allow USDA to complete the amendatory proceedings. The temporary suspension will allow USDA to postpone the next continuance referendum for the tart cherry marketing order until March 2003.

Delaying the continuance referendum will allow for the completion of the amendatory proceedings and an evaluation by the completion of the amendatory proceedings and an evaluation by the industry of any approved amendments at least a year before producers and processors are asked to vote on continuing the order. A later continuance referendum should be a better indicator of the support for the order.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through

group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. The majority of handlers and producers of tart cherries may be classified as small entities.

This rule temporarily suspends the provision in § 930.83(d) of the order which specifies the month in which a continuance referendum should be conducted to determine if producers and processors favor the continuance of the tart cherry marketing order. Pursuant to this provision, the next continuance referendum is scheduled for March 2002. Section 930.83(b) authorizes USDA to terminate or suspend the operation of any or all of the provisions of this order whenever USDA finds that such provisions do not tend to effectuates the declared policy of the Act.

One alternative to this action will be to continue the status quo. However, without a postponement of the continuance referendum, USDA will have to conduct two referenda closely together, for the second series of amendments and one for a continuance referendum. The problem with proceeding in this manner is that growers and processors will not have had time to determine how any amendments that are adopted could affect order operations and evaluate the results. A temporary delay in holding the continuance referendum will allow the amendments to be evaluated by growers and processors. Thus, the vote on continuance will be a more reliable determiner of industry support for the order.

Discussion of Comments

A proposed rule concerning this action was published in the **Federal Register** on May 15, 2001 (66 FR 26813). Copies of the rule were mailed and sent via facsimile to all Board members and handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register, and USDA. A 60-day comment period ending on July 16, 2001, was provided to allow interested persons to respond to the proposal.

Forty-three comments were received during the comment period in response to the proposal. Forty comments were received in opposition to the proposal and three comments favored the proposal. The comments received were mainly from growers.

The three comments favoring the proposal strongly supported the proposed action. However, one supporter disagreed with the March 2003 date for the continuance referendum. The commenter asserted that the industry should be allowed to operate a full season with the new amendments before the continuance referendum is held. The commenter stated that completion of the formal rulemaking process could extend into the 2002–2003 season and a referendum in March 2003 would not afford producers and processors the opportunity for a full season's review of the new amendments.

One commenter opposed to the proposal stated that a continuance referendum provides a measurement of support and effectiveness of the order, and, therefore, should not be delayed until after any changes to the order are implemented. The commenter believes that the tart cherry industry should be allowed to vote whether or not it supports or disfavors the marketing order based on the order as it has been operating over the past five years, without regard to any amendatory proceedings.

The other comments from growers in opposition to the proposal urged USDA not to suspend the continuance referendum pending completion of the amendatory proceedings. They contend that two important amendatory proposals have already been addressed. The first proposal involves subjecting production in all districts within the production area to volume regulation. With production shifts over the last few years, about 90 percent of the production would be subject to volume regulation during the 2001/2002 crop year. They believe that this lives up to the spirit of the proposed amendments to the order. The other important change allowing handlers to earn diversion credits for export sales of juice and juice concentrate was addressed by suspending order language through the informal rulemaking process.

The Board has the authority to recommend necessary changes to the order and the administrative rules and regulations to address evolving industry operations and changing crop year circumstances. It is important for the Board to address changing industry conditions to keep the marketing order current. The USDA further recognizes the importance of continuance referenda in gauging the effectiveness and support for marketing orders within an industry.

However, neither USDA nor the tart cherry industry can be certain which, if any, of the proposed amendments to the order will be approved. Because of this uncertainty, USDA believes it appropriate to complete the amendatory proceeding before holding a continuance referendum. The USDA anticipates issuing a recommended decision on the amendatory proposals in 2001. If warranted, a grower and processor referendum on the proposals would be held in the spring of 2002.

Therefore, USDA has concluded that the temporary suspension should be issued and a continuance referendum should be conducted in March 2003.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by this order have been previously approved by OMB and assigned OMB Number 0581–0177. This action imposes no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The Board's meeting was publicized and all Board members and alternate Board members, representing both large and small entities, were invited to attend the meeting and participate in Board deliberations. The Board itself is composed of 18 members, of which 17 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review certain issues and make recommendations.

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

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board, the comments received, and other available

information, it is hereby found that the provision temporarily suspended does not tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 930

Tart cherries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 930.83 [Suspended in part]

2. In paragraph (d), the sentence ''The Secretary shall conduct a referendum within the month of March of every sixth year after the effective date of this part to ascertain whether continuation of this part is favored by the growers and processors'' is suspended effective March 1 through March 31, 2002.

Dated: November 15, 2001.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 01–29111 Filed 11–20–01; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV01–930–5 FIR]

Tart Cherries Grown in the States of Michigan, et al.; Suspension of Provisions Under the Federal Marketing Order for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, the provisions of an interim final rule suspending a provision in the Federal tart cherry marketing order (order) to allow handlers to receive diversion credit for exporting juice and juice concentrate to countries other than Canada and Mexico. The suspended provision does not allow diversion credit for domestic shipments of tart cherry juice or juice concentrate. The Cherry Industry Administrative Board (Board) unanimously recommended this action to allow handlers of tart cherries to maintain and possibly expand market opportunities for juice and juice concentrate products in export outlets. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

EFFECTIVE DATE: December 21, 2001.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2AO4, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone: (301) 734–5243, Fax: (301) 734–5275 or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930, both as amended (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

The order authorizes the use of volume regulation. In years when volume regulation is implemented to stabilize supplies, a certain percentage of the cherry crop is required to be set aside as restricted tonnage, and the balance may be marketed freely as free tonnage. The restricted tonnage is required to be maintained in handler-owned inventory reserve pools. Under § 930.59, Handler diversion privilege, handlers in regulated districts may fulfill any restricted percentage requirements by diverting cherries or cherry products in programs approved by the Board. One form of diversion which the Board may authorize is the use of cherries for exempt purposes under § 930.62. That section states that the Board, with the approval of USDA, may exempt from various requirements of the order (such as assessments, and reserve pool obligations) cherries used for certain purposes such as experimental use or new market development.

Section 930.162 of the regulations under the order contains various approved forms of exemption and the procedure for applying for, and obtaining, exempt use approval from the Board as well as diversion credit. One of the exempt uses authorized by regulation prior to the issuance of the interim final rule was the use of cherries or cherry products in the development of export markets (other than Canada and Mexico) provided that such products do not include juice or juice concentrate. The interim final rule modified this section to make exports of juice or juice concentrate to countries other than Canada and Mexico an exempt use. When recommending provisions of the order, the industry considered Canada and Mexico to be premium markets for tart cherries, not outlets for which exemptions and

diversion certificates should be given. The industry also was concerned about transshipments of lower priced cherries because of their close proximity to the United States and the primary domestic market. Thus, Canada and Mexico are excluded as eligible countries for the development of export markets.

The Board held a meeting on March 20, 2001, and unanimously recommended that the provision prohibiting handlers from receiving diversion credit through use of juice and juice concentrate be suspended from the order. However, the Board recommended that the suspension be only applicable to exports.

During the order promulgation process, producers and handlers from Oregon and Washington (Northwest), expressed concern that juice and/or juice concentrate could be established by the Board as a use eligible for diversion credit. Some handlers in the Northwest processed all or the majority of their cherries into juice/juice concentrate. At that time, this was the Northwest tart cherry industry's primary product and handlers in the Northwest would not be subject to volume regulation. Northwest producers and handlers were concerned that the juicing and concentrating of surplus or restricted cherries by handlers in regulated districts (Michigan, New York, and Utah) would oversupply the Northwest's juice market with low-quality, low-priced product. Record testimony indicated that cherries produced in the Northwest have a high brix (sugar content) level desirable for juice/juice concentrate which produces a high quality product. Because of these concerns, the provision preventing the issuance of diversion credit for tart cherry juice and juice concentrate were included in the order in 1996 to protect the juice market for tart cherry producers and handlers in the Northwest.

However, use of juice and juice concentrate for export was allowed under the exemption provisions for the 1997–1998 season. The 1997–1998 season was the first season of operation for this order and its provisions were new to the industry and complex to administer. Handlers new to the order provision had shipped or contracted to ship tart cherry juice or juice concentrate to eligible countries with the intention of applying for diversion certificates. If those handlers had been prohibited from receiving diversion certificates for those sales, the handlers would have incurred severe financial difficulties. Thus, the provision against exports of juice and juice concentrate was suspended for the 1997–1998 season.

The Northwest tart cherry industry, specifically in Washington, is changing. Washington handlers are now producing 5 + 1 cherries (25 pounds of cherries to 5 pounds of sugar) in addition to packing juice and juice concentrate. According to the industry, the situation facing compliance with volume regulations for the 2001–2002 season is of significant concern for all regulated handlers and Washington handlers in particular. It is quite likely that the primary inventory reserve will be full at the onset of the harvest for the 2001–2002 crop year. The primary inventory reserve has a maximum limit of 50 million pounds of restricted cherries. If this reserve is full, the only reserve option for regulated handlers is a secondary reserve.

A secondary reserve is an option for a handler when the primary reserve is above the 50 million pound limit. However, from a practical standpoint, a secondary reserve is not a reasonable option. Handlers establishing secondary reserves are responsible for all costs of that reserve, including inspection costs. This could prove costly for handlers establishing secondary reserves as no cherries can be released from the secondary reserve until all cherries in the primary reserve have been released. Handlers, in order to meet restricted percentage requirements, would have to consider options other than using inventory reserves. Diversion options are available to handlers. In-orchard diversion of cherries takes place when cherries are not harvested and left in the orchard. At-plant diversion of cherries takes place at the handler's facility prior to placing cherries into the processing line. This is to ensure that the cherries diverted were not simply an undesirable or unmarketable product of processing. According to the Board, export diversion would probably be the most preferred of the options. However, this option would not be available to handlers if the previous limitation on exports of juice and/or juice concentrate had continued. Products that sell in the export markets are mostly hot-pack (canned), dried, IQF (Individually Quick Frozen), juice or concentrate. Five plus one (5 + 1) cherries do not generally sell in export markets. This type of processed product contains sugar and is subject to increased tariffs when exported.

Tart cherry handlers in Washington produce only a few products. As previously mentioned, they produce juice and juice concentrate and 5 + 1 products. Without the ability to export juice and/or juice concentrate for diversion credit, Washington handlers could have difficulty in meeting their restricted percentage requirements. The suspension of the provision in § 930.59 of the order that previously prevented handlers from receiving diversion credit for juice and juice concentrate will allow Washington handlers as well as other handlers in volume regulated districts to receive diversion credit for such shipments. This will enable handlers to increase sales to new markets and fulfill their restricted reserve obligation for the 2001–2002 crop year.

The Board recommended that the proviso in § 930.59 concerning the exclusion of juice and concentrate products be suspended insofar as it applies to exports. In order to accomplish the intent of the Board's recommendation, the whole proviso was suspended. Diversion credit may be granted for uses which fall under the exemptions in § 930.62 of the order. The regulations in § 930.162 implement the authority in the order concerning exempt uses and contain the terms and conditions under which diversion credit may be approved. Consistent with the Board's recommendation, the regulation was amended to reflect the intent that exempt use approval, and diversion credit in the case of juice and juice concentrate will only be allowed for exports to countries other than Canada and Mexico.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opts for such certification, but rather performs regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities.

Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the

Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 900 producers of tart cherries in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The standard for producers was changed from $500,000 to $750,000 after the interim final rule was issued. The majority of tart cherry producers and handlers may be classified as small entities.

Data from the National Agricultural Statistics Service (NASS) states that for 1999, tart cherry utilization for juice, wine, or brined uses was 34.5 million pounds for all districts covered under the order. The total processed amount for 1999 was 252.3 million pounds. Juice, wine, and brined tart cherries represented about 14 percent of the total processed crop, and about 10 percent over the last three seasons (1997 through 1999).

This rule continues in effect the suspension of a provision in the order to allow handlers to receive diversion credit for exporting tart cherry juice and juice concentrate to certain eligible countries. The Board met on March 20, 2001, and unanimously recommended that the provision prohibiting handlers from receiving diversion credit through use of juice and juice concentrate be suspended from the order. However, the Board recommended that the suspension be only applicable to exports.

During the order promulgation process, producers and handlers from Oregon and Washington (Northwest), expressed concern that juice and/or juice concentrate could be established by the Board as a use eligible for diversion credit. Some handlers in the Northwest processed all or the majority of their cherries into juice/juice concentrate. At that time, this was the Northwest's primary product and handlers in the Northwest would not be subject to volume regulation. Northwest producers and handlers were concerned that the juicing and concentrating of surplus or restricted cherries by handlers in regulated districts (Michigan, New York, and Utah) would oversupply the Northwest's juice market with low-quality, low-priced product.

Record testimony indicated that cherries produced in the Northwest have a high brix (sugar content) level desirable for juice/juice concentrate which produces a high quality product. Because of these concerns, the provision preventing the issuance of diversion credit for tart cherry juice and juice concentrate were included in the order in 1996 to protect the juice market for tart cherry producers and handlers in the Northwest. In the long run, it is anticipated that all businesses, whether large or small, will benefit from this suspension action because market growth will be increased for tart cherry products, grower returns will be improved, and less fruit will be abandoned in-orchard or at-plant by producers and handlers. Moreover, all regulated handlers will be allowed to participate in export markets and have access to diversion credits.

According to the industry, the situation facing compliance with volume regulations for the 2001–2002 season is of significant concern for all regulated handlers and Washington handlers in particular. It is quite likely that the primary inventory reserve will be full at the onset of the harvest for the 2001–2002 crop year. The primary inventory reserve has a maximum limit of 50 million pounds of restricted cherries. If this reserve is full, the only reserve option for regulated handlers is a secondary reserve.

A secondary reserve is an option for a handler when the primary reserve is above the 50 million pound limit. However, from a practical standpoint, a secondary reserve is not a reasonable option. Handlers establishing secondary reserves are responsible for all costs of that reserve, including inspection costs. This could prove costly for handlers establishing secondary reserves as no cherries can be released from the secondary reserve until all cherries in the primary reserve have been released. Handlers, in order to meet restricted percentage requirements, would have to consider options other than using inventory reserves. Diversion options are available to handlers. In-orchard diversion of cherries takes place when cherries are not harvested and left in the orchard. At-plant diversion of cherries takes place at the handler's facility prior to placing cherries into the processing line. This is to ensure that the cherries diverted were not simply an undesirable or unmarketable product of processing. According to the Board, export diversion would probably be the most preferred of the options. However, this option would not be available to handlers if the previous limitation on exports of juice and/or juice concentrate had continued. The continued suspension of the order provision that prevents handlers from receiving diversion credit for juice and juice concentrate will allow Washington handlers as well as other handlers in volume regulated districts to receive diversion credit for such shipments. To be consistent with the Board's intent, the regulation prevents the use of juice or juice concentrate for exempt use or diversion credit in the domestic market. This will enable handlers to increase sales to new markets and fulfill their restricted reserve obligation for the 2001–2002 crop year. Industry estimates are that in Washington State alone, this suspension would affect up to 4,200 tons of juice/juice concentrate products, with an estimated value of $1.5 to $2.5 million dollars.

One alternative to this relaxation would have been to continue the status quo. However, this would not be favorable to cherry producers and handlers as they would have been forced to either destroy tons of cherries in-orchard or at-plant, or incur costly storage fees for maintaining a secondary reserve.

This action imposes no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by this order have been previously approved by OMB and assigned OMB Number 0581–0177.

The Board's meeting was publicized and all Board members and alternate Board members, representing both large and small entities, were invited to attend the meeting and participate in Board deliberations. The Board itself is composed of 19 members, of which 18 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review certain issues and make recommendations.

An interim final rule concerning this action was published in the **Federal Register** on July 31, 2001. Copies of the rule were mailed by the Board's staff to all Board members and handlers. In

addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 30-day comment period which ended August 30, 2001. One comment was received.

The comment was received from a tart cherry handler who supports the suspension, but is critical of the rule's timing. The effective date of this action was August 1, 2001. This date fell during harvest in some production areas and at the completion of harvest in other areas. The commenter is concerned that, for this season, all areas of production cannot take advantage of the expansion of exempt products available for export and diversion credit equitably. The commenter states that simply making such rule effective 30 days prior to harvest or 20 days after harvest would allow growers and handlers to be treated more equitably.

The interim final rule relaxed requirements on meeting restricted obligations in seasons with volume regulation, and USDA believed that the benefits anticipated should be made available to the industry as soon as possible. The relaxation has now been available since August 1, 2001, of the 2001/2002 season, and should be available to the industry for future seasons. Therefore, timing will no longer be an issue.

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

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee, the comment received, and other available information, it is hereby found that the provision suspended does not tend to effectuate the declared policy of the Act, while the additional regulatory amendments are necessary to implement the suspension, and, therefore, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

Accordingly, the interim final rule amending 7 CFR part 930 which was published at 66 FR 39409 on July 31, 2001, is adopted as a final rule without change.

Dated: November 15, 2001.

A. J. Yates,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–29115 Filed 11–20–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV01–984–1 IFR]

Walnuts Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Walnut Marketing Board (Board) for the 2001–02 and subsequent marketing years from $0.0134 to $0.0124 per kernelweight pound of assessable walnuts. The $0.0010 decrease is necessary because this year's estimate of assessable walnuts is about 17 percent more than last year's estimate. The Board locally administers the Federal marketing order which regulates the handling of walnuts grown in California (order). Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year runs from August 1 through July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: November 23, 2001. Comments received by January 22, 2002, will be considered prior to issuance of the a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984 both as amended, (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning on August 1, 2001, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any

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

This rule decreases the assessment rate established for the Board for the 2001–02 and subsequent marketing years from $0.0134 to $0.0124 per kernelweight pound of assessable walnuts.

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

For the 2000–01 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of $0.0134 per kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on September 7, 2001, and unanimously recommended 2001–02 expenditures of $3,124,800 and an assessment rate of $0.0124 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were $2,937,885. The recommended assessment rate is $0.0010 lower than the $0.0134 rate currently in effect. The lower assessment rate is necessary because this year's crop is estimated by the California Agricultural Statistics Service (CASS) to be 280,000 tons (252,000,000 kernelweight pounds merchantable), which is about 17 percent more than last year's estimate. Thus, sufficient income should be generated at the lower rate for the Board to meet its anticipated expenses.

Major expenditures in the budget recommended by the Board for the 2001–02 year include $2,566,569 for marketing and production research projects, $313,200 for employee expenses such as administrative and office salaries, payroll taxes and benefits, $130,600 for office expenses, including rent, office supplies, telephone/fax, printing, and furniture/fixtures/automobile, $76,000 for other operating expenses, including management and field travel, Board meeting expenses, insurance, and audit fees, and $38,431 as a reserve for contingency. Budgeted expenses for these items in 2000–01 were $2,450,255 for program expenses, including marketing and production research projects, $278,630 for employee expenses, $104,000 for office expenses, $80,000 for other operating expenses, and $25,000 as a reserve for a contingency, respectively.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 252,000,000 kernelweight pounds which should provide $3,124,800 in assessment income and allow the Board to cover its expenses. As specified in § 984.69, unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year.

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

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. The USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2001–02 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 5,500 producers of walnuts in the production area and about 43 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000.

Current industry information shows that 14 of the 43 handlers (32.5 percent) shipped over $5,000,000 of merchantable walnuts and could be considered large handlers by the Small Business Administration. Twenty-nine of the 43 walnut handlers (67.5 percent) shipped under $5,000,000 of merchantable walnuts and could be considered small handlers. An estimated 5,442 walnut producers, or about 98.9 percent of the 5,500 total producers, would be considered small producers with annual income less than $750,000. Based on the foregoing, it can be concluded that the majority of California walnut handlers and producers may be classified as small entities.

This rule decreases the assessment rate established for the Board and collected from handlers for the 2001–02 and subsequent marketing years from $0.0134 to $0.0124 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2001–02 expenditures of $3,124,800. The recommended $0.0010 decrease in the assessment rate is necessary because this year's estimate of assessable walnuts is about 17 percent more than last year's estimate. Thus, sufficient income should be generated at the

reduced rate for the Board to meet its anticipated expenses.

Major expenditures in the budget recommended by the Board for the 2001–02 year include $2,566,569 for marketing and production research projects, $313,200 for employee expenses such as administrative and office salaries, payroll taxes and benefits, $130,600 for office expenses, including rent, telephone/fax, postage, printing, furniture, fixtures, and automobile, $76,000 for other operating expenses, including management and field travel, insurance, and audit fees, and $38,431 as a reserve for contingency. Budgeted expenses for these items in 2000–01 were $2,450,255 for marketing and production research projects, $278,630 for employee expenses, $104,000 for office expenses, $80,000 for other operating expenses, and $25,000 as a reserve for a contingency, respectively.

Prior to arriving at this budget, the Board considered information from various sources, such as the Board's Budget and Personnel Committee, Research Committee, and Marketing Development Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the walnut industry. The recommended $0.0124 per kernelweight pound assessment rate was then determined by dividing the total recommended budget by the 252,000,000 kernelweight pound estimate of assessable walnuts for the year. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year (§ 984.69).

A review of historical information and preliminary information pertaining to the current marketing year indicates that the grower price for 2001–02 could range between $0.50 and $0.70 per kernelweight pound of assessable walnuts. Therefore, the estimated assessment revenue for the 2001–02 year as a percentage of total grower revenue could range between 1.7 and 2.5 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the walnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 7, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2001–02 marketing year began on August 1, 2001, and the order requires that the rate of assessment for each marketing year apply to all merchantable walnuts handled during the year; (2) this action decreases the assessment rate for merchantable California walnuts; (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 984

Walnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 984.347 is revised to read as follows:

§ 984.347 Assessment rate.

On and after August 1, 2001, an assessment rate of $0.0124 per kernelweight pound is established for California merchantable walnuts.

Dated: November 15, 2001.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 01–29114 Filed 11–20–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 440

RIN 1904–AB05

Weatherization Assistance Program for Low-Income Persons

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy adopts, with changes, the interim final rule published in the **Federal Register** on December 8, 2000, to amend the Weatherization Assistance Program for Low-Income Persons. This final rule also incorporates certain statutory amendments which were discussed in the preamble of the interim final rule published on December 8, 2000.

EFFECTIVE DATE: November 21, 2001.

FOR FURTHER INFORMATION CONTACT: Greg Reamy, Office of Building Technology Assistance, U.S. Department of Energy, Mail Stop EE–42, 5E–066, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4074.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Amendments to the Weatherization Assistance Program
III. Procedural Requirements
IV. Other Federal Agencies
V. The Catalog of Federal Domestic Assistance

I. Introduction

The Department of Energy (DOE or Department) amends the program regulations for the Weatherization Assistance Program for Low-Income Persons (WAP or Program). This Program is authorized by Title III of the Energy Conservation and Production Act, as amended (Act), 42 U.S.C. 6561 *et seq.* The changes are necessitated by the statutory amendments enacted by the Congress on November 9, 2000, as part of the Energy Policy and Conservation Act Amendments of 2000. These statutory changes: (1) Eliminate the requirement in § 440.18 that 40 percent of the funds used to weatherize a home be spent for materials; (2) restructure the method in § 440.18 by which States compute their average cost per home by increasing the average cost per home to $2,500 beginning in 2000; and (3) eliminate the separate per dwelling unit average in § 440.18 for capital intensive improvements and include capital intensive costs as a part of the average costs.

In the preamble of the December 8, 2000, interim final rule, DOE indicated that it intended to include a discussion of the program regulations in the final rule. This discussion was intended to explain and clarify areas of the regulations where no changes were made. This discussion was to provide States and local agencies background information on the existing program regulations as well as some of the discussion used in the preambles of previous rulemakings, since many State and local staffs have changed several times over the years and much institutional knowledge has been lost. DOE has decided not to provide this information in this final rule, but rather through program guidance documents. DOE has also amended, as necessary, other sections in the regulations which reference the principal sections that were affected.

II. Amendments to the Weatherization Assistance Program

Section 440.14 State Plans

DOE eliminates § 440.14(c)(6)(ix) referring to the 40 percent materials requirement.

Section 440.18 Allowable Expenditures

DOE eliminates § 440.18(a) referring to the 40 percent materials requirement and the need for a waiver. This provision was deleted from the statute as part of the Energy Policy and Conservation Act Amendments of 2000. DOE changes new § 440.18(a) and (b) by increasing the average cost per home to $2,500 beginning in 2000.

DOE eliminates the separate per dwelling unit average by deleting § 440.18(a)(ii)(2) for capital intensive improvements and now includes capital intensive costs as a part of the average cost per home.

III. Procedural Requirements

A. Review Under Executive Order 12866

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

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. DOE published an interim final rulemaking to amend 10 CFR part 440 to give State and local agencies additional flexibility in addressing the weatherization needs of low-income citizens and to make other changes designed to streamline and update DOE's Weatherization Assistance Program. The interim final rule, and the preceding proposed rule, were developed following extensive consultation with State and local stakeholders and after reviewing comments received. DOE said that the previous interim final rule and the preceding proposed rule would not have any adverse economic impact on small governments, organizations or businesses. Accordingly, DOE certifies that the final rule, as promulgated, will not have a significant economic impact on a substantial number of small entities.

C. Review Under the Paperwork Reduction Act

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

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this final rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE regulations implementing the National Environmental Policy Act of 1969, (42 U.S.C. 4321 *et seq.*) Specifically, this final rule is covered under the Categorical Exclusion in paragraph A5 to subpart D, 10 CFR part 1021, which covers rulemakings that interpret or amend an existing regulation without changing the environmental effect of the regulation. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's final rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses

other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

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

H. Review Under the Treasury and General Government Appropriations Act

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule or policy that may affect family well-being. Today's final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

IV. Other Federal Agencies

DOE provided draft copies of the final rule to the Department of Health and Human Services' Low-Income Home Energy Assistance Program and the Department of Agriculture's Farmers Home Administration. We have received no comments. DOE also provided a draft copy to the Administrator of the Environmental Protection Agency, pursuant to § 7 of the Federal Energy Administration Act, as amended, 15 U.S.C. 766. The Administrator has made no comments.

V. The Catalog of Federal Domestic Assistance

The *Catalog of Federal Domestic Assistance* number for the Weatherization Assistance Program for Low-Income Persons is 81.042.

List of Subjects in 10 CFR Part 440

Administrative practice and procedure, Aged, Energy conservation, Grant programs-energy, Grant programs-housing and community development, Housing standards, Indians, Individuals with disabilities, Reporting and recordkeeping requirements, Weatherization.

Issued in Washington, DC, on November 7, 2001.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Accordingly, the interim rule amending 10 CFR Part 440 which was published at 65 FR 77210 on December 8, 2000, is adopted as a final rule with the following changes:

PART 440—WEATHERIZATION ASSISTANCE PROGRAM FOR LOW-INCOME PERSONS

1. The authority citation for part 440 continues to read as follows:

Authority: 42 U.S.C. 6861 *et seq.*, 42 U.S.C. 7101 *et seq.*

§ 440.14 [Amended]

2. In § 440.14 paragraph (c)(6)(ix) is removed and reserved.

§ 440.18 [Amended]

3. In § 440.18

a. Revise paragraph (a) and remove paragraphs (b) introductory text and (b)(2);

b. Redesignate paragraph (b)(1) introductory text as paragraph (b) introductory text and revise it; and

c. Redesignate paragraphs (b)(1)(i) and (ii) introductory text as praragraphs (b)(1) and (2) introductory text, and redesignate paragraphs (b)(1) (ii)(A) and (B) as paragraphs (b)(2)(i) and (ii):

§ 440.18 Allowable Expenditures.

(a) Except as adjusted, the expenditure of financial assistance provided under this part for labor, weatherization materials, and related matters included in paragraphs (c)(1) through (9) of this section shall not exceed an average of $2,500 per dwelling unit weatherized in the State, except as adjusted in paragraph (b) of this section.

(b) The $2,500 average will be adjusted annually by DOE beginning in calendar year 2000 by increasing the limitation by an amount equal to:

* * * * *

[FR Doc. 01–28823 Filed 11–20–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–35–AD; Amendment 39–12507; AD 2001–23–10]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 33, T–34, 35, 36, 55, 56, 58, and 95 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) 33, T–34, 35, 36, 55, 56, 58, and 95 Series airplanes. This AD requires you to inspect the left-hand and right-hand flap flex shaft assemblies to determine the manufacture date. This AD also requires you to replace any flap flex shaft assemblies manufactured from January 2000 through April 2001. This AD is the result four separate reports of flap drive cable separation. The actions specified by this AD are intended to prevent separation of the flap flex shaft assembly caused by improper heat treatment. Such a condition could lead to an asymmetric flap condition, resulting in uncommanded roll of the airplane.

DATES: This AD becomes effective on December 13, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of December 13, 2001.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before January 12, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–35–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–35–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: Paul DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? Raytheon has notified FAA of four separate incidents of the flap drive cable separating on Models A36, B36TC, and 58 airplanes. Three of the incidents occurred during flight and resulted in asymmetric flap conditions. In all three cases, a safe landing was made. The flap flex shaft failed on one airplane while rigging the flaps on the ground.

Raytheon and FAA investigated the incidents and determined the cause to be a result of a quality control problem. During manufacturing from January 2000 through April 2001, the end of the flap flex shaft assemblies was not being properly heat-treated. Improper heat-treatment allowed the cable end to crack and separate from the flap flex shaft assembly.

Information on the affected parts follows:

—The affected parts are part number 12527Y–63.31 (left-hand) flap flex shaft assemblies, part number 12163Y–63.31 or 12163Y–1 (right-hand) flap flex shaft assemblies, and part number 45–521212 (any dash number) flap actuator assemblies, that were manufactured from January 2000 through April 2001. Raytheon has installed these parts on certain Models A36, B36TC, and 58 airplanes at manufacture; and

—These flap flex shaft assemblies could be installed through spare replacements on any of the following series airplanes: 33, T–34, 35, 36, 55, 56, 58, and 95. Specific models are listed in paragraph (a)(1) and (a)(2) of this AD.

What are the consequences if the condition is not corrected? If this condition is not corrected, separation of the flex flap shaft assembly could result. Such a condition could lead to an asymmetric flap condition, resulting in uncommanded roll of the airplane.

Is there service information that applies to this subject? Raytheon has issued Mandatory Service Bulletin SB 27–3478, September 2001.

What are the provisions of this service information? The service bulletin includes procedures for:

—Inspecting the left-hand flap flex shaft assembly, part number 12527Y–63.31 and the right-hand flap flex shaft assembly, part number 12163Y–63.31 or 12163Y–1, to determine the manufacture date;

—Replacing any flap flex shaft assembly manufactured from January 2000 through April 2001; and

—Inspecting the airplane logbook for airplanes with spare replacement only, to see if any flap flex shaft assemblies or flap actuator assemblies have been replaced since March 1, 2000, to determine if the flap flex shaft assemblies need to be inspected and possibly replaced.

The FAA's Determination and an Explanation of the Provisions of This AD

What has FAA decided? The FAA has reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Raytheon 33, T–34, 35, 36, 55, 56, 58, and 95 Series airplanes of the same type design;

—The actions specified in the previously-referenced service information (as specified in this AD) should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What does this AD require? This AD requires you to incorporate the actions in the previously-referenced service bulletin.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We have included, in the rulemaking docket, a discussion of information that may have influenced this action.

Will I have the opportunity to comment prior to the issuance of the rule? Because the unsafe condition described in this document could result in separation of the flap flex shaft assembly which could lead to an asymmetric flap condition, resulting in uncommanded roll of the airplane, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How do I comment on this AD? Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of the AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2001–CE–35–AD.'' We will date stamp and mail the postcard back to you.

Regulatory Impact

Does this AD impact various entities? These regulations 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, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? We have determined that this regulation is an emergency regulation that must be

issued immediately to correct an unsafe condition in aircraft, and 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 (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

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 airworthiness directive (AD) to read as follows:

2001–23–10 Raytheon Aircraft Company: Amendment 39–12507; Docket No. 2001–CE–35–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:

(1) Group 1: Raytheon may have installed the affected flap flex shaft assemblies on the following airplanes at manufacture:

Models	Serial Nos.
(i) A36	E–3302 through E–3398
(ii) B36TC	EA–652 through EA–677
(iii) 58	TH–1936 through TH–1988 and TH–1990 through TH–1996.

(2) Group 2: The affected flap flex shaft assemblies and flap actuator assembly could be installed through spare replacement on any of the following model airplanes:

Models	Serial Nos.
(i) 35–33, 35–A33, 35–B33, 35–C33, 35–C33A, E33, E33A, E33C, F33, F33A, F33C, and G33.	All serial numbers
(ii) T–34C, T–34C (T–34C–1), T–34C (34C), A45 (T–34A, B–45), D45 (T–34B), and 45 (YT–34).	All serial numbers.
(iii) 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B.	All serial numbers except D–1 through D–837.
(iv) 36, A36, A36TC, and B36TC	All serial numbers except E–3302 through E–3398 and EA–652 through EA–677 (those serial numbers are included in Group 1).
(v) 95–55, 95–A55, 95–B5 5, 95–B55A, 95–B55B (T–42A), 95–C55, 95–C55A D55, D55A, E55, and E55A.	All serial numbers.
(vi) 56TC and A56TC	All serial numbers.
(vii) 58, 58A, 58P, 58PA, 58TC, and 58TCA	All serial numbers except TH–1936 through TH–1988 and TH–1900 through TH–1996 (those serial numbers are included in Group 1)
(viii) 95, B95, B95A, D95A, and E95	All serial numbers.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent separation of the flap flex shaft assembly caused by improper heat treatment. Such a condition could lead to an asymmetric flap condition, which could result in uncommanded roll of the airplane.

(d) *What actions must I accomplish to address this problem for Group 1 airplanes?* To address this problem for Group 1 airplanes, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the identification label on the left-hand (LH) flap flex shaft assembly, part number (P/N) 12527Y–63.31, and the right-hand (RH) flap flex shaft assembly, P/N 12163Y–63.31 or 12163Y–1, to determine the manufacture date. If the manufacture date on the identification label on any of the flex flap shaft assemblies is before January 2000 and after April 2001, the flap flex assemblies are not affected and do not need to be replaced.	Within the next 25 hours time-in-service (TIS) after December 13, 2001, the effective date of this AD.	In accordance with Raytheon Mandatory Service Bulletin SB 27–3478, Issued: September 2001, and the applicable maintenance manual.
(2) If the manufacture date on the identification label on any of the flex flap shaft assemblies is from January 2000 through April 2001, replace with parts that were manufactured before January 2000 and after April 2001.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	In accordance with Raytheon Mandatory Service Bulletin SB 27–3478, Issued: September 2001, and the applicable maintenance manual.

Actions	Compliance	Procedures
(3) Do not install on any airplane, a LH flap flex shaft assembly, P/N 12527Y–63.31, a RH flap flex shaft assembly, P/N 12163Y–63.31 or 12163Y–1, or a flap actuator assembly, P/N 45–521212 (any dash number containing a flap flexible shaft assembly), that has a manufacture date from January 2000 through April 2001.	As of December 13, 2001, the effective date of this AD.	In accordance with Raytheon Mandatory Service Bulletin SB 27–3478, Issued: September 2001.

(e) *What actions must I accomplish to address this problem for Group 2 airplanes?* To address this problem for Group 2 airplanes, you must accomplish the following:

Actions	Compliance	Procedures
(1) Check the airplane logbook to determine whether the LH flap flex shaft assembly, P/N 12527Y–63.31, the RH flap flex shaft assembly, P/N 12163Y–63.31 or 12163Y–1, or the flap actuator assembly, P/N 45–521212 (any dash number), has been replaced since March 1, 2000. (i) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the airplane logbook. (ii) If, by checking the airplane logbook, the pilot can positively show that the LH or the RH flap flex shaft assembly or the flap actuator assembly has never been replaced since March 1, 2000, no further action is required..	Within the next 25 hours time-in-service (TIS) after December 13, 2001, the effective date of this AD.	In accordance with Raytheon Mandatory Service Bulletin SB 27–3478, Issued: September 2001.
(2) If the check of the airplane logbook shows that the LH or the RH flap flex shaft assembly or the flap actuator assembly has been replaced since March 1, 2000, or if complete records of the LH and RH flap flex assembly or the flap actuator assembly do not exist, inspect the identification labels on the flap flex shaft assemblies to determine the manufacture date. (i) If the manufacture date on the identification label on any of the flex flap shaft assemblies is from January 2000 through April 2001, replace with parts that were manufactured before January 2000 and after April 2001. (ii) If the manufacture date on any identification label is before January 2000 and after April 2001, the flap flex assemblies are not affected and do not need to be replaced.	Within the next 25 hours time-in-service (TIS) after December 13, 2001, the effective date of this AD. Accomplish replacements prior to further flight.	In accordance with Raytheon Mandatory Service Bulletin SB 27–3478, Issued: September 2001, and the applicable maintenance manual
(3) Do not install on any airplane, a LH flap flex shaft assembly, P/N 12527Y–63.31, a RH flap flex shaft assembly, P/N 12163Y–63.31 or 12163Y–1, or a flap actuator assembly, P/N 45–531212 (any dash number containing a flap flexible shaft assembly), that has a manufacture date from January 2000 through April 2001.	As of December 13, 2001, the effective date of this AD.	In accordance with Raytheon Mandatory Service Bulletin SB 27–3478, Issued: September 2001.

(f) *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, Wichita Aircraft 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, Wichita 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 (f) 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.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Paul DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

(h) *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. You must adhere to the

limitations presented in the appendix to this AD.

(i) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Mandatory Service Bulletin SB 27–3478, Issued: September 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view this information at 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 December 13, 2001.

Appendix to Docket No. 2001–CE–35–AD

The following must be adhered to in order to obtain a special flight permit as specified in paragraph (h).

Limitations—Flaps must be retracted for all takeoffs.

Emergency Procedures

Asymmetrical Flaps

Attempt to retract the flaps. If flaps will not retract, the airplane will have a tendency to roll in the direction of the retracted flap. This roll tendency will increase with increasing speed. Use aileron trim and reduce speed as required to reduce roll forces.

Flaps-Up or Asymmetrical-Flap Landing

Follow all published Before Landing Procedures except for airspeed. Maintain the published Flaps-Up Approach Speed. If this speed is not published, use one of the following:

(a) Multiply the highest indicated flaps-up stall speed, found in the Performance Section, by 1.3.

or

(b) For Bonanza Series, T–34A, T–34B, and 45, add 10 knots to the published Flaps-Down Landing Approach Speed.

(c) For Baron Series, add 15 knots to the published Flaps-Down Landing Approach speed.

Plan on longer landing distance.

Issued in Kansas City, Missouri, on November 13, 2001.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–29019 Filed 11–20–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 010416096–1265–02]

RIN 0648–AP22

Revisions to Anchoring Prohibitions in the Flower Garden Banks National Marine Sanctuary

AGENCY: Marine Sanctuaries Division (MSD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is amending the regulations governing the anchoring and mooring of vessels in the Flower Garden Banks National Marine Sanctuary (FGBNMS or Sanctuary). NOAA is making this change to conform the regulations to anchoring prohibitions adopted by the International Maritime Organization (IMO), at its December 6, 2000 meeting. NOAA will prohibit all anchoring and mooring in the Sanctuary with the exception that vessels 100 feet (30.48 meters) and under in length are permitted to moor at existing Sanctuary mooring buoys. The intent of this rule is to prevent further injuries to corals in the Sanctuary from anchoring.

EFFECTIVE DATE: This rule will take effect on November 21, 2001.

FOR FURTHER INFORMATION CONTACT: G.P. Schmahl (979) 779–2705, or Lisa Symons (301) 713–3141, ext. 108.

SUPPLEMENTARY INFORMATION:

I. Background

The Sanctuary consists of three separate areas of ocean waters over and surrounding the East and West Flower Garden Banks and Stetson Bank (the Banks), and the submerged lands thereunder including the Banks, in the northwestern Gulf of Mexico. The area designated at the East Bank is located approximately 120 nautical miles (nmi) south-southwest of Cameron, Louisiana, and encompasses 19.20 nmi2. The area designated at the West Bank is located approximately 110 nmi southeast of Galveston, Texas, and encompasses 22.50 nmi2. The area designated at Stetson Bank is located approximately 70 nmi. southeast of Galveston, Texas, and encompasses 0.64 nmi2. The three areas encompass a total of 42.34 nmi2 (145.09 square kilometers). The area is unique among the world's coral reefs. The area contains the northernmost coral reefs on the North American continental shelf and supports the most highly developed offshore hard-bank communities in the region.

The Sanctuary is home to organisms unknown on the world's other continental shelves. These organisms are generally associated with the hypersaline, anoxic brine seep having a chemosynthetic energy base analogus to that found at deep-sea hydrothermal vents. The reefs in Flower Garden Banks crest at approximately 15 meters below the water surface and extend downward to 46 meters depth, where the hermatypic corals are replaced by reefal communities dominated by coralline algae and sponges. This deeper ''algal terrace'' covers most surfaces down to a depth of 90 meters. The area has at least 20 species of hermatypic (reef building) corals, 80 species of algae, 196 known macro-invertebrate species, and more than 200 fish species. The reef-building corals and coralline algae construct and maintain the substratum and, through a multitude of relationships, largely control the structure of benthic communities occupying the banks. As the primary building-blocks of the entire ecosystem of the Banks, the coral and algae are by far the most important organisms in the Flower Garden Banks.

Observations by Sanctuary staff, researchers and members of the diving public indicate that anchoring of large commercial ships, particularly internationally flagged vessels, has caused considerable damage to the corals and other resources of the Sanctuary despite existing domestic regulations prohibiting anchorage of vessels greater than 100 feet (30.48 meters). There is clear evidence of anchoring damage to Flower Garden Banks from large ships. Scars or tracks of pulverized coral have been documented by studies conducted by submersibles and divers. The largest scar from anchoring found to date extends for approximately 1.7 kilometers and resembles a continuous, ''roadcut-like'' gouge into the bank. Another crater-like scar measures approximately 50 meters in diameter. Scars from the swinging of ships on their anchor chains are evident on many corals. There are hundreds of coral colonies abraded, fractured or toppled, apparently by the dragging of anchors or anchor cables and chains. Loose coral pieces act as agents of further injury to the living coral, particularly during heavy seas and storms as the pieces are repeatedly driven into and around the living coral. The regeneration of the reef

from anchor damage may never occur. Even if optimal conditions for regeneration occur, it would still take hundreds and perhaps thousands of years for the reef to return to its pre-damage condition.

Safety considerations also support establishment of this measure. The area is transited by commercial ships, many of which are en route to and from the U.S. ports in Texas and Louisiana. The safety of a ship can depend on the ability of its anchor to hold. The character of the bottom is of prime importance in determining whether an anchor will hold. Coral provides an unstable anchoring bottom. The scars and damage to the coral in this area evidence that anchors tend to drag along the bottom when deployed in coral rather than hold in the coral.

In July of 2000, the United States delegation to the International Maritime Organization (IMO), submitted a proposal to ban anchoring in the FGBNMS for vessels greater than 100 feet (30.48 meters). The IMO, out of concern for impacts to corals, modified the United States' proposal to prohibit all anchoring, but vessels 100 feet (30.48 meters) and under would be allowed to moor using existing Sanctuary mooring buoys. Implementation of this regulation and the restrictions on anchoring adopted by IMO will prevent further injury to the coral and reef community. The new international measure will also ensure that no-anchoring zones are marked on all charts internationally. This rule will conform the Sanctuary regulations to the IMO action.

Recreational and commercial vessels 100 feet (30.48 meters) and under in length may continue to use existing mooring buoys. There are currently 12 buoys on East and West Flower Garden Banks and 3 buoys on Stetson Banks. Additional buoys will be provided within or adjacent to the Sanctuary if necessary.

The Animal Protection Institute was the only party submitting written comment on the proposed rule (66 FR 26822, May 15, 2001). The Animal Protection Institute stated: ''We hope the proposed rule will improve compliance with this restriction by ensuring the Sanctuary is marked on all international charts that identify no-anchoring zone . . . This proposal is a step toward providing the Flower Garden Banks coral reef ecosystems the protection it needs and it reflects the values of a majority of Americans who support strong protections for our nation's protected wild areas.''

II. Miscellaneous Rulemaking Requirements

National Marine Sanctuaries Act

Section 301(b) of the National Marine Sanctuaries Act, 16 U.S.C. 1434, provides authority for comprehensive and coordinated conservation and management of these areas in coordination with other resource management authorities.

National Environmental Policy Act

NOAA has concluded that this regulatory action would not have a significant effect, individually or cumulatively, on the human environment. Further, the action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement in accordance with Section 6.05b.2 of NOAA Administrative Order 216–6. Specifically, this action is not likely to result in significant impacts as defined in 40 CFR 1508.27.

Executive Order 12866

This action has been determined to be not significant for the purpose of Executive Order 12866.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Vessels 100 meters and under in length, which are those most likely to belong to small entities, will be allowed to moor using Sanctuary mooring buoys. The majority of users in this area are divers either on their own vessels or vessels operated by dive charter organizations in the area. The dive charter operations use the existing Sanctuary moorings and since their vessels are less than 100 feet in length, they are not likely to be effected by this rule. Most of the vessels subject to this rule are foreign flagged vessels that are owned or chartered by large corporations. There is no reason to expect that this regulation will have a measurable impact on the small business community. Accordingly, an initial regulatory flexibility analysis was not prepared. No comments on this certification were received.

Paperwork Reduction Act

This rule does not contain any collection of information requirements subject to the Paperwork Reduction Act.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Historic preservation, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife.

Dated: November 9, 2001.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons stated above, 50 CFR part 922 is amended as follows:

PART 922—[AMENDED]

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

Subpart L—Flower Garden Banks National Marine Sanctuary

2. Section 922.122 (a)(2) is revised to read as follows:

§ 922.122 Prohibited or otherwise regulated activities.

(a) * * *

(2)(i) Anchoring any vessel within the Sanctuary.

(ii) Mooring any vessel within the Sanctuary, except that vessels 100 feet (30.48 meters) or less in registered length may moor on a Sanctuary mooring buoy.

* * * * *

[FR Doc. 01–28907 Filed 11–20–01; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL–100–FOR]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Illinois proposed revisions to and additions of statutory provisions concerning lands eligible for remining, the Illinois Interagency Committee on Surface Mining Control and

Reclamation, lands unsuitable petitions, and rulemaking procedures. Illinois intends to revise its program to be consistent with SMCRA and to clarify ambiguities.

EFFECTIVE DATE: November 21, 2001.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521. Telephone: (317) 226–6700. Internet: *IFOMAIL@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program
II. Submission of the Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Illinois Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of this criteria, the Secretary of the Interior conditionally approved the Illinois program on June 1, 1982. You can find background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the June 1, 1982, **Federal Register** (47 FR 23883). You can find later actions concerning the Illinois program at 30 CFR 913.15, 913.16, and 913.17.

II. Submission of the Amendment

By letter dated June 28, 2001 (Administrative Record No. IL–5068), the Illinois Department of Natural Resources (Department) sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). The proposed amendment consists of changes made to the Illinois Surface Coal Mining Land Conservation and Reclamation Act (State Act) at 225 Illinois Compiled Statutes (ILCS) 720. The statutory changes were enacted through Public Act 90–0490 and became effective on August 17, 1997. Illinois sent the amendment at its own initiative.

We announced receipt of the amendment in the August 15, 2001, **Federal Register** (66 FR 42813). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on September 14, 2001. We did not receive any public comments. Because no one requested a public hearing or meeting, we did not hold one.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment to the Illinois program.

Any revisions that we do not discuss below concern minor wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. 225 ILCS 720/1.03 Definitions

Public Act 90–0490 amended subsection (a) by adding the following definition of ''lands eligible for remining'':

(9–a) ''Lands eligible for remining'' means those lands that would otherwise be eligible for expenditures under the Abandoned Mined Lands and Water Reclamation Act.

On October 24, 1992, the Energy Policy Act of 1992 amended SMCRA by adding a definition for the term ''lands eligible for remining'' at section 701(34). The Illinois definition of ''lands eligible for remining'' is the same as the Federal definition at section 701(34) of SMCRA with one exception. The Federal definition limits lands eligible for remining to those that would be eligible for expenditures under section 404 or section 402(g)(4) of SMCRA. Although the Illinois Abandoned Mined Lands and Water Reclamation Act contains counterparts to both section 404 and section 402(g)(4) of SMCRA, the proposed definition does not limit eligibility to those counterparts. But, Illinois' implementing regulatory definition of ''lands eligible for remining'' at 62 Illinois Administrative Code (IAC) 1701.5, Appendix A, does contain the Federal limitation. So, we find that Illinois' definition at 225 ILCS 720/1.03(a)(9–a), as implemented by its regulatory definition at 62 IAC 1701.5, Appendix A, is no less stringent than section 701(34) of SMCRA.

B. 225 ILCS 720/1.04 Advisory Council on Reclamation

1. Public Act 90–0490 revised 225 ILCS 720/1.04(a) by adding the language ''or his or her designee'' at the end of the first sentence. The revised sentence reads as follows:

(a) There is created the Surface Mining Advisory Council to consist of 9 members, plus the Director or his or her designee.

This is a nonsubstantive change that allows the Director of the Department of Natural Resources to designate a person to serve as a member of the Advisory Council in his or her place. Because this change to the previously approved statute at 225 ILCS 720/1.04(a) is nonsubstantive, we find that it will not make the Illinois State Act less stringent than SMCRA.

2. Public Act 90–0490 revised the first sentence of 225 ILCS 720/1.04(c) by adding the language ''Office of Mines and Minerals within the.'' The revised sentence reads as follows:

(c) The Council shall act solely as an advisory body to the Director and to the Land Reclamation Division of the Office of Mines and Minerals within the Department.

This revision clarifies that the Land Reclamation Division is a division of the Office of Mines and Minerals within the Illinois Department of Natural Resources. Because the change to the previously approved statute at 225 ILCS 720/1.04(c) is for clarification purposes only, we find that it will not make the Illinois State Act less stringent than SMCRA.

C. 225 ILCS 720/1.05 Interagency Committee

Public Act 90–0490 amended 225 ILCS 720/1.05 by adding a provision that abolished the Interagency Committee on Surface Mining Control and Reclamation (Interagency Committee). The provision reads as follows:

The Interagency Committee on Surface Mining Control and Reclamation shall be abolished on June 30, 1997. Beginning July 1, 1997, all programmatic functions formerly performed by the Interagency Committee on Surface Mining Control and Reclamation shall be performed by the Office of Mines and Minerals within the Department of Natural Resources, except as otherwise provided by Section 9.04 of this Act.

The Interagency Committee was originally created to review permit applications and provide comments to the Department on protection of the hydrologic system, water pollution control, the reclamation plan, soil handling techniques, dams and impoundments, and postmining land use. These programmatic functions are now performed by the Office of Mines and Minerals. We find that the abolishment of the Interagency Committee will not make the Illinois

program less stringent than SMCRA or less effective than the Federal regulations because the Office of Mines and Minerals has increased its technical expertise in all areas needed to perform these programmatic functions in-house. Also, under 225 ILCS 720/9.04, the Department may delegate responsibilities, other than final action on permits, to other State agencies with the authority and technical expertise to carry out such responsibilities if necessary.

D. 225 ILCS 720/2.08 Standards for Approval of Permits and Revisions

Public Act 90–0490 added 225 ILCS 720/2.08(e) concerning lands eligible for remining. This new subsection reads as follows:

(e) After the effective date of this amendatory Act of 1997, the prohibition of subsection (d) shall not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for remining under a permit held by the person making such application. As used in this subsection:

(1) ''unanticipated event or condition'' means an event or condition encountered in a remining operation that was not contemplated in the applicable surface coal mining and reclamation permit; and

(2) ''violation'' has the same meaning as such term has under subsection (d).

On October 24, 1992, the Energy Policy Act of 1992 amended SMCRA by adding sections 510(e) and 701(33) that contain substantively the same requirements for lands eligible for remining with one exception. Section 510(e) provides that its authority terminates on September 30, 2004, and Illinois' statute at 225 ILCS 720/2.08(e) does not include this termination clause. However, we are approving 225 ILCS 720/2.08(e) because Illinois can provide this termination clause in its implementing regulations. To date, Illinois has not developed regulations to implement this statute. For any implementing regulations that are developed in the future, we will require Illinois to include a clause that terminates their authority on September 30, 2004. We notified Illinois of this requirement in our letter dated August 22, 2001 (Administrative Record No. IL–5072).

E. 225 ILCS 720/6.07 Forfeiture

Public Act 90–0490 added a new subsection (f) concerning lands eligible for remining. This new subsection reads as follows:

(f) In the event the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, funds appropriated for expenditure under the Abandoned Mined Lands and Water Reclamation Act may be used if the amount of the bond or deposit is not sufficient to provide for adequate reclamation or abatement.

On October 24, 1992, the Energy Policy Act of 1992 amended SMCRA by revising section 404 to add a substantively identical requirement for lands eligible for remining with one exception. Illinois' statute at 225 ILCS 720/6.07(f) does not contain an exception clause for emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices. The counterpart provision in section 404 of SMCRA provides that ''except that if conditions warrant the Secretary shall immediately exercise his authority under section 410.'' However, Illinois' implementing abandoned mine land plan regulation at 62 IAC 2501.10(h) includes a counterpart to the Federal exception clause. So, we find that Illinois' statute at 225 ILCS 720/6.07(f), as implemented by its regulation at 62 IAC 2501.10(h), is no less stringent than the same provision in section 404 of SMCRA.

F. 225 ILCS 720/6.08 Release of Bonds

Public Act 90–0490 added new subsection (i) concerning lands eligible for remining. This new subsection reads as follows:

(i) Surface coal mining operations on lands eligible for remining shall not affect the eligibility of those lands for reclamation and restoration under the Abandoned Mined Lands and Water Reclamation Act after the release of the bond or deposit for any such operation under this Section.

On October 24, 1992, the Energy Policy Act of 1992 amended SMCRA by revising section 404 to add a substantively identical requirement for lands eligible for remining. Therefore, we find that 225 ILCS 720/6.08(i) is no less stringent than the same provision in section 404 of SMCRA.

G. 225 ILCS 720/7.03 Procedure for Designation

Public Act 90–0490 amended subsection (b) by adding the language ''unless the petition is rejected by the Department as incomplete, frivolous, or submitted by a person lacking an interest which is or may be adversely affected by surface coal mining operations'' to the end of the subsection. The revised subsection reads as follows:

(b) Immediately after a petition under this Section is received, the Department shall prepare a land report in accordance with Section 7.04, unless the petition is rejected by the Department as incomplete, frivolous, or submitted by a person lacking an interest which is or may be adversely affected by surface coal mining operations.

We find that the language added at 225 ILCS 720/7.03(b) is consistent with the requirements of Illinois' approved implementing regulation at 62 IAC 1764.15(a)(3) and the counterpart Federal regulation at 30 CFR 764.15(a)(3). The State regulation and the Federal regulation require that a petition be returned to the petitioner if the regulatory authority determines that the petition is incomplete, frivolous, or that the petitioner is not a person having an interest which is or may be adversely affected. We also find that the requirements of 225 ILCS 720/7.03(b) are no less stringent than the requirements of section 522 of SMCRA for designating areas as unsuitable for surface coal mining.

H. 225 ILCS 720/7.04 Land Report

Public Act 90–0490 amended the third sentence of subsection (a) to clarify that each Land Report must contain a detailed statement on the potential coal resources of the area by adding the word ''coal'' between the words ''potential'' and ''resources.'' It also amended the last sentence of subsection (a) by clarifying that petitions to have an area designated as unsuitable for surface coal mining operations are filed under 225 ILCS 720/7.03, Procedure for Designation.

The counterpart Federal statute at section 522(d) of SMCRA requires, among other things, that the regulatory authority prepare a detailed statement on the potential coal resources of the area prior to designating any land areas as unsuitable for surface coal mining operations. Because the changes to 225 ILCS 720/704(a) only clarify Illinois' previously approved statute, we find that it remains no less stringent than section 522(d) of SMCRA.

I. 225 ILCS 720/9.01 Rules

Public Act 90–0490 amended Section 9.01 by deleting existing subsections (c) through (g) and the first sentence of subsection (h). The balance of subsection (h) was redesignated as subsection (c) and subsection (i) was redesignated as subsection (d). Existing subsections (c) and (d) contain procedures for public notice of and comment on a rule-making proceeding. Existing subsections (e) through (g) contain agency procedures for adoption of rules. The first sentence of existing subsection (h) contains information on when an adopted rule is effective.

We find that the deletion of 225 ILCS 720/9.01(c) through (g) and the first sentence of subsection (h) is appropriate because the provisions were either

inconsistent with or duplicative of the rulemaking procedures in the Illinois Administrative Act at 5 ILCS 100/5–40. Existing subsection (i), which was redesignated as subsection (d), provides that the provisions of the Illinois Administrative Procedure Act apply to the adoption of rules under the State Act. All Illinois State agencies must comply with the provisions of the Illinois Administrative Act at 5 ILCS 100/5 when adopting, amending, or repealing administrative rules. While there is no direct Federal counterpart to the removed provisions, section 102(i) of SMCRA and the Federal regulation at 30 CFR 732.15(b)(10) require State programs to provide for public participation in the development and revision of State regulations. The Illinois Administrative Act at 5 ILCS 100/5 provides for the publication in the Illinois Register of proposed rulemaking and provides for public participation in the rulemaking process. So, we find that the deletion of the existing provisions at 225 ILCS 720/9.01(c) through (g) and the first sentence of subsection (h) does not make the Illinois program less stringent than SMCRA or less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Federal Agency Comments

On July 13, 2001, under section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Illinois program (Administrative Record No. IL–5069). We did not receive any comments.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain the written concurrence of the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Illinois proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA for its concurrence.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. IL–5069). The EPA responded on July 24, 2001 (Administrative Record No. IL–5070), that it had reviewed the program amendment and had no comments to offer.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On July 13, 2001, we requested comments on Illinois' amendment (Administrative Record No. IL–5069), but neither responded to our request.

Public Comments

We asked for public comments on the amendment, but did not receive any.

V. Director's Decision

Based on the above findings, we approve the amendment as submitted by Illinois on June 28, 2001.

However, as discussed in finding No. III.D, if Illinois ever proposes regulations to implement 225 ILCS 720/2.08(e), we will require Illinois to add a provision that terminates the authority of the regulations on September 30, 2004.

To implement this decision, we are amending the Federal regulations at 30 CFR part 913, which codify decisions concerning the Illinois program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process.

VI. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary under SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866 and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 27, 2001.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 913 is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for Part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 913.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 913.15 Approval of Illinois regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * * *		
June 28, 2001	November 21, 2001	225 ILCS 720/1.03(a)(9–a), 1.04(a) and (c), 105, 2.08(e), 6.07(f), 6.08(i), 7.03(b), 7.04(a), 9.01.

[FR Doc. 01–29028 Filed 11–20–01; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SPATS No. MT–022–FOR]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the Montana regulatory program (hereinafter, the Montana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or ''the Act''). Montana proposed a statutory revision concerning transfer of a revoked permit. HB–495 was passed by the Montana legislature and signed into law by the Governor to enable the transfer of a revoked permit to a new party so as to continue the original proposed coal mining and reclamation operation. The State intends to revise its program to improve operational efficiency.

EFFECTIVE DATE: November 21, 2001.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, Casper Field Office; Telephone: 307–261–6550; e-mail address: *gpadgett@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Montana Program

Section 503(a) of SMCRA permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana regulatory program in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Submission of the Proposed Amendment

By letter dated April 27, 2001, Montana sent us a proposed amendment

to its program (Administrative Record No. MT–19–01) under SMCRA (30 U.S. 1201 *et seq.*). Montana submitted the amendment after the State Legislature passed HB–495. Governor Judy Martz signed the bill into law on May 1, 2001. The amendment changes the Montana Strip and Underground Mine Reclamation Act (MSUMRA), which governs the State's regulatory program. Specifically, the proposed amendment provides the following:

Section 1. Operating permit revocation—permit transfer; that a revoked operating permit will not terminate until five years after revocation, or until substantial revegetation occurs. The amendment allows a person to apply for the transfer of a revoked permit that has not terminated by submitting to the Department of Environmental Quality (the department) an application that contains information required for a permit applicant by section 82–4–222 of Montana's statute. The amendment requires the department to stop reclamation activities on the permit area upon receipt of a transfer application. It also provides that a person who applies for a revoked permit need not submit any additional information unless the department can show that significant changes in the environmental baseline data occurred. Under the proposed amendment, the department must process transfer applications under time frames already in Montana's statutes. The amendment provides that, after a public comment period, the department must transfer the permit when the new operator provides proof of site ownership or control and adequate bonding. It further requires all pre-existing permit deficiencies and necessary modifications to be corrected to the department's satisfaction before additional surface is disturbed, and that pre-established environmental monitoring requirements continue. The proposed amendment specifies conditions under which the department may not transfer a permit, including the need for significant changes in the operating or reclamation plans and if the applicant or owners or controllers of the applicant have outstanding violations. This amendment provides that the department is not required to reimburse the former permittee or surety for funds expended for reclamation, monitoring or site maintenance. This statutory change does not apply to the revocation or transfer of an operating permit that authorizes mining on Federal lands.

Section 2. Codification instruction; states that Section 1 is intended to be codified as an integral part of Title 82, chapter 4, part 2, and the provisions of Title 82, chapter 4, part 2, apply to Section 1.

Section 3. Effective date; states this act is effective on passage and approval.

Section 4. Applicability: States Section 1 applies to mine operating permits that are in effect as of the effective date of this act and applies retroactively, within the meaning of 1–2–109, to permits that were revoked no more than 5 years before the effective date of this act.

Section 5. Termination B contingent termination; states except as provided in subsection (2), this act terminates October 1, 2005.

We announced receipt of the proposed amendment in the May 24, 2001, **Federal Register** (66 FR 28680; Administrative Record No. MT–019–04). In the same document, we opened the public comment period and provided an opportunity for a public hearing on the amendment's adequacy. We did not hold a public hearing because nobody requested one. The public comment period ended on June 25, 2001. We received written comments from one private citizen, one industry group, one environmental group, the Governor of Montana, and two Federal agencies.

III. Director's Finding

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

1. Standard Applied in Reviewing This Amendment

The proposed change to the Montana statute has no counterpart in either SMCRA or the Federal regulations. However, that does not mean that it must automatically be disapproved. Section 505(b) of SMCRA provides that ''Any provision of any State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, which provides for the control and regulation of surface mining reclamation operations for which no provision is contained in this Act shall not be construed to be inconsistent with this Act.''

The criteria for deciding whether this proposed amendment should be approved or disapproved are whether or not the proposed amendment is in accordance with the provisions of the SMCRA and consistent with the requirements of the Federal regulations. As those phrases are defined in 30 CFR 730.5, the proposed amendment should be no less stringent than SMCRA and be no less effective than the Federal regulations in meeting the requirements of SMCRA in order to be approved. For the reasons articulated below, we conclude that the proposed amendment is no less stringent than SMCRA and no less effective than the Federal regulations and, therefore, may be approved.

2. Assumption of a Revoked Permit by Another Party in Order To Reinitiate Mining

The basic objective of the proposed amendment is to allow another party to assume a revoked permit and begin mining under the terms of that permit. While SMCRA and the Federal regulations clearly provide for the revocation of permits and separately provide for the transfer, assignment, or sale of permit rights, there is no express Federal counterpart to the changes Montana proposes to make to MSUMRA in this amendment which would allow another party to assume a revoked permit and begin mining under the terms of that permit. The question, then, is whether or not such a provision is inconsistent with SMCRA.

We have previously addressed this basic question in relation to a statutory change proposed by another State. West Virginia proposed a somewhat comparable amendment to its approved statutory requirements on April 28, 1997. That amendment allows a revoked permit to be reinstated within one year following the notice of permit revocation, subject to the discretion of the West Virginia Division of Environmental Protection's (WVDEP) director and based on WVDEP's receipt of a petition for reinstatement. The amendment further provided that a reinstated permit may be assigned to any person who meets the permit eligibility requirements of West Virginia's regulatory program.

We published our approval of West Virginia's proposed statutory change in the February 9, 1999, **Federal Register** (64 FR 6201). In our decision, we noted that the Federal enforcement requirements of section 521 of SMCRA do not specifically prohibit reinstating a revoked permit. Therefore, we approved the proposed statutory revision in so far as it did not contain any provisions that are less stringent than the requirements of SMCRA.

That same rationale applies here. While the proposed Montana amendment provides that revoked permits do not actually terminate for a specified period (five years) after revocation, rather than allowing for reinstatement as with the approved

West Virginia program, the effect is the same. Either program would allow another party to assume a revoked permit and begin mining within the terms of that permit. To disapprove one approach after approving the other would be inconsistent. Further, providing a mechanism for other operators to assume the reclamation liability and commence mining at forfeited sites that have not yet been reclaimed is consistent with the objective of section 515(b)(1) of SMCRA which is to maximize recovery of the coal resource in order to minimize reaffecting reclaimed land through future mining operations. It is also consistent with our re-mining initiatives. Therefore, we find that the basic concept embodied in the proposed revision to the Montana program may be approved since it is not specifically prohibited by SMCRA and is not less stringent than SMCRA.

Permits issued under the approved Montana program are valid for five years and are subject to renewal. However, under this provision, a revoked permit does not terminate until five years after revocation. Based upon this provision, we understand that should a permit be transferred during that five-year period, it would still expire at the end of those five years unless renewed by the new owners of the permit. For example, if a transfer takes effect three years after revocation, the transferred permit will terminate two years after the transfer unless renewed. Our determination that the provision is no less stringent than SMCRA is based upon this understanding.

3. Process for Another Party To Assume a Revoked Permit

While the proposed statutory change to the West Virginia program was approved on February 9, 1999, that same **Federal Register** notice made clear that the State was barred from implementing the change until its program was further amended to specify procedures for implementing the approved change. Thus, while the statutory change providing the concept was found no less stringent than SMCRA, it was not yet clear that the processes to be used to implement the provision would be no less effective than the Federal regulations. Therefore, we notified West Virginia that, before implementing the provision, it must establish provisions governing such transfers that provide adequate safeguards to ensure that the reinstated permit will satisfy all the requirements of the West Virginia Surface Mining Control and Reclamation Act (WVSMCRA). In addition to eligibility requirements, which were already covered in the approved amendment (and which are also adequately covered in the proposed Montana amendment), we notified West Virginia that it must establish procedures that (1) allow for public participation, (2) require that the revoked permit meet appropriate permitting requirements of the WVSMCRA, and (3) require that the mining and reclamation plan be modified to address any outstanding violations. We also stated that (4) in no event can a reinstated permit be approved in advance of the close of the public comment period, and (5) the party seeking reinstatement must post a performance bond that will be in effect before, during, and after the reinstatement of the revoked permit.

On March 14, 2000, West Virginia sent to us amendments primarily incorporating reinstatement provisions into its transfer regulations. In the August 18, 2000, **Federal Register** (65 FR 50409) largely approving the procedures proposed by West Virginia, we seemed to add a sixth criterion by stating that procedures must not result in the intentional delay of bond forfeiture reclamation. These six criteria, articulated to evaluate whether or not the procedures adopted by West Virginia are no less effective than the Federal regulations, provide a reasonable standard for evaluating whether or not this proposed amendment to Montana's approved program contains adequate procedural safeguards for implementing the concept of allowing another party to assume mining at the site of a revoked permit. Therefore, to the extent the proposed amendment meets these criteria, it can be found no less effective than the Federal regulations.

4. Comparison of Montana's Proposed Amendment With the Specific Criteria Established by OSM for the West Virginia Proposal

Based upon application of the six criteria established to evaluate the West Virginia proposal to the proposed Montana amendment, we find that Montana's proposed amendment is no less effective than the Federal regulations pertaining to the transfer, assignment, or sale of permit rights at 30 CFR 774.17.

Of the six criteria established to evaluate the West Virginia proposal, the first and fourth dealt with the issue of public participation. The first criterion required public notice, and the fourth criterion required that the transfer not occur until the close of the public comment period. The proposed Montana amendment meets these requirements. Proposed Section 1.(6) provides for transfer only after public notice and opportunity for comment. This requirement is not inconsistent with 30 CFR 774.17(c) and is no less effective than the Federal regulations so long as it is implemented in a manner consistent with that Federal provision.

The second criterion established to evaluate the West Virginia proposal was that the revoked permit meet appropriate permitting requirements. The proposed Montana amendment meets this requirement. Proposed Section 1.(2) requires that the application for transfer of a revoked permit contain the information required for a permit applicant in sections 82–4–222(1)(b) through (i) of the Montana program. Those sections generally require information pertaining to ownership and control of both the subject site and mining operation and other legal, financial, and compliance matters.

An area of potential concern regarding the second criterion is that proposed Section 1.(3) would preclude Montana from requiring additional information from the applicant unless Montana can show that significant changes in the environmental baseline data have occurred. However, this limitation is mitigated by several provisions of the proposed amendment which require the submission of information to correct both paperwork deficiencies and operational violations of the previously approved mining and reclamation plan. First, proposed Section 1.(2) requires the applicant to submit all of the compliance information for outstanding violations required by 82–4–222(1)(g) of the Montana program, and proposed Section 1.(7)(c) prohibits transfer of a revoked permit unless those violations are corrected. Second, proposed Section 1.(6)(b) requires, as a condition of permit transfer, that, prior to creating any additional disturbance at the site, all preexisting permit deficiencies must be corrected to the satisfaction of Montana and, also, that any preestablished environmental monitoring requirements must continue. Third, proposed Sections 1.(7)(a) and (b) prohibit permit transfer where Montana can show that significant changes to the operating or reclamation plan are necessary or where program requirements for backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area cannot be met. Finally, proposed Section 2 applies the provisions of the entire Montana program, namely, Title 82, Chapter 4, Part 2, to proposed Section 1. We

understand this to mean that all of the provisions of the Montana program apply to the process for transfer of a revoked permit, except those which are expressly modified by Section 1. We find that, taken together, these provisions of the proposed Montana amendment are fully sufficient to assure that the informational requirements for transfer of a revoked permit are no less effective than 30 CFR 773.17(b) and (c).

The third criterion established to evaluate the West Virginia proposal was that the mining and reclamation plan be modified to address any outstanding violations. The proposed Montana amendment meets this requirement. Proposed Section 1.(7)(c) prohibits transfer of a revoked permit where Montana can show that it would otherwise be precluded from doing so because of an outstanding violation or pattern of violations pursuant to 82–4–227(11) or (12) of the Montana program. Also, proposed Section 1.(6)(b) requires, as a condition of permit transfer, that, prior to creating any additional disturbance at the site, all preexisting permit deficiencies, including modifications necessary because of reclamation that has been conducted at the site, be corrected to Montana's satisfaction. Taken together, these sections of the proposed Montana amendment are no less effective than 30 CFR 773.17(d)(1).

The fifth criterion established to evaluate the West Virginia proposal was that a bond be posted. The proposed amendment, at Section 1.(6)(a), stipulates that adequate bonding, as required by the program, must be provided before the transfer can occur. This is consistent with the requirement and no less effective than the Federal regulations.

The sixth and final criterion, added in the August 18, 2000, **Federal Register** notice, was that the procedures must not result in an intentional delay of bond forfeiture reclamation. One area of potential concern with the proposed amendment is that, unlike the West Virginia provision that limits reinstatement of a revoked permit to within 1 year of revocation, this proposal provides that a revoked permit does not terminate until five years after revocation or substantial completion of seeding and planting on disturbed areas, whichever occurs earlier. It has been OSM's experience, working with many States over several years, that it is not uncommon for 1 to 5 years, or even more, to lapse between the time of permit revocation and the completion of reclamation with forfeited funds. Therefore, the proposed time limit of 5 years is not unreasonable, particularly since the time will be less if reclamation with forfeited funds is substantially completed in less than five years. Our finding that this provision will not result in intentional delays in bond forfeiture reclamation is based upon our understanding that Montana will continue to proceed to reclaim forfeited sites in a timely manner within the 5-year time limit in this provision unless an application for transfer is received. Should we find in future reviews that Montana is intentionally delaying reclamation to allow the full 5 years to lapse, we will reconsider this finding and may require an amendment.

A potential concern with the proposed amendment related to reclamation delays is the provision that, upon receipt of an eligible application, the department shall cease reclamation activities on the permit area. On its face, it seems very reasonable and prudent to cease reclamation activities when it appears that another party will likely take over the permit and resume mining. In fact, to not cease reclamation activities would be to potentially waste forfeiture funds while increasing the disturbance necessary to resume mining. In addition, the proposal makes clear that an application must contain all the ownership and violation information necessary to determine eligibility for a permit and that reclamation activities should cease only when an application is received from an eligible applicant. Therefore, our finding that this provision will not cause intentional delays in bond forfeiture reclamation is based upon our understanding that, consistent with these provisions, Montana will not cease reclamation activities with forfeited funds until it has checked the application to make sure that the information required by 82–4–222(1)(b) through (1)(i) is contained in the application and Montana has determined that the applicant is eligible for a permit. Only then, as we understand this proposal, would Montana cease reclamation with forfeited funds. If, in future reviews, we should determine that Montana is applying this provision inconsistent with this finding, a further amendment may be required.

Although not expressly addressed in the proposed Montana amendment nor in the Federal permit transfer regulations in 30 CFR 774.17, having liability insurance is also a requirement for all permittees under the Federal program. However, Section 2 of the amendment applies the provisions of Title 82, chapter 4, part 2, to Section 1. As stated above, we understand this to mean that the provisions of Title 82,chapter 4, part 2 apply to the process for application for transfer of a revoked permit, except as expressly modified by Section 1. The application of section 82–4–222(5), which requires an applicant for a transfer to submit a certificate of public liability insurance, has not been modified by Section 1. Therefore, we understand the amendment to include the requirement for a certificate of public liability insurance. Our finding that the proposal is no less effective than the Federal regulations and not less stringent than SMCRA is based upon that understanding.

IV. Summary and Disposition of Comments

Public Comments

We received six letters concerning the proposed amendment, primarily in response to our request for comments. Following are summaries of all written comments on the proposed amendment that we received and our responses to those comments.

B.M.P. Investments, Inc. (BMP) responded in a June 13, 2001, letter, by expressing its support for the proposed amendment (Administrative Record No. MT–19–06). BMP asserted that neither SMCRA nor the 30 CFR regulations contain any provisions precluding our approval of Montana's proposed amendment. It further asserted that there is no language in SMCRA or the Federal regulations that prohibits a State from reissuing a revoked mine permit under the conditions contained in Montana's new statutory amendment (HB–495).

We agree with these comments as we discussed above in Part III, Director's Findings, of this final rule.

In a letter dated June 28, 2001, Montana Governor Judy Martz expressed to the Secretary of the Interior her support for the amendment on the basis that it expedites the resumption of mining at a site that is already reviewed and permitted (Administrative Record No. MT–19–09). Governor Martz requested that we allow Montana to implement the statute. She noted that the amendment safeguards against environmental damage by requiring preexisting permit deficiencies to be corrected, additional information if there have been significant changes in baseline data, and preestablished environmental monitoring requirements to continue. The Governor also noted that a revoked permit may not be transferred if existing requirements of the statutes cannot be met, significant changes in the operating or reclamation plan are needed, or the applicant has

uncorrected violations. She further noted the amendment's provisions for public notice and comment, site ownership and control, and adequate bonding.

The Northern Plains Resource Council (NPRC) expressed several concerns for the proposed amendment in a letter dated June 21, 2001 (Administrative Record No. MT–19–08). NPRC asserted that Montana's amendment goes beyond the scope and authority of SMCRA and that there is no authority to resurrect a permit that has ceased to be. NPRC stated that, by definition, a revoked permit does not exist and SMCRA does not provide for rehabilitation of revoked permits through permit transfer. We disagree with this comment. As we stated under Part III, Director's Findings, we previously approved an amendment proposed by West Virginia that raised the issue of reinstating revoked permits. In that approval, we held that SMCRA does not specifically prohibit the reinstatement of a revoked permit and we approved the transfer of such permits to a third party. In doing so, we specified the criteria that would be necessary for full approval and operation of this provision. We also noted previously in this final rule that section 505(b) of SMCRA provides that ''Any provision of any State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, which provides for the control and regulation of surface mining and reclamation operations for which no provision is contained in this Act shall not be construed to be inconsistent with this Act.''

NPRC noted that Montana's proposed amendment requires the State to stop reclamation activities upon receipt of an application for transfer of a revoked permit. NPRC maintained that stopping such activities would cause even further delay of reclamation with forfeited funds. We expressly address this issue above in the findings section in our discussion of this provision. Again, while we recognize it as an area of potential concern, we reiterate that it is not only reasonable but also prudent to stop reclamation activities when an application has been received that indicates a strong likelihood that mining will resume in the near future. This would be true even without this provision. It would still be reasonable for any Regulatory Authority to suspend reclamation using forfeited funds if it received an entirely new permit application seeking to mine an area where a permit had been previously revoked and reclamation with forfeited funds was underway. Knowing that it has received a complete application for transfer of the revoked permit and finding that the applicant is not precluded from holding a permit pursuant to the Montana program, we believe that it would be prudent for Montana to then halt expenditure of forfeited funds on reclamation as required by the proposed amendment. However, the amendment does not change existing obligations on Montana to proceed with reclamation in the event of bond forfeiture until a transfer application is received.

NPRC stated that the party filing the application assumes no liability for the site until approval while extending the State's liability by further delaying reclamation. We note that liability for the site remains with the original permittee until the site is reclaimed by the State with forfeited bond funds or is taken over by another party.

NPRC asserted that the proposed process does not evaluate the financial ability of the applicant against the financial requirements of taking over the permit. While that is true, such an evaluation has never been part of the permitting process under SMCRA nor does SMCRA expressly authorize or require such a review. Therefore, we would have no basis to require it in relation to this amendment. However, Montana's amendment only allows the State to transfer a permit to a new operator if that new operator provides proof of adequate bonding as required by MSUMRA. The bond is the financial guarantee that reclamation work will be performed.

The NPRC expressed concerns that, because the information required for a transfer of permit under the proposed amendment is minimal and administrative, changes in field conditions or in the proposed operation/reclamation plan would not be adequately addressed prior to permit transfer. It is true that, in most circumstances, the information required in the application is limited to administrative information. However, that is also true of the Federal rules at 30 CFR 774.17(b) for permit transfer which formed the basis for the approach taken by West Virginia in response to our requirement to establish procedures for implementing the reinstatement of revoked permits. Further, while Montana is precluded from preparing a full review under 75–1–201, it is not precluded from using information it receives during the public comment period or information it already has from its permit files, inspection and enforcement files, or forfeiture reclamation work to evaluate the application. In fact, it would have to do so to determine whether or not it can show that significant changes to the operating plan or reclamation plan are necessary or that certain reclamation requirements cannot be met. Either finding would preclude issuance of the transfer. Governor Martz recognized these limitations on permit transfers under the proposed amendment by stating in her comment letter that ''if the existing requirements of the statutes cannot be met, significant changes in the operating plan or reclamation plan are necessary, or the applicant is in violation of Public Law 95–87, the department may not transfer the permit * * * '' (Administrative Record No. MT–19–09; emphasis added). Therefore, it is clear that Montana will undertake sufficient analysis to determine if these conditions exist. Our finding that the proposed amendment is no less effective than the Federal rules and meets the criteria outlined for West Virginia is based upon Montana undertaking that level of analysis. Also, Montana can require additional information as part of the application if significant changes occurred in the environmental baseline data during the period of operation or since the original permit was revoked. Further, as previously discussed, as a condition of the transfer, all preexisting problems must be addressed to the satisfaction of Montana before additional disturbance is created.

The NPRC stated that the permit that is the immediate subject of this proposed amendment is the Bull Mountain Mine No. 1 permit. NRPC goes on to allege numerous concerns with the Bull Mountain mine. While we make no judgment with respect to these allegations, how that mine was operated with regard to the permit is not a factor in our consideration of the proposed amendment. Under this amendment, Montana can only approve a transfer if the permit transfer application is complete and (1) it cannot show that either the operation plan or the reclamation plan needs to be changed, (2) it cannot show that the requirements of MSUMRA and the administrative rules for operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, and reclamation of the affected area cannot be met, (3) proof of ownership or control has been provided, (4) the applicant is eligible to receive a permit, and (5) adequate bond has been posted. Also, liability insurance is required. Further, that transfer will be conditioned to require that all preexisting permit deficiencies be corrected to the satisfaction of Montana before additional disturbance is

allowed. We make no judgment of whether or not the Bull Mountain No. 1 permit could qualify for a transfer under the proposed amendment. However, we believe the above provisions are adequate to assure that mining could only resume at that site if concerns such as NPRC alleges are addressed.

We also received comments in a letter dated July 16, 2001, from a citizen involved in the purchase of property nearby the Bull Mountain mine (Administrative Record No. MT–19–10). The citizen expressed concern that he considered the permit revocation to be final but that the change in Montana's law that is the subject of this amendment has made it an issue again. The commenter stated that the mine's uncertain status makes it difficult for anyone to decide whether or not to live and invest in the area. He argued that there should be another opportunity for local public input into the permitting decision, noting that conditions have changed since the permit was revoked and local residents appear to be ill-informed about the mine's status. As we noted previously in this final rule, the amendment requires the department to provide for public notice and the opportunity for comment while processing an application for transferring a revoked permit. We also noted previously that this proposed amendment allows the department to request additional information from the applicant if it can show that significant changes in environmental baseline data have occurred. We noted further that this amendment precludes the department from transferring a revoked permit if it can show that significant changes in the operation/reclamation plan are needed or that other requirements of Montana's statute and rules cannot be met. Governor Martz reiterated these requirements in her June 28, 2001, letter to us (Administrative Record No. MT–19–09). Finally, we note that anyone investing in areas of known coal reserves or an inactive mine owned by others cannot be guaranteed that future mining will not occur. Even without a provision such as proposed in this amendment, inactive or reclaimed mines can be reactivated under completely new permits if they meet requirements that already exist in applicable Federal and State laws and regulations.

Federal Agency Comments

Under 30 CFR 731.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment in letters dated May 15, 2001, from various Federal agencies with an actual or potential interest in the Montana program (Administrative Record No. MT–19–03).

In a letter dated June 18, 2001, the U.S. Department of Labor, Mine Safety and Health Administration (MSHA) stated that Montana's proposed amendment will not affect MSHA's enforcement of the Federal Mine Safety and Health Act of 1977 (Administrative Record No. MT–19–05).

The U.S. Department of the Interior, Bureau of Indian Affairs (BIA), responded to our request for comments in a letter dated June 22, 2001 (Administrative Record No. MT–19–07). The BIA stated that it is comfortable with the procedures and requirements Montana advocates in its amendment. It added that only one mine in Montana currently produces Indian owned coal, and that it does not anticipate that mine's permit being revoked or transferred.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get a written agreement from EPA for those provisions of the program amendment that related to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Montana proposed to make in this amendment pertain to air or water quality standards. As a result, we did not ask EPA to agree on the amendment.

However, we did request comments from EPA under 30 CFR 732.17(h)(11)(i) in a letter dated May 15, 2001 (Administrative Record No. MT–19–03). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On May 15, 2001, we requested comments from them on Montana's amendment (Administrative Record No. MT–19–03). Neither the SHPO nor the ACHP responded to our request.

V. Director's Decision

Based on the above finding, we approve the amendment Montana sent to us on April 27, 2001.

We approve, as discussed in Part III, finding number 1: Section 1 of Title 82, chapter 4, part 2 of the Montana Strip and Underground Mine Reclamation Act, providing for transfer of revoked operating permits, including provisions for applying for a transfer, processing transfer applications, approving and not approving transfer requests, requirements for reimbursement of expended funds, and restricting transfer requests to non-Federal lands.

To implement this decision, we are amending the Federal regulations at 30 CFR part 926, which codify decisions concerning the Montana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have significant takings implications and therefore a takings implication assessment is not required. The basic objective of the amendment is to allow a new party to assume a revoked permit and begin mining under the terms of that permit.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866, and because it is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The basic objective of the amendment is to allow a new party to assume a revoked permit and begin mining under the terms of that permit. Because the application of the rule is limited and because the party assuming the revoked permit stands to gain an economic benefit, we have concluded that the rule will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: a. does not have an annual effect on the economy of $100 million; b. will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and c. does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based on the fact that the application of the rule is limited and the party assuming the revoked permit stands to gain an economic benefit.

Unfunded Mandates

OSM has determined under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on any local, State, or Tribal governments or private entities.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, surface mining, underground mining.

Dated: November 6, 2001.

Brent T. Wahlquist,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR 926 is amended as set forth below:

PART 926—MONTANA

1. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 926.15 is amended in the table by adding a new entry in chronological order by November 21, 2001 to read as follows:

926.15 Approval of Montana regulatory program amendments.

Original amendment submission date	Date of final publication	Citation/Description
April 27, 2001	November 21, 2001	MCA 82–4 Part 2 Operating permit revocation—permit transfer

[FR Doc. 01–29106 Filed 11–20–01; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[USCG–1998–3423]

RIN 2115–AF55

Implementation of the National Invasive Species Act of 1996 (NISA)

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: To comply with the National Invasive Species Act of 1996 (NISA), the Coast Guard has established both regulations and voluntary guidelines to control the invasion of aquatic nuisance species (ANS). Ballast water from ships is one of the largest pathways for the intercontinental introduction and spread of ANS. This rule finalizes regulations for the Great Lakes ecosystem and voluntary ballast water management guidelines for all other waters of the United States, including mandatory reporting for nearly all vessels entering waters of the United States.

DATES: This final rule is effective December 21, 2001.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1998–3423 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this

docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, contact Lieutenant Commander Mary Pat McKeown, Project Manager, U.S. Coast Guard Headquarters, Office of Operating and Environmental Standards (G–MSO), telephone 202–267–0500. For questions on viewing, or submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 8, 1993, the Coast Guard published a final rule titled ''Ballast Water Management for Vessels Entering the Great Lakes'' in the **Federal Register** [58 FR 18330]. The rule established mandatory procedures for the Great Lakes in 33 CFR part 151, subpart C.

On December 30, 1994, we published a final rule titled ''Ballast Water Management for Vessels Entering the Hudson River'' in the **Federal Register** [59 FR 67632]. The rule amended the regulations in 33 CFR part 151 to include requirements for portions of the Hudson River, which connects to the Great Lakes.

On April 10, 1998, we published a notice of proposed rulemaking (NPRM) titled ''Implementation of the National Invasive Species Act of 1996 (NISA)'' in the **Federal Register** [63 FR 17782].

On May 17, 1999, we published an interim rule [64 FR 26672] that implemented the National Invasive Species Act of 1996 (NISA). We received 27 letters commenting on the interim rule.

Background and Purpose

Aquatic nuisance species invasions through ballast water are now recognized as a serious problem threatening global biological diversity and human health.

On November 29, 1990, Congress enacted the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA) [Public Law 101–646; 16 U.S.C. 4711]. Congress enacted NANPCA to prevent and control infestations of zebra mussels and other nonindigenous aquatic nuisance species in coastal and inland waters of the United States.

On October 26, 1996, Congress enacted the National Invasive Species Act of 1996 (NISA) [Public Law 104–332], which amended and reauthorized NANPCA (the Act). The purpose of the Act was to provide for ballast water management to prevent the introduction and spread of nonindigenous species into the waters of the United States.

On November 27, 1997, the IMO Marine Environment Protection Committee (MEPC) adopted Resolution A.868(20), ''Guidelines for the Control and Management of Ships' Ballast Water to Minimize the Transfer of Harmful Aquatic Organisms and Pathogens.'' The IMO recommends that all maritime nations of the world adopt and use these voluntary guidelines.

The regulations and guidelines in this rule will implement the Act by—

- Requiring operators of vessels entering waters of the United States from beyond the Exclusive Economic Zone (EEZ) to submit a ballast water management report;
- Providing voluntary ballast water management guidelines for operators of vessels entering waters of the United States from beyond the EEZ; and
- Promoting ballast water management for operators of all vessels in waters of the United States.

Discussion of Comments and Changes

The Coast Guard received 116 comments on the interim rule. The paragraphs in this section discuss the comments we received, provide the Coast Guard's responses, and explain any changes we are making to the regulations. General comments are discussed first, followed by comments on specific sections of the regulations.

General Comments

Six comments expressed support for the rule and commended the Coast Guard for our effort to control the spread of ANS in U.S. waters and to develop realistic regulations that reflect industry input.

Ten comments discussed the importance of maintaining consistent national and international standards to control the spread of ANS. Some of these expressed concern that States or other levels of government may issue other regulations that exceed or significantly change the standards included in the rule. One respondent stated that solutions to the spread of ANS must be evaluated to ensure that they don't exacerbate the ANS problem as it applies to individual ports. Another comment suggested that Federal government control of ballast water management is necessary to avoid having different requirements at individual ports.

It has long been the Coast Guard's position that consistent standards of universal application, coupled with Federal initiatives to address unique regional concerns, are the best means of meeting local and national environmental goals with the least disruption to international maritime commerce. To avoid potential conflicts between regulations and duplication of effort, we request that any political subdivision of the United States that is contemplating any laws, regulations, or requirements regarding the discharge of ballast water, consider this regulation prior to taking action.

The Coast Guard will try to maintain nationwide consistency in methods for the control of invasive species. We are committed to ensuring national consistency for regulations that are established as international rules and regulations, adopted by the IMO, and ratified by the United States, which are related to the design, construction, equipment, manning, and operation of vessels. However, this rulemaking isn't intended to preempt any State, regional, or local efforts that exceed but don't conflict with the standards set forth in this rule. Section 1205 of the Act states that—

Nothing in this title shall affect the authority of any State or political subdivision thereof to adopt or enforce control measures for aquatic nuisance species, or diminish or affect the jurisdiction of any State over species of fish and wildlife.

Eleven comments discussed the costs associated with compliance and noted that we did not accurately reflect these costs in the interim rule. Two respondents suggested that the task of filling out the report is the responsibility of the chief officer (chief mate or master), so the associated cost should be based on a chief officer's salary. One of the respondents suggested basing the cost on the overtime rate of a master.

The Coast Guard has revised the cost of complying with the mandatory reporting requirement and has increased the estimated cost to industry to meet this requirement.

Many of the comments stated that the Coast Guard's cost analysis does not accurately reflect the cost and impact of compliance with either the voluntary guidelines for ballast water management or the mandatory reporting requirements. Several comments stated that certain additional costs should be included in the analysis if the voluntary guidelines become mandatory. The examples of these costs the respondents note include those for fuel for ballast pump operations; shore reception facility fees; increased equipment usage (*i.e.,* wear and tear), and maintenance and repairs; decreased efficiency of vessels due to reduced speeds; and

postponement or cancellation of other operational priorities.

The Coast Guard disagrees. The only costs the Coast Guard can consider in this Final Rule are those associated with the mandatory reporting requirements. However, we agree that the costs identified by the commenter will need to be addressed if the Coast Guard determines that a mandatory ballast water exchange program is needed. We will be evaluating the voluntary program in the coming months in order to accurately report to Congress on the success (or lack thereof) of the voluntary program. Should that report indicate our intent to promulgate a mandatory program, we will issue a new regulation that will consider the costs of the mandatory program.

We received two letters prior to the close of the comment period from respondents who notified us that they were compiling comments from numerous sources and requested that we consider those group comments even if they were not received prior to the comment period closing. We did accept these comments.

Ten comments discussed research and alternative technologies. One comment commended the Coast Guard for our research in developing alternatives to exchanging ballast water at sea. Five comments emphasized the importance of finding safe, practical, and cost-effective alternatives, in lieu of ballast water exchange, to achieve the objectives of NISA. One comment recommended moving research from identification of the problem to management of the problem. One comment indicated that developing such alternatives is an extremely important aspect of any long-term ballast water management program for the U.S. and for other countries. The respondent noted that discussion of this topic was not adequately addressed in the interim rule. One comment noted that with the advances in the development of new technologies for ballast water management, commercial investment in new systems is likely if there is a way to implement the new systems and create markets for them. One comment stated that nearly any system of treatment that avoids the additional pumping cycles involved in ballast water exchange at sea will be welcomed by ship owners because of the savings in both manpower and fuel. The respondent indicated that an added benefit will come from the reduction in carbon dioxide emissions.

We concur with these comments and are actively supporting and encouraging different technologies.

We received seven comments about the Environmental Assessment (EA) portion of this rulemaking. The Coast Guard will respond to these seven comments regarding the Environmental Assessment in the EA section of this final rule.

We received two comments from one respondent about the question-and-answer format of the interim rule. The first comment requested that the Coast Guard republish the entire requirement for ballast water management in a traditional format. The second comment stated that the question-and-answer format is not satisfactory because many of the existing regulations have been supplemented and are now simply referenced. The respondent offered as an example that although the requirements in § 151.2045 are a mixture of information about recordkeeping and reporting, the stated topic question refers only to recordkeeping.

In response to the first comment, the Coast Guard changed the traditional format of the rule for better organization and clarity. We used many of the plain language techniques to write the rule. These writing techniques are intended to make regulations less technical and easier to follow and understand, and are consistent with the requirements of the Presidential Memorandum, ''Plain Language in Government Writing'' (63 FR 31885, June 1, 1998). In response to the second comment, the actual requirement for reporting is in § 151.2040. We feel that if we were to add reporting to the heading of § 151.2045, it may cause confusion.

We received two comments about the timing of the effective date of the interim rule compared to the ending date of the comment period. One respondent indicated that it would have been preferable for the Coast Guard to first review the public comments about the interim rule before the rule became effective. Another respondent urged the Coast Guard to keep the rule in an interim status to gather at least 6 months of data and experience for evaluation before the final rule is established.

In response to the first comment, the interim rule was developed based on the proposed rule and the numerous comments on the proposed rule. We do not believe that delaying the implementation of the interim rule was warranted. More importantly, to delay implementation of that rule would not have been in the best interests of the general public. In response to the second comment, we understand the respondents' concerns. We did wait to obtain 6 months of data and experience before we moved this regulation to final rule status. We wanted to ensure that any portions of the regulation that had been confusing to the public, or that had been open to different interpretations than we intended, were clarified for this final rule. This preliminary data showed an extremely low compliance with the reporting requirement. One of the reasons for this may be that the national program requires reports to be submitted prior to departure from the first port of call in U.S. waters. This is inconsistent with other CG required information, which must be submitted prior to a vessel's arrival at a port of call in U.S. waters. To increase compliance with these regulations, develop consistency with other CG programs, and better monitor compliance we have amended § 151.2040(c)(4) to require that the ballast water information be submitted prior to a vessel's arrival at their first port of call in U.S. waters.

Comments on Specific Sections of the Rule

What Vessels Does This Subpart Apply To (§ 151.2005)?

Eight comments discussed applicability to vessels. Three of these comments indicated that the applicability section of the interim rule is not clear.

One comment noted that the wording in § 151.2005(a) should be changed and made consistent with § 151.2005(b). One comment indicated that the term, ''waters of the United States,'' in § 151.2005(a) is confusing and conflicts with how it is defined in 33 CFR 2.05–30 and in § 151.2020(a). The comment stated that while 33 CFR 2.05–30 refers to the territorial sea as extended to 12-nautical miles from the baseline, § 151.2020(a) appears to refer to the 200-mile EEZ. The comment suggested that we remove the reference to the ''waters of the United States'' and replace it with ''the EEZ.'' The Coast Guard disagrees; in 33 CFR 2.05–30, navigable waters of the U.S. extend to 3-nautical miles from the baseline. For this rule navigable waters of the U.S. extend to 12-nautical miles from the baseline. The phrase/term ''waters of the United States'' does not appear in § 151.2020.

For clarification, we modified § 151.2005(b) to include all vessels equipped with ballast tanks and to emphasize that these are additional provisions for vessels that have operated outside the EEZ. However, the reference in § 151.2020 of the interim rule referred to the ballast water that is of concern and not ''Waters of the United States'' or the ''EEZ.'' Please refer to the information under § 151.2020 of this preamble for a complete discussion of

this issue. We deleted § 151.2020 and revised § 151.2035(b) to better convey what we intended.

Three comments discussed why vessels that are not able to conduct open ocean exchanges, because of the nature of their voyages, should be exempt from the mandatory provisions. One comment stated that most vessels operating in the Wider Caribbean Area and Gulf of Mexico will find it nearly impossible to take on clean ballast in areas that are both 200 miles from land and have a depth of water of 2000 meters. One comment notes that the distance and depth covered in the rule only applies to a small percent of sea area for the Gulf of Mexico. One comment said that most itineraries of cruise ships operating in this geographic area do not include the areas that are both 200 miles from shorelines and 2,000 meters in depth. The comment also noted that this would mean that most vessels would have to travel 200 miles out into the Atlantic Ocean and back to conduct ballast water exchange or to take on clean ballast water.

The Coast Guard understands the concerns expressed in these comments. But, we believe that reporting such information is essential to future, sound decision-making. If vessels entering the EEZ from the outside must be diverted or delayed, thereby, imposing economic costs and increased fuel consumption and air emissions, such information is highly relevant and is important to any future action. Therefore, it should be reported on the Ballast Water Reporting Form.

Three comments discussed the applicability of the regulations to vessels declaring ''No Ballast on Board (NOBOB).'' One of these comments questions whether a vessel that is not carrying ballast onboard, which enters the U.S. EEZ, is expected to comply with the reporting requirements. Other comments suggest that vessels with ballast tanks that only contain unpumpable or residual ballast should be exempt from the rule since these vessels do not pose an environmental threat to U.S. waters.

The answer to the first comment question is yes. Vessels which have residual and unpumpable ballast onboard must still meet the reporting requirement. Since this area has caused confusion, the Coast Guard amended the relevant sections of the rule (§§ 151.2005, 2040, and 2045 subpart D) to state ''equipped with ballast tanks'' in lieu of ''carrying ballast water.'' In response to the other comments, we do not agree. NISA directs the Coast Guard to take into account, when developing the guidelines, ''ballasting practices of vessels that enter the waters of the United States with no ballast onboard.'' There is concern within the United States that vessels that declare NOBOB may still pose a potential risk for introducing nonindigenous species by adding ballast into tanks containing residual ballast, including sediments, then subsequently discharging this mixture into the receiving waters. One of the first steps in determining if there is a threat from these vessels is identifying how many of them are declaring NOBOB and finding out the particulars about them (e.g., type, port of call, and point of origin).

Which Vessels Are Exempt From Mandatory Requirements (§ 151.2010)?

We received 16 comments about exemptions for certain vessels from the mandatory reporting requirements. Many of these comments duplicate those discussed in the applicability section of this preamble.

Five of the 16 comments questioned the rationale for exempting crude oil tankers from mandatory reporting but not exempting similar vessels engaged in coastwise trade (e.g., chemical and product tankers). One comment requested an explanation of the difference between a crude oil tanker engaged in coastwise trade and other vessels engaged in coastwise trade for the purpose of this regulation. Several respondents mentioned whether the Coast Guard has the authority to exempt additional classes of vessels.

A number of the 16 exemption comments requested an exemption for vessels that may travel outside the EEZ for brief periods or that make repetitive voyages (e.g., vessels engaged in liner trade, non-crude-oil vessels engaged in coastwise trade, passenger vessels trading between the Bahamas and Florida, and container vessels in the Caribbean and Gulf of Mexico trade). Many of these comments also requested flexibility in meeting the reporting requirements. Suggestions offered for modified reporting by such vessels include the following: allowing the vessel to submit an initial report, then report by exception when things change significantly; allowing the vessel to submit a quarterly or annual report; allowing the vessel to submit one standard voyage profile versus voyage-by-voyage reports; and allowing a vessel that doesn't discharge any ballast to simply state this on the report.

The Coast Guard acknowledges the concerns and suggestions expressed in these comments. We took the applicability and exemptions in this rule directly from the Act. The intent of the mandatory reporting and recordkeeping requirements is to determine the ballasting patterns of the U.S., including those of vessels that declare NOBOB but are carrying residual ballast and sediments in their tanks. It is essential for all currently non-exempt vessels to comply with the reporting requirements so that this information will be available for future decision-making. If we do not have sufficient reports to evaluate the success of the voluntary program, NISA calls for the Coast Guard to make BWE a mandatory program (16 U.S.C. 4711(f)). As it stands now, we do not have scientific and technological support to include exemptions for additional vessels or circumstances not specifically covered in the Act. Therefore, we do not currently plan on exempting any additional classes of vessels. We have however added section § 151.2041 to allow for equivalent reporting procedures for vessels that conduct repetitive voyages. The Coast Guard believes that exemption of vessels that operate outside the EEZ would be contrary to the intent of NISA. There is a growing concern in the United States over the discharge of even domestic ballast water, so the information from the vessels referred to here may be essential in determining any future actions.

One exemption comment suggested that tugs and unmanned barges be exempt from the rule.

As indicated previously, the Coast Guard took the applicability and exemptions in this rule directly from the Act. To expand the exemptions currently granted under NISA, either the law would need to be amended to specifically grant additional exemptions, or the proposed exemption must fit within a fair interpretation of the existing Act. The Coast Guard does not believe that any of the exemptions proposed by the commenters meet this criterion. Therefore, it is important for all currently non-exempt vessels to comply with the reporting requirement, as this will provide essential information to aid future decision-making. For example, in many situations, it may be inherently unsafe to conduct an exchange of ballast by an unmanned barge. If this situation occurs, it should be reported on the ''Ballast Water Reporting Form'' because it is important information that would be helpful in future decision-making. Alternatively, if technology is developed that would be applicable to barges and tugs, it is expected that these vessels might be able to treat their ballast water, thereby eliminating the need for ballast exchange.

One of the 16 exemption comments mentioned that the term ''same location'' referenced in § 151.2010(d) is vague and could be better defined.

The intent of § 151.2010(d) is to exempt vessels that leave a berth in a specific port, conduct a voyage that takes them outside the EEZ (where they take on ballast to compensate for things such as the fuel burned and heavy-weather compensation), then return to roughly the same berth in the same port, without taking on any ballast other than a type that would be acceptable as an open ocean exchange.

One exemption comment requested that § 151.2010(a) be revised to read ''the master, operator, or person-in-charge of the vessel must operate, or ensure the operation of, the treatment system as designed.''

Our intent is that the treatment system must be operated as designed during discharges of ballast water into the United States. We have amended § 151.2010(b) to clarify this point.

To What Ballast Water Does This Subpart Apply (§ 151.2020)?

We received seven comments about ballast water applicability. These comments indicated that this section is unclear.

We agree with these comments. The reference in § 151.2020 as it appeared in the interim rule referred to the ballast water that is taken on a vessel that would pose a greater risk to the receiving environment. This is ballast water most likely to carry species that can survive in the waters of the United States. This includes any water taken on from a continental shelf or island plateau. The reference in § 151.2035(b)(1) as it appeared in the interim rule referred to what waters are acceptable to conduct an exchange. To clarify these differences, we deleted § 151.2020 and inserted into § 151.2035(b), the statement ''that was taken on in areas less than 200 miles from any shore or in waters less than 2000 meters deep.'' We have also revised § 151.2035(b)(1) for clarity and consistency.

What Definitions Apply to This Subpart (§ 151.2025)?

We received two comments about definitions. One comment asked us to define and clarify the term ''high seas'' as it relates to the EEZ.

''High seas'' means the ''parts of the sea that are not included in the EEZ, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State.'' We have amended *§ 151.2010(d)* to clarify that what was intended by the referral to high seas in that section was areas that would be acceptable for open ocean exchange.

One comment asked us to define what a crude oil tanker is for the purpose of this rule.

In 46 U.S.C., ''crude oil tanker'' is defined as a tanker engaged in the trade of carrying crude oil.

Who Is Responsible for Determining When To Use the Safety Exemption (§ 151.2030)?

We received eight comments about safety. The majority of these comments said that the safety of the vessel and crew must be the number one consideration in any ballast management effort. One comment thanked us for recognizing the importance of safety and the importance of the master's role in ensuring safety. One comment stated that the two methods of ballast water exchange defined in the rule are not safe for container ships, and it requested that we consider regulations that would continue to give the master discretion to consider the safety of the vessel before performing deep-sea ballasting operations. One comment explained that a flow-through exchange creates safety concerns for operating personnel on deck, who may be, because of large quantities of water flowing on deck, subject to personal injury by slips and falls. Five comments noted that safety should be the first consideration and vessel owners or operators should not be charged with noncompliance if the reason for noncompliance is safety of the vessel and its crew. Two of the five comments stated that if a vessel does not comply with the voluntary guidelines for safety reasons, it should not be placed in the noncompliance category. One comment said that if such vessels were listed in the noncompliance category, it would skew data toward mandatory requirements in the future.

The Coast Guard supports these statements. We believe that safety of the vessel, its crew, the cargo, and the environment are of paramount importance, and we will continue to focus on this area in the regulations. The Coast Guard also recognizes that ballast water exchange is not the ultimate solution to reducing the influx of organisms carried in ballast water. We understand that simply due to the nature of their voyage, many ships cannot conduct ballast exchange. We will continue to encourage advances in methods of treating ballast water. We will consider applicable laws, regulations, and the consequences of a treatment before we approve any method. The Coast Guard encourages companies to continue to research and develop other ballast control methods. In addition, the Coast Guard supports the position that vessels that do not comply with the voluntary guidelines for safety reasons should not be placed in the noncompliance category. Therefore, we have taken the same position in this regard as the Aquatic Nuisance Species Task Force (ANSTF) Effectiveness Criteria Committee.

What Are the Voluntary Ballast Water Management Guidelines (§ 151.2035)?

We received twelve comments concerning voluntary ballast-water management guidelines. Three of these comments related to exemptions for vessels whose routes do not take them into waters that are both 200 miles from land and have a depth of 2000 meters. You may refer to the discussion under § 151.2005 for the Coast Guard's response.

One of the comments about the voluntary guidelines requested that the Coast Guard reduce the depth requirement for an acceptable open ocean exchange for the Gulf of Mexico because the 2000-meter requirement is not warranted.

The Coast Guard does not plan to change the depth requirement until international agreement, based on sound scientific evidence, is reached. We request that affected vessels note on their ''Ballast Water Reporting Form'' estimates of the delay and distance they experience if they have to divert to accomplish an open ocean exchange. This information is essential to future decision-making.

One of the comments about the voluntary guidelines stated that § 151.2035 should specify a minimum period of time a U.S. coastwise vessel must operate beyond the EEZ before the reporting requirements and ballast exchange provisions apply.

In response to this comment, please see the discussion under § 151.2005.

One comment posed three questions about vessels engaged in domestic trade: (1) Isn't the intent of the Act to stop the introduction and spread of ANS? (2) What other ballast water methods are enforceable on domestic trade? (3) Will these other methods be enforced?

The Coast Guard recognizes the importance of these questions. In § 151.2035(a), we have included guidelines (precautionary practices) for all vessels equipped with ballast tanks that operate in waters of the United States. However, the Act doesn't give the Coast Guard the authority to require owners and operators of vessels engaged in domestic trade to perform ballast

water management methods such as ballast water exchange. Currently we are encouraging technological solutions for the treatment of ballast water. We will pursue implementation and enforcement of regulations regarding the transport of aquatic nuisance species by ballast water to the extent of the authority granted to us by Congress.

One comment concerns precautions for the quality of the water used as ballast water as referenced in § 151.2035(a) and suggests that the Coast Guard or other agency publish the ports and other locations that have water containing the noted harmful agents.

The Coast Guard recognizes that some waters may pose higher risks of containing potential invasive species than other waters. However, it has not been proven that any given water body is completely free from risk. Historical patterns show that zebra mussels may have been shipped for more than 50 years before they established a sustainable population in the Great Lakes and before they became a nuisance species. Therefore, we have determined that we must proceed using the premise that any port may be a threat.

Two comments discussed reception facilities. One of these comments noted that the definition of ''adequate facility'' is unclear. The other comment stated that the Coast Guard should publish the details of where and when the reception facilities mentioned in § 151.2035(b)(4) are available and what the costs are for using these facilities.

An approved or ''adequate facility'' would be one that the Coast Guard has accepted to be at least as effective as ballast water exchange in treating ballast water to reduce the risk of invasive species. The suggestion to publish the information about any ballast water reception facility that may be approved for the treatment of aquatic nuisance species in the future is a good one. This type of information would most likely be published through a ''Local Notice To Mariners,'' which would be included in the ''Coast Pilot,'' as appropriate. However, the publication of costs would appropriately be the responsibility of the facility itself.

One comment regarding publicly-owned treatment plants stated that the responsibility to comply with 33 CFR 151, including sediment disposal, should stay with the vessel operators, not public ports, and the Coast Guard should avoid requiring port authorities to employ publicly-owned treatment plants.

This requirement is to ensure that vessel representatives are aware that disposal of sediments within the United States must be done per existing regulations or laws, such as those of the Animal and Plant Health Inspection Service. The Coast Guard did not add any regulation of sediment disposal within this regulation. We reaffirmed the existing requirements for the disposal of soil brought into the United States that exist under 7 CFR part 330.

One comment stated that the final rule should require mandatory ballast water exchange in the same vein as it requires mandatory recordkeeping.

The Coast Guard has determined that the regulations adopted in this rule accurately reflect the requirements of the Act. Those regulations direct the Coast Guard to develop ''Voluntary Guidelines,'' unless it is demonstrated after a minimum trial period of 2 years that this level of guidelines does not offer an acceptable level of protection for the waters of the United States. The Coast Guard is preparing a report on the effectiveness of the voluntary guidelines to Congress, which must also precede any mandatory program. The Coast Guard considers this regulation to represent the most practical and effective ballast water management method available at this time. However, we cannot rule out the possibility of mandatory BWE in the future. Additionally, we will continue to support and encourage the development of more efficient and effective methods of protecting waters of the United States from non-indigenous aquatic nuisance species.

One comment recommended deleting the suggestion in § 151.2035(b)(2) to retain ballast water onboard because it is not a workable solution.

We do not agree with this comment. Many vessels do retain ballast onboard. They shift ballast as needed to control the stress and stability of the ship. This method of ballast management is a legitimate practice that reduces the discharge of untreated ballast, and we will continue to recognize it as such.

What Are the Mandatory Requirements for Vessels Carrying Ballast Water Into the Waters of the United States After Operating Beyond the EEZ (§ 151.2040)?

We received 13 comments about the mandatory reporting requirements. Many of these comments were requesting clarification of applicability or requesting exemptions from the mandatory reporting and recordkeeping of ballast water practices. They are appropriately discussed in § 151.2005 and § 151.2010.

The Coast Guard believes it is important for compliance to be made as efficient as possible for all concerned. Therefore, we have added to § 151.2041 a vehicle for parties to request alternative methods of reporting. As previously discussed, the information from all vessels, including those not discharging ballast, will be essential to make practical, enforceable regulations that accomplish the intended purpose and to make sound recommendations to Congress for future legislative action.

One comment requested that the Coast Guard clarify § 151.2045 to state that the reporting requirement doesn't apply to operators on voyages in areas less than 200 miles from the baseline of the U.S.

This comment appeared to misinterpret that the reporting requirement is triggered by the fact that a vessel has operated beyond the EEZ. We apologize for any confusion that may have been caused by our discussion on page 26676 in the preamble of the interim rule. We used the phrase ''generally 200 miles seaward of the baseline,'' however, we did not emphasize it throughout the example. While the seaward boundary of the EEZ is 200 miles from the baseline in much of the United States, there are areas where it differs. Such areas include portions of Florida, New England, Southern California, Texas, Alaska and Washington State, where the EEZ limit is less than 200 miles from the baseline. The Act tasks the Coast Guard with specific responsibilities for ''a vessel that is carrying ballast water into the waters of the United States after operating beyond the Exclusive Economic Zone.'' To effectively fulfill these responsibilities and make sound decisions for further action, we must gather the information for all vessels entering the waters of the U.S. after operating beyond the EEZ, including those vessels declaring NOBOB, which contain residual and unpumpable ballast.

Two comments indicate that the requirements for remitting the report appear burdensome for the master of the vessel. One respondent says that it would be easier for the vessel's captain to send information to the nearest Coast Guard office 24 hours before the vessel arrives in a particular port. Then the Coast Guard office could send the information to the National Ballast Water Information Clearinghouse (NBIC) or appropriate Captain of the Port. We agree that it may be easier for the vessel master to submit the required information prior to entry in U.S. waters as this would be consistent with other Coast Guard programs and activities. Therefore, we are amending paragraph 151.2040(c)(4) to require vessels entering a U.S. port to submit the required ballast water management

practices information before the vessel arrives at the first port of call in the waters of the United States. However, we disagree that it would be easier to submit the report to the local Coast Guard office. We believe a centralized location that all reports are sent to creates less burden to all parties then creating ''middle men'' to obtain and forward the reports. For the majority of the United States, the report can be mailed, faxed, or transmitted electronically to the NBIC. It may be sent by the master, owner, operator, agent, or person-in-charge of a vessel. The only areas in which there is no need to submit the ballast water information to the centralized location (NBIC) are those areas that had existing programs prior to the development of a national program. Vessels in those areas, the Great Lakes and Hudson River north of the George Washington Bridge, where ballast management practices are mandatory, report directly to the appropriate Captain of the Port 24 hours prior to entry by the means detailed in § 151.2040(c)(1), (c)(2), and (c)(3).

What Are the Mandatory Recordkeeping Requirements (§ 151.2045)?

The comments on § 151.2045 duplicate the comments already discussed in this preamble.

What Methods Are Used To Monitor Compliance With This Subpart (§ 151.2050)?

We received three comments about this section of the rule.

One comment indicated that the final rule should adequately describe the sampling procedures that the Coast Guard will use to monitor compliance as required by the Act.

Current sampling procedures are appropriately described in the Coast Guard ''Navigation and Inspection Circular'' 08–99 (NVIC 08–99). You may view this NVIC at http://www.uscg.mil/hq/g-m/nvic/8–99/n8–99.pdf.

One comment stated that the Coast Guard cannot make a sound and supportable recommendation to Congress at the end of the ''voluntary'' period based only on results from a verification test that all parties agree is inadequate. Another comment urged the Coast Guard to increase its focus on substantial testing so that an adequate verification test can be released as soon as possible.

The Coast Guard is using multiple means to verify compliance with the voluntary ballast water management. These means include a statistically significant number of Coast Guard boardings to determine the validity of reports that were submitted to the NBIC, a comparison of reports received with the number of vessel arrivals as determined by the Maritime Administration, and spot-checks of the salinity of ballast water carried on vessels that are boarded. While we are actively pursuing more definitive physical, biological, and chemical parameters to definitively verify that open ocean exchange has been conducted, salinity will likely remain as an effective screening parameter to show when one was not conducted.

What Must Each Application for Approval of an Alternative Compliance Technology Contain (§ 151.2060)?

The Coast Guard received two comments about this section of the rule. One comment noted that there is a need for a clearly defined approval process for new compliance technology that should follow internationally agreed-upon standards. A second respondent urged the ANS Task Force to give sufficient attention to the development of this approval process.

The Coast Guard is currently working with Agencies of the ANSTF to develop publishable standards and protocols for acceptance. In the interim, approval will be on a case-by-case basis through Commandant (G–MSO–4).

What Is the Standard of Adequate Compliance Determined by the ANSTF for This Subpart (§ 151.2065)?

One comment urged the ANS Task Force to give sufficient attention to the development of the criteria to measure alternative compliance methods. Another comment said that by not having effectiveness criteria available at the onset of the evaluation, it is unknown if compliance with the voluntary guidelines will be sufficient to prevent the need for mandatory provisions. This, therefore, places vessel owners and operators at a significant disadvantage in making informed decisions regarding research, investment, and alternative compliance measures.

We respect this opinion. However, we feel that delay of the rulemaking while awaiting the Aquatic Nuisance Species Task Force's report of adequate compliance would not be in the best interests of the general public. We have informed the ANSTF of our concerns and the paramount importance of providing these criteria.

Appendix to Subpart D of Part 151—Ballast Water Reporting Form

The Coast Guard received eight comments about the ''Ballast Water Reporting Form.'' Most of the comments expressed concern that the form is too detailed in scope, and the information requested is not needed or is duplicative of what is already carried onboard the vessel. Several comments recommended that an abridged report along with existing information carried onboard the vessel be accepted as an alternative. One comment requested that the Coast Guard simplify the form in future revisions.

The Coast Guard will not currently make any changes to the form published in the interim rule. At this stage of the program, all the information that is required is considered essential to make sound decisions. We have, however, added provisions within this rule to allow for equivalent means of reporting *(§ 151.2041)*.

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. It has not been reviewed by the Office of Management and Budget (OMB) 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 Coast Guard 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.

Summary of Costs

The rule will cost industry the time and resources it will take to submit the paperwork required by this rule. A vessel's officer is likely to be the person tasked with completing the report, so we based our (revised) estimate on the current annual salary for a third mate on a U.S. merchant vessel. We accounted for overtime/the possibility of higher-salaried officers completing some reports, and included administrative costs ($9 per report for photocopying, etc.). We calculated that it will cost approximately $60 to submit each report. The following equation illustrates the calculation:

$151,464 ÷ 2,080 hours × .67 hours + $9=$60

We used the U.S. Coast Guard Marine Safety Management System (MSMS) to determine that this rule will apply to 30,877 vessel transits (this includes transits on the Great Lakes). We multiplied the cost of each report ($60) by the number of vessel arrivals from outside the EEZ (30,877) to get a total annual cost of $1,852,620. The following equation illustrates the calculation:

$60 × 30,877=$1,852,620

The rule will cost the Federal government the time it will take Coast Guard personnel to review ballast water management record information. The Coast Guard will add 30 E–5 billets to verify compliance and collect the information this rule will require. Commandant Instruction 7310.1E states that the hourly cost for an E–1 to E–5 range billet is $15 per hour. This translates to a yearly cost of $31,200 per billet (2080 × $15=$31,200). Therefore, the cost of 30 billets will equal $936,000 ($31,200 × 30=$936,000). We estimate that the total cost to the Coast Guard to collect and send the appropriate paperwork to the National Ballast Water Information Clearinghouse (NBIC) is $75,000. The total annual cost was calculated as illustrated in the following equation:

30 [billets] × $2,500 [administrative costs]=$75,000

The Coast Guard will also allocate $450,000 per year to the NBIC. The NBIC will provide analysis, synthesis, and interpretation of data collected under the Act. Therefore, the total government cost of this rule is $1,311,000 annually. The total government cost was calculated as illustrated in the following equation:

$936,000 + $450,000 + $75,000=$1,461,000

Summary of Benefits

This rule is the next step in an ongoing effort to reduce the numbers of non-indigenous species invading the waters of the United States.

According to the U.S. Congress' Office of Technology Assessment, ''Harmful Non-Indigenous Species in the United States,'' the economic impact on the United States from introductions of non-indigenous species has exceeded several billion dollars through—

- Efforts to prevent and reduce further infestations;
- Repairs of damage to various infrastructures; and
- Lost revenues.

For example, the Great Lakes Fishery Commission estimates the European Ruffe, a fish that entered the Great Lakes via expelled ballast water in the early 1980's, could cause annual losses of $90 million if it is not controlled.

As international maritime trade continues to expand, the economic impact of non-indigenous species invasions will continue to increase. This increase may necessitate more extensive long-term control efforts, including improving ballast-water management practices. The reporting requirements in this rule will allow the Coast Guard to receive the information we need to make decisions on what measures may be required in the future to help solve the aquatic nuisance species problem.

Impact on Small Entities

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities,'' include 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 rule applies to any vessel with ballast tanks entering the waters of the United States after operating beyond the EEZ. Vessels engaged in coastwise trade (within the EEZ) and passenger vessels equipped with treatment systems designed to eliminate aquatic species in their ballast tanks will be exempt from the mandatory provisions of the rule. The rule requires vessel operators to report their ballast water management efforts. We estimate that each report will cost the vessel operator $60. This sum is very low on an absolute dollar basis. We believe that it will account for a very low percentage of the operating costs of even the smallest commercial vessel operations. For this reason, the Coast Guard certifies under 5 U.S.C. 605(b) that the 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), the Coast Guard offers to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Mary Pat McKeown, Project Manager, Office of Operating and Environmental Standards (G–MSO) at 202–267–0500.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) require the Office of Management and Budget (OMB) to review each rule that contains a collection-of-information. The Office of Management and Budget must determine if the practical value of the information is worth the burden of collecting the information. Collection-of-information requirements include reporting, recordkeeping, notification, monitoring, posting, labeling, and other, similar requirements.

This rulemaking will require the owner or operator of a vessel with ballast tanks, entering the waters of the United States from outside the EEZ, to submit paperwork to the Coast Guard. The paperwork will document the owner's or operator's ballast water management practices. The provisions of the Act require the Coast Guard, in consultation and cooperation with the Aquatic Nuisance Species Task Force and the Smithsonian Institution Environmental Research Center, to develop and maintain the NBIC. The purpose of the NBIC is to determine the patterns of ballast water delivery and management in the waters of the United States. The information obtained from the mandatory reports that owners and operators must submit will be entered into a database at the NBIC. This rule requires submission of the following information:

- Vessel type, owner or operator, gross tonnage, call sign, and Port of Registry (Flag).
- Port of arrival, vessel agent, last port and country of call, and next port and country of call.
- Total ballast water capacity, total volume of ballast water onboard, total number ballast water tanks, and total number of ballast water tanks in ballast.
- Total number of ballast tanks/holds that are to be discharged into the waters of the United States or at a reception facility, the number of tanks that were exchanged or treated using an alternative method of compliance, type of alternative compliance method, if used for treatment, whether the vessel has a ballast water management plan and IMO guidelines onboard, and whether the ballast water management plan was used.
- Origin of ballast water—this includes date(s), location(s), volume(s), and temperature(s) (if a tank has been exchanged, this is the ballast water that was taken on in port and then replaced during the exchange).
- For any ballast water exchanged or treated, date(s), location(s), volume(s),

method, thoroughness (percentage exchanged if exchange conducted), sea height at time of exchange if exchange conducted.

• Expected date, location, volume, and salinity of any ballast water to be discharged into the waters of the United States or at a reception facility.

• Location of the facility used for disposal of sediment carried into the waters of the United States, if sediment is to be discharged within the jurisdiction of the United States.

If we did not require owners or operators to provide this information, it would be impossible to produce the studies and congressional reports on ballast water management patterns that the provisions of the Act require.

The Coast Guard will use the information to—

• Ensure that an owner or operator has complied with the ballast water management regulations; and

• Assess the rate of compliance with the voluntary guidelines listed in the rule.

As stated under the Regulatory Evaluation section of this document, the vessel's officer is likely to be the person tasked with completing the report, so we based our revised cost estimate on the current annual salary for a third mate on a U.S. merchant vessel. Overtime, the possibility of more senior officers completing the report, and administrative costs were taken into account. We calculated that it will cost $60 to submit each report. We used the U.S. Coast Guard Marine Safety Management System to determine that this rule will apply to 30,877 vessel transits (this includes transits on the Great Lakes). We multiplied the cost of each report ($60) by the number of vessel arrivals from outside the EEZ (30,877) to get a total annual cost of $1,852,620. In the interim rule the annual burden hours on industry of 20,585 and the cumulative burden for 3 years of 61,755 hours were not correct. The correct annual burden on industry will be 20,688 hours per year, and the cumulative burden for 3 years is 62,064 hours.

The title and description of the information collection, a description of the respondents, and an estimate of the total annual burden follow. Included in the estimate is the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Implementation of the National Invasive Species Act of 1996 (NISA)

Summary of Collection of Information: This rule contains collection-of-information requirements in the following sections: §§ 151.2040 and 151.2045.

Need for Information: This rule will require owners or operators of each vessel with ballast water tanks, who enter the United States after operating outside the EEZ, to provide to the U.S. Coast Guard information regarding ballast water management practices.

Proposed Use of Information: The information is needed to ensure that the mandatory ballast water management regulations are complied with prior to allowing the vessel to enter U.S. ports, and to assess the effectiveness of the voluntary guidelines. The information will be used by the Coast Guard Headquarters staff and researchers from both private and other governmental agencies to assess the effectiveness of voluntary ballast-water management guidelines for vessels with ballast tanks that enter U.S. waters after operating outside the EEZ. The information will be provided to Congress on a regular basis as required by the Act.

Description of the Respondents: Any vessel (owner or operator) with ballast tanks entering U.S. waters after operating outside the EEZ.

Number of Respondents: 30,877 vessel entries.

Frequency of Response: Whenever a vessel with ballast tanks enters the United States after operating outside the EEZ.

Burden of Response: 40 minutes per respondent.

Estimated Total Annual Burden: 20,688 hours.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Coast Guard has submitted a copy of this rule to OMB for its review of the collection of information. OMB has approved the collection. The approval for the Ballast Water Reporting Form, and the corresponding OMB Control Number 2115–0598, expires on August 31, 2002.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. The Unfunded Mandates Reform Act requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This rule will not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 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 E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and Finding of No Significant Impact are available in the docket for inspection or copying where indicated under **ADDRESSES**.

The Coast Guard is establishing voluntary guidelines for all vessels equipped with ballast tanks that operate in waters of the United States. The Coast Guard is also establishing additional voluntary ballast water management guidelines and mandatory reporting requirements for all vessels carrying ballast water into the waters of the United States after operating beyond the EEZ. These reporting requirements are intended to monitor the level of participation by vessels in the voluntary national guidelines program. If participation levels in this program are inadequate, the Act requires the Secretary of Transportation to mandate the ballast water management guidelines. Once reported, the information will be used to develop and maintain a ballast water information clearinghouse, which will monitor the effectiveness of the program and identify future needs for better protecting domestic waters from the introduction of invasive species.

The Coast Guard has considered the implications of the Coastal Zone Management Act (16 U.S.C. 1451, *et seq.*) with regard to this rulemaking. Under this Act, the Coast Guard must determine whether the activities proposed by it are consistent with activities covered by a federally approved coastal zone management plan for each State, which may be affected by this federal action. A listing of the 29 States and Territories with federally approved coastal zone management plans can be found in Appendix B of the Environmental Assessment for this rulemaking.

The Coast Guard has determined that voluntary ballast water management guidelines and mandatory reporting requirement, will have no effect on the coastal zones of the listed States and Territories. In addition, the Coast Guard found the regulations in the interim rule were consistent, to the maximum extent practicable, with the enforceable policies of the federally approved coastal zone management plan and submitted a consistency determination to that effect. The State Administrator's for each listed State and Territory with coastal zone management plans responded, concurring with the Coast Guard consistency determination that implementing voluntary guidelines for ballast water management and mandatory reporting requirement would be consistent with their respective coastal zone management plans.

Seven comments on the interim rule specifically addressed items in the Environmental Assessment. Several comments mentioned that the assessment should have considered and discussed mandatory ballast water exchange as an alternative means of controlling the spread of ANS.

The Coast Guard agrees with this comment and has added mandatory ballast water exchange to the list of alternatives evaluated in the Environmental Assessment.

One comment recommended that if we do not address mandatory ballast water exchange, we should consult with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under section 7 of the Endangered Species Act (16 U.S.C. 1531, *et seq.*). Then, we should publish the results of these consultations in the final rule.

The Coast Guard provided the U.S. Fish and Wildlife Service and the National Marine Fisheries Service with a copy of the rule and its environmental assessment of the rule. This information initiated an informal Section 7 consultation per the Endangered Species Act (16 U.S.C. 1531, *et seq.*), which resulted in both agencies concurring with the Coast Guard's assessment that this rule will not significantly impact listed species or their critical habitats.

Another comment indicated that all treatment approaches should be assessed by the same performance standards and the assessment should be written to reflect consistency.

The Coast Guard assessed the alternative ballast water management methods that are being considered for approval to determine if they met the need and purpose of the proposed action as defined in the environmental assessment.

One comment indicated that the evaluation of alternative solutions to ballast water exchange must be based on scientific, objective evaluations, and they must be compared to defensible standards of effectiveness for controlling the invasion and spread of ANS.

The Environmental Assessment for this rulemaking addressed the environmental considerations required under the National Environmental Policy Act (NEPA) and the Coast Guard's NEPA procedures and policies—as specified in, ''National Environmental Policy Act: Implementing Procedures and Policy for Considering Environmental Impacts'' COMDTINST M16475.1C. The Environmental Assessment discussed the effects of implementing voluntary ballast water management guidelines and mandatory reporting versus taking a no-action alternative and not implementing voluntary guidelines and mandatory reporting. Therefore, the regulations to implement provisions of the Act concerning ballast water control, when using voluntary guidelines for ballast water management and mandatory reporting requirements, will not have a significant impact on the environment.

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 151 subparts C and D as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

* * * * *

Subpart C—Ballast Water Management for Control of Nonindigenous Species in the Great Lakes and Hudson River

1. The authority citation for part 151 subpart C continues to read as follows:

Authority: 16 U.S.C. 4711; 49 CFR 1.46.

2. Amend § 151.1510 by revising paragraph (a)(1) to read as follows:

§ 151.1510 Ballast water management.

(a) The master of each vessel subject to this subpart shall employ one of the following ballast water management practices:

(1) Carry out an exchange of ballast water on the waters beyond the EEZ, from an area more than 200 nautical miles from any shore, and in waters more than 2,000 meters (6,560 feet, 1,093 fathoms) deep, prior to entry into the Snell Lock, at Massena, New York, or prior to navigating on the Hudson River, north of the George Washington Bridge, such that, at the conclusion of the exchange, any tank from which ballast water will be discharged contains water with a minimum salinity level of 30 parts per thousand.

* * * * *

3. Amend § 151.1516 by revising paragraph (a) introductory text to read as follows:

§ 151.1516 Compliance monitoring.

(a) The master of each vessel subject to this subpart shall provide, as detailed in § 151.2040, the following information, in written form, to the COTP:

* * * * *

Subpart D—Ballast Water Management for Control of Nonindigenous Species in Waters of the United States

4. The authority citation for part 151 subpart D continues to read as follows:

Authority: 16 U.S.C. 4711; 49 CFR 1.46.

5. Amend § 151.2005 by revising paragraph (b) to read as follows:

§ 151.2005 To which vessels does this subpart apply?

* * * * *

(b) In addition, §§ 151.2035(b) through 151.2065 apply to all vessels, U.S. and foreign, equipped with ballast tanks, that enter the waters of the United States after operating beyond the Exclusive Economic Zone, except those vessels exempted in § 151.2010 and § 151.2015.

6. Amend § 151.2010 by revising paragraphs (b) and (d) to read as follows:

§ 151.2010 Which vessels are exempt from the mandatory requirements?

* * * * *

(b) A passenger vessel equipped with a functioning treatment system designed to kill aquatic organisms in the ballast water. The treatment system must be utilized for ballast water discharged into the waters of the United States and it must operate as designed.

* * * * *

(d) A vessel that will discharge ballast water or sediments only at the same location where the ballast water or sediments originated. The ballast water or sediments must not mix with ballast water or sediments other than those taken on in areas more than 200 nautical miles from any shore and in waters more than 2,000 meters (6,560 feet, 1,093 fathoms) deep.

§ 151.2020 [Removed]

7. Remove § 151.2020.

8. Amend § 151.2035 by revising paragraph (b) (1) to read as follows:

§ 151.2035 What are the voluntary ballast water management guidelines?

* * * * *

(b) In addition to the provisions of § 151.2035(a), you (the master, operator, or person-in-charge of a vessel) are requested to employ at least one of the following ballast water management practices, if you carry ballast water, that was taken on in areas less than 200 nautical miles from any shore or in waters less than 2000 meters deep, into the waters of the United States after operating beyond the EEZ:

(1) Exchange ballast water on the waters beyond the EEZ, from an area more than 200 nautical miles from any shore, and in waters more than 2,000 meters (6,560 feet, 1,093 fathoms) deep, before entering waters of the United States.

* * * * *

9. Amend § 151.2040 by revising the section heading and paragraphs (c)(1), (c)(2), and (c)(4)(ii); and by adding § 151.2040(c)(4)(iv) to read as follows:

§ 151.2040 What are the mandatory requirements for vessels equipped with ballast tanks that enter the waters of the United States after operating beyond the Exclusive Economic Zone (EEZ)?

* * * * *

(c) The master, owner, operator, agent, or person-in-charge of a vessel entering the waters of the United States after operating beyond the EEZ, unless specifically exempted by §§ 151.2010 or 151.2015, must provide the information required by § 151.2045 in electronic or written form to the Commandant, U.S. Coast Guard or the appropriate COTP as follows:

(1) For a United States or Canadian Flag vessel bound for the Great Lakes. You must fax the required information to the COTP Buffalo, Massena Detachment (315–764–3283), at least 24 hours before the vessel arrives in Montreal, Quebec.

(2) For a foreign flagged vessel bound for the Great Lakes. You must—

(i) Fax the required information to the COTP Buffalo, Massena Detachment (315–764–3283), at least 24 hours before the vessel arrives in Montreal, Quebec; or

(ii) Complete the ballast water information section of the St. Lawrence Seaway required ''Pre-entry Information from Foreign Flagged Vessels Form'' and submit it in accordance with the applicable Seaway Notice.

(3) * * *

(4) For a vessel not addressed in paragraphs (c)(1), (c)(2), and (c)(3) of this section. Before the vessel arrives at the first port of call in the waters of the United States, you must—

(i) * * *

(ii) Transmit the information electronically to the NBIC at *http://invasions.si.edu/ballast.htm* or e-mail it to ballast@serc.si.edu; or

(iii) * * *

(iv) A single report that includes the ballast discharge information for all U.S. ports that will be entered during this voyage will be accepted unless the vessel exits the EEZ during transits.

10. Add § 151.2041 to subpart D to read as follows:

§ 151.2041 Equivalent Reporting Methods for vessels other than those entering the Great Lakes or Hudson River

(a) For ships required to report under § 151.2040(c)(4) the Chief, Environmental Standards Division (G–MSO–4), acting for the Assistant Commandant for Marine Safety and Environmental Protection (G–M) may, upon receipt of a written request, consider and approve alternative methods of reporting if:

(1) Such methods are at least as effective as that required by § 151.2040(c)(4); and

(2) Compliance with the requirement is economically or physically impractical.

(i) The Chief, Environmental Standards Division (G–MSO–4) will take approval or disapproval action on the request submitted in accordance with paragraph (a) of this section within 30 days of receipt of the request.

(ii) [Reserved].

11. Amend § 151.2045 by revising the section heading and paragraph (a) introductory text to read as follows:

§ 151.2045 What are the mandatory recordkeeping requirements for vessels equipped with ballast tanks that enter the waters of the United States after operating beyond the Exclusive Economic Zone (EEZ)?

(a) The master, owner, operator, or person in charge of a vessel entering the waters of the United States after operating beyond the EEZ, unless specifically exempted by §§ 151.2010 or 151.2015 must keep written, records that include the following information (Note: Ballast tank is any tank or hold that carries ballast water regardless of design):

* * * * *

12. Amend Appendix to Subpart D of Part 151 BALLAST WATER REPORTING FORM AND INSTRUCTIONS FOR BALLAST WATER REPORTING FORM by revising the second page of the form to read as follows:

BILLING CODE 4910–15–U

Where to send this form.

Vessels bound for Great Lakes:

United States or Canadian Flag vessel bound for the Great Lakes

Fax the form to the COTP Buffalo, Massena Detachment **315-764-3283** at least 24 hours before the vessel arrives in Montreal, Quebec.

Any other Flag vessel bound for the Great Lakes

Fax the form to the COTP Buffalo, Massena Detachment **315-764-3283** at least 24 hours before the vessel arrives in Montreal, Quebec, or;

Complete the ballast water information section of the St. Lawrence Seaway required "Pre-entry Information from Foreign Flagged Vessels Form" and submit it in accordance with the applicable Seaway Notice.

Vessels bound for the Hudson River North Of George Washington Bridge

Vessel bound for the Hudson River north of the George Washington Bridge

Fax the form to the COTP New York at **718-354-4249** before the vessel enters the waters of the United States (12 miles from the baseline).

Vessels bound for all other United States Ports

Vessel bound for all ports within the waters of the United States other than the Great Lakes or Hudson River north of the George Washington Bridge

Before the vessel arrives at the first port of call in the waters of the United States send the form by one of the three following methods:

- Mail the form to the **U.S. Coast Guard, c/o Smithsonian Environmental Research Center (SERC), P.O. Box 28, Edgewater, MD 21037-0028;**
- Transmit the form electronically to the National Ballast Information Clearinghouse (NBIC) at http://invasions.si.edu/ballast.htm or e-mail it to ballast@serc.si.edu; or
- Fax the form to the Commandant, U.S. Coast Guard, c/o the NBIC at **301-261-4319.**

If any information changes, send an amended form before the vessel departs the waters of the United States.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The Coast Guard estimates that the average burden for this report is 35 minutes. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Commandant (G-MSO), U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593-0001, or Office of Management and Budget, Paperwork Reduction Project (2115-0598), Washington, DC 20503.

Dated: August 21, 2001.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–28162 Filed 11–20–01; 8:45 am]

BILLING CODE 4910–15–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7106–1]

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendment.

SUMMARY: We are taking direct final action to amend the national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. Rather than requiring the precompliance plans 6 months in advance of the compliance date, the amended rule will require the plans 3 months in advance. Under the promulgated rule, precompliance plans for existing sources would be due December 23, 2001. With this action, these plans will be due by March 23, 2002.

DATES: This direct final rule will be effective on December 21, 2001, without further notice, unless the EPA receives adverse comments by December 6, 2001. If we receive any adverse comments on the amendment, we will publish a timely withdrawal of this direct final rule in the **Federal Register** indicating that the amendment in this rule will not take effect.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, Room M–1500, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. A separate copy of each public comment must also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT.** Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

Docket. Docket No. A–95–20 contains supporting information used in developing the PAI Production NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (Mail Code C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711 (express packages to 4930 Old Page Road, Research Triangle Park, NC 27709), telephone number (919) 541–5402, electronic mail address mcdonald.randy@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect version 5.1, 6.1, or Corel 8 file format. All comments and data submitted in electronic form must note the docket number A–95–20. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Randy McDonald, c/o OAQPS Document Control Officer (MD-C404–02), U.S. EPA, Research Triangle Park, NC 27709. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules http://www.epa.gov/ttn/oarpg. The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	Typically, 325199 and 325320.	Typically, 2869 and 2879.	Producers of pesticide active ingredients that contain organic compounds that are used in herbicides, insecticides, or fungicides. Producers of any integral intermediate used in onsite production of an active ingredient used in an herbicide, insecticide, or fungicide.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulation affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR

part 63, subpart MMM. If you have questions regarding the applicability of the amendment to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this direct final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by January 22, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review.

I. Why Are We Amending the Rule?

We are currently engaged in litigation settlement discussions with a number of pesticide manufacturers that would otherwise be required to file precompliance plans by December 23, 2001. In order to avoid potentially unnecessary filings and possible confusion related to compliance should we agree to make changes to the rule, we believe it is reasonable to grant a short extension of the precompliance reporting deadline to allow time for the settlement negotiations to conclude. This amendment does not change the actual compliance deadline for sources, but merely shortens the advance notice that these sources must provide the Agency. We believe 3 months advance notice is still adequate for purposes of implementing the rule and will not impair our ability to ensure compliance by June 23, 2002.

II. What Amendment Are We Making to the Rule?

Today's action changes the deadline for existing sources submitting precompliance plans under 40 CFR § 63.1368(e). Rather than requiring the precompliance plans 6 months in advance of the compliance date, the amended rule will require the plans 3 months in advance. Under the promulgated rule, precompliance plans for existing sources would be due December 23, 2001. With today's action, these plans will be due by March 23, 2002.

III. Why Are We Publishing the Amendment as a Direct Final Rule?

We are granting a short extension of the precompliance reporting deadline in an expeditious manner in order to avoid potentially unnecessary filings and possible confusion related to compliance. We view this amendment as noncontroversial and anticipate no adverse comments. Therefore, we are publishing this amendment in a direct final rule. If we receive an adverse comment on the amended definition, we will withdraw it. To withdraw the amended definition, we will publish a timely notice before the effective date of this amendment indicating that the amended definition is being withdrawn. In the ''Proposed Rules'' section of this **Federal Register**, we are publishing a separate document that will serve as the proposal for the amendment in the event that we receive an adverse comment. We will respond to all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on the subsequent final rule. Any parties interested in commenting must do so at this time.

IV. What Are the Administrative Requirements for This Direct Final Rule?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule amendment is a not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This direct final rule amendment does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to the PAI Production NESHAP. Thus, Executive Order 13132 does not apply to this direct final rule amendment.

C. 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 direct final rule amendment does not have tribal implications. It will not have substantial direct effects on tribal governments, or 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 because no tribal governments own or operate PAI production facilities. Thus, Executive Order 13175 does not apply to this rule amendment.

D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that

EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule amendment is not subject to Executive Order 13045 because it is based on technology performance, not health or safety risks. Furthermore, this rule amendment has been determined not to be ''economically significant'' as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule amendment does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. For existing sources, the total annual cost of the PAI Production NESHAP has been estimated to be approximately $39.4 million (64 FR 33559, June 23, 1999). Today's amendment does not add new requirements that would increase this cost. Thus, this rule amendment is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this rule amendment contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, this rule amendment is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule amendment. The EPA has also determined that this direct final rule amendment will not have a significant impact on a substantial number of small entities. For purposes of assessing the impacts of this direct final rule amendment on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 325320 that has as many as 500 employees; (2) a small business in NAICS code 325199 that has as many as 1,000 employees; (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's amendment on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact on small entities'' (5 U.S.C. Sections 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's amendment imposes no additional regulatory requirements on owners or operators of affected sources. We have, therefore, concluded that today's final rule amendment will have no impact on small entities.

G. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in the 1999 PAI Production NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control No. 2060–0370. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1807.01), and a copy may be obtained from Sandy Farmer by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260–2740.

The amendment contained in this direct final rule will have no impact on the information collection burden estimates made previously. Consequently, the ICR has not been revised.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Public Law 104–113 (15 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, and business practices) that are developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency does not

use available and applicable voluntary consensus standards.

Today's action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Congressional Review Act

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

J. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use

This direct final rule amendment is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 16, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

Subpart MMM—National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

2. Section 63.1368 is amended by revising the first sentence of paragraph (e) introductory text as follows:

§ 63.1368 Reporting Requirements.

* * * * *

(e) *Precompliance plan.* The Precompliance plan shall be submitted at least 3 months prior to the compliance date of the standard. ***

* * * * *

[FR Doc. 01–29067 Filed 11–20–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7106–6]

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendment.

SUMMARY: On June 23, 1999 (64 FR 33550), EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. On August 19, 20, and 23, 1999, petitions for review of the June 1999 rule were filed in the U.S. Court of Appeals for the District of Columbia Circuit. This action is in response to issues raised by one of those petitioners—the American Coke and Coal Chemicals Institute (ACCCI). The EPA is taking direct final action to amend the NESHAP for PAI Production by revising the definition of the term ''process tank'' for clarity. We view this revision to be minor and noncontroversial, and we anticipate no adverse comment.

DATES: This direct final rule will be effective on February 4, 2002 without further notice, unless the EPA receives adverse comments by December 21, 2001, or by January 7, 2002 if a public hearing is requested. See the proposed rule in this **Federal Register** for information on the hearing. If we receive any adverse comments on the amended definition, we will publish a timely withdrawal of this direct final rule in the **Federal Register** indicating that the revisions in this notice will not take effect.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, Room M–1500, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT.** Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

Docket. Docket No. A–95–20 contains supporting information used in developing the PAI Production NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect version 5.1, 6.1, or Corel 8 file format. All comments and data submitted in electronic form must note the docket number A–95–20. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Randy McDonald, c/o OAQPS Document Control Officer (Room 740B), U.S. EPA, 411 W. Chapel Hill Street, Durham, NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available

to the public without further notice to the commenter.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	Typically, 325199 and 325320.	Typically, 2869 and 2879	• Producers of pesticide active ingredients that contain organic compounds that are used in herbicides, insecticides, or fungicides. • Producers of any integral intermediate used in onsite production of an active ingredient used in an herbicide, insecticide, or fungicide.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulation affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR part 63, subpart MMM. If you have questions regarding the applicability of these amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this direct final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by January 22, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review.

I. Why Are We Amending the Rule?

On June 23, 1999, we promulgated NESHAP for Pesticide Active Ingredient Production as subpart MMM in 40 CFR part 63 (64 FR 33550). On August 23, 1999, ACCCI filed a petition for review of the promulgated PAI Production NESHAP in the U.S. Court of Appeals for the District of Columbia Circuit, *ACCCI* v. *EPA,* No. 99–1339 (consolidated with *American Crop Protection Association* v. *EPA,* No. 99–1332) (D.C. Circuit). On June 15, 2001, ACCCI and EPA signed a settlement agreement which provides that EPA will undertake a rulemaking to revise the definition of the term ''process tank.'' The settlement agreement also provides that EPA will sign final rule amendments no later than 12 months after the signature date of the settlement.

II. What Amendments Are We Making to the Rule?

This direct final rule revises the definition of the term ''process tank'' in 40 CFR 63.1361 because the current definition is ambiguous and internally inconsistent. The current provision defines ''process tank'' as:

> * * * a tank that is used to collect material discharged from a feedstock storage vessel or equipment within the process and transfer of this material to other equipment within the process or a product storage vessel. Processing steps occur both upstream and downstream of the tank within a given process unit. Surge control vessels and bottoms receivers that fit these conditions are considered process tanks.

According to the first sentence of the current definition, tanks that transfer material to other equipment within the process or to a product storage vessel are process tanks. At the same time, according to the second sentence of the current definition, processing steps are required upstream and downstream of the tank for it to be a process tank. Some tanks covered by the first sentence would not seem to be covered by the second sentence because the downstream storage vessels would not provide the downstream processing that the second sentence seems to require. To eliminate this inconsistency, we are revising the definition by deleting the reference to processing upstream and downstream of the process tank. In addition, we are revising the definition to clarify that process tanks may include both tanks used for certain unit operations (*e.g.,* reactions and blending), and tanks that are not used for unit operations (*e.g.,* a surge control vessel or bottom receiver). Tanks that are clearly omitted from the definition of a process tank include feedstock and product storage vessels.

III. Why Are We Publishing These Amendments as a Direct Final Rule?

In this direct final rule, we are revising the definition of the term ''process tank.'' The revised definition is consistent with our original intent, and we believe that the revision will not change the number of affected sources, the number of emission points subject to control, or the required level of control. The clearer definition also may preclude the need for certain applicability determinations, thereby reducing the burden on State and local agencies implementing the rule.

We view this amendment as noncontroversial and anticipate no adverse comments. Therefore, we are publishing this amendment in a direct final rule. If we receive an adverse comment on the amended definition, we will withdraw it. To withdraw the amended definition, we will publish a timely notice before the effective date of this rule indicating that the amended definition is being withdrawn. In the ''Proposed Rules'' section of this **Federal Register**, we are publishing a separate document that will serve as the proposal for the amended definition in the event that we receive an adverse

comment. We will respond to all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on the subsequent final rule. Any parties interested in commenting must do so at this time.

IV. What Are the Administrative Requirements for This Direct Final Rule?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule amendment is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This direct final rule amendment does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to the PAI Production NESHAP. Thus, Executive Order 13132 does not apply to this direct final rule amendment.

C. 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 direct final rule amendment does not have tribal implications. It will not have substantial direct effects on tribal governments, or 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 because no tribal governments own or operate PAI production facilities. Thus, Executive Order 13175 does not apply to this rule amendment.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule amendment is not subject to Executive Order 13045 because it is based on technology performance, not health or safety risks. Furthermore, this rule amendment has been determined not to be ''economically significant'' as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule amendment does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any one year. For

existing sources, the total annual cost of the PAI Production NESHAP has been estimated to be approximately $39.4 million (64 FR 33559, June 23, 1999). Today's amendment does not add new requirements that would increase this cost. Thus, this rule amendment is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this rule amendment contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, this rule amendment is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et seq.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule amendment. The EPA has also determined that this direct final rule amendment will not have a significant impact on a substantial number of small entities. For purposes of assessing the impacts of this direct final rule amendment on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 325320 that has as many as 500 employees; (2) a small business in NAICS code 325199 that has as many as 1,000 employees; (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's amendment on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact on small entities'' (5 U.S.C. sections 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's amendment only clarifies the definition of one term; no additional regulatory requirements are imposed on owners or operators of affected sources. We have, therefore, concluded that today's final rule amendment will have no impact on small entities.

G. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in the 1999 PAI Production NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control No. 2060–0370. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1807.01), and a copy may be obtained from Sandy Farmer by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email at *farmer.sandy@epa.gov,* or by calling (202) 260–2740.

The amendment contained in this direct final rule will have no impact on the information collection burden estimates made previously. Consequently, the ICR has not been revised.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Public Law 104–113 (15 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* material specifications, test methods, sampling and analytical procedures, and business practices) that are developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Today's action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Congressional Review Act

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

J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This direct final rule amendment is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 15, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

Subpart MMM—National Emission Standards for Pesticide

Active Ingredient Production

2. Section 63.1361 is amended by revising the definition for *process tank* to read as follows:

§ 63.1361 Definitions.

* * * * *

Process tank means a tank that is used within a process to collect material discharged from a feedstock storage vessel or equipment within the process before the material is transferred to other equipment within the process or a product storage vessel. In many

process tanks, unit operations such as reactions and blending are conducted. Other process tanks, such as surge control vessels and bottom receivers, however, may not involve unit operations.

* * * * *

[FR Doc. 01–29098 Filed 11–20–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[VA–T5–2001–01a; FRL–7106–3]

Clean Air Act Full Approval of Operating Permit Program; Virginia; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the direct final rule fully approving the operating permit program of the Commonwealth of Virginia. In the direct final rule published on October 10, 2001 (66 FR 51581), we stated that if we received adverse comment by November 9, 2001, the rule would be withdrawn and not take effect. EPA subsequently received adverse comment. EPA will address the comments received in a subsequent final action based upon the proposed action also published on October 10, 2001 (66 FR 51620). EPA will not institute a second comment period on this action.

EFFECTIVE DATE: The Direct final rule is withdrawn as of November 21, 2001.

FOR FURTHER INFORMATION CONTACT: David Campbell, Permits and Technical Assessment Branch at (215) 814–2196 or by e-mail at campbell.dave@.epa.gov.

List of Subjects in 40 CFR Part 52

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

Dated: November 13, 2001.

James W. Newsom,

Regional Administrator, Region III.

Accordingly, the addition of 40 CFR part 70, Appendix A, ''Virginia'', paragraph (b) is withdrawn as of November 21, 2001.

[FR Doc. 01–29102 Filed 11–20–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301190; FRL–6809–3]

RIN 2070–AB78

Azoxystrobin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation revises a time-limited tolerance for combined residues of azoxystrobin in or on the crop group Brassica leafy vegetables by limiting the listing to Head and Stem (Brassica) subgroup (subgroup 5A) and raising the residue level from 25 parts per million (ppm) to 30 ppm. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on cabbage. This regulation establishes a maximum permissible level for residues of azoxystrobin in this food commodity. The tolerance will expire and is revoked on December 31, 2003.

DATES: This regulation is effective November 21, 2001. Objections and requests for hearings, identified by docket control number OPP–301190, must be received by EPA on or before January 22, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301190 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9364; and e-mail address: pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get 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/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301190. The official record consists of the documents specifically referenced in this action, 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, Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for combined residues of the fungicide azoxystrobin, [methyl(E)-2-(2-(6-(2-cyanophenoxt)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate] and the Z-isomer of azoxystrobin, [methyl(Z)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3 methoxyacrylate], in or on Head and Stem (Brassica) subgroup at 30 ppm and removing the listing for Brassica vegetables at 25 ppm. This tolerance will expire and is revoked on December 31, 2003. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Azoxystrobin on Cabbage and FFDCA Tolerances

Alternaria Leafspot and Cercospora Leafspot are highly destructive fungi that can ruin fields of cabbage. Several rainstorms occurred in the affected area during the month of August with total rainfall exceeding 10 inches. It was feared that more warm wet weather could allow bacterial soft rot to invade damaged tissue and reduce both yields and quality during shipment. Texas issued a crisis exemption for the use of azoxystrobin to control Alternaria Leafspot (*Alternaria brassicae*) and Cercospora Leafspot (*Cercospora Carotae*) on cabbage.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of azoxystrobin in or on Head and Stem (Brassica) subgroup (subgroup 5A). In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 31, 2003, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cabbage after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether azoxystrobin meets EPA's registration requirements for use on cabbage or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of azoxystobin by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Texas to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for azoxystrobin on cabbage in Texas, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of azoxystrobin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of azoxystrobin and its Z-isomer in or on Head and Stem (Brassica) subgroup at 30 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent

in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 X 10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for azoxystrobin used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR AZOXYSTOBIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and LOC for Risk Assessment	Study and Toxicological Effects
Acute Dietary general population including infants and children	NOAEL < 200 mg/kg/day UF = 300 Acute RfD = 0.67 mg/kg/day	FQPA SF = 1X aPAD = acute RfD ÷ FQPA SF = 0.67 mg/kg/day	Acute Neurotoxicity - Rat (MRID 43678134, 44182013, 44182015) LOAEL = 200 mg/kg based on diarrhea at two-hours post dose at all dose levels up to and including the LOAEL.
Chronic Dietary all populations	NOAEL= 18 mg/kg/day UF = 100 Chronic RfD = 0.18 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD ÷ FQPA SF = 0.18 mg/kg/day	Combined Chronic Toxicity/Carcinogenicity Feeding study - Rat (MRID 43678139) LOAEL in males/females = 34/117 mg/kg/day based on reduced body weights in both sexes and bile duct lesions in males.
Short-Term (1–7 days) Incidental Oral (Residential)	NOAEL= 25 mg/kg/day UF = 100	FQPA SF = 1X	Prenatal Developmental Oral Toxicity - Rat (MRID 43678142) LOAEL = 100 mg/kg/day based on increased maternal diarrhea, urinary incontinence, and salivation.
Intermediate-Term (1 week to several months) Incidental Oral (Residential)	NOAEL= 20 mg/kg/day UF = 100	FQPA SF = 1X	90–Day Feeding - Rat (MRID 43678135) LOAEL = 211/223 mg/kg/day in males/females based on decreased body weight gain in both sexes and clinical signs indicative of reduced nutrition.
Short-, Intermediate-, and Long-Term Dermal (Occupational/Residential)	none	No dermal or systemic toxicity was seen at the limit dose (1,000 mg/kg/day). This risk assessment is not required.	21–Day Repeated Dose Dermal - Rat (MRID 43678137)
Short-Term (1–7 days) Inhalation (Occupational/Residential)	Oral NOAEL= 25 mg/kg/day Use route-to-route extrapolation (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational/Residential)	Prenatal Developmental Oral Toxicity - Rat (MRID 43678142) LOAEL = 100 mg/kg/day based on increased maternal diarrhea, urinary incontinence, and salivation.
Intermediate-Term (1 week to several months) Inhalation (Occupational/Residential)	Oral NOAEL= 20 mg/kg/day Use route-to-route extrapolation (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational/Residential)	90–Day Feeding - Rat (MRID 43678135) LOAEL = 211/223 mg/kg/day in males/females based on decreased body weight gain in both sexes and clinical signs indicative of reduced nutrition.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR AZOXYSTOBIN FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and LOC for Risk Assessment	Study and Toxicological Effects
Long-Term (> 180 days) Inhalation	NOAEL = N/A	This risk assessment is not applicable to the use scenario of azoxystrobin.	
Cancer (oral, dermal, inhalation)	None	None	Azoxystrobin is classified as ''not likely to be carcinogenic in humans''

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.507) for the combined residues of azoxystrobin and its Z-isomer, in or on a variety of raw agricultural commodities. Tolerances are established on agricultural commodities at levels ranging from 0.01 ppm to 55.0 ppm; on meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at levels ranging from 0.01 ppm to 0.07 ppm; and on milk at 0.006 ppm. Tolerances were recently established on Brassica, leafy greens, subgroup. Time limited tolerances in connection with use under section 18 emergency exemptions on Brassica leafy vegetables are currently in effect at 25 ppm. Risk assessments were conducted by EPA to assess dietary exposures from azoxystrobin in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: In conducting this acute dietary exposure analysis, EPA has made very conservative assumptions: all commodities having established or proposed azoxystrobin tolerances will contain azoxystrobin residues (i.e., 100% crop treated), and those residues will be at the level of the tolerance.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: In conducting this chronic dietary exposure analysis, EPA has made very conservative assumptions: all commodities having established or proposed azoxystrobin tolerances will contain azoxystrobin residues (i.e., 100% crop treated), and those residues will be at the level of the tolerance.

iii. *Cancer*. Since carcinogenicity studies produced no evidence that azoxystrobin is a carcinogen, the Agency concluded that azoxystrobin is unlikely to be a human carcinogen. There is also, as a consequence, no carcinogenicity endpoint, and this analysis was not performed.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for azoxystrobin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of azoxystrobin.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to produce estimates of pesticide concentrations in an index reservoir. The Screening Concentration in Ground Water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will generally use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to azoxystrobin they are further discussed in the aggregate risk sections below.

Based on the FIRST and SCI-GROW models the EECs of azoxystrobin for acute exposures are estimated to be 170 parts per billion (ppb) for surface water and 0.06 ppb for ground water. The EECs for chronic exposures are estimated to be 33 ppb for surface water and 0.06 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Azoxystrobin is currently registered for use on the following residential non-dietary sites: turf and ornamentals. The risk assessment was conducted using the following exposure assumptions: Products containing azoxystrobin may

be applied to turf 1 to 5 times per year at rates up to 0.95 lb active ingredient (ai) per acre (i.e., not to exceed 5 lb ai per acre per year) and to ornamentals at rates up to 0.75 lb ai per acre every 7 to 14 days, but not to exceed 5 lb ai per acre per year. The currently registered labels do not prohibit homeowners from mixing/loading/applying either the flowable concentrate or the water-dispersible granule formulations. This residential exposure and risk assessment was conducted using the application rate for turf because it is the highest use rate.

Residential handlers may be exposed to azoxystrobin for both short-term dermal and inhalation exposure to azoxystrobin when mixing, loading and applying the formulations. Adults and children may be exposed to azoxystrobin residues from dermal contact with foliage during post-application activities. Toddlers may receive short- and intermediate-term oral exposure from incidental ingestion during post-application activities.

As no dermal endpoint was selected, a dermal exposure and risk assessment was not conducted for residential handlers or post-application activities. NOAELs of 25 mg/kg/day and 20 mg/kg/day were selected for assessing the risk from short- and intermediate-term incidental oral exposures, respectively. These same NOAELs were selected for assessing the risks from short- and intermediate-term inhalation exposures. The LOC for risk assessment purposes is 100.

No chemical-specific exposure or residue dissipation data for handler or post-application activities were submitted in support of the registered lawn uses. EPA's Draft Standard Operating Procedures (SOPs) for Residential Exposure Assessments, and Recommended Revisions, were used as the basis for all residential handler exposure calculations. Some of the handler exposure data used in this assessment are from the Outdoor Residential Exposure Task Force (ORETF). The task force recently submitted proprietary data to the Agency on hose-end sprayers, push-type granular spreaders, and handgun sprayers. The ORETF data were used in this assessment in place of PHED data for the garden hose-end sprayer scenario. The ORETF data were designed to replace the present Pesticide Handler Exposure Database (PHED) data with higher-confidence, higher quality data that contains more replicates than the PHED data for those scenarios.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether azoxystrobin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, azoxystrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that azoxystrobin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* Prenatal development studies in rats and rabbits, and a 2–generation reproductive toxicity study in rats did not indicate increased susceptibility of young rats or rabbits to *in utero* and/or postnatal exposure.

3. *Conclusion.* There is a complete toxicity data base for azoxystrobin and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The Agency has determined that the 10X FQPA safety factor to protect infants and children should be removed (that is, set to 1) because, in addition to the completeness of the toxicological data base and the lack of increased susceptibility of young rats and rabbits to prenatal and postnatal exposure to azoxystrobin, the unrefined chronic dietary exposure estimates will overestimate dietary exposure, and ground and surface water modeling data produce upper-bound concentration estimates.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to azoxystrobin in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of azoxystrobin on drinking

water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to azoxystrobin will occupy 11% of the aPAD for the U.S. population, 11% of the aPAD for females 13 years and older, 20% of the aPAD for children 1 to 6 years, the subpopulation at greatest exposure. In addition, despite the potential for acute dietary exposure to azoxystrobin in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of azoxystrobin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.— AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO AZOXYSTROBIN

Population Subgroup	aPAD (mg/kg)	%aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	0.67	11	170	0.06	21,000
Females 13 to 50 years	0.67	11	170	0.06	18,000
Children 1 to 6 years	0.67	20	170	0.06	5,400

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to azoxystrobin from food will utilize 12% of the cPAD for the U.S. population, 11% of the cPAD for females 13 to 50 years and 18% of the cPAD for children 1 to 6, the subpopulation at greatest exposure. Based on the use pattern, chronic residential exposure to residues of azoxystrobin is not expected. In addition, despite the potential for chronic dietary exposure to azoxystrobin in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of azoxystrobin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.— AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO AZOXYSTROBIN

Population Subgroup	cPAD (mg/kg/day)	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.18	12	33	0.06	5,600
Females 13 to 50 years	0.18	11	33	0.06	4,800
Children 1 to 6 years	0.18	18	33	0.06	1,500
Seniors 55+ years	0.18	12	33	0.06	5,600

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Azoxystrobin is currently registered for use(s) that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for azoxystrobin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 1,183 for adults and 490 for children 1 to 6 years. These aggregate MOEs do not exceed the Agency's LOC for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of azoxystrobin in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's LOC, as shown in the following Table 4:

TABLE 4.— AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO AZOXYSTROBIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate LOC	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. population	1,183	100	33	0.06	8,050
Children 1 to 6 years	490	100	33	0.06	2,000

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level).

Azoxystrobin is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for azoxystrobin.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 580 for children 1 to 6 years. These aggregate MOEs do not exceed the Agency's LOC for aggregate exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for

chronic exposure of azoxystrobin in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's LOC, as shown in the following Table 5:

TABLE 5.—AGGREGATE AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO AZOXYSTROBIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate LOC	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Intermediate-Term DWLOC (ppb)
Children 1 to 6 years old	580	100	33	0.06	2,100

5. *Aggregate cancer risk for U.S. population.* Azoxystrobin is classified as ''not likely to be carcinogenic in humans'' based on the results of carcinogenicity studies in mice and rats. Therefore, azoxystrobin is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to azoxystrobin residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate methodology is available for enforcement of the proposed tolerances. RAM 243, is a gas chromatography with nitrogen-phosphorus detection (GC/NDP) method previously submitted by the registrant which can be used for the analysis of the tolerances in or on non-oily commodities. This method has been reviewed and validated by the Agency, and will be submitted to the Food and Drug Administration (FDA) for inclusion in Pesticide Analytical Manual (PAM) II. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

No Codex, Canadian, or Mexican maximum residue levels (MRLs) have been established for residues of azoxystrobin in or on the these commodities. Therefore, no tolerance discrepancies exist between countries for this chemical.

VI. Conclusion

Therefore, the tolerance is revised for combined residues of azoxystrobin, [methyl (E)-2- (2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate) and its Z isomer (methyl (Z)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate], in or on Head and Stem (Brassica) subgroup at 30 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301190 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 22, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential 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. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP–301190, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes a time limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 8, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. In § 180.507, paragraph (b) is amended by revising the introductory text, and the entry for ''Brassica leafy vegetable'' in the table to read as follows:

§ 180.507 Azoxystrobin; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the combined residues of the fungicide, azoxystrobin, [methyl (E)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate) and the Z isomer of azoxystrobin, [methyl (Z)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate] in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table. The tolerances expire and will be revoked by EPA on the date specified in the table.

Commodity	Parts per million	Expiration/revocation date
* * * * *		
Head and Stem (Brassica) subgroup	30	12/31/03
* * * * *		

* * * * *

[FR Doc. 01–28971 Filed 11–20–01; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2626; MM Docket No. 01–170; RM–10190]

Radio Broadcasting Services; Pittsburg, NH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 246A to Pittsburg, New Hampshire, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of Pittsburg Broadcasting Company. See 66 FR 41490, August 8, 2001. Coordinates used for Channel 246A at Pittsburg, New Hampshire, are 45–02–25 NL and 71–21–17 WL. As Pittsburg is located within 320 kilometers of the U.S.-Canada border, concurrence of the Canadian government has been requested for Channel 246A at Pittsburg, but has not been received. Therefore, if a construction permit is granted for Channel 246A at Pittsburg, New Hampshire, prior to receipt of final notification by the Canadian government, the construction permit will include the following condition: ''Operation with the facilities specified herein is subject to modification, suspension or termination without right to a hearing if found by the Commission to be necessary in order to conform to the Canada-USA FM Broadcast Agreement, or if specifically objected to by Industry Canada.'' With this action, this docketed proceeding is terminated.

DATES: Effective December 24, 2001. A filing window for Channel 246A at Pittsburg, New Hampshire, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the application filing process for Channel 246A at Pittsburg, New Hampshire, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–170, adopted October 31, 2001, and released November 9, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Hampshire, is amended by adding Pittsburg, Channel 246A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–29083 Filed 11–20–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2629; MM Docket No. 01–141; RM–10146]

Radio Broadcasting Services; Las Vegas and Pecos, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a proposal filed on behalf of Meadows Media, LLC, permittee of Station KTRL(FM), Channel 275C2, Las Vegas, New Mexico, the Allocations Branch substitutes Channel 275C3 for Channel 275C2 at Las Vegas, reallots Channel 275C3 to Pecos, New Mexico, as that community's second local FM service, and modifies the authorization for Station KTRL(FM), accordingly. This document also allots Channel 283C2 to Las Vegas, New Mexico, as that community's fifth local FM service, as requested by Meadows Media, LLC. *See* 66 FR 35925, July 10, 2001. Coordinates used for Channel 275C3 at Pecos, New Mexico, are those of the petitioner's intended transmitter site at 35–40–15 NL and 105–33–06 WL. Coordinates used for Channel 283C2 at Las Vegas, New Mexico are those at the currently authorized site of Station KTRL(FM) at 35–35–57 NL and 105–12–12 WL. With this action, this docketed proceeding is terminated.

DATES: Effective December 24, 2001. A filing window for Channel 283C2 at Pecos, New Mexico, will not be opened at this time. Instead, the issue of

opening this allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–141, adopted October 31, 2001, and released November 9, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico is amended by removing Channel 275C2 and adding Channel 283C2 at Las Vegas, and adding Channel 275C3 at Pecos.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–29084 Filed 11–20–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2567, MM Docket No. 89–120, RM–6701, RM–6999, RM–7000, RM–7001; MM Docket No. 90–195, RM–7152; MM Docket No. 91–352, RM–7866; MM Docket No. 92–214, RM–8061, RM–8144, RM 8145, RM–8146, RM–8147]

FM Broadcasting Services; Northwye, Cuba, Waynesville, Lake Ozark, and Eldon, Missouri; Brookline, Missouri; Ava, Branson, and Mountain Grove, Missouri; Columbia, Bourbon, Leasburg, Gerald, Dixon, and Cuba, Missouri

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: The staff previously dismissed petitions for reconsideration in each of the above four dockets, filed by Lake Broadcasting, Inc., 66 FR 21681, published May 1, 2001; 66 FR 22450 and 66 FR 22449, published May 4, 2001. Lake filed petitions for reconsideration, arguing that these dismissals were premature. The staff disagreed, concluding that Lake's proposals to upgrade two of its stations could not be granted because those authorizations had been revoked and those decisions have become final. Further, the Commission has ordered Lake and the other formerly licensed stations controlled by Michael Rice to cease broadcast operations no later than 11:59 p.m. on October 3, 2001. *See* Memorandum Opinion and Order, FCC 01–300, released October 3, 2001. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTAL INFORMATION: This is a summary of the Memorandum Opinion and Order, MM Docket Nos. 89–120; 90–195; 91–352; and 92–214, adopted October 31, 2001, and released November 2, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center (room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may be also purchased from the Commission's copy contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau 1.

[FR Doc. 01–29085 Filed 11–20–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 01–2627, MM Docket No. 01–31; RM–10035]

Radio Broadcasting Services; Huntsville, La Porte, Nacogdoches and Willis, TX and Lake Charles, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 279C for Channel 279C3 at Willis, Texas, reallots Channel 279C from Willis, Texas, to La Porte, Texas, and modifies the license for Station KVST(FM) to specify operation on Channel 279C at La Porte in response to a petition filed by New Wavo Communication Group, Inc. *See* 66 FR 10658, February 16, 2001. The coordinates for Channel 279C at La Porte are 29–58–19 and 94–31–16. We shall also substitute Channel 259A for Channel 259C3 at Huntsville, Texas, reallot Channel 259A to Willis, Texas, and modify the license for Station KUST accordingly. The coordinates for Channel 259A at Willis are 30–32–37 and 95–28–32. To accommodate the allotments at La Porte and Willis, we shall substitute Channel 277C2 for Channel 279C1 at Lake Charles, Louisiana, and modify the license for Station KBIU accordingly at coordinates 30–12–12 and 93–26–19 and substitute Channel 277C2 for Channel 277C1 at Nacogdoches, Texas and modify the license for Station KJCS accordingly at coordinates 31–25–59 and 94–49–19.allot Channel 291A to Refugio, Texas, at coordinates 28–21–58 and 97–19–11.

DATES: Effective December 24, 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–31, adopted October 31, 2001, and released November 9, 2001. The full text of this Commission decision is available for inspection and copying during regular business hours in the Commission's Reference Information Center, Portals II,

445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint @aol.com.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 279C3 at Willis and adding La Porte, Channel 279C, and by removing Channel 259A at Huntsville and adding Channel 259C3 at Willis, and by removing Channel 277C1 and adding Channel 277C2 at Nacogdoches.

3. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 279C1 and adding Channel 277C2 at Lake Charles.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–29088 Filed 11–20–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2625; MM Docket No. 01–176; RM–10191]

Radio Broadcasting Services; Sykesville, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 240A to Sykesville, Pennsylvania, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of Sykesville Broadcasting. See 66 FR 42622, August 14, 2001. Coordinates used for Channel 240A at Sykesville, Pennsylvania, are 41–03–01 NL and 78–49–21 WL. As Sykesville is located within 320 kilometers of the U.S.-Canada border, concurrence of the Canadian government has been requested for Channel 240A at that community, but has not been received. Therefore, if a construction permit is granted for Channel 240A at Sykesville, Pennsylvania, prior to receipt of final notification by the Canadian government, the construction permit will include the following condition: ''Operation with the facilities specified herein is subject to modification, suspension or termination without right to a hearing if found by the Commission to be necessary in order to conform to the Canada-USA FM Broadcast Agreement, or if specifically objected to by Industry Canada.'' With this action, this docketed proceeding is terminated.

DATES: Effective December 24, 2001. A filing window for Channel 240A at Sykesville, Pennsylvania, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the application filing process for Channel 240A at Sykesville, Pennsylvania, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–176, adopted October 31, 2001, and released November 9, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by adding Sykesville, Channel 240A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–29089 Filed 11–20–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281-0369-02; I.D. 111601A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for king mackerel in the exclusive economic zone (EEZ) in the western zone of the Gulf of Mexico. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective 12 noon, local time, November 19, 2001, through June 30, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 727-570-5305, fax 727-570-5583, e-mail Mark.Godcharles@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended annual total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf of Mexico migratory group of king mackerel in the western zone of 1.01

million lb (0.46 million kg) (66 FR 17368, March 30, 2001).

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the Federal Register. NMFS has determined that the commercial quota of 1.01 million lb (0.46 million kg) for Gulf group king mackerel in the western zone will be reached on November 18, 2001. Accordingly, the commercial fishery for Gulf group king mackerel in the western zone is closed effective 12 noon, local time, November 19, 2001, through June 30, 2002, the end of the fishing year. The boundary between the eastern and western zones is 87°31′06″ W. long., which is a line directly south from the Alabama/Florida boundary.

Until July 1, 2002, no person aboard a vessel for which a commercial permit for king mackerel has been issued, other than a vessel operating as a charter vessel or headboat, may fish for or retain king mackerel in or from the western zone in the EEZ. A vessel for which a charter vessel/headboat permit and a commercial king mackerel permit have been issued is operating as a charter vessel or headboat when it carries a paying passenger or when more than three persons are aboard, including captain and crew. A person aboard a vessel operating as a charter vessel or headboat may fish for or retain king mackerel in or from the western zone under the bag and possession limits of 50 CFR 622.39(c)(1)(ii).

During the closure, king mackerel taken from the western zone in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold 50 CFR 622.43(a)(3)(iii). This prohibition does not apply to trade in king mackerel from the western zone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action responds to the best available information recently obtained from the fishery. The closure must be implemented immediately to prevent an overrun of the commercial quota (50 CFR 622.42(c)(1)) of Gulf group king mackerel, given the capacity of the fishing fleet to harvest the quota quickly. Overruns could potentially lead to further overfishing and unnecessary delays in rebuilding this resource. Therefore, any delay in implementing this action would be impractical and contradictory to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds, for good cause, that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 16, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–29117 Filed 11–16–01; 3:07 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 225
Wednesday, November 21, 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.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–25266; File No. S7–22–01]

RIN 3235–AG71

Custody of Investment Company Assets With a Securities Depository

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Proposed rule.

SUMMARY: The Commission is proposing amendments to the rule under the Investment Company Act that governs investment companies' use of securities depositories. The amendments would expand the types of investment companies that can maintain assets with a depository, expand the types of depositories they can use, and update the conditions they must follow to use a depository. The amendments are designed to respond to developments in securities depository practices and commercial law since the rule was adopted.

DATES: Comments must be received on or before January 31, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–22–01; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).[1]

[1] We do not edit personal, identifying information, such as names or E-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Hugh P. Lutz, Attorney, or C. Hunter Jones, Assistant Director, Office of Regulatory Policy, at (202) 942–0690, in the Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission today is proposing for public comment amendments to rule 17f–4 (17 CFR 270.17f–4) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Investment Company Act'' or the ''Act'').[2]

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Executive Summary

Rule 17f–4 under the Investment Company Act permits a registered management investment company (''fund'') to deposit the securities it owns in a system for the central handling of securities (''securities depository''). The Commission adopted the rule in 1978. Since then, the custody practices and commercial law that relate to custody arrangements with securities depositories have changed substantially.

Today we are proposing amendments to update and simplify rule 17f–4 to reflect these business and legal developments. The proposed amendments would permit additional types of custodians to operate depositories and allow depositories to perform additional functions under the rule, and would expand the types of investment companies that can rely on the rule. The amendments also would eliminate certain custodial compliance requirements of rule 17f–4 that are no longer necessary. Instead, the fund's contract with its custodian would be required to provide that the custodian will take appropriate action to safeguard assets held for the fund, and furnish the fund with periodic reports on its internal accounting controls and financial strength. Finally, the amendments would eliminate requirements that fund directors approve the fund's own custody arrangements and that the fund approve its custodian's arrangements with depositories.

I. Background

Section 17(f) of the Investment Company Act governs the custody of a fund's assets, including its portfolio securities.[3] This section requires a fund to maintain its securities and other investments with certain types of custodians under conditions designed to assure the safety of the fund's assets. After the ''paperwork crisis'' of the late 1960s demonstrated the inefficiency of transferring securities in paper certificate form,[4] Congress amended section 17(f) to permit a fund to deposit its securities in a system for the central handling of securities (also referred to as a ''securities depository''), subject to rules adopted by the Commission.[5] A securities depository handles the custody and transfer of securities through electronic bookkeeping rather than physical delivery of certificates.[6] Today, the widespread use of depositories permits the efficient

[2] Unless otherwise noted, all references to ''rule 17f–4'' or any paragraph of the rule will be to 17 CFR 270.17f–4.

[3] 15 U.S.C. 80a–17(f).

[4] *See* James S. Rogers, *Policy Perspectives on Revised UCC Article 8*, 43 UCLA L. Rev. 1431, 1442 (1996) [''Policy Perspectives''].

[5] *See* section 17(f) (authorizing use of ''system for the central handling of securities''); H.R. Rep. No. 1382, 91st Cong., 2d Sess. at 27 (1970) (amendment was intended to permit the use of a ''central certificate depository''); Policy Perspectives, *supra* note 4, at 1442–45 (the primary response to problems with paper settlement was immobilization of securities certificates through depositories; some securities were also dematerialized); Group of Thirty, Clearance and Settlement Systems in the World's Securities Markets 55–56 (Mar. 1989) (securities are immobilized by storing certificates with a depository that can transfer them by changing electronic records; securities are dematerialized by dispensing with any physical evidence of ownership and relying entirely on electronic records).

[6] *See* section 17(f).

electronic processing of high volumes of securities transactions.[7]

In 1978, the Commission adopted rule 17f–4 to establish conditions for use of securities depositories by funds.[8] The conditions were designed to limit potential risks to funds using the new depository systems. The conditions were drafted to be compatible with the 1978 revisions to Article 8 of the Uniform Commercial Code, which governs the ownership and transfer of investment securities under state law.[9]

Custody practices evolved after 1978, leading to significant revisions to Article 8 in 1994 (''Revised Article 8'').[10] Prior Article 8 assumed that issuers would record investors' interests on their own books. Today, investors typically maintain a security through an account with a broker-dealer, bank or other financial institution (''securities intermediary''),[11] which in turn will maintain an account for its customers with a securities depository.[12] The depository generally does not record each investor's interest, but records the interest of the intermediary on behalf of all of its customers.[13] Thus, the individual investor's interest (or ''security entitlement'') [14] appears only on the books of the intermediary with which the investor maintains an account.[15] Revised Article 8 refers to this type of securities ownership arrangement as an ''indirect holding'' arrangement,[16] as distinguished from a ''direct holding'' arrangement in which the investor's ownership interest appears on the issuer's books.[17] Revised Article 8 has significantly clarified the legal rights and duties that apply in indirect holding arrangements,[18] and every state has enacted Revised Article 8 into law.[19]

Last year, we adopted a new rule concerning the use of *foreign* securities depositories that focused on the risk of these arrangements.[20] In the *domestic* context, the important changes in custody practice and commercial law that have occurred since 1978 have reduced the risks of these arrangements, and made some requirements of rule 17f–4 unnecessary for the protection of fund assets. Today we are proposing to revise rule 17f–4 to reflect these and other developments. The amendments would (i) expand the types of custodial entities that may operate depositories under the rule and the functions they may perform, as well as the types of investment companies that may rely on the rule, (ii) update the conditions of the rule, and (c) revise certain fund approval requirements for custody arrangements involving depositories.

II. Discussion

A. Functions of a Securities Depository

We propose to update the terms we use in the rule to reflect the broader range of functions today performed by securities depositories for funds. The rule currently permits a securities depository to hold fund securities that are *transferred* (or pledged) by bookkeeping entry.[21] The proposed amendments would permit a depository to hold fungible assets that are transferred, pledged, or ''otherwise acquired or disposed of'' by bookkeeping entry.[22] Permitting a depository to hold assets that may be ''acquired or disposed of'' without being ''transferred'' would accommodate the use of depositories that hold open-end fund shares or ''Treasury Direct'' securities, both of which securities typically are conveyed through redemption by the issuer.[23] Other

[7] The use of depositories also may enhance the efficiency of clearance and settlement by permitting the netting of offsetting transactions of depository participants before account balances are adjusted, and may eliminate some risks of holding paper certificates. *See* Policy Perspectives, *supra note*, at 1442; Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 23815 (Apr. 29, 1999) [64 FR 24489 (May 6, 1999)] at n.20 and accompanying text. The immobilization of certificates in depositories has steadily increased since 1975 when Congress amended the Securities Exchange Act of 1934 (''Exchange Act'') to authorize the Commission to develop a national system for clearance and settlement. *See* S. Rep. No. 75, 94th Cong., 1st Sess. 4–6, 55–56 (1975); sections 3(a)(23)(A) and 17A of the Exchange Act [15 U.S.C. 78c(a)(23)(A), 78q–1].

[8] *See* Deposits of Securities in Securities Depositories, Investment Company Act Release No. 10453 (Oct. 26, 1978) [43 FR 50869 (Nov. 1, 1978)] [''1978 Adopting Release'']. We estimate that more than 97 percent of all funds now use depository custody arrangements. Our estimate is based on responses to Item 18 of Form N–SAR [17 CFR 274.101].

[9] *See* Uniform Commercial Code, 1978 Official Text with Comments, Article 8, Investment Securities (West 1978) (''Prior Article 8''); Use of Depository Systems by Registered Management Companies, Investment Company Act Release No. 10053 (Dec. 8, 1977) [42 FR 63722 (Dec. 19, 1977)] (''1977 Reproposing Release'') at nn. 4–7, 9, 12 and accompanying text (citing provisions of Prior Article 8); 1978 Adopting Release, *supra* note 8, at nn. 4 and 6.

[10] *See* Uniform Commercial Code, Revised Article 8—Investment Securities (With Conforming and Miscellaneous Amendments to Articles 1, 4, 5, 9, and 10) (1994 Official Text with Comments) (''Revised Article 8''), Prefatory Note at I.B., C., and D.; Warren F. Cooke, *United States Legal Report, in Banking Yearbook 1998* 157–62 (Richard Forster ed., Euromoney Publications 1998) (referring to Revised Article 8 as ''[o]ne of the most significant legal shifts in the U.S. legal landscape affecting banking'').

[11] Revised Article 8, *supra* note 10, Prefatory Note to Art. 8, Part III.A. and § 8–102(a)(14) (defining a ''securities intermediary'').

[12] The Depository Trust Company (''DTC'') is a registered clearing agency that acts as the securities depository for most publicly traded equity securities and many fixed-income securities (other than government securities) in U.S. markets.

[13] Intermediaries deposit their securities with a depository, and the depository's records reflect the ownership interests of the various intermediaries in those securities. *See* Revised Article 8, *supra* note 10, Prefatory Note to Art. 8, Parts I.B., C., and D.

[14] *See* Revised Article 8, supra note , § 8–102(a)(17) and cmt. 17 (''security entitlement'' means ''the rights and property interest of an entitlement holder with respect to a financial asset'' in an ''indirect holding'' arrangement).

[15] A security entitlement gives the investor a limited pro rata property interest in comparable entitlements (or other interests in securities) maintained by the investor's intermediary with a depository or other intermediary. *See* Revised Article 8, *supra* note 10, §§ 8–503(b) and cmt. 1, and 8–504 and cmt. 1 (all customers of the securities intermediary share a pro rata property interest in all interests in the same financial asset held by the intermediary).

[16] An indirect holding arrangement can be compared to a chain of persons who hold interests in a particular security. The investor stands at one end of the chain and the issuer at the other end. They are linked by one or more securities intermediaries (such as a bank and a depository). The investor has certain rights against the intermediary linked to it, which in turn has rights against the next intermediary. The issuer owes certain duties to the depository, which owes duties to the next intermediary, which owes duties to the investor. *See generally* Revised Article 8, *supra* note 10, Prefatory Note to Art. 8, Parts I.B., C., D., and II.C., and § 8–109.

[17] In a direct holding arrangement, the investor or its custodian may hold either certificates or uncertificated securities that have been registered in the investor's own name.

[18] *See infra* note and accompanying text.

[19] Revised Article 8 has been adopted by all 50 states, the District of Columbia, and Puerto Rico. The National Conference of Commissioners on Uniform State Laws, *Introductions & Adoptions of Uniform Acts: A Few Facts About'Revised UCC Article 8* (1994) (visited Aug. 14, 2001) <http://www.nccusl.org/nccusl/uniformact—factsheets/uniformacts-fs-ucca8.asp>. The U.S. Department of the Treasury relied on Revised Article 8 in drafting its Treasury/Reserve Automated Debt Entry System (''TRADES'') regulations for government securities. *See* Regulations Governing Book-Entry Treasury Bonds, Notes and Bills, Department of the Treasury Circular, Public Debt Series, No. 2–86 [61 FR 43626 (Aug. 23, 1996)] (''1996 Treasury Circular'') (adopting TRADES regulations codified at 31 CFR 357, Subpart B). The Commission staff has stated that it would not recommend enforcement action if certain funds used the federal book-entry system under the revised regulations. Investment Company Institute, SEC No-Action Letter (Oct. 3, 1997).

[20] *See* Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 24424 (Apr. 27, 2000) [65 FR 25630 (May 3, 2000)] (''Rule 17f–7 Adopting Release'').

[21] *See* rule 17f–4(a).

[22] Proposed rule 17f–4(b)(9). Rule 17f–4 also requires that the securities be fungible. Under the proposed amendments, the securities would be considered fungible even if a depository transfers some shares of the same class in different forms (*e.g.*, it transfers most shares in electronic form, but periodically transfers some shares in certificate form).

[23] *See* Revised Article 8, supra note 10, at § 8–102(a)(18) (''uncertificated security'' means a security that is not represented by a certificate); § 8–103 cmt. 3 (''the typical transaction in shares of open-end investment companies is an issuance or redemption, rather than a transfer of shares''); 1996 Treasury Circular, *supra* note 19, Appendix B to

Continued

amendments to rule 17f–4 also would permit a depository to hold assets that are conveyed ''by physical delivery.'' [24] This change is designed to facilitate the use of centralized custody arrangements for investments that are commonly held in certificate form.[25]

The proposed amendments also would update the terminology of rule 17f–4 that describes how funds and their custodians use depositories. The rule currently permits a fund or its custodian (or an agent of the custodian) to ''deposit * * * securities owned by'' the fund in a depository.[26] The proposed amendments would permit a fund or its custodian to ''place and maintain assets'' in a depository,[27] and permit a custodian to use an ''intermediary custodian.''[28]

B. Scope of the Rule

Rule 17f–4 permits funds to maintain assets with a depository established by a registered clearing agency, such as DTC, and the book-entry system of the Federal Reserve.[29] We now propose to revise the scope of rule 17f–4 by permitting funds to maintain assets with a registered transfer agent for the purpose of holding shares of an open-end registered management investment company (mutual fund).[30] This amendment would acknowledge that a mutual fund's transfer agent may serve as the functional equivalent of a depository.[31] This amendment responds to the growth in ''fund of funds,'' cash sweep and other arrangements in which a registered investment company invests in shares of a mutual fund.

We request comment on the scope of rule 17f–4 and our proposed amendments. Are there other organizations that act as depositories for funds? Should they be included in the rule?

C. Reliance on Rule by Non-Management Companies

Rule 17f–4 currently permits only registered *management* investment companies, *i.e.,* open-end funds (or mutual funds) and closed-end funds, to rely on the rule.[32] The proposed amendments would broaden the rule to permit any registered investment company, including a unit investment trust (''UIT'') or a face-amount certificate company, to use a securities depository.[33] The staff has stated that it would not recommend enforcement action in similar circumstances when non-management companies maintained assets in a depository[34] to supplement custody arrangements with a trustee.[35] Because a non-management company has no directors, officers, or investment adviser, the proposed amendments would authorize a trustee to approve these arrangements.[36] The trustee also would have to establish an internal control system reasonably designed to prevent unauthorized officer's instructions.[37] The Commission requests comment on these proposals for the use of depositories by non-management companies. Should other conditions apply to these arrangements? [38]

D. Compliance Requirements for the Custodian or Securities Depository

Rule 17f–4 requires that, if a fund holds securities in a depository through a custodian or its agents, the custodian must maintain the fund's securities in a depository account for the custodian's

Part 357 at n.1 and accompanying text (describing ''Treasury Direct'' system through which investors may hold non-transferable Treasury securities issued directly to them).

[24] A centralized processing facility that transfers certificates by physical delivery appears to offer benefits comparable to those of a depository, including centralized custody, recordkeeping, and transfer capabilities, and reduction of the expenses, delays, and risks of decentralized holding of certificates.

[25] These types of investments include some equity securities, bankers acceptances, certificates of deposit, municipal securities, and non-depository eligible mortgage-backed securities.

[26] Rule 17f–4(b).

[27] Proposed rule 17f–4(a). ''Place and maintain'' would be substituted for ''deposit'' in order to make the language of the rule more consistent with Revised Article 8 and with rules 17f–5 and 17f–7. *See* Revised Article 8, *supra* note 10, § 8–504 (duty of securities intermediary to ''maintain'' financial asset); rule 17f–5 Note; rule 17f–7 Note. ''Assets'' would be substituted for ''securities owned by the fund'' to clarify that assets are not always held in the fund's name and may not be its exclusive property. *See supra* note 15. ''Assets'' would include cash, securities, and similar investments owned by the fund or held by another person for the fund's benefit. Proposed rule 17f–4(b)(1). The staff has stated that it would not recommend enforcement action if a fund that participated directly in a depository maintained a cash account to facilitate settlement or to secure obligations to a reserve fund. Midwest Securities Trust Co., SEC No-Action Letter (Mar. 14, 1990).

[28] Proposed rule 17f–4(b)(5) (an intermediary custodian would mean any subcustodian through which the fund's custodian maintains assets with a depository, if the subcustodian is qualified to act as a custodian).

[29] *See* rule 17f–4(b)(1), (2), (c), and (d). The proposed amendments would update references to Treasury regulations to reflect revisions and to add a reference to the Treasury Direct regulations. *See supra* note 19; proposed rule 17f–4(a)(4)(i).

[30] Proposed rule 17f–4(a)(4)(iii). A conventional depository rarely holds shares issued by a fund. *See* Transfer Agents Operating Direct Registration System, Securities Exchange Act Release No. 35038 (Dec. 1, 1994) [59 FR 63662 (Dec. 8, 1994)] at n.6 and accompanying text. The staff has stated that it would not recommend enforcement action when a fund acts as a transfer agent for its own shares. *See* Capital Supervisors Helios Fund, Inc., SEC No-Action Letter (June 18, 1984). *See also* American Pension Investors Trust, SEC No-Action Letter (Feb. 1, 1991) (staff stated it would not recommend enforcement action if the custodian for fund of funds maintained shares of underlying funds with its transfer agent based on rule 17f–4 if underlying funds did not disclaim liability for acting on instructions believed to be genuine); Gardner Fund, SEC No-Action Letter (Mar. 7, 1988) (staff stated that it would not recommend enforcement action if fund of funds maintained its investments directly with transfer agents of unaffiliated funds, subject to conditions based on rules 17f–2 and 17f–4).

[31] A registered transfer agent, like a clearing agency, is subject to significant regulatory oversight. A transfer agent must register with the Commission or a bank regulatory agency, section 17A(c) of the Exchange Act [15 U.S.C. 78q–1(c)], and must comply with Commission regulations that govern its primary functions. *See* sections 17A(d)(1) and (2) of the Exchange Act [15 U.S.C. 78q–1(d)(1)–(2)] (Commission may prescribe regulations for any registered transfer agent, which may be enforced by Commission or transfer agent's appropriate regulatory agency); rules 17Ad–1 to 17Ad–13 [17 CFR 240.17Ad–1—240.17Ad–13] (Commission rules apply to all registered transfer agents, including banks, with limited exceptions for ''exempt transfer agents'' that handle few transactions under 17 CFR 240.17Ad–4(b)); Securities Exchange Act Release No. 35038, *supra* note 30 (Commission rules address matters including the timely issuance and cancellation of certificates, recordkeeping practices, and the safeguarding of securities and cash); sections 17A(d)(3), (d)(4), and (f) of the Exchange Act [15 U.S.C. 78q–1(d)(3), (d)(4), and (f)] (rules adopted by other regulatory bodies must be consistent with Commission rules).

[32] Rule 17f–4(b). Section 17(f) of the Investment Company Act likewise applies to registered management companies.

[33] Proposed rule 17f–4(b)(4) (''fund'' means a registered investment company).

[34] *E.g.,* Bradford Trust Co., SEC No-Action Letter (Nov. 29, 1982) (staff stated it would not recommend enforcement action if trustee maintained UIT's holdings of corporate and municipal bonds with DTC); United States Trust Co. of New York, SEC No-Action Letter (Apr. 16, 1992) (staff stated it would not recommend enforcement action if trustee maintained UIT's investments in open-end funds with transfer agents of portfolio funds under conditions based on rule 17f–4, if portfolio funds did not disclaim liability for acting on instructions believed to be genuine). Insurance company separate accounts registered as UITs also may use depository-like arrangements. *See* rule 26a–2(b) under the Act [17 CFR 270.26a–2(b)] (separate account registered as UIT may hold securities of underlying portfolio funds in uncertificated form with transfer agent); rules 6e–2(b)(9)(iv) and 6e–3(T)(b)(9)(iv) under the Act [17 CFR 270.6e–2(b)(9)(iv), and 270.6e–3(T)(b)(9)(iv)].

[35] Section 26(a)(2)(D) of the Act [15 U.S.C. 80a–26(a)(2)(D)] requires the assets of a UIT to be held by a trustee. Section 28(c) of the Act [15 U.S.C. 80a–28(c)] imposes similar requirements on a face-amount certificate company, but authorizes the Commission to adopt custody rules.

[36] Proposed rule 17f–4(a)(3).

[37] Proposed rule 17f–4(a)(2)(ii) and (b)(6). The staff has stated that it would not recommend enforcement action if, among other things, a trustee maintained a system designed to prevent unauthorized officer's instructions. United States Trust Co. of New York, *supra* note 34. Under the proposed amendments, the trustee as the fund's custodian also would have to enter into an appropriate custody agreement with the company's sponsor. *See* proposed rule 17f–4(a)(1).

[38] *See, e.g.,* United States Trust Co. of New York, *supra* note 34 (staff stated that it would not recommend enforcement action if, among other things, the shares of a portfolio fund were registered with transfer agent in the name of trust company as trustee of UIT).

customers that is separate (or ''segregated'') from the depository account for the custodian's own securities, and must identify (or ''earmark'') on the custodian's records a portion of the total customer securities as belonging to the fund (the ''segregation and earmarking requirements''). The custodian also must send to the fund confirmations of transfers to or from the fund's account with the custodian (the ''confirmation requirement'').[39] In addition, a depository that deals directly with a fund must deliver the fund's securities to an appropriate successor if the depository no longer acts for the fund (the ''successor custodian requirement'').[40] Each of these requirements appears unnecessary for the protection of fund assets in light of the revisions to commercial law adopted in Revised Article 8. The proposed amendments would eliminate these requirements and substitute requirements designed to provide reasonable protection for fund assets under modern commercial law.

With respect to the segregation and earmarking requirements, Revised Article 8 provides that a fund and other customers of a custodian have proportionate interests in all securities of the custodian, even if the custodian does not segregate particular securities as the property of customers.[41] In addition, the earmarking of some securities for the fund rather than other customers appears inconsistent with the guiding principle of Revised Article 8 to treat entitlement holders alike.[42] The confirmation requirement of rule 17f–4 seems unnecessary to establish the fund's ownership of security entitlements under commercial law,[43] and may in effect limit the methods the custodian uses to inform the fund about the status of its securities account.[44] Finally, the rule's successor custodian requirement seems unnecessary[45] and concerns matters that should reasonably be the responsibility of the fund.[46]

The proposed amendments to rule 17f–4 would substitute more general compliance requirements for custodians and depositories in place of these existing requirements.[47] First, the fund's contract with its custodian would be required to provide that the custodian will take all actions reasonably necessary or appropriate under applicable commercial and regulatory law to safeguard assets held by the custodian, or assets maintained elsewhere for the benefit of the fund.[48] If the fund deals directly with a depository, the depository's contract or rules for participants would be required to provide that the depository will meet similar obligations.[49] These undertakings would assure that the fund's own custodian or depository must comply with the specified duties of a securities intermediary or issuer under Revised Article 8.[50] This assurance is important because Revised Article 8 sharply limits the ability of a fund to seek recourse from any party other than its own custodian for assets mishandled by the custodian.[51]

Second, the custody contract (or depository rules) would have to state that the custodian (or depository) will promptly provide periodic reports on its internal accounting controls and financial strength, and available reports on the controls of any depository or intermediary custodian it uses.[52] Rule 17f–4 currently requires a custodian to provide similar reports about internal controls.[53] Periodic review of a custodian's controls by fund auditors is a significant safeguard for fund assets.[54] The fund also should consider the financial strength of its own custodian or of any depository with which it deals directly.[55]

The Commission requests comment on the proposed contractual requirement to take actions necessary or appropriate under applicable commercial and regulatory law to safeguard assets. Should the rule specify duties applicable in particular

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[39] *See* rule 17f–4(d)(2)–(3).

[40] *See* rule 17f–4(c)(2).

[41] *See supra* note 15 and accompanying text; *cf.* Revised Article 8, *supra* note 10, § 8–511 (entitlement holders have priority over creditors' claims to all assets of their securities intermediary, unless a creditor has perfected a security interest in some assets by obtaining ''control''). In direct holding arrangements, segregation of customer assets seems unnecessary to protect fund shares or securities certificates that are maintained in the fund's own name with a depository such as a transfer agent or a centralized processing facility.

[42] *See* Revised Article 8, *supra* note 10, § 8–503 and cmts. 1–2 (one entitlement holder generally cannot assert that its rights to the assets held by a securities intermediary are superior to the rights of another entitlement holder; a security entitlement is not a claim to a specific identifiable thing).

[43] *See* Revised Article 8, *supra* note 10, § 8–501(b) and cmt. 2 (securities intermediary creates a security entitlement when it indicates by book entry that a financial asset has been credited to the customer's account, accepts an asset for credit to the account, or becomes obligated under law to credit an asset); cmt. 3 (the existence of a security entitlement does not depend on when the custodian acquires financial assets to support it); *cf.* 1977 Reproposing Release, *supra* note 9, at nn. 4–7 and accompanying text (confirmation may help to establish fund's ownership of securities). Confirmation also seems unnecessary to protect assets that are maintained directly with a depository in the fund's own name. *See supra* note 41.

[44] The custodian and fund may prefer timed updates, daily balance reports, or other methods of indicating that the custodian has credited an account. *See* Revised Article 8, *supra* note 10, § 8–501(b) cmt. 2 (''Paragraph (1) does not attempt to specify exactly what accounting, record-keeping, or information transmission steps suffice to indicate that the intermediary has credited the account. That is left to agreement, trade practice, or rule in order to provide the flexibility necessary to accommodate varying or changing accounting and information processing systems.'').

[45] Rule 17f–4(c)(2) requires that, if a fund deals with a depository directly (rather than through a custodian), the arrangement with the depository must provide that, if the depository ceases to act for the fund, it will deliver the fund's assets to an appropriate successor custodian. The provision appears unnecessary because failure by a fund to maintain assets in a permissible manner would violate section 17(f) of the Act.

[46] *See infra* Section II.E.

[47] Proposed rule 17f–4(a)(1) and (2)(i).

[48] Proposed rule 17f–4(a)(1)(i) (obligation of custodian or trustee of unit investment trust). The applicable commercial law normally would be the local law of the jurisdiction of the custodian, *see* Revised Article 8, *supra* note 10, § 8–110, which would usually be Revised Article 8 or similar regulations that govern the federal book-entry system.

[49] Proposed rule 17f–4(a)(2)(i). A depository that deals only with the fund's custodian would not have to enter into an agreement with the fund.

[50] The securities intermediary's duties under commercial law include: (i) maintaining sufficient unencumbered financial assets to cover all security entitlements of all entitlement holders, *see* Revised Article 8, *supra* note 10, § 8–504; (ii) obtaining for the entitlement holder payments made by the issuer of a financial asset, *id.*, § 8–505; (iii) exercising rights with respect to a financial asset (such as the right to vote proxy materials) as directed by the holder, *id.*, § 8–506; (iv) complying with orders given by the holder concerning financial assets (such as to dispose of entitlements), *id.*, § 8–507; and (v) changing the holder's entitlement into another available form of holding upon request (such as converting it into a security certificate in a direct holding arrangement), *id.*, § 8–508. A transfer agent may be subject to the duties of an issuer under commercial law. *See, e.g.,* Revised Article 8, § 8–207 (duties of issuer concerning registered owner); § 8–401 (duty of issuer to register transfer).

[51] *See* Revised Article 8, *supra* note 10, §§ 8–116, 8–502, 8–503 and cmts. 2–3, 8–510 (adverse claims may not be asserted against a purchaser who acquires a security entitlement for value and without notice of the adverse claims; entitlement holders may assert a claim against a purchaser other than their securities intermediary only if their own intermediary is insolvent and lacks sufficient assets to satisfy their claims, and the purchaser knowingly colluded with the intermediary to violate duties to holders); Policy Perspectives, *supra* note 4, at 1508.

[52] Proposed rule 17f–4(a)(1)(ii) (obligation of custodian); *see* proposed rule 17f–4(a)(2)(i) (similar obligation for depository that deals directly with the fund).

[53] *See* rule 17f–4(d)(4).

[54] Fund auditors review a custodian's internal controls when evaluating factors that could affect the fair presentation of information in financial statements. *See* AICPA Audit and Accounting Guide, Audits of Investment Companies, ¶¶ 2.132 to 2.136 (May 1, 1998) (auditor reviews fund's internal control structure and considers custodian's controls; should test interaction of these controls); Sub-Item 77B of Form N-SAR [17 CFR 274.101] (auditor's report on internal controls must be attached to the fund's Form N-SAR report).

[55] Revised Article 8 severely limits the circumstances in which the fund could assert a claim against anyone other than its own custodian. *See supra* note and accompanying text.

circumstances?[56] Should the rule clarify that custody contracts should not generally waive duties under commercial law? [57] We also request comment on the proposed contractual requirement to provide reports on the custodian's internal accounting controls and financial strength, and reports on the internal controls of subcustodians. Is it appropriate to require reports about the custodian's financial strength? Are reports on subcustodians' internal controls unnecessary because subcustodians do not deal directly with the fund? [58] Should other requirements apply to a custodian or depository? Should the amendments include a transition provision that would apply the current requirements of the rule to any custody arrangement that remains subject to Prior Article 8?[59]

E. Approval of Custody Arrangements

We are proposing to eliminate the requirements of rule 17f–4 that fund directors approve (i) the fund's direct arrangements with depositories, and (ii) arrangements by custodians with depositories.[60] Custody arrangements involving depositories have become routine.[61] Although directors, in exercising their general responsibility to oversee fund operations, should monitor the fund's dealings with its own custodian, close involvement in approving arrangements with domestic depositories appears unnecessary. The amendments would permit the fund itself (through an officer) to approve arrangements with depositories and with custodians that use depositories.[62]

The Commission requests comment on these proposals. Should the fund or its directors have to approve any arrangement in which the custodian maintains certificates in the fund's name with a centralized processing facility,[63] or maintains fund shares with a transfer agent that acts as a depository? Should the fund board have to approve any direct dealings with a depository?

F. Note Clarifying Application of Rule 17f–4

We propose to add a note to rule 17f–4 clarifying the relationship between that rule and rule 17f–5 under the Act, which governs the maintenance of fund assets with a foreign custodian.[64] The note would state that a custody arrangement in which fund assets are held with a U.S. depository through a foreign custodian, would be governed by rule 17f–5 as well as by rule 17f–4.[65]

III. General Request for Comment

The Commission requests comment on the rule amendments proposed in this Release, suggestions for additional changes to existing rules or forms, and comment on other matters that might have an effect on the proposals contained in this Release. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[66] the Commission also requests information regarding the potential impact of the proposals on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

IV. Effects on Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when it engages in rulemaking and is required to determine whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[67] The Commission therefore requests comment whether the proposals, if adopted, would promote efficiency, competition, and capital formation. Does rule 17f–4 currently create inefficiencies? Would the proposed amendments reduce or compound those inefficiencies? Would other regulatory approaches be more efficient? Does rule 17f–4 currently hinder competition or capital formation? Would the proposed amendments, or any alternative amendments, result in improvements in competition or capital formation? Commenters are requested to provide empirical data to support their views.

We have received correspondence from an association of global bank custodians (''Bank Custodians'') that raises issues of regulatory fairness under the Commission's rules. The Bank Custodians recommend that the Commission treat domestic and transnational depositories similarly under the Commission's custody rules under section 17(f).[68] The Bank

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[56] Special duties might be appropriate when a fund or its custodian maintains securities certificates with a centralized processing facility. If the certificates are not endorsed to the facility, and the facility does not act as a representative for the issuer, the facility may not have to comply with either the duties of a securities intermediary or the duties of an issuer under Revised Article 8.

[57] *See* Revised Article 8, *supra* note 10, §§ 8–111, 8–504(c)(1), 8–505(a)(1), 8–506(1), 8–507(a)(1), 8–508(1), 8–509(b) (securities intermediary must perform its duties under Revised Article 8 with ''due care in accordance with reasonable commercial standards,'' unless modified by regulatory requirements or contractual provisions that meet ''good faith'' standard).

[58] A fund could rarely assert a claim against an intermediary with which it does not deal directly. *See supra* note 51.

[59] A few U.S. jurisdictions may require additional time to enact Revised Article 8 into law. *See supra* note. In jurisdictions where Revised Article 8 is in effect, a fund would need to update its custody contracts to incorporate the revised protections and remove any inconsistent provisions. *See* proposed rule 17f–4(a)(3) (discussed below).

[60] *See* rule 17f–4(c)(3), (d)(5); proposed rule 17f–4(a)(3).

[61] *See* Revision of Certain Annual Review Requirements of Investment Company Boards of Directors, Investment Company Act Release No. 19719 (Sept. 17, 1993) [58 FR 49919, 49920 (Sept. 24, 1993)] (commenters suggested that depository arrangements are commonplace, generally do not involve conflicts of interest, and involve a degree of technical expertise that is more appropriately exercised by fund management); *cf. id.* at n.15 (consent requirement in section 17(f) may favor director approval); *see* SEC Division of Investment Management, Protecting Investors: A Half-Century of Investment Company Regulation at 255 (May 1992) (directors should primarily address conflicts of interest).

[62] *See* proposed rule 17f–4(a)(3). This approval would satisfy the statutory requirement that a custodian use a system for the central handling of securities only ''with the consent of the registered management company for which it acts as custodian.'' *See* section 17(f). If the fund is a unit investment trust or other non-management company, a trustee would be required to approve those arrangements. *See* proposed rule 17f–4(a)(3).

[63] *See supra* note and accompanying text.

[64] The note would not add any new requirements, but instead would clarify the operation of rules 17f–4 and 17f–5 in cases where fund assets are held with a U.S. depository through a foreign custodian.

[65] In some circumstances, rule 17f–2 (governing fund ''self-custody'') may apply to a depository arrangement as well. The staff has taken the position that a ''self-custody'' arrangement may arise when the fund's investment adviser controls or is controlled by (or is under common control with) the fund's custodian, intermediary custodian, or depository, and that these arrangements may be subject to rule 17f–2 under the Investment Company Act (governing self-custody arrangements), as well as rule 17f–4. *See, e.g.,* Rodney Square Fund, SEC No-Action Letter (June 15, 1987) (staff refused to provide assurance concerning enforcement action in case where a fund's custodian was adviser to one fund and controlled adviser to other funds, and custodian/adviser retained effective control over assets even though it maintained assets with unaffiliated depository). *See also* Mutual Fund Group, SEC No-Action Letter (Dec. 12, 1989) (staff refused to provide assurance concerning enforcement action in case where a fund's adviser also acted as subcustodian, despite fund's use of unaffiliated custodian); In the Matter of Gofen and Glossberg, Inc., Investment Advisers Act Release No. 1400 (Jan. 11, 1994) (the Commission imposed sanctions for adviser's failure to protect client trust assets held by unaffiliated custodian but transferable by adviser's employees as trustees). The existence of common personnel also may raise self-custody concerns. *See, e.g.*, Dean Witter World Wide Investment Trust, SEC No-Action Letter (Mar. 14, 1988) (staff stated that it would not recommend enforcement action if, among other things, foreign adviser's personnel did not have access to assets held by affiliated domestic custodian).

[66] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[67] 15 U.S.C. 80a–2(c).

[68] *See* Letter from Daniel L. Goelzer, Baker & McKenzie, to Robert E. Plaze, Associate Director, Division of Investment Management (Dec. 7, 2000). *See also* Letter from Daniel L. Goelzer, Baker & McKenzie, to C. Hunter Jones, Assistant Director, Division of Investment Management (Oct. 17, 2001). These letters are available in File No. S7–19–00 (comments on Commission's Regulatory Flexibility

Custodians stated that the treatment of depositories under rule 17f–4, rule 17f–5 (governing eligibility of foreign custodians to hold fund assets), and rule 17f–7 (governing eligibility of foreign depositories to hold fund assets) is premised on two assumptions—that U.S. depositories will handle and hold securities that are traded in the United States, and that foreign banks and depositories will handle and hold securities that trade outside the United States, in the jurisdiction in which the securities' markets are located. In the Bank Custodians' view, these assumptions are becoming increasingly obsolete, because local depositories often do not serve a single market but instead are portals to custody in other markets. Given this development, the Bank Custodians suggest that rule 17f–4 should include requirements that are similar to those contained in rules 17f–5 [69] and 17f–7 [70] or, alternatively, that the requirements of the latter rules should apply if a domestic depository holds custody of its assets with foreign custodians or depositories.[71]

We have decided not to propose the amendments to rule 17f–4 suggested by the Bank Custodians at this time, because they may impose unnecessary burdens on funds using U.S. depositories. We regulate the U.S. depositories discussed by the Bank Custodians as clearing agencies under the Securities Exchange Act of 1934.[72] As such, they are subject to rigorous standards for their operations, which are designed to safeguard the interests of investors, including investment companies.[73] Before a clearing agency may establish a link with a foreign custodian or depository, it must obtain an order from us after demonstrating that its arrangement with the custodian or depository will adequately safeguard customer securities.[74] We believe our approval and ongoing monitoring of a clearing agency's link with a foreign custodian or depository provide at least the same degree of protection of fund assets as the standards that apply to a foreign custodian or depository that holds assets on behalf of a fund under rules 17f–5 and 17f–7.[75] Thus it initially appears unnecessary to require U.S. depositories that link to foreign custodians and depositories to also satisfy the eligibility requirements of rules 17f–5 and 17f–7.

While we are not proposing the amendments to rule 17f–4 recommended by the Bank Custodians, we are concerned about the issues of regulatory fairness raised in their letter. Would our failure to apply rules 17f–5 and 17f–7 (or their requirements) to domestic depositories create an unfair burden on competition between domestic depositories and global custodians of funds? If it would, should we therefore apply those rules to U.S. depositories that hold fund assets through foreign linkages? Alternatively, should we amend rules 17f–5 and 17f–7 to provide an exception from some or all of their requirements if a fund maintains assets with a foreign custodian with which a U.S. depository has established a linkage? Would such a change impede the establishment of linkages that a U.S. depository might otherwise choose to establish?

We specifically request analyses of the costs and benefits of any such regulatory approaches. Is there any difference in costs to funds and risks to investors, either because of differences in disclosure to funds or otherwise, between arrangements in which a fund uses a clearing agency's linkage with a foreign depository to hold custody of foreign assets, versus arrangements in which a fund holds assets in a foreign depository through a global custodian? Would any of the alternatives impose unnecessary regulatory burdens, or impose overlapping or duplicative requirements? What would be the effect of each alternative on efficiency, competition, and capital formation? We request that commenters provide us with data that we might use in evaluating the costs and benefits of the alternative approaches.[76]

V. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits that result from its rules. The proposed amendments to rule 17f–4 respond to developments in securities custody practices and commercial law that have occurred since the rule was adopted. The proposed amendments would expand the types of funds and custodial entities that may rely on the rule, update the rule's compliance requirements, and reduce burdens on fund directors. Discussed below are certain costs and benefits that the Commission has identified with respect to the proposed rule amendments.

The Commission requests comment on the costs and benefits of the

Agenda issued Oct. 17, 2000) and in File No. S7–22–01.

[69] Rule 17f–5 generally requires that a delegate of the fund's board of directors (i) determine that the assets will be subject to reasonable care, (ii) determine that the arrangement with the foreign custodian is governed by a written contract that meets specified standards, and (iii) monitor the appropriateness of maintaining the fund's foreign assets with the custodian. Rule 17f–4 does not include these requirements.

[70] Rule 17f–7 generally requires a foreign depository to meet minimum requirements in order to be an ''eligible securities depository'' and requires that each fund's primary custodian provide the fund (or its adviser) with a continually updated risk analysis of the foreign depository. Rule 17f–4 does not include these requirements.

[71] We encountered a similar issue during the adoption of rule 17f–7. We noted at that time that the risk analyses performed under that rule with respect to a transnational depository should include information reasonably available about the depository's global custodial network. *See* Rule 17f–7 Adopting Release, *supra* note , at n.24.

[72] *See* section 17A of the Exchange Act [15 U.S.C. 78q–1]. The Fedwire system and mutual fund transfer agents do not register as clearing agencies, but are very unlikely to hold securities through a foreign custodian or depository.

[73] In 1980 the Commission specified the standards that would apply to the registration and oversight of clearing agencies under the Exchange Act. Those standards relate to the provisions of section 17A that require clearing agencies to have the capacity to facilitate the prompt and accurate settlement of securities transactions, and safeguard securities and assets in their control. *See* 15 U.S.C. 78q–1(b)(3)(A), (F). The standards require the clearing agency, among other things, to: (i) perform periodic risk assessments of its operations; (ii) have a board audit committee composed of non-management directors who select (or participate in selecting) the agency's independent public accountant and review its work; (iii) have a competent internal audit department that reviews the clearing agency's system of internal accounting controls; (iv) annually furnish to participants audited financial statements, and furnish on request unaudited quarterly financial statements; (v) annually furnish to participants an opinion report prepared by the independent public accountant based on a study and evaluation of the clearing agency's system of internal accounting control; and (vi) have detailed plans to assure the physical safeguarding of securities and funds, the integrity of the automatic data processing systems, and the recovery from loss or destruction of securities, funds or data. *See* Securities Exchange Act Release No. 16900 (June 17, 1980) [45 FR 41920 (June 23, 1980)].

[74] *See, e.g.,* Self-Regulatory Organizations; The Depository Trust Company, Securities Exchange Act Release No. 39657 (Feb. 12, 1998) [63 FR 8725 (Feb. 20, 1998)] (notice of proposed link between DTC and Canadian securities depository); Self-Regulatory Organizations; The Depository Trust Company, Securities Exchange Act Release No. 40523 (Oct. 13, 1998) [63 FR 54739 (Oct. 13, 1998)] (order approving proposed link).

[75] When approving links between a U.S. clearing agency and a foreign custodian or depository, the Commission applies the same standards for the safeguarding of securities as it does for securities held with a U.S. clearing agency. *See supra* note 73. Thus, a U.S. clearing agency's custodial arrangements with a foreign custodian or depository are held to U.S. standards. In contrast, rule 17f–5 permits a fund's foreign custody manager to determine that assets maintained on behalf of the fund are subject to reasonable care based on the standards applicable to custodians in the relevant foreign market, even if those standards are lower than those that would be acceptable for a U.S. custodian. *See* Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 22658 (May 12, 1997) [62 FR 26923 (May 16, 1997)], at n.39 and accompanying text.

[76] The Bank Custodians have estimated, for example, that the average costs of complying with the risk monitoring provisions of rule 17f–7 for its nine member banks are $300,000 per bank. *See* Letter from Daniel L. Goelzer, Baker & McKenzie, to C. Hunter Jones, Assistant Director, Division of Investment Management (Oct. 17, 2001).

proposed rule amendments. We encourage commenters to identify, discuss, analyze, and supply relevant data regarding any additional costs and benefits.

A. Benefits

The Commission staff estimates that approximately 5,255 entities (including 4,900 registered investment companies,[77] 130 custodians, and 225 possible securities depositories[78]) would benefit from the proposed amendments.

Updates the rule to reflect current custody practice and commercial law. The proposed amendments to rule 17f–4 would benefit funds, advisers, and custodians because the amendments update the rule to conform to current custody practices and commercial law. As discussed above, rule 17f–4 was adopted in 1978 and was designed to operate in the context of commercial law applicable at that time. Custody practices and commercial law have changed significantly since 1978, and the proposed amendments would bring the rule up to date in those respects.

The Commission staff has issued numerous no-action letters in an attempt to keep the rule current with custody practice and commercial law.[79] Investment companies, custodians, subcustodians, transfer agents, and securities depositories would benefit from these amendments because the amendments would reflect changes in custody practices and applicable commercial law.

Removes unnecessary regulatory requirements. The proposed amendments to rule 17f–4 would remove three custodial compliance requirements[80] that have accounted for a significant amount of custodians' time and resources. The Commission staff estimates that custodians could spend approximately 66,300 hours[81] and $3,673,852[82] annually to comply with these three requirements. The proposed amendments would eliminate the burden of complying with these requirements, which could benefit fund investors through reduced costs.

Provides general compliance requirements. In place of the three custodial compliance requirements, the proposed amendments to rule 17f–4 would include more general compliance requirements. Most importantly, the proposed amendments would require that the fund's contract with its custodian must provide that the custodian take all actions reasonably necessary or appropriate under applicable commercial and regulatory law to safeguard assets held by the custodian. This safeguarding of assets requirement is more flexible and less prescriptive than the current requirements in rule 17f–4. This reduces costs by creating a more efficient safeguarding process.

Allows more entities to operate securities depositories. Under the proposed amendments, more entities would be able to operate securities depositories. This would benefit the additional entities that are allowed to operate securities depositories such as registered transfer agents. These entities already perform depository-like functions[83] and the proposed amendments would codify this practice. Current rules only allow registered clearing agencies, of which there are 13, and those using the federal book-entry system, of which there are 12, to be securities depositories. The effect of the proposed amendments would be to allow approximately 200 registered transfer agents to operate depositories under the rule. This would increase competition for services, lowering costs and bettering services to investment companies.

Expands the functions of securities depositories. The proposed amendments to rule 17f–4 would enlarge the functions that a securities depository may perform on behalf of a fund. The amendments would clarify that securities depositories can hold assets, such as open-end fund shares or ''Treasury Direct'' securities, that are typically conveyed only through redemption by the issuer. Securities depositories also would be permitted to hold assets that are conveyed by physical delivery. These amendments would facilitate the use of centralized custody arrangements for investments. Costs would be reduced in the clearing and settlement process, because it is easier to clear and settle transactions with an entity that can hold almost all the assets of the fund than with several entities that hold separate portions of fund assets. Reducing the costs and fees associated with securities depositories and custodians should benefit each industry.

Makes more entities eligible to rely on rule 17f–4. The proposed amendments would benefit all of the approximately 800 registered non-management companies because they could rely on rule 17f–4 and maintain assets in a securities depository under the clear standards of the rule. Investors would benefit from this amendment because the non-management company assets would be maintained with a securities depository under the standards of rule 17f–4.

Reduces burdens on fund directors. The proposed amendments to rule 17f–4 would remove the burdens on fund directors to approve all custody arrangements and changes to those arrangements. Instead, a fund's officers would approve the fund's own arrangement with a custodian that uses a depository and its own arrangement directly with a depository.[84] The proposed amendments should benefit fund directors and fund shareholders by eliminating the need for fund directors to approve arrangements that have become increasingly routine.

B. Costs

The proposed amendments to rule 17f–4 would impose one-time costs on funds, custodians, and securities depositories. As discussed above, contracts between funds and custodians (or securities depositories) would need to be modified to include language that the custodian will take all actions reasonably necessary to safeguard the assets held by the custodian and that the custodian will provide periodic reporting on its internal accounting controls and financial strength to the fund. The modification of these contracts will impose some costs. During the first year, the Commission

[77] The number of registered investment companies is based on approximately 4,100 management investment companies, 795 unit investment trusts, and 5 face amount certificate companies.

[78] The proposed amendments would allow more entities to operate as a securities depository. This number is approximated by adding the following entities: 12 Federal Reserve Banks; 13 clearing agencies; and approximately 200 registered transfer agents.

[79] *See, e.g., supra* notes 27 and 34.

[80] The three custodial compliance requirements (the segregation, earmarking, and confirmation requirements) are discussed above. *See supra* note and accompanying text.

[81] The staff estimates that, to comply with the rule, each custodian spends about 10 hours segregating, 250 hours earmarking, and 250 hours on daily confirmations to funds. (510 hours × 130 custodians = 66,300 total hours by all custodians).

[82] The following is an estimated breakdown of the annual cost for custodians to comply with the three compliance requirements:

Segregation—10 total hours: 5 hours of support staff and 5 hours by professional staff.

Earmarking—250 hours: 125 hours of support staff and 125 hours of professional staff.

Daily Confirmations—250 hours: 250 hours of support staff.

Total: 380 hours of support staff ($30.58 per hour) and 130 hours of professional staff ($128 per hour). (380 × $30.58) + (130 × $128) = $28,260.40x 130 custodians = $3,673,852.

[83] *See supra* note and accompanying text.

[84] As noted above, however, a fund's directors should review the fund's custody arrangements as an exercise of their general oversight responsibilities.

staff estimates that it could take a total of approximately 10 hours and $1,555 [85] per fund to comply with the proposed amendments. It is estimated that all the funds together would spend approximately 45,160 hours [86] and $7,020,483 [87] to comply with the proposed amendments. This would be a one-time event, and the future contracts between funds and custodians (or securities depositories) would include this language. After the first year, the staff estimates that funds change custodians (or securities depositories) on average every 10 years, *i.e.,* each year only 10 percent of funds change custodians (or securities depositories). The Commission staff estimates each fund will spend approximately 2 hours and $393 [88] each year to ensure compliance with the contracts between funds and custodians or about 980 hours and $192,712 annually for all funds to ensure contract compliance after the first year.[89]

We request comment on the costs and benefits of the proposed rule amendments and invite commenters to submit their own estimates of costs and benefits that would result from the proposal. In order to fully evaluate the costs and benefits associated with the proposed amendments, we request that commenters' estimates of the costs and benefits of the proposed amendments be accompanied by specific empirical data supporting their estimates.

VI. Summary of Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 regarding the amendments to rule 17f–4 under the Investment Company Act. The following summarizes the IRFA.

The IRFA summarizes the background of the proposed amendments. The IRFA also discusses the reasons for the proposed amendments and the objectives of, and legal basis for, the amendments. Those items are discussed above in this release.

The IRFA discusses the effect of the proposed amendments on small entities. Rule 17f–4 specifies conditions under which funds maintain assets with securities depositories either directly, or through custodians that maintain assets with depositories. As a result, the proposed amendments to rule 17f–4 have the potential to affect (i) any fund that directly or indirectly uses securities depositories, (ii) its custodian, and (iii) any securities depository.

Approximately 4,900 registered investment companies, including approximately 230 registered investment companies that are small entities, would be affected by amended rule 17f–4.[90] Approximately 130 custodians, most of which are banks or registered broker-dealers, would be affected by rule 17f–4. Few if any of these custodians are small entities.[91] Approximately 225 entities would be permitted by the rule amendments to serve as fund securities depositories; few if any of these entities are small entities. The IRFA states that Commission staff expects the proposed amendments to have little impact on small entities. The rule amendments obligate fund custodians and depositories that deal directly with funds to undertake to take all actions reasonably necessary or appropriate to safeguard the fund's assets. These undertakings would not add to the existing obligations of funds, custodians, and depositories. Rather, they would assure that the fund's custodian or depository complies with the specified duties of a securities intermediary or issuer under Revised Article 8. In addition, the aggregate burden on small entities would be minimal because few of the affected entities (*i.e.,* funds, custodians, and depositories) are small entities.

The IRFA explains that the proposed amendments would significantly ease reporting, recordkeeping, and other compliance requirements of rule 17f–4. The rule currently provides that, if a fund holds securities in a depository through a custodian or its agents, the custodian must maintain the fund's securities in a depository account for the custodian's customers that is separate from the depository account for the custodian's own securities, and must identify on the custodian's records the portion of the total customer securities that belong to the fund. The custodian also must send the fund confirmations of transfers to or from the fund's account with the custodian.[92] In addition, a depository that deals directly with a fund must deliver the fund's securities to an appropriate successor if the depository no longer acts for the fund.[93] The proposed amendments would eliminate these requirements and substitute more general compliance requirements for custodians and depositories.[94]

The IRFA states that the Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant economic impact on small entities. As discussed above, few of the entities that would be affected by the proposed amendments to rule 17f–4 would be considered to be small entities for purposes of the Regulatory Flexibility Act. Moreover, the overall impact of the amendments would be to decrease the burdens on all entities, including small entities, because the burdens under the proposed amendments should be more than offset by the elimination of existing requirements. Therefore, the potential

[85] This number is calculated by adding the following:

Fund Directors—1 hour × $500 per hour = $500

In House Counsel—8 hours × $128 per hour = $1,024

Support Staff—1 hour x $30.58 per hour = $30.58

Total = 10 hours and $1,554.58

[86] This number is calculated by:

Renegotiation of contracts—multiply 97 percent of the 4,100 funds that already have contracts with custodians by 10 hours (3,977 × 10 hours = 39,770 hours).

New contracts—multiply 539 (490 non-management companies that use custodians + 49 funds that deal directly with securities depositories) by 10 hours (539 × 10 hours = 5,390 hours).

Total = 39,770 hours + 5,390 hours = 45,160 hours

[87] This number is calculated by:

Renegotiation of contracts—multiply 97 percent of the 4,100 funds that already have contracts with custodians by $1,554.58 (3,977 × $1,554.58 = $6,182,564.70).

New contracts—multiply 539 (490 non-management companies that use custodians + 49 funds that deal directly with securities depositories) by $1,554.58 (539 × $1,554.58 = $837,918.62).

Total = $6,182,564.70 + $837,918.62 = $7,020,483.32

[88] This number is calculated by adding the following:

Fund Director—.5 hours × $500 per hour = $250

In House Counsel—1 hour × $128 per hour = $128

Support Staff—.5 hours × $15 per hour = $15.29

Total = 2 hours and $393.29

[89] The annual hours and cost is calculated by multiplying the hours and cost per fund by 490 funds (10 percent of 4900 funds).
securities depositories) would likely incur minimal costs in providing copies of existing reports on internal accounting controls to funds. The rule amendments would not require the preparation of new reports.

[90] A fund is considered a small entity for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less. 17 CFR 270.0–10. There are approximately 4,900 registered investment companies, including 240 small entities. Approximately 97 percent of registered investment companies (4,750) report that they maintain assets in securities depositories. Assuming that a proportionate number of small entities use securities depositories, then approximately 230 registered investment companies that are small entities will be affected by the rule amendments.

[91] A bank is considered by the Small Business Administration to be a small entity if it has less than $100 million in assets. *See* 13 CFR 121.201 (1999). *See also* 5 USC 601(3). A bank's assets are determined by averaging its total assets reported for each of the last four quarters. *See* 13 CFR 121.201 n.8.

[92] *See* rule 17f–4(d)(2)–(3).

[93] *See* rule 17f–4(c)(2).

[94] Proposed rule 17f–4(a)(1) and (2)(i).

impact of the amendments on small entities should not be significant. For these reasons, alternatives to the proposed amendments and proposed new rule are unlikely to minimize any impact that the proposed amendments may have on small entities.[95]

The Commission encourages the submission of comments with respect to any aspect of the IRFA. Comment specifically is requested on the number of small entities that would be affected by the proposed amendments, and the likely impact of the proposed amendments on small entities. Commenters are requested to describe the nature of any impact and to provide empirical data supporting the extent of the impact. These comments will be considered in connection with the adoption of the rule amendments, and will be placed in the same public file as comments on the proposed rules themselves. A copy of the IRFA may be obtained by contacting Hugh P. Lutz, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0506.

VII. Paperwork Reduction Act

Certain provisions of the proposed amendments to rule 17f–4 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 [(44 U.S.C. 3501–3520)] (''PRA''), and the Commission is submitting the proposed amendments to the Office of Management and Budget in accordance with 44 U.S.C. 3507(d). The title for the collection of information is ''Custody of Investment Company Assets with a Securities Depository.'' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

The proposed amendments to rule 17f–4 would eliminate several collection of information requirements (specifically, the segregation, earmarking and confirmation requirements)[96] and replace them with more general requirements. The proposed amendments would require a modification of contracts between funds and custodians (or securities depositories) to provide that the custodian will take all actions reasonably necessary or appropriate under applicable commercial and regulatory law to safeguard fund assets.[97] In addition, the custody contract (or depository rules) would have to state that the custodian (or depository) will promptly provide periodic reports on its internal controls and financial strength, and available reports on the controls of any depository or intermediary custodian it uses.[98]

The Commission staff estimates that 5,255 respondents (including 4,900 registered investment companies,[99] 130 custodians, and 225 possible securities depositories[100]) would be subject to the proposed amendments to rule 17f–4. The rule is elective, but most, if not all, funds use depository custody arrangements.[101] The proposed amendments to the rule would increase the information collection burden by approximately 8,138 hours during the first year because of the required one-time contract modifications detailed above. After the first year, the information collection burden would decrease by approximately 36,042 hours annually. These changes are reflected in the summaries below:

First year burden	Paperwork burden hours
Current Rule 17f–4	42,600
Rule 17f–4 as proposed to be amended	50,738
Net Change	8,138
Annual Burden after First Year	
Current Rule 17f–4	42,600
Rule 17f–4 as proposed to be amended	6,558
Net Change	(36,042)

Arrangements between funds, custodians, subcustodians, and securities depositories are written arrangements according to business practice. The Commission believes that requiring investment companies to modify their existing contracts with custodians and depositories to incorporate the new compliance requirements would create an initial one-time burden of 10 hours per fund, or about 45,160 burden hours for all funds.[102]

The Commission estimates that after the first year, 490 investment companies[103] would spend on average 2 hours annually complying with the contract requirements of the rule (*i.e.,* signing contracts with additional custodians or securities depositories) for a total of 980 burden hours.

Currently rule 17f–4 requires custodians or their agents to send periodic reports to funds concerning internal accounting controls of the depository, the custodian, and its agents. The proposed amendments would require that this report include any reports on the financial strength of the custodian and any other available reports on the internal accounting controls of securities depositories or their operators and of any intermediary custodian. The Commission staff estimates that 130 custodians or their agents and 49 securities depositories[104] would spend 12 hours[105] annually in transmitting such reports to funds. The total annual burden hours for compliance with proposed rule 17f–4's reporting requirement is estimated to be 2,148 hours annually.

Under rule 17f–4, funds are required to approve any new depository arrangements or changes to existing

[95] Alternatives in this category would include: (i) establishing different compliance or reporting standards that take into account the resources available to small entities; (ii) clarifying, consolidating or simplifying the compliance requirements for small entities; (iii) using performance rather than design standards; and (iv) exempting small entities from coverage of all or part of the rule.

[96] *See supra* note 39 and accompanying text.

[97] If the fund deals directly with a depository, the depository's contract or rules for participants would be required to provide that the depository would meet similar obligations.

[98] This provision is designed to assure that the fund (or its adviser) receives any reports that are already available about the financial soundness of the custodian and depository. The provision would not require the special preparation of additional reports.

[99] The number of registered investment companies comprises approximately 4,100 management investment companies, 795 unit investment trusts, and 5 face amount certificate companies.

[100] The proposed amendments would increase the types of entities eligible to serve as depositories. The estimate of 225 possible entities is reached by adding the following: 12 Federal Reserve Banks, 13 clearing agencies, and approximately 200 registered transfer agents.

[101] The Commission staff estimates that more than 97 percent of all funds now use depository custody arrangements. This estimate is based on responses to Item 18 of Form N–SAR [17 CFR 274.101].

[102] The Commission staff estimates that 97 percent of the 4,100 registered management companies (3,977 funds) would have to renegotiate their custodial contracts to comply with the proposed amendments. In addition, the staff estimates that 490 of the 800 non-management companies would enter into new custodial contracts consistent with the proposed amendments. The staff estimates that 49 investment companies deal directly with securities depositories and would enter into contracts with securities depositories consistent with the proposed amendments. The staff estimates that it would take 10 hours per fund to comply with the two contract provisions required by the proposed amendments. The total number of burden hours for the first year would be 45,160 hours (4,516 funds × 10 hours).

[103] The staff estimates that approximately 10 percent of all funds, or 490 funds, approve new depository custody arrangements yearly, *i.e.*, a fund changes custodians (or securities depositories) every 10 years.

[104] The proposed amendment also would extend this requirement to securities depositories with which a fund deals directly. Commission staff estimates that 49 funds, or about one percent of funds, deal directly with securities depositories.

[105] Custodians or their agents usually send out periodic reports twice a year. Currently, it is estimated that custodians or their agents spend 6 burden hours per report to fulfill the requirement of rule 17f–4.

depository arrangements. The staff estimates that 490 funds per year currently spend 8 hours annually reviewing these arrangements and the modifications to them. The proposed amendments to the rule would require a fund to approve only its own custody arrangements with a custodian or securities depository; the staff estimates that on average 490 funds per year will spend 6 hours in approving custody arrangements. The total burden hours for this requirement are 2,940 annual burden hours.

If a fund deals directly with a securities depository, the proposed amendments to rule 17f–4 would require that the fund implement internal control systems reasonably designed to prevent unauthorized officer's instructions (by providing at least for the form, content, and means of giving, recording, and reviewing all officer's instructions). Currently rule 17f–4 requires funds to have internal control systems designed to prevent unauthorized instructions. The Commission staff estimates that 49 funds, or one percent of all funds, will spend 10 hours annually implementing systems to prevent unauthorized officer's instructions, resulting in 490 burden hours for this requirement under the proposed amendments to rule 17f–4.

We request your comments on the accuracy of our estimates. Pursuant to 44 U.S.C. 3506(c)(2)(b), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimates of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609 with reference to File No. S7–22–01. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–22–01, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 5th Street, NW., Washington, DC 20549.

VIII. Statutory Authority

The Commission is proposing to amend rule 17f–4 pursuant to the authority set forth in sections 6(c), 17(f), 26, 28, 30, 31, and 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a–6(c), 80a–17(f), 80a–26, 80a–28, 80a–29, 80a–30, and 80a–37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

2. Section 270.17f–4 is revised to read as follows:

§ 270.17f–4. Custody of investment company assets with a securities depository.

(a) *Custody arrangement with a securities depository.* A Fund or its Custodian may place and maintain Assets with a Securities Depository, *provided that:*

(1) *Contract with custodian.* If the Fund uses a Securities Depository through its Custodian (or through the Fund's trustee, if the Fund is a Non-Management Company), the Fund's contract with the Custodian (or trustee) provides that the Custodian will:

(i) Take all actions reasonably necessary or appropriate under applicable commercial and regulatory law to safeguard Assets maintained by the Custodian with a Securities Depository or Intermediary Custodian for the benefit of the Fund; and

(ii) Promptly provide periodic reports concerning the internal accounting controls and financial strength of the Custodian, and available reports concerning the internal accounting controls of any Securities Depository or its operator and of any Intermediary Custodian.

(2) *Direct dealings with securities depository or non-management company arrangements.* If the Fund maintains Assets directly with a Securities Depository, or is a Non-Management Company:

(i) The Fund's contracts with the Securities Depository or its operator, or the Securities Depository's written rules for its participants, provide that the Securities Depository will, in performing its duties, comply with obligations comparable to those of a Custodian under paragraphs (a)(1)(i) and (ii) of this section; and

(ii) The Fund (or the Fund's trustee, if the Fund is a Non-Management Company) has implemented internal control systems reasonably designed to prevent unauthorized Officer's Instructions (by providing at least for the form, content, and means of giving, recording, and reviewing all Officer's Instructions).

(3) *Fund's approval.* An officer of the Fund (or a trustee of a Fund that is a Non-Management Company) has approved each of the Fund's own custody arrangements with its Custodian or with a Securities Depository under this paragraph (a).

(4) *Operators of a securities depository.* The Securities Depository is operated by:

(i) A Federal Reserve Bank or other person authorized to hold custody of securities in the federal book-entry system described in regulations of the United States Department of the Treasury codified at 31 CFR Part 357, Subparts B and C, or comparable regulations of other federal agencies affecting the book-entry system;

(ii) A clearing agency registered with the Commission under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1); or

(iii) A transfer agent registered with the Commission or other appropriate regulatory agency as provided in section 17A of the Securities Exchange Act of 1934 (15 U.S.C 78q–1), when acting as agent for an open-end registered investment company whose securities it holds.

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

(1) *Assets* means cash and securities and similar investments that are owned by the Fund or held by another person for the benefit of the Fund.

(2) *Custodian* means a bank or other person authorized to hold Assets for the Fund under section 17(f) of the Act (15 U.S.C. 80a–17(f)) or Commission rules in this chapter, but does not include a Fund itself, a Safekeeping Facility, or a Foreign Custodian.

(3) *Foreign Custodian* means a custodian whose use is governed by § 270.17f–5 or § 270.17f–7.

(4) *Fund* means an investment company registered under the Act.

(5) *Intermediary Custodian* means any subcustodian through which a Custodian maintains any Assets with a Securities Depository, if the subcustodian is qualified to act as a Custodian.

(6) *Officer's Instruction* means a request or direction to a Securities Depository or its operator in the name of the Fund by one or more persons authorized by the Fund's board of directors (or by the Fund's trustee, if the Fund is a Non-Management Company) to give it.

(7) *Non-Management Company* means a Fund that is a unit investment trust or a face-amount certificate company.

(8) *Safekeeping Facility* means any vault, safe deposit box, or other repository for safekeeping maintained by a bank or other company whose functions and physical facilities are supervised by a federal or state authority, if the Fund maintains its own Assets there in accordance with § 270.17f–2.

(9) *Securities Depository* means a system for the central handling of Assets in which Assets are treated as fungible and are transferred, pledged, or otherwise acquired or disposed of by bookkeeping entry without physical delivery, or by physical delivery within or through the system.

Note to § 270.17f–4: If a Fund's (or its custodian's) custody arrangement with a Securities Depository involves one or more Eligible Foreign Custodians (as defined in § 270.17f–5) through which assets are maintained with the Securities Depository, § 270.17f–5 will govern the Fund's (or its custodian's) use of each Eligible Foreign Custodian.

Dated: November 15, 2001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–29021 Filed 11–20–01; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 3

Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule outlines the conditions for appropriate use enacted by law, defines a nontraditional Defense contractor, and provides audit policy application to transactions other than contracts, grants or cooperative agreements for prototype projects. It directly impacts the public by prescribing conduct that must be followed by a party to, or entity that participates in the performance of any such transaction.

DATES: Comments on the proposed rule must be received in writing to the address specified below on or before January 22, 2002, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Office of the Director, Defense Procurement, Attn: Ms. Teresa Brooks, PDUSD(A&T)/DP(CPA), 3060 Defense Pentagon, Washington, DC 20301–3060. Telefax (703) 614–1254.

FOR FURTHER INFORMATION CONTACT: Teresa Brooks, (703) 695–8567.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, Pub.L. 103–160, as amended, authorizes the Secretary of a Military Department, the Director of Defense Advanced Research Projects Agency and any other official designated by the Secretary of Defense, to enter into transactions other than contracts, grants or cooperative agreements for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense. Such transactions are commonly referred to as ''other transaction'' agreements for prototype projects. To the extent that a particular statute or regulation is limited in its applicability to the use of a procurement contract, it would generally not apply to ''other transactions'' for prototype projects.

Part 3 to 32 CFR was initially established to implement the section 801 of the National Defense Authorization Act for Fiscal Year 2000 requirement that an ''other transaction'' agreement for a prototype project that provides for payments in a total amount in excess of $5,000,000 include a clause that provides Comptroller General access to records. However, there are additional requirements that now warrant public comment and expansion of part 3 to 32 CFR. Specifically, section 803 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub.L. 106–398) identified conditions for appropriate use of the authority and defined a nontraditional Defense contractor. In addition, the Department has developed audit policy applicable to transactions for prototype projects. These additional requirements are addressed in this proposed rule.

Regulatory Evaluation

Executive Order 12866, ''Regulatory Planning and Review.''

It has been determined that this rule is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

Unfunded Mandates Reform Act (Sec. 202, Pub.L. 104–4).

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Pub.L. 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601).

It has been certified that this part is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule does not require additional record keeping or other significant expense by project participants.

Pub.L. 96–511, ''Paperwork Reduction Act of 1995'' (44 U.S.C. 3501 et seq.)

It has been certified that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

Federalism (Executive Order 13132).

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132.

List of Subjects in 32 CFR Part 3

Grants program.

Accordingly, part 3 to 32 CFR proposed to be amended as follows:

PART 3—TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS

1. The authority citation for part 3 is revised to read as follows:

Authority: Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Pub.L. 103–160), as amended.

2. Section 3.1 is proposed to be revised to read as follows:

§ 3.1 Purpose.

This part consolidates rules that implement section 845 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, as amended, and have a significant impact on the public. Section 845 authorizes the Secretary of a Military Department, the Director of Defense Advanced Research Projects Agency, and any other official designated by the Secretary of Defense, to enter into transactions other than contracts, grants, or cooperative agreements in certain situations for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense.

3. Section 3.4 is proposed to be redesignated as section 3.6 and §§ 3.2 and 3.3 are proposed to be redesignated as §§ 3.3 and 3.4.

4. New § 3.2 is proposed to be added to read as follows:

§ 3.2 Background.

''Other transactions'' is the term commonly used to refer to the 10 U.S.C. 2371 authority to enter into transactions other than contracts, grants or cooperative agreements. ''Other Transactions'' are generally not subject to the federal laws and regulations limited in applicability to contracts, grants or cooperative agreements. As such, they are not required to comply with the Federal Acquisition Regulation (FAR) and its supplements.

5. Newly redesignated section 3.4 is proposed to be amended to add the following new definitions in alphabetical order:

§ 3.4 Definitions.

Agreements Officer. An individual with the authority to enter into, administer, or terminate OTs for prototype projects and make regulated determinations and findings.

Business unit. Any segment of an organization, or an entire business organization which is not divided into segments.

* * * * *

Key participant. A business unit that makes a significant contribution to the prototype project. Examples of a ''significant contribution'' include supplying new key technology or products, accomplishing a significant amount of the effort, or in some other way causing a material reduction in the cost or schedule or increase in performance.

Nontraditional defense contractor. A business unit that has not, for a period of at least one year prior to the date of the OT agreement, entered into or performed on

(1) Any contract that is subject to full coverage under the cost accounting standards prescribed pursuant to section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 422) and the regulations implementing such section; or

(2) Any other contract is excess of $500,000 to carry out prototype projects or to perform basic, applied, or advanced research projects for a Federal agency, that is subject to the Federal Acquisition Regulation.

Procurement contract. A contract award pursuant to the Federal Acquisition Regulation.

Segment. One of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service.

Senior Procurement Executive. (1) Department of the Army—Assistant Secretary of the Army (Acquisition, Logistics and Technology); (2) Department of the Navy—Assistant Secretary of the Navy (Research, Development and Acquisition); (3) Department of the Air Force—Assistant Secretary of the Air Force (Acquisition). (4) The Directors of Defense Agencies have been delegated authority to act as Senior Procurement Executive for their respective agencies.

6. New section 3.5 is proposed to be added to read as follows:

§ 3.5 Appropriate use.

(a) In accordance with statute, this authority may be used only when:

(1) At least one nontraditional Defense contractor is participating to a significant extent in the prototype project; or

(2) No nontraditional Defense contractor is participating to a significant extent in the prototype project, but at least one of the following circumstances exists:

(i) At least one third of the total cost of the prototype project is to be paid out of funds provided by non-Federal parties to the transaction.

(ii) The Senior Procurement Executive for the agency determines in writing that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a procurement contract.

(b) When a nontraditional Defense contractor is not participating to a significant extent in the prototype project and cost-sharing is the reason for using OTA, then the non-Federal amounts counted as provided, or to be provided, by a party to the OT agreement (including any entity that participates in the performance of the agreement or a subordinate element of the party or entities) may not include costs that were incurred before the date on which the OT agreement becomes effective. Costs that were incurred for a prototype project by a party, entity or subordinate element after the beginning of negotiations, but prior to the date the OT agreement becomes effective, may be counted as non-Federal amounts if and to the extent that the Agreements Officer determines in writing that

(1) The party, entity or subordinate element incurred the costs in anticipation of entering into the OT agreement; and

(2) It was appropriate for the party, entity or subordinate element to incur the costs before the OT agreement became effective in order to ensure the successful implementation of the OT agreement. As a matter of policy, these same restrictions apply any time cost-sharing may be recognized when using OTA.

7. Section 3.7 is proposed to be added to read as follows:

§ 3.7 Audit policy.

(a) *General.* This policy applies only when an agreement:

(1) Uses amounts generated from the awardee's financial or cost records as the basis for payment, or

(2) Requires at least one third of the total costs to be provided by non-federal parties pursuant to statute. For example, this policy applies when an agreement calls for interim or actual cost reimbursement, including payable milestones that provide for adjustment based on amounts generated from the awardee's financial or costs records. In these circumstances, Agreements Officers must include appropriate audit access clauses in the agreement. Sample clauses are provided in paragraph (g) of this section. Sample 3 must be used verbatim when the use of an independent public accountant (IPA) is authorized. Agreement Officers may tailor the remaining sample clauses, but

must ensure all such clauses are structured consistently with this guidance in this policy.

(b) *Key participants.* In addition, Agreements Officers must require awardees to insert an appropriate audit access clause in awards to key participants who:

(1) Contribute to the statutory cost share requirement or

(2) Are expected to receive payments that exceed $300,000 and will be based on amounts generated from financial or cost records. Unless otherwise permitted by the Agreements Officer, the sample clauses may be altered by the awardee only as necessary to identify properly the contracting parties and the Agreements Officer.

(c) *Frequency of audits.* An agreement audit normally will be peformed only when the Agreements Officer determines it is necessary to verify the awardee's compliance with the terms of the agreement.

(d) *Means of accomplishing any required audits.* (1) *Single Audit Act.* When the awardee or key participant is a state government, local government, or nonprofit organization whose Federal procurement contracts and financial assistance agreements are subject to the Single Audit Act (Public Law 104–156, dated 5 July 1996), the agreement must follow the provisions of that Act. The Single Audit Act is implemented by OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations,'' and DoD Directive 7600.10 [1], ''Audits of State and Local Governments, Institutions of Higher Education, and Other Nonprofit Institutions.'' The Act is intended to minimize the duplication of audit activity and provides for the use of IPAs, to conduct annual audits of state or local governments and educational or other nonprofit organizations.

(2) *Business units currently performing on procurement contracts subject to the Cost Principles or Cost Accounting Standards.* DCAA must perform any necessary audits if, at the time of agreement award, the awardee or key participant is performing a procurement contract that is subject to the Cost Principles (48 CFR part 31) and/or Cost Accounting Standards (48 CFR part 99) and is not subject to the Single Audit Act. Any decision to not use DCAA in such cases must be approved by the DoD Office of the Inspector General (OIG) prior to awarding an agreement that provides for the possible use of an IPA. When such cases arise, Agreements Officers should contact the Deputy Assistant Inspector General (Audit Policy and Oversight).

(3) *Business units not currently performing on procurement contracts subject to the cost principles or cost accounting standards.* DCAA or a qualified IPA may perform any necessary audit if, at the time of agreement award, the awardee or key participant is not performing a procurement contract subject to the Cost Principles or Cost Accounting Standards and is not subject to the Single Audit Act. An IPA may be used only when there is a statement in the Agreements Officer's file that the business unit:

(i) Is not performing a procurement contract subject to the Cost Principles or Cost Accounting Standards at the time of agreement award, and

(ii) Will not accept the agreement if the Government has access to the business unit's records. Agreements Officer should grant approval to use an IPA in this instance and provide input in Part III of the required annual report submission. The Part III input must identify, for each business unit that is permitted to use an IPA, the business unit's name and address and the expected value of its award. The IPA is to be paid by the awardee or key participant. This cost will be reimbursable based on the business unit's established accounting practices and subject to any limitations in the agreement. The Agreements Officer is responsible for determining, with advice from the OIG, whether an IPA audit has been performed in accordance with Generally Accepted Government Auditing Standards.

(A) *Necessary provisions.* The agreement must include the Sample 3 audit access clause verbatim, when the use of an IPAA is authorized.

(B) *Awardee flow-down responsibilities.* Agreements must require awardees to include the ''necessary provisions'' in agreements with key participants receiving total payments that

(*1*) Exceed $300,000;

(*2*) Are based on amounts generated from cost or financial records or contribute to statutory cost share requirements; and

(*3*) Provide for use of an IPA. In such cases, the awardee must provide written notice, identifying the business unit name and address and expected value of award, to the Agreements Officer. However, the key participant may provide the information directly to the Agreements Officer if this is agreeable to the awardee.

(e) *Scope of required audits.* The Agreements Officer should coordinate with the auditor regarding the nature of any review to be conducted. The Agreements Officer may request a traditional audit, where the auditor determines the scope of the review, or the Agreements Officer may request a review of only specific cost elements. While the auditor also determines the scope of these reviews, the reviews are limited to the cost elements specified by the Agreements Officer. For example, the Agreements Office might request a review of only the direct labor costs. Finally, the Agreements Officer may request an ''agreed-upon procedures'' review. Under this review, the Agreements Officer specifies not only the cost elements to be reviewed, but also the procedures to be followed in conducting that review. For example, the Agreements Officer might request that the auditor verify the costs claimed to the awardee's general and job cost ledgers.

(f) *Length and extent of access.* (1) Agreements must provide for the Agreements Officer's authorized representative to have direct access to sufficient records to ensure full accountability for all Government funding or statutorily required cost share under the agreement. This access must be allowed for a specified period of time (normally 3 years) after final payment, unless notified otherwise by the Agreements Officer. In the case where an IPA is used, the representative must have direct access to the IPA's audit reports and working papers to ensure accountability for funding or cost share.

(2) In accordance with statute, if an agreement gives the Agreements Officer or another DoD component official access to a business unit's records, the DoDIG and GAO must receive the same access to those records.

(g) *Sample audit access clauses.* (1) *Sample 1:* Clause for awardees [insert name, if desired], that have a contract, grant, or cooperative agreement subject to the Single Audit Act:

The awardee shall comply with all aspects of the Single Audit Act.

(2) *Sample 2:* Clause for awardees [insert name, if desired] that are not subject to the Single Audit Act but have a contract subject to Cost Principles and/or Cost Accounting Standards:

The Agreements Officer, or an authorized representative, shall have the right to examine or audit the awardee's records during the period of the agreement and for three years after final payment, unless notified otherwise by the Agreements Officer. The Agreements Officer, or an authorized representative, shall have direct access to sufficient records to ensure full accountability for all Government funding or to verify statutorily required cost share under the agreement.

[1] Copies may be obtained via Internet at http://www.dtic.mil/whs.directives.

(3) *Sample 3:* Clause for awardees [insert name, if desired] that are not subject to the Single Audit Act, do not have a procurement contract subject to Cost Principles (48 CFR part 31) and/or Cost Accounting Standards (48 CFR part 99), and refuse to accept Government access to their records:

The Agreements Officer shall have the right to request an examination or audit of the awardee's records during the period of the agreement and for three years after final payment, unless notified otherwise by the Agreements Officer. The audit will be conducted by an independent public accountant (IPA), subject to the following conditions:

(i) The audit shall be performed in accordance with Generally Accepted Government Auditing Standards (GAGAS).

(ii) The Agreements Officers' authorized representative shall have the right to examine the IPA's audit report and working papers for 3 years after final payment or three years after issuance of the audit report, whichever is later, unless notified otherwise by the Agreements Officer.

(iii) The IPA shall send copies of the audit report to the Agreements Officer and the Assistant Inspector General (Audit Policy and Oversight) [AIG(APO)], 400 Army Navy Drive, Suite 737, Arlington, VA 22202.

(iv) The IPA shall report instances of suspected fraud directly to the DoDIG.

(v) When the Agreements Officer determines (subject to appeal under the disputes clause of the agreement) that the audit has not been performed within twelve months of the date requested by the Agreements Officer or has not been performed in accordance with GAGAS or any other pertinent provisions of the agreement, the Government shall have the r8ight to require corrective action by the awardee. The awardee may take corrective action by having the IPA correct any deficiencies identified by the Agreements Officer, having another IPA perform the audit, or electing to have the Government perform the audit. If corrective action is not taken, the Agreements Officer shall have the right to take one or more of the following actions:

(A) Withhold or disallow a percentage of costs until the audit is completed satisfactorily;

(B) Suspend performance until the audit is completed satisfactorily; and/or

(C) Terminate the agreement.

(vi) If it is found that the awardee was performing a procurement contract subject to Cost Principles (48 CFR part 31) and/or Cost Accounting Standards (48 CFR part 99) at the time of agreement award, the Agreements Officer, or an authorized representative, shall have the right to audit sufficient records of the awardee to ensure full accountability for all Government funding or to verify statutorily required cost share under the agreement. The awardee shall retain such records for three years after final payment, unless notified otherwise by the Agreements Officer.

(4) *Sample 4:* Clause for all awardees for flowing down requirements:

The awardee shall flow down the applicable audit access requirements in agreements with key participants who contribute to statutory cost share requirements or will receive total payments that exceed $300,000 and are based on amounts generated from cost or financial records. The awardee shall request audits of key participants when the Agreements Officer advises that audits are necessary. The Agreements Officer will provide sample audit access clauses to the awardee. Unless otherwise permitted by the Agreements Officer, the awardee shall alter the sample clauses only as necessary to identity properly the contracting parties and the Agreements Officer. The awardee shall provide a statement to the Agreements Officer when a business unit meets the conditions for use of an Independent Public Accountant (other than pursuant to the Single Audit Act) for any needed audits. The statement shall include the business unit's name and address, and the expected value of its award. The statement must show that the business unit currently is not performing on a procurement contract subject to the Cost Principles (48 CFR part 31) and/or Cost Accounting Standards (48 CFR part 99) and refuses to allow Government access to its records. The key participant may provide this statement directly to the Agreements Officer if this is agreeable to the awardee.

Dated: November 15, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–29008 Filed 11–20–01; 8:45 am]

BILLING CODE 5001–08–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7106–2]

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendment.

SUMMARY: The EPA is proposing to amend the national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. This action changes the deadline for existing sources submitting precompliance plans. Rather than requiring the precompliance plans 6 months in advance of the compliance date, the amended rule will require the plans 3 months in advance. Under the promulgated rule, precompliance plans for existing sources would be due December 23, 2001. With this action, these plans will be due by March 23, 2002.

In the ''Rules and Regulations'' section of this **Federal Register**, we are making this change in a direct final rule without prior proposal because we view it as minor and noncontroversial, and we anticipate no adverse comments. We have explained our reasons for this change in the preamble to the direct final rule.

If we receive no adverse comments, we will take no further action on this proposed rule. If we receive an adverse comment on the revised definition, we will publish a timely withdrawal of the direct final rule, and it will not take effect. If we receive adverse comment, we will respond to all such comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: *Comments.* Written comments must be received by December 6, 2001.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, Room M–1500, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. A separate copy of each public comment must also be sent to the contact person listed below in **FOR FURTHER INFORMATION CONTACT.** Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

Docket. Docket No. A–95–20 contains supporting information used in developing the NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW, Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (Mail Code C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711 (express packages to 4930 Old Page Road, Research Triangle Park, North Carolina 27709), telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect version 5.1, 6.1, or Corel 8 file format. All comments and data

submitted in electronic form must note the docket number A–95–20. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Randy McDonald, c/o OAQPS Document Control Officer (MD–C404–02), U.S. EPA, Research Triangle Park, NC 27709. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this proposed rule will also be available through the WWW. Following signature, a copy of this action will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	Typically, 325199 and 325320	Typically, 2869 and 2879	• Producers of pesticide active ingredients that contain organic compounds that are used in herbicides, insecticides, or fungicides. • Producers of any integral intermediate used in onsite production of an active ingredient used in an herbicide, insecticide, or fungicide.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the proposed revisions to the regulation affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR part 63, subpart MMM. If you have questions regarding the applicability of this proposed amendment to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. What Action Is EPA Proposing?

This proposal would change the date that the precompliance plan must be submitted from 6 months prior to the compliance date to 3 months prior to the compliance date. For further information, please see the information provided in the direct final rulemaking notice located in the ''Rules and Regulations'' section of today's **Federal Register**.

II. What Are the Administrative Requirements for This Action?

Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule amendment on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 325320 that has as many as 500 employees; (2) a small business in NAICS code 325199 that has as many as 1,000 employees; (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule amendment on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact on small entities'' (5 U.S.C. sections 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The EPA has determined that none of the small entities will experience a

significant impact because the proposed amendment imposes no additional regulatory requirements on owners or operators of affected sources.

For information regarding other administrative requirements for this action, please see the direct final rule action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 16, 2001.

Christine Todd Whitman,

Administrator.

[FR Doc. 01–29068 Filed 11–20–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7106–7]

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendment.

SUMMARY: The EPA is proposing to amend the National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production. This action proposes to revise the definition of the term ''process tank.''

In the ''Rules and Regulations'' section of this **Federal Register**, we are making this change in a direct final rule without prior proposal because we view it as minor and noncontroversial, and we anticipate no adverse comments. We have explained our reasons for this change in the preamble to the direct final rule.

If we receive no adverse comments, we will take no further action on this proposed rule. If we receive an adverse comment on the revised definition, we will publish a timely withdrawal of the direct final rule, and it will not take effect. If we receive adverse comment, we will respond to all such comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: *Comments.* Written comments must be received by December 21, 2001, unless a hearing is requested by December 3, 2001. If a hearing is requested, written comments must be received by January 7, 2002.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by December 3, 2001, a public hearing will be held on December 5, 2001.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, Room M–1500, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below in **FOR FURTHER INFORMATION CONTACT.** Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina at 10:30 a.m.

Docket. Docket No. A–95–20 contains supporting information used in developing the NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address mcdonald.randy@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect version 5.1, 6.1, or Corel 8 file format. All comments and data submitted in electronic form must note the docket number A–95–20. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Randy McDonald, c/o OAQPS Document Control Officer (Room 740B), U.S. EPA, 411 W. Chapel Hill Street, Room 944, Durham, NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Maria Noell, U.S. EPA, MD–13, Research Triangle Park, NC 27711, telephone (919) 541–5607, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Maria Noell to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning this proposed amendment.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this proposed rule will also be available through the WWW. Following signature, a copy of this action will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules http://www.epa.gov/ttn/oarpg. The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more

information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	Typically, 325199 and 325320	Typically, 2869 and 2879	• Producers of pesticide active ingredients that contain organic compounds that are used in herbicides, insecticides, or fungicides. • Producers of any integral intermediate used in onsite production of an active ingredient used in an herbicide, insecticide, or fungicide.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the proposed revisions to the regulation affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR part 63, subpart MMM. If you have questions regarding the applicability of this proposed amendment to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. What Action Is EPA Proposing?

This proposal would revise the definition of ''process tank'' in 40 CFR part 63, subpart MMM. For further information, please see the direct final rulemaking notice located in the ''Rules and Regulations'' section of today's **Federal Register**.

II. What Are the Administrative Requirements for This Action?

Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule amendment on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 325320 that has as many as 500 employees; (2) a small business in NAICS code 325199 that has as many as 1,000 employees; (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule amendment on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact on small entities'' (5 U.S.C. Sections 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The EPA has 1 determined that none of the small entities will experience a significant impact because the proposed amendment imposes no additional regulatory requirements on owners or operators of affected sources.

For information regarding other administrative requirements for this action, please see the direct final rule action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 15, 2001.

Christine Todd Whitman,

Administrator.

[FR Doc. 01–29099 Filed 11–20–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2568; MM Docket No. 01–311, RM–10318]

Radio Broadcasting Services; Burney, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes an allotment in Burney, CA. The Commission requests comment on a petition filed by Corey J. McCaslin proposing the allotment of Channel 225A at Burney, California, as the community's first competing FM broadcast service. Channel 225A can be allotted to Burney in compliance with the Commission's minimum distance separation requirements at center city coordinates without site restriction. The coordinates for Channel 225A at Burney are 40–52–56 North Latitude and 121–39–34 West Longitude. See **SUPPLEMENTARY INFORMATION** infra.

DATES: Comments must be filed on or before December 24, 2001, and reply comments on or before January 8, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Corey J. McCaslin, Post Office Box 7612, Chico, California 94592.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Mass Media Bureau (202)418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of

Proposed Rule Making, MM Docket No. 01–311, adopted October 31, 2001 and released November 2, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202)863–2893.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 225A at Burney.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–29086 Filed 11–20–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2569; MM Docket No. 99–244; RM–9678, 9873]

Radio Broadcasting Services; Cumberland, KY and Weber City, VA; Glade Spring, Marion, Richlands and Grundy, VA

AGENCY: Federal Communications Commission.

ACTION: Order to show cause.

SUMMARY: The Commission requests a written statement from Virginia-Kentucky Broadcasting Co., why its license should not be modified to specify operation on Channel 264A in lieu of Channel 249A at Grundy, Virginia, to accommodate the counterproposal filed by Holston Valley Broadcasting Corporation requesting the allotment of Channel 274A at Glade Spring, Virginia. See 14 FCC Rcd 10545 (1991). Channel 249A can be substituted at Grundy in compliance with the Commission's minimum distance separation requirements at Station WMJD(FM)'s presently licensed site. The coordinates for Channel 249A at Grundy are 37–18–08 North Latitude and 82–07–04 West Longitude.

DATES: Statements must be filed on or before December 24, 2001.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing a written statement to FCC, Virginia-Kentucky Broadcasting Co., should serve the following: William J. Pennington, Esq., Post Office Box 403, Westfield, Massachusetts 01086 (Counsel for Cumberland City Broadcasting Co.); and Dennis J. Kelly, Esq., Post Office Box 6648, Annapolis, Maryland 21401 (Counsel for Holston Valley Broadcasting Corporation).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order to Show Cause, MM Docket No. 99–244, adopted October 24, 2001, and released November 2, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–29087 Filed 11–20–01; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 66, No. 225
Wednesday, November 21, 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

Office of the Secretary

State of Wisconsin Department of Agriculture, Trade and Consumer Protection Soil and Water Resource Management Grant Program; Determination of Primary Purpose of Program Payments for Consideration as Excludable From Income Under Section 126 of the Internal Revenue Code of 1954, as Amended

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that all State cost-share payments made to individuals under the Soil and Water Resource Management Grant Program are made primarily for the purpose of conserving soil and water resources. This determination is made in accordance with section 126 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 126). The determination permits recipients of these cost-share payments to exclude from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Dave Jelinski, Director, Land and Water Resources Bureau, Wisconsin Department of Agriculture, Trade and Consumer Protection, Post Office Box 8911, Madison, Wisconsin 53708–8911 or Mark W. Berkland, Director, Conservation Operations Division, USDA Natural Resources Conservation Service, Post Office Box 2890, Washington, DC 20013.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 126), provides that certain payments made to persons under State conservation programs may be excluded from the recipient's gross income for Federal income tax purposes, if the Secretary of Agriculture determines that payments are made ''primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests or providing a habitat for wildlife.'' The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR part 14, and makes a ''primary purpose'' determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that payments made under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

Procedural Matters: The authorizing legislation, regulations, and operating procedures regarding the Wisconsin Department of Agriculture, Trade and Consumer Protection's Soil and Water Resource Management Grant Program have been examined using the criteria set forth in 7 CFR part 14. The Secretary of Agriculture has concluded that the cost-share payments made for implementation of projects under the Soil and Water Resources Management Grant Program are primarily for the purpose of conserving soil and water resources. A ''Record of Decision, Wisconsin Department of Agriculture, Trade and Consumer Protection Soil and Water Resource Management Grant Program, Primary Purpose Determination for Federal Tax Purposes'' has been prepared and is available upon request from Dave Jelinski, Director, Land and Water Resources Bureau, Wisconsin Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, Second Floor, Post Office Box 8911, Madison, Wisconsin 53708–8911 or Mark W. Berkland, Director, Conservation Operations Division, USDA Natural Resources Conservation Service, Post Office Box 2890, Washington, DC 20013.

Determination: As required by section 126(b) of the Internal Revenue Code of 1954, as amended, we have examined the authorizing legislation, regulations, and operating procedures regarding the Wisconsin Department of Agriculture, Trade and Consumer Protection Soil and Water Resource Management Grant Program. In accordance with the criteria set out in the CFR part 14, we have determined that all cost-share payments for implementing projects under the Soil and Water Resource Management Grant Program are primarily for the purpose of conserving soil and water resources. Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income, for Federal income tax purposes, all or part of such cost-share payments made under said program.

Signed in Washington, DC on November 15, 2001.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 01–29017 Filed 11–20–01; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[FV–02–334]

United States Standards for Grades of Apple Juice From Concentrate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is soliciting comments on its proposal to create new United States Standards for Grades of Apple Juice from Concentrate. USDA has received a petition from a major association to create grade standards for apple juice from concentrate that will include a description of the product, style, grades, ascertaining the grade by sample, and ascertaining the grade by lot. This proposal will provide a common language for trade, a means of measuring value in the marketing of apple juice from concentrate, and provide guidance in the effective utilization of apple juice from concentrate.

DATES: Comments may be submitted on or before January 22, 2002.

ADDRESSES: Written comments may be submitted to: Lydia E. Berry, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Avenue SW., Washington, DC 20250–0247; fax (202) 690–1087; or e-mail *lydia.berry@usda.gov*. Comments should reference the date and page of this issue of the **Federal Register**. All comments received will be made available for public inspection at the address listed

above during regular business hours and on the Internet.

The draft of the United States Standards for Grades Apple Juice from Concentrate is available either through the address cited above or by accessing the AMS Home Page on the Internet at: *www.ams.usda.gov.fv/ppb.html.* Any comments received, regarding this proposed standard will also be posted on that site.

FOR FURTHER INFORMATION CONTACT: Lydia E. Berry at (202) 720–5021 or e-mail at *lydia.berry@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and make copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables no longer appear in the Code of Federal Regulations but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is proposing to establish the U.S. Standards for Grades of Apple Juice from Concentrate using the procedures that appear in part 36 of Title 7 of the Code of Federal Regulations (7 CFR part 36).

On May 28, 1996, Processed Apples Institute, Inc., an association of producers of processed apple products, requested that USDA develop a standard for apple juice from concentrate to be used by the industry. The petitioner provided information on style, and descriptions to AMS to develop the standard.

After researching the issue, AMS prepared a discussion draft of the apple juice from concentrate standard, and distributed copies for input to the petitioner, and the National Food Processors Association (NFPA). Input from the above groups was used to develop the proposed standard.

Based on the results of the information gathered, AMS is proposing to establish a standard for apple juice from concentrate following the standard format for U.S. Grade Standards. AMS is proposing to define ''apple juice from concentrate'' and establish ''clear'' and ''cloudy'' as the style designations. The proposal will also define the quality factors that affect apple juice from concentrate such as ''color,'' ''defects'' and ''flavor.''

This proposal will establish the grade levels ''A,'' ''B,'' and ''Substandard,'' and assign the corresponding score points for each level. The proposed tolerance for each quality factor as defined for each grade level will also be established.

The grade of a sample unit of apple juice from concentrate will be ascertained by considering the ratings for the factors of absence of defects, color and clarity, and flavor and aroma, which are scored; the total score; and the limiting rules which apply. This proposal will provide a common language for trade, a means of measuring value in the marketing of apple juice from concentrate, and provide guidance in the effective utilization of apple juice from concentrate. The official grade of a lot of apple juice from concentrate covered by these standards will be determined by the procedures set forth in the Regulations Governing Inspection and Certification of Processed Products Thereof, and Certain Other Processed Foods Products (7 CFR 52.1 to 52.83).

This notice provides for a 60 day comment period for interested parties to comment on changes to the standards.

Authority: 7 U.S.C. 1621–1627.

Dated: November 15, 2001.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 01–29113 Filed 11–20–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[FV–02–333]

United States Standards for Grades of Dried Figs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is revising the United States Standards for Grades of Dried Figs. The revision will eliminate the present Grade ''A'' quality level and change the present Grade ''B'' quality level to the new Grade ''A''. This proposal elevates the present Grade ''C'' quality level to a new Grade ''B'' level thus eliminating the Grade ''C'' designation from the United States Standards for Grades of Dried Figs. The existing grade level ''Substandard'' would remain the same. These changes have been requested by the industry in order to bring the standards for dried figs in line with the present quality levels being marketed today and provide guidance in the effective utilization of dried figs.

EFFECTIVE DATE: December 21, 2001.

FOR FURTHER INFORMATION CONTACT: Lydia E. Berry, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247,1400 Independence Avenue SW., Washington, DC 20250–0247; fax (202) 690–1087; or e-mail *lydia.berry@usda.gov.* The current United States Standards for Dried Figs, along with the changes, are available either through the address cited above or by accessing the AMS Home Page on the Internet at: *www.ams.usda.gov/standards/dried.htm*

The comments from the proposed notice and the final notice will be made available on the internet at: *www.ams.usda.gov/fv/ppb.html*

The U. S. Standards for Dried Figs do not appear in the Code of Federal Regulations.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables no longer appear in the Code of Federal Regulations but are maintained by USDA, AMS, Fruit and Vegetable Programs. AMS is revising the U. S. Standards for Grades of Dried Figs using the procedures that appear in part 36 of Title 7 of the Code of Federal Regulations (7 CFR Part 36).

Proposed by the Petitioner

AMS received a petition from the California Fig Advisory Board requesting the USDA to revise the United States Standards for Grades of Dried Figs. The Board specifically requested that the present grade ''A'' be eliminated, and that the present grade ''B'' be elevated to a new grade ''A'', the current grade ''C'' be elevated to a new grade ''B'' and the level of grade ''C'' be eliminated in the new standard. The Board also provided information on

style, sample size, and descriptions to AMS to revise the standard. The petition was derived from a consensus of the dried fig industry.

Proposed by Fruit and Vegetable Programs, AMS

A notice proposing changes to the United States Standards for Dried Figs based on the petition was published in the May 9, 2001, **Federal Register** (66 FR 23662). AMS received three comments in response to the notice. Responses were received from California Fig Advisory Board, and two growers. All responses were in favor of the revisions. One grower had requested some further changes to the standard that were not addressed in the original petition, including an additional increase in the moisture tolerance and the inclusion of an additional style. Therefore additional changes should be addressed in a new petition. Based on the submitted information and petition, AMS is revising the standard for dried figs following the standard format for U.S. Grade Standards.

The grade of a sample unit of dried figs is ascertained by considering the factors of varietal characteristics, size, moisture, and flavor and odor which are not scored; the ratings for the factors of color, uniformity of size, defects, and maturity and development, which are scored; the total score; and the limiting rules which apply.

Accordingly, this proposal would establish grade levels ''A'', ''B'' and ''Substandard'' with corresponding score points assigned for each level. Tolerances for each quality factor for each grade level are established. These changes will bring the standard for dried figs in line with present quality levels being marketed today and provide guidance in the effective utilization of dried figs.

AMS believes that revisions to the standard are needed to meet the needs of industry and that these changes will allow for a better marketing environment for all dried fig producers.

This revision becomes effective 30 days after the date of publication of this notice in the **Federal Register**.

Authority: 7 U.S.C. 1621–1627.

Dated: November 15, 2001.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 01–29112 Filed 11–20–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayton, Oregon on Monday, December 3, 2001. The meeting is scheduled to begin at 6 p.m. will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center located on 400 West Virginia Street in Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Pub. L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landoweners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. The tentative agenda will include discussion of the Environmental Analysis for the proposed SRA Management Plan and the effects of alternatives and a public comment period.

The public comment period is tentatively scheduled to begin at 8 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the December 3 meeting by sending them to Designated Federal Official Stephanie Phillips at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Stephanie Phillps; Willamette National Forest, Detroit Ranger District, HC 73 Box 329, Mill City, OR 97360; (503) 854–3366.

Dated: November 14, 2001.

Y. Robert Iwamoto,

Acting Forest Supervisor.

[FR Doc. 01–29049 Filed 11–20–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and request for revocation in part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

EFFECTIVE DATE: November 21, 2001.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2000), for administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Extruded Rubber Thread from Malaysia.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than October 31, 2002.

	Period to be reviewed
Antidumping Duty Proceedings	
Malaysia: Extruded Rubber Thread A–557–805	10/1/00–9/30/01
Filati Lastex Elastofibre Sdn. Bhd. Heveafil Sdn. Bhd.	
The People's Republic of China:	
Helical Spring Lock Washers[1] A–570–822	10/1/00–9/30/01
Hangzhou Spring Washer Plant (aka Zhejiang Wanxin Group Co., Ltd.).	
Barium Chloride[2] A–570–007	10/1/00–9/30/01
China National Chemicals Import and Export Corp.	
Zhang Jia Ba	
Tangshan	
Tianjin Chemical	
Red Star	
Linshu	
Ermeishang	
Hengnan	
Buohai	
Kunghan	
Xinji	
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
Russia: Uranium A–821–802	10/1/00–9/30/01

[1] If one of the above-named companies does not qualify for a separate rate, all other exporters of helical spring lock washers from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[2] If one of the above-named companies does not qualify for a separate rate, all other exporters of barium chloride from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: November 15, 2001.

Holly A. Kuga,

Senior Office Director for Import Administration.

[FR Doc. 01–29144 Filed 11–20–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Forged Stainless Steel Flanges From India: Rescission of New Shipper Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Rescission of new shipper review.

SUMMARY: On March 28, 2001, the Department initiated a new shipper review of certain forged stainless steel flanges from India for Metal Forgings Pvt. Ltd. (Metal Forgings). Pursuant to section 351.214(f)(2)(ii) of the Department's regulations, we find that an expansion of the normal review period to include the entry of the subject merchandise would be likely to prevent the completion of the review within the time limits set by the Department's regulations, and therefore we are rescinding this new shipper review.

EFFECTIVE DATE: November 21, 2001.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Mike Heaney, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–5222 and 202–482–4475, respectively.

SUPPLEMENTARY INFORMATION:

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 Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Background

On March 28, 2001, the Department initiated a new shipper review of certain forged stainless steel flanges from India, for the period February 1, 2000 through January 31, 2001 manufactured or exported by Metal Forgings. *See Certain Stainless Steel Flanges from India,* 66 FR 16905. Metal Forgings' responses to our original and supplemental questionnaires showed that its merchandise was not loaded for export until April 26, 2001, and therefore could not have entered the United States until, at the earliest, sometime in the fourth month after the conclusion of the period of review (POR).

Rescission of Review

Under section 351.214(f)(2)(ii) of the Department's regulations, when the sale of the subject merchandise occurs

within the POR, but the entry occurs after the normal POR, the POR may be extended unless it would be likely to prevent the completion of the review within the time limits set by the Department's regulations. The regulations do not provide a definitive date by which the entry must occur, but the preamble to the Department's regulations state that both the entry and the sale should occur during the POR, and that only under ''appropriate'' circumstances should the POR be extended when the entry is made after the POR. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27319 (May 19, 1997).

The Department has in many cases extended the POR by 30 days in order to capture entries of POR sales, when the 30-day extension is not likely to pose significant obstacles to completing a new shipper review within the time limits established by the Department's regulations. However, the shipment in this case was made over 30 days after the sale, and an extension of the POR to include the entry would pose significant obstacles to the timely completion of this new shipper review. *See* ''Memorandum to Richard Weible, Certain Forged Stainless Steel Flanges (Flanges) from India, Subject: Rescission of New Shipper Review,'' dated August 9, 2001. Accordingly, we are rescinding the new shipper review of Metal Forgings for the period February 1, 2000 through January 31, 2001.

We note that the respondent may renew its request for a new shipper review, pursuant to the deadlines provided by section 351.214(d) of the Department's regulations. If Metal Forgings renews its request and if the review request and the reported transaction conform to requirements, we will conduct a new shipper review per section 351.214(g)(1)(i), and the POR will include both the sale and the entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(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 terms of an APO is a sanctionable violation. This determination is issued in accordance with 19 CFR 351.214(4)(2) and section 777(i)(1) of the Act.

Dated: November 13, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 01–29147 Filed 11–20–01; 8:45 am

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Notice of Amended Final Determination of Sales at Less Than Fair Value; Honey From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended Final Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: November 21, 2001.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge, Charles Rast, or Donna Kinsella, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 482–3518, (202) 482–1324, or (202) 482–0194, respectively.

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 Tariff Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR part 351 (2001).

Amendment to the Final Determination

On September 26, 2001, the Department determined that honey from Argentina is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735(a) of the Tariff Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Honey From Argentina*, 66 FR 50611 (October 4, 2001) (*Final Determination*). On October 9, 2001, respondent Asociacion Cooperativas Argentinas (ACA) timely filed an allegation that the Department had made several ministerial errors in its final determination. ACA requested that we correct the errors and publish a notice of amended final determination in the **Federal Register**, pursuant to 19 CFR 351.224(e). In addition, on October 15, 2001, petitioners filed comments in rebuttal of ACA's alleged errors.

ACA's submission alleges the following errors:

- The Department mistakenly omitted in its calculation of ACA's G&A expenses total invoiced economic activity, which should have been used as the G&A denominator instead of ACA's cost of goods sold;
- The Department inadvertently failed to include in its G&A expense ratio denominator the costs associated with services provided by ACA, which are part of its cost of sales;
- The Department failed to include other income earned by ACA's administrative departments (''Organos de Direccion y Asesoramiento'', ''Organos de Ejecucion General'', and ''Adminstracion Descentralizada'') in the calculation of the numerator used in the G&A expense ratio;
- The Department inadvertently included income taxes in the calculation of the numerator used to derive the G&A expense ratio; and
- Finally, the Department inadvertently erred in calculating an interest expense ratio based on gross rather than net financing costs because the Department failed to deduct interest revenue from the financing costs. *See* Letter, Wilmer, Cutler & Pickering, October 9, 2001 *passim.*

In their rebuttal submission, petitioners claim all errors alleged by the respondent are not ministerial errors. Regarding alleged errors in the calculation of the G&A expense ratio, petitioners assert the Department, according to normal practice, calculated the G&A expense ratio by dividing the company-wide G&A expenses by the company-wide total cost of goods sold per respondent's audited financial statement. Petitioners also contend the costs of services provided by ACA were most likely the costs associated with inter-company transactions omitted from the financial statement. Petitioners further contend there is no evidence on the record that the income items identified by the respondent were earned solely by the departments incurring G&A expenses, and no evidence that the expenses associated with the income items were not included in another part of the financial statement. Regarding interest income, petitioners claim there is no evidence that the amount of interest income ACA proposes should be included as interest income was indeed earned from short-term investments of working capital. *See* Letter, Collier Shannon Scott, October 15, 2001.

The Department's regulations define a ministerial error as one involving

''addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' *See* 19 CFR 351.224(f).

After reviewing ACA's allegations and petitioners rebuttal we have determined, in accordance with 19 CFR 351.224, that the *Final Determination* includes two ministerial errors. We agree with ACA that the unintentional omission of other income from the G&A expense ratio and the inadvertent inclusion of income taxes in the G&A expense ratio constitute ministerial errors. *See* 19 CFR 351.224(e); see also Memorandum For Richard Weible; ''Allegations of Ministerial Errors; Final Determination in the Investigation of Honey from Argentina'' (Ministerial Errors Memorandum), dated October 26, 2001, a public version of which is on file in room B–099 of the main Commerce building, and the *Final Determination*, 66 FR at 50408.

We do not agree with ACA's assertions that (1) using ACA's cost of goods sold as the G&A denominator was a ministerial error; (2) excluding from the G&A expense ratio denominator the costs associated with services provided by ACA as costs of sales was a ministerial error; and (3) calculating an interest expense ratio based on gross rather than net financing costs was a ministerial error. For a detailed description of each of these allegations and, where applicable, our resultant corrections, see the Ministerial Errors Memorandum.

In accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of honey from Argentina. The revised weighted-average dumping margins are in the ''Amended Final Determination'' section, below.

Scope of the Investigation

For purposes of these investigations, the products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to these investigations is currently classifiable under subheadings 0409.00.00, 1702.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (''U.S. Customs'') purposes, the Department's written description of the merchandise under investigation is dispositive.

Amended Final Determination

We are amending the final determination of the antidumping duty investigation of Honey from Argentina to reflect correction of the above-cited ministerial errors. The revised final weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin (percent)
Asociacion Cooperativas Argentinas (ACA)	37.44
All Others	35.76

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Tariff Act, we are directing the United States Customs Service (Customs) to continue suspending liquidation on all imports of the subject merchandise from Argentina. Customs shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which normal value exceeds the export price as indicated in the chart above. These suspension-of-liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Tariff Act, we have notified the International Trade Commission of our amended final determination. This determination is issued and published in accordance with section 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: November 9, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–29145 Filed 11–20–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–834–806]

Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Kazakhstan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty order.

EFFECTIVE DATE: November 21, 2001.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen at 202–482–0409, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''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. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2000).

Background

On September 21, 2001, the Department issued its final determination in the antidumping duty investigation of hot-rolled steel from Kazakhstan. *See Notice of Final Determination of Sales At Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from Kazakhstan*, 66 FR 50397 (October 3, 2001) (''Final Determination'').

On November 13, 2001, the International Trade Commission (''ITC'') notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from Kazakhstan.

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included within the scope of this investigation are vacuum

degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTSUS''), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

—Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., American Society for Testing and Materials (''ASTM'') specifications A543, A387, A514, A517, A506).
—Society of Automotive Engineers (''SAE'')/American Iron & Steel Institute (''AISI'') grades of series 2300 and higher.
—Ball bearing steels, as defined in the HTSUS.
—Tool steels, as defined in the HTSUS.
—Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
—ASTM specifications A710 and A736.
—USS abrasion-resistant steels (USS AR 400, USS AR 500).
—All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
—Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this investigation is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this investigation, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

Antidumping Duty Order

In accordance with section 736(a)(1) of the Act, the Department is directing the U.S. Customs Service (''Customs'') to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of hot-rolled carbon steel flat products from Kazakhstan. The antidumping duties will be assessed on all unliquidated entries of hot-rolled carbon steel flat products from Kazakhstan entered, or withdrawn from warehouse, for consumption on or after May 3, 2001, the date on which the Department published its notice of preliminary determination in the **Federal Register**. Customs must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The ''Kazakhstan-Wide'' rate applies to all exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)
OJSC Ispat Karmet	243.46
Kazakhstan-Wide	243.46

This notice constitutes the antidumping duty order with respect to hot-rolled carbon steel flat products from Kazakhstan. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Department of Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act.

Dated: November 14, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–29146 Filed 11–20–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–046]

Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has received information sufficient to warrant initiation of a changed circumstances administrative review of the antidumping duty finding on polychloroprene rubber from Japan. Based on this information, we preliminarily determine that the restructured manufacturing and marketing joint ventures, Showa DDE

Manufacturing KK (SDEM) and DDE Japan Kabushiki Kaisha (DDE Japan), are the successor-in-interest companies to Dupont Showa Denko (SDP) and its predecessor, Showa Neoprene, for purposes of determining antidumping liability in this proceeding. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 21, 2001.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Tom Futtner, AD/DVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6320 or (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions as of 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 references to the regulations of the Department are to 19 CFR part 351 (2001).

Background

On December 6, 1973, the Department published in the **Federal Register** (38 FR 33593) the antidumping finding on polychloroprene rubber from Japan. On September 27, 2001, DuPont Dow Elastomers L.L.C. (Dupont Dow) and DDE Japan submitted a letter stating that SDEM and DDE Japan are the successor-in-interest companies to SDP and Showa Neoprene, and, as such, entitled to receive the same antidumping treatment as these companies have been accorded.

Scope of Review

Imports covered by this review are shipments of polychloroprene rubber, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 4002.42.00, 4002.49.00, 4003.00.00, 4462.15.21 and 4462.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). HTSUS item numbers are provided for convenience and for U.S. Customs Service purposes. The written descriptions remain dispositive.

Initiation and Preliminary Results of Review

In a letter dated September 27, 2001, Dupont Dow and DDE Japan advised the Department that in 1998, SDP was restructured. The production portion of SDP was renamed SDEM. Further, the marketing end of SDP's business was separated from SDEM and renamed DDE Japan. According to Dupont Dow and DDE Japan, these entities were renamed to reflect Dupont Dow's participation in the joint ventures and to make the companies more globally competitive. Nevertheless, like SDP and similar to Showa Neoprene, the two firms, SDEM and DDE Japan, remained jointly owned ventures of Dupont Dow and Showa Denko KK. For further discussion of the SDP restructuring, *see* Memorandum from Bernard T. Carreau to Faryar Shirzad, dated concurrently with this notice, regarding Polychloroprene Rubber from Japan: Request for Changed Circumstances Review.

Thus, in accordance with section 751(b) of the Act and sections 351.216 and 351.221(a) of the Department's regulations, the Department is initiating a changed circumstances review to determine whether SDEM and DDE Japan are the successor-in-interest companies to SDP and its predecessor, Showa Neoprene, for purposes of determining antidumping duty liability in this proceeding. In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review,* 57 FR 20460, 20462 (May 13, 1992) (*Canadian Brass*). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review,* 59 FR 6944, 6945 (February 14, 1994) and *Canadian Brass,* 57 FR 20460. Therefore, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company essentially operates as the same business entity as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

Dupont Dow and DDE Japan have presented evidence to establish a prima facie case of SDEM's and DDE Japan's successorship status. As a consequence, we find that it is appropriate to issue the preliminary results of our review in combination with the notice of initiation of the changed circumstances review in accordance with section 351.221(c)(3)(ii). Although SDP has become two separate companies, SDEM and DDE Japan, and this restructuring has precipitated some changes, the management, production facilities, supplier relationships, sales facilities and customer base are essentially unchanged from those of SDP, and before that, Showa Neoprene. Therefore, the record evidence demonstrates that the new joint venture entities essentially operate in the same manner as the predecessor companies of SDP and Showa Neoprene. As DDE Japan sells and distributes all the polychloroprene rubber for the newly restructured joint venture entities, we preliminarily determine that DDE Japan should be given the same antidumping duty treatment as SDP and its predecessor, Showa Neoprene, *i.e.,* 0 percent antidumping duty cash deposit rate.

The cash deposit determination from this changed circumstances review will apply to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. This deposit rate shall remain in effect until publication of the final results of the next relevant administrative review.

Interested parties are invited to comment on these preliminary results. Any written comments may be submitted no later than 21 days after date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, are due five days after the case brief deadline. Case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.209. The Department will publish the final results of the changed circumstances review including the results of its analysis of any issues raised in any such comments.

This initiation of review, preliminary results of review and notice are in accordance with sections 751(b) and 777(i)(1) of the Act.

Dated: November 13, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–29148 Filed 11–20–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board (CSSPAB) will meet Tuesday, December 4, 2001, Wednesday, December 5, 2001, and Thursday, December 6, 2001, from 9 a.m. until 5 p.m. All sessions will be open to the public. However, all visitors to the National Institute of Standard and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Elaine Frye no later than November 30, 2001, and she will provide you with instructions for admittance. Ms. Fry'e email address is *elaine.frye@nist.gov* and her phone number is 301/975–2819. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. Details regarding the Board's activities are available at *http://csrc.nist.gov/csspab/.*

DATES: The meeting will be held on December 4, 5, and 6, 2001, from 9 a.m. until 5 p.m.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology, Administration Building, Lecture Room B, in Gaithersburg, Maryland. Please note admittance instructions under SUMMARY paragraph.

Agenda

—Welcome and Overview
—Session on Minimally Accepted Security Controls—to include briefings from Federal agencies such as the National Oceanic and Atmospheric Administration, Social Security Administration, Federal Communications Commission and the Federal Reserve
—Updates on Recent Legislative Issues
—Update on OMB Activities
—Discussion of Follow-On Actions from CSSPAB Privacy Event
—Public Participation
—Agenda Development for March 2002 meeting
—Wrap-up

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the CSSPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. It would be appreciated if 35 copies of written material were submitted for distribution to the Board and attendees no later than November 30, 2001. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Dr. Fran Nielsen, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–3669.

Dated: November 8, 2001.

Karen H. Brown,

Acting Director, NIST.

[FR Doc. 01–29165 Filed 11–21–01; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology. Department of Commerce.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, December 11, 2001 from 8:25 a.m. to 5:15 p.m. and Wednesday, December 12, 2001 from 8;15 a.m. to Noon. The Visiting Committee on Advanced Technology is composed of thirteen members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include a NIST Update, Progress on Strategic Planning, NIST Homeland Security and Counter-Terrorism Activities, Internal IT Services Cross-Cut Review, and The Future of Nanotechnolgoy at NIST. Discussions scheduled to begin at 3:45 p.m. end at 5:15 p.m. on December 11, 2001 and to begin at 8:15 a.m. and to end at Noon on December 12, 2001, on staffing of management positions at NIST, the NIST budget, including funding levels of the Advanced Technology Program and the Manufacturing Extension Partnership, and feedback sessions will be closed.

DATES: The meeting will convene December 11, 2001 at 8:25 a.m. and will adjourn at Noon on December 12, 2001.

ADDRESSES: The meeting will be held in the Employees Lounge, Administration Building, at NIST, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Janet R. Russell, Administrative Coordinator, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, MD 20899–1004, telephone number (301) 975–2107.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 12, 2001, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the Advanced Technology Program and the Manufacturing Extension Partnership Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly

unwarranted invasion of personal privacy.

Dated: November 15, 2001.

Karen H. Brown,

Acting Director.

[FR Doc. 01–29167 Filed 11–20–01; 8:45am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of prospective grant of exclusive patent license.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology (''NIST''), Department of Commerce, is contemplating the grant of an exclusive license in the United States of America, its territories, possessions and commonwealths, to NIST's interest in the invention embodied in U.S. Patent No. 5,508,342 (Application No. 08/189,708), titled, ''Polymeric Amorphous Calcium Phosphate Compositions,'' filed February 1, 1994; NIST Docket No. 93–063US, to the American Dental Association Health Foundation (ADAHF), having a place of business at 211 East Chicago Avenue, Chicago, IL 60611. The grant of the license would be for all fields of use.

FOR FURTHER INFORMATION CONTACT: J. Terry Lynch, National Institute of Standards and Technology, Office of Technology Partnerships, 100 Bureau Drive, Stop 2200, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty sharing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty day from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. The availability of the invention for licensing was published in the **Federal Register**, Vol. 60, No. 175 (September 11, 1995).

U.S. Patent No. 5,508,342 is owned by the U.S. Government, as represented by the Secretary of Commerce. The present invention relates to a new type of bioactive composition which can be used in a prophylactic or reconstructive manner by preserving substantially sound mineralized tissue as well as for promoting remineralization of minerally defective skeletal tissue, such as teeth and bones. More particularly, the present invention is directed to compositions containing amorphous calcium phosphate and unsaturated monomers and to the hardened polymeric composites which they form. The present invention is also directed to a method of treating teeth and bones to effect mineralization.

Dated: November 15, 2001.

Karen H. Brown,

Deputy Director.

[FR Doc. 01–29166 Filed 11–20–01; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of a Draft Restoration Plan and Environmental Assessment for the M/V Kuroshima Oil Spill, Summer Bay, Unalaska, AK, Request for Comments

SUMMARY: Natural Resource Trustee agencies (Trustees) have developed a Draft Restoration Plan and Environmental Assessment (Draft RP/EA) for the restoration of natural resources injured by the release of fuel oil from the 1997 grounding of the M/V Kuroshima near the City of Unalaska, Alaska. The purpose of this notice is to inform the public of the availability of the Draft RP/EA and the opportunity to comment. All persons affected by, or otherwise interested in, the proposed restoration plan are invited to submit written comments and attend a public meeting in Unalaska on the proposed plan.

DATES: Comments on the Draft RP/EA must be submitted in writing on or before December 21, 2001. A public meeting has been scheduled November 26, 2001. Detail on this meeting is provided in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Comments and requests for the Draft RP/EA should be submitted to: Douglas Helton, National Oceanic and Atmospheric Administration, Damage Assessment Center, 7600 Sand Point Way, Seattle, WA, 98115. Alternatively, comments may be submitted electronically to the following E-mail address: *Doug.Helton@NOAA.GOV.* All comments received, including names and addresses, will become part of the public record.

FOR FURTHER INFORMATION CONTACT: Douglas Helton, NOAA Damage Assessment Center, 7600 Sand Point Way, Seattle, WA, 98115, or visit the M/V Kuroshima web site at: www.darcnw.noaa.gov/kuro.htm

SUPPLEMENTARY INFORMATION:

Background

On November 26, 1997, the M/V Kuroshima, a 368-foot frozen seafood freighter dragged anchor and ran aground in Summer Bay on Unalaska Island, near Dutch Harbor, Alaska. Thirty-nine thousand gallons of heavy fuel oil were spilled. Much of the oil was blown upstream into Summer Bay Lake, which borders Summer Bay, with the remainder stranding along Summer Bay Beach and nearby shorelines. After reviewing a variety of potential injuries to natural resources and their services, the Trustees have identified five categories of natural resources and services adversely affected by the M/V Kuroshima spill that justify restoration: seabirds, salmon, vegetation, shellfish and intertidal biota, and recreational services.

Under the Oil Pollution Act of 1990 (OPA), Federal and State natural resource trustee agencies are authorized to determine the nature and extent of natural resource injuries, select appropriate restoration projects, and implement or oversee restoration. One goal under OPA is to make the public whole for injuries to natural resources and their services resulting from the release of oil. In consultation with the Qawalangin Tribe of Unalaska, the National Oceanic and Atmospheric Administration, the U.S. Fish and Wildlife Service, the Alaska Department of Fish and Game, the Alaska Department of Natural Resources, and the Alaska Department of Law (the Trustees) developed a Draft Restoration Plan and Environmental Assessment (Draft RP/EA) that addresses the natural resource and service injuries identified by the Trustees.

The primary purpose of this Notice is to inform the public of the availability of the Draft RP/EA, and solicit public comment on the proposed restoration actions. The Draft RP/EA includes: removing introduced predators to enhance nesting success for seabird populations affected by the spill; restoring dune vegetation; cleaning up beach debris; performing additional tests of intertidal shellfish; controlling shoreline erosion and lakeshore revegetation, managing salmon runs in the affected lake, and funding equipment and curriculum development for an environmental education camp for local youths.

Public Meeting

The Trustees have scheduled a public meeting for November 26, 2001, from 6:30 pm to 8:30 pm at the Unalaska City Hall, 43 Raven Way, Unalaska, Alaska. The purpose of this meeting will be to discuss the Draft RP/EA and solicit public comments.

Administrative Record

The Trustees have compiled a public record (Administrative Record) to support their restoration planning decisions and inform the public of the basis of their decisions. Additional information and documents, including public comments received on the Draft RP/EA, the Final RP/EA, and other related restoration planning documents, will also become a part of the Administrative Record, and will be submitted to a public repository upon their completion.

The documents comprising the public record (Administrative Record) can be viewed at the following locations: NOAA DANW, 7600 Sand Point Way, NE Seattle, Washington 98115, Contact Doug Helton at (206) 526–4563, or *Doug.Helton@NOAA.GOV;* The Qawalangin Tribe of Unalaska, 205 West Broadway, Unalaska, AK 99685, Contact Jacob Stepetin at (907–581–2920); and the U.S. Department of Justice, 801 B Street, Suite 504, Anchorage, Alaska 99501, Contact Lorraine Carter at 907–271–5452.

Dated: November 2, 2001.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 01–29107 Filed 11–20–01; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111201B]

Directed Economic Assistance Program; Establishment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Direct Assistance Program

SUMMARY: The Consolidated Appropriations Act of 2001 makes $3,000,000 available to the Secretary of Commerce to provide economic assistance to fishermen and fishing communities affected by Federal closures and fishing restrictions in the Hawaii long line fishery. In furtherance of this directive, NOAA, NMFS, is establishing a direct economic assistance program (DEAP) to provide financial assistance to vessel owners that fished under a Hawaii longline limited access permit and harvested pelagic species in the Hawaii-based longline fishery between January 1, 1999, and November 29, 1999. This document announces the availability of assistance under the DEAP and the eligibility requirements.

DATES: Effective November 21, 2001.

ADDRESSES: Copies of the analysis used by NMFS to categorize vessels qualifying for the eligibility period as either ''swordfish'' or ''tuna'' fishing vessels are available from Dr. Charles Karnella, Administrator, Pacific Islands Area Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Karnella, Administrator, Pacific Islands Area Office (PIAO), NMFS, 808-973-2937.

SUPPLEMENTARY INFORMATION:

Background

Section 208 of Appendix D of the Consolidated Appropriations Act, 2001 (Pub. L. 106-554, enacted December 21, 2000) makes available $3,000,000 to the Secretary of Commerce: ''...to provide economic assistance to fishermen and fishing communities affected by federal closures and fishing restrictions in the Hawaii long line fishery....'' The Federal closures and fishing restrictions described began in late 1999 when vessels registered for use under Hawaii longline limited access permits (Hawaii-based longline vessels) were prohibited from engaging in fishing in certain accustomed areas and with certain gear. These restrictions were the result of injunctions issued by the U.S. District Court for the District of Hawaii (the Court) to reduce the number of sea turtles injured and killed incidental to fishing operations. Specifically, on February 24, 1999, Turtle Island Restoration Network and The Center for Marine Conservation filed *Center for Marine Conservation, et al.* v. *National Marine Fisheries Service, et al., Civil Action No. 99-00152(DAE)(CMC* v. *NMFS).* The Court in *CMC* v. *NMFS* issued an order on October 18, 1999, determining that an injunction was warranted during the time that NMFS prepared an environmental impact statement (EIS). On November 23, 1999, the Court issued the first in a series of orders directing NMFS to impose certain restrictions on the fishery (Order Setting Terms of Injunction filed November 23, 1999, Order Amending Order Setting Terms of Injunction filed January 11, 2000, Amended Order Modifying Provisions of Order of Injunction filed June 26, 2000, Order Clarifying Order Modifying Provisions of Order of Injunction filed June 26, 2000, Order Further Amending Order Modifying Provisions of Order of Injunction filed August 4, 2000, and Order Modifying Injunction filed March 30, 2001).

Additionally, while preparing the EIS, using revised methods adopted for estimating the fishery's impacts on sea turtles, NMFS learned that the longline fishery had taken more olive ridley turtles than anticipated in a biological opinion (BO) under the Endangered Species Act (ESA) issued in November of 1998. Therefore, on June 7, 2000, NMFS reinitiated consultation under section 7 of the ESA to reassess the fishery's impacts on all sea turtles and on March 29, 2001, NMFS issued a new BO that superceded the BO of November 1998. In the 2001 BO, NMFS determined that continued operation of the Hawaii-based longline fishery was likely to jeopardize the continued existence of leatherback, loggerhead, and green sea turtle populations. To avoid the likelihood of jeopardy, NMFS developed Reasonable and Prudent Alternatives (RPAs) to the management regime. The RPAs include seasonal closure of certain areas and a prohibition of swordfish style fishing (e.g., shallow longline sets, etc.) north of the equator. NMFS has implemented, by emergency rule at 66 FR 31561, June 12, 2001, measures that conform with that BO and comply with the most recent court order in *CMC* v. *NMFS* (March 30th Order). Background information on actions to implement the various orders in *CMC* v. *NMFS* is not repeated here; this information was published in several previous **Federal Register** documents (64 FR 72290, December 27, 1999; 65 FR 16346, March 28, 2000; 65 FR 37917, June 19, 2000; 65 FR 51992, August 25, 2000; 65 FR 66186, November 3, 2000; 66 FR 1110, February 22, 2001; and 66 FR 15358, March 19, 2001).

The June 12, 2001, emergency rule cited above eliminated the swordfish portion of the Hawaii longline fishery, and further, will close an area from 0 °-15° north lat., between 145°-180° west long., approximately 1.9 million square miles, to the tuna component of the Hawaii longline fishery each April and May to protect sea turtles. These and previous closures have had, and will continue to have, adverse economic effects on the participants in the Hawaii-based longline fishery. For fiscal year 2001, Congress appropriated

$3,000,000 to help offset some of these negative economic effects in order to assist the fishermen and fishing communities.

Direct Economic Assistance Program

NMFS is establishing a DEAP to provide financial assistance for owners of vessels registered for use under a Hawaii longline limited access permit and that operated that vessel in the fishery between January 1, 1999, and November 29, 1999 (inclusive). This January 1, 1999, through November 29, 1999, designated period of eligibility (eligibility period) includes all days in the 1999 fishing year up to and including the first business Monday after the Order Setting Terms of Injunction was filed on November 23, 1999 (November Order), in *CMC* v. *NMFS*. This was the first order directing NMFS to take management action restricting fishing operations of Hawaii longline limited access vessels.

Among other things, the November Order required that within 30 days of the order, NMFS shall prohibit all activities of the Hawaii longline fishery authorized by the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region, as amended, within the area encompassed and bounded by the following description: North of 28° north lat. and between 168° and 150° west long. Subsequent Court orders mandated adjustments to time, area, and gear restrictions.

Eligibility

NMFS will provide direct financial assistance to vessel owners that were registered for use under a Hawaii longline limited access permit during the eligibility period of January 1, 1999, and November 29, 1999, so long as those vessels harvested and submitted to NMFS logbooks documenting the catch of Pacific pelagic management unit species (PMUS) during that eligibility period. To qualify for relief under the DEAP, an applicant must have (1) owned a vessel registered for use under a Hawaii longline limited access permit during the eligibility period, and (2) harvested PMUS using that vessel during the eligibility period as documented by logbooks timely submitted to NMFS.

For purposes of the DEAP, the definition of ''owner'' at 50 CFR 660.12 will be applied to determine ownership during the eligibility period. Under this definition, ''owner'' means a person who is identified as the owner of the vessel (during the period of eligibility) as described in the Certificate of Documentation (Form CG-1270) issued by the United States Coast Guard (USCG) for a documented vessel, or in a registration certificate issued by a state, a territory, or the USCG for an undocumented vessel. Vessel ownership determinations will be solely based on these official vessel documentation records. For purposes of the DEAP, documentation of ownership transfers may include the Coast Guard documentation filing date. Corporate or partnership or shared ownership interest determinations will be based solely on information in the limited access permit records.

Vessel harvesting determinations for the Hawaii-based longline fishery during the eligibility period will be documented by and solely based upon existing Federal fishery records and databases. NMFS requires vessels to submit catch and effort logbooks (vessel logbooks) to document fishing activities and catch by species within 72 hours of each landing. The logbook database will be used by NMFS to determine which vessels participated in the Hawaii pelagic longline fishery during the eligibility period. Logbook submissions or corrections made after June 1, 2000, will not be accepted as a cure for missing or erroneous logbook submissions.

Based on logbooks, a total of 118 vessels have been identified by NMFS as submitting logbooks documenting the harvest of PMUS in the Hawaii-based longline fishery during this period. Therefore, the owners of these 118 vessels are eligible for financial assistance under this program.

Financial Assistance

Using the vessel logbook data base, NMFS conducted an analysis to categorize vessels qualifying for the eligibility period as either ''swordfish'' or ''tuna'' fishing vessels. Vessel harvesting activity during the eligibility period was categorized based on gear configurations and catch composition. Fifteen attributes for each qualifying vessel were reviewed, including the number of hooks per float, use of light sticks, bait employed, set time, target species, and fish kept. A copy of the analysis is available from the PIAO Administrator upon request at the address provided (see **ADDRESSES**). NMFS will allocate financial assistance to owners of ''swordfish'' vessels at a rate of two times that of owners of ''tuna'' vessels.

In the event ownership of a vessel qualifying for financial assistance changed during the eligibility period, NMFS will prorate the relief available per vessel and make a distribution based on the number of days of ownership within the eligibility period by each respective owner. To address any disputed ownership claims, including claims of dual or multiple vessel owners, NMFS will request and consider information from the parties disputing ownership. If, after submission to NMFS and review of the additional information, the parties reach agreement on ownership, an agreement signed by affected parties will be submitted to NMFS and distribution will be based on that agreement. If agreement cannot be reached, NMFS will make a determination as to vessel ownership during the eligibility period on the sole basis of official vessel documentation records, including, for U.S. Coast Guard documentation, the date of filing.

In instances of dual or multiple ownership interests, distribution will be prorated based on percentage of ownership interest. Distributions to corporations will be to the corporation.

On September 21, 2001, NMFS sent a letter to owners of permitted vessels, identified as having fished (based on logbook data) during the eligibility period. The letters asked for confirmation of contact and permit information. NMFS then attempted to contact non-responding owners of vessels that fished under a Hawaii longline permit during the eligibility period. These efforts included inquiries through local fishing industry associations and the announcement through this public notice. The initial list of eligible vessel owners will be determined by NMFS from the available vessel logbook and permit data, and the analysis using gear configuration and catch composition. NMFS will send a letter to vessel owners indicating NMFS' initial decision on the eligibility, categorization, and the anticipated level of financial assistance within 30 days of the effective date of this document.

Review Process

A process for requesting review of claims for eligibility under the DEAP is available for up to 60 days after the effective date of this notice. During this review period, individuals or firms that believe they owned qualifying vessels active during the eligibility period, but that have not been contacted by NMFS for address confirmation, or disagree with an initial determination by NMFS, may contact the PIAO Administrator (see **ADDRESSES**) to document eligibility (e.g., ownership of a qualifying vessel during the eligibility period, or verification of a vessels' tuna or swordfish categorization). Applicants pursuing review must present written vessel logbook documentation that was filed in a timely manner in accordance

with NMFS regulations or USCG or state or territorial documents to support claims of eligibility. All relevant documentation must be sent via certified mail to the PIAO Administrator's address and must be postmarked no later than 60 days after the effective date of this notice.

Upon receipt of a request for review, NMFS will complete a technical review of the information to determine eligibility no later than 90 days after the date of effectiveness of this notice. If, after review and consideration of the documentation provided during this technical review, NMFS verifies eligibility, NMFS will send a confirmation letter by certified mail to the owner of the vessel during the eligibility period, and NMFS records will be adjusted to reflect the eligibility determination. If, after technical review, NMFS is not able to verify eligibility, NMFS will refer the claim for eligibility for further review.

A final determination on the eligibility claim will be made by the Assistant Administrator for Fisheries, based on all relevant information provided by the applicant and the determination by the PIAO Administrator, no later than 140 days after the effective date of this Notice, and a determination letter will be sent by certified mail to the individual seeking review. The Assistant Administrator's determination is the final agency decision, and will be incorporated in NMFS records.

Other Requirements for Financial Assistance

An owner of an eligible vessel must be certified by NMFS, prior to distribution of any Federal funds, to ensure that the recipient does not have a delinquent Federal debt. If any Federal debt is identified, proof of payment must be made before funds will be disbursed. If an eligible owner has been found culpable of a violation of Federal natural resource laws, and has outstanding fines or penalties due and owing, proof of payment must be made before funds will be disbursed.

NMFS has determined that funds, if any, remaining after direct distribution to eligible vessels, less administrative cost, may be used by NMFS to fund protected species work shops and gear reconfiguration workshops for the Hawaii-based longline fishery. NMFS has determined that educational workshops will also ameliorate the economic impacts of Federal regulatory actions on the fishery. Further notification of these programs, if any, will be published in a separate announcement.

DEAP Implementation Plan

To assist fishermen and administer the DEAP in a rational and equitable manner, NMFS is basing eligibility for financial assistance on (1) ownership of a vessel, and (2) use of that vessel to harvest PMUS, during a designated eligibility period. Designation of the eligibility period, keyed to the dates described below, facilitates identification of qualifying vessels and owners. The start of the eligibility period, January 1, 1999, is the beginning of the fishing year in the calendar year that unanticipated litigation-driven, restrictive management adjustments were first implemented. The eligibility period ends November 29, 1999, the first business Monday after the November Order.

Following the November Order, the Hawaii-based longline fishery could be reasonably expected to anticipate restrictions on fishing activity. This eligibility period directs financial assistance to owners of vessels engaged in harvesting activity under a Hawaii longline limited access permit in the months immediately preceding the November Order. NMFS has concluded that this period of eligibility best defines a category of owners with demonstrated investment in participation in the fishery. Gearing up for and participating in the 1999 fishing year, prior to awareness of the restrictions imposed by the November Order, is a sign of commitment of resources. These fishery participants experienced unanticipated and serious business impairment and disruption as a result of the November Order and subsequent restrictive management actions. NMFS recognizes that operational and business decisions of owners with vessels active outside the eligibility period may have been affected by the litigation-driven management actions, and has determined that the financial assistance under this program is best focused on owners making business decisions and actively participating in the fishery in the 1999 fishing year through November 29, 1999.

NMFS has concluded that restrictions imposed on the fishery have had larger operationl impacts on vessels targeting swordfish than on vessels targeting tunas. Further, swordfish vessels are anticipated to incur additional costs of $12,000 - $15,000 for outfitting for conversion to deep-set fishing activity. In response, NMFS is apportioning the assistance among eligible vessels to reflect this difference, and will allocate financial assistance to swordfish vessels at a rate of two times that of tuna vessels. To facilitate appropriate compensation and implement the apportionment, NMFS is categorizing vessels, based on submitted vessel logbooks, as ''tuna'' or ''swordfish'' vessels.

Vessel ownership and activity determinations will be based upon vessel logbook information, permit information, or official Coast Guard, state, or territorial documentation.

Not Eligible for DEAP

Holding, by ownership or otherwise, of a Hawaii longline limited access permit, in and of itself, is not sufficient to qualify for financial assistance under the DEAP. Similarly, holding by ownership or otherwise, of a longline general permit, or longline general permit for a vessel registered under a Hawaii longline limited access permit used solely for transhipment of Pacific pelagic management unit species that were harvested with longline gear, in and of itself, is not sufficient to qualify for financial assistance under the DEAP.

Classification

Executive Order 12866

This notice has been determined to be ''not significant'' for purposes of Executive Order 12866, ''Regulatory Planning and Review.''

Administrative Procedure Act and Regulatory Flexibility Act

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for this notice relating to public property, loans, grants benefits or contracts (5 U.S.C. 553(a)), a regulatory flexibility analysis is not required and has not been prepared for this notice.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Catalog of Federal Domestic Assistance

This is a new program and will be added to the Catalog of Federal Domestic Assistance # 11.452, Unallied Industry Projects.

Authority: Pub. L. 106-554.

Dated: November 15, 2001.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 01–29159 Filed 11–20–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111501D]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held on December 10-13, 2001.

ADDRESSES: These meetings will be held at the Imperial Palace Hotel, 850 Bayview Avenue, Biloxi, MS 39530; telephone: 228–436–3000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

December 12

8:30 a.m.–Convene.

8:45 a.m. - 9:15 a.m.–Appointment of new committee members. 9:15 a.m. - 12 noon–Receive public testimony on Dolphin/Washoo Environmental Impact Statement (EIS) and Draft Shrimp Amendment 10/Environmental Assessment (EA).

1:30 p.m. - 2:30 p.m.–Receive the report of the Shrimp Management Committee.

2:30 p.m. - 3:30 p.m.–Receive the report of the Mackerel Management Committee.

3:30 p.m. - 4 p.m.–Receive a report of the Law Enforcement Committee.

4 p.m. - 5 p.m.–CLOSED SESSION–Receive a report of the Advisory Panel (AP) Selection Committee.

December 13

8:30 a.m. - 12 noon–Receive a report of the Reef Fish Management Committee.

1:30 p.m. - 3 p.m.–Continue report of the Reef Fish Management Committee.

3 p.m. - 3:15 p.m.–Receive a report of the Personnel Committee.

3:15 p.m. - 3:30 p.m.–Receive a report of the Administrative Policy Committee.

3:30 p.m. - 3:45 p.m.–Receive a report of the Habitat Protection Committee.

3:45 p.m. - 4 p.m.–Receive a report of the International Commission for the Conservation of Atlantic Tunas Advisory Committee.

4 p.m. - 4:15 p.m.–Receive a report of the South Atlantic Fishery Management Council Liaison.

4:15 p.m. - 4:30 p.m.–Receive Enforcement Reports.

4:30 p.m. - 4:45 p.m.–Receive the NMFS Regional Administrator's Report.

4:45 p.m. - 5 p.m.–Receive Director's Reports.

5 p.m. - 5:15 p.m.–Other Business.

Committees

December 10

8:30 a.m. - 9:30 a.m.–CLOSED SESSION–Convene the AP Selection Committee to recommend members for an Ad Hoc Essential Fish Habitat (EFH)/EIS Review Panel.

9:30 a.m. - 10:30 a.m.–Convene the Personnel Committee to consider revisions to the personnel section of the Administrative Handbook.

10:30 a.m. - 11:30 a.m.–Convene the Administrative Policy Committee to consider revisions of Statement of Organization Practices and Procedures (SOPPS).

1 p.m. - 5:30 p.m.–Convene the Reef Fish Management Committee to review a consolidated Draft Reef Fish Amendment 18 with a draft supplemental environmental impact statement (DSEIS) that includes measures to further encourage grouper stocks as well as identification of EFH, habitat areas of particular concern (HAPCs), and gear impacts. The Committee may develop their recommendations to the Council and to approve public hearing locations. The Committee will also discuss a Fishery Management Plan (FMP) review protocol. The full Council will consider these recommendations on Thursday morning. Final action on Reef Fish Amendment 18 will likely be taken at the March 11-15, 2002 Council meeting in Mobile, AL. Public testimony on the amendment and DSEIS is scheduled before the Council takes final action.

December 11

8 a.m. - 11 a.m.--Convene the Shrimp Management Committee to review Draft Amendment 10/EA and develop recommendations to the full Council for final action. The full Council will consider these recommendations on Wednesday afternoon. The Shrimp Committee will also hear a report on the Gulf and South Atlantic Fisheries Foundation's Bycatch and Effort Monitoring Program.

11 a.m. - 12 noon–Convene the Habitat Protection Committee to hear recommendations from Habitat Protection APs and to discuss a proposed Council freshwater inflow policy.

1 p.m. - 3 p.m.–Convene the Mackerel Management Committee to make recommendations regarding approval of the Dolphin/Wahoo EIS.

3 p.m. - 5:30 p.m.–Convene the Law Enforcement Committee to to receive progress reports on the 2001 Operations Plan and Cooperative Enforcement Agreements and to consider the 2002 Operations Plan.

Although non-emergency issues not contained in the agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act), those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

A copy of the Committee schedule and agenda can be obtained by calling (813) 228–2815.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by December 3, 2001.

Dated: November 16, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–29160 Filed 11–20–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111301B]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission's

Summer Flounder, Scup, and Black Sea Bass Industry Advisors will hold a public meeting.

DATES: The meeting will be held Wednesday, December 5, 2001, from 10 a.m. until 5 p.m.

ADDRESSES: This meeting will be held at the Holiday Inn BWI, 890 Elkridge Landing Road, Linthicum, MD 21090, telephone 410–859–8400.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904. Atlantic States Marine Fisheries Commission, 1444 Eye Street, NW, 6th Floor, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone 302–674–2331, ext. 19. Jack Dunnigan, Executive Director, Atlantic States Marine Fisheries Commission, 202–289–6400, ext. 304.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss the 2002 recreational management measures for summer flounder, scup, and black sea bass.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these 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

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council Office at least 5 days prior to the meeting date.

Dated: November 15, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–29161 Filed 11–20–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111401E]

New England 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 New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee, Scientific and Statistical Committee (SSC) and Scallop Oversight Committee in December, 2001 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between December 7–11, 2001. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Wakefield and Boston, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Friday, December 7, 2001, 9:30 a.m. – Research Steering Committee Meeting.

Location: Sheraton Colonial, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245–9300.

The Council's Research Steering Committee plans to review its roles and responsibilities with respect to its relationship to the Council and NMFS. Further discussion about coordination of previously funded projects is scheduled. The committee also will review the impact of the experimental/exempted fishing permit program on collaborative research; and if time permits there will be a discussion of a 2002 Request for Proposals relative to the Northeast groundfish resource.

Friday, December 7, 2001, 9:30 a.m. – Scientific and Statistical Committee Meeting.

Location: Holiday Inn, Boston Logan Airport, 225 McClellan Highway, Boston, MA 02128; telephone: (617) 569–5250.

The SSC will discuss several issues raised with respect to the Consensus Summary of Assessments of the 33rd Northeast Stock Assessment Workshop and provide guidance to the Council. The Stock Assessment Workshop estimated biomass reference points associated with Maximum Sustainable Yield for Gulf of Maine cod, using an age structured model and assumptions about the relationship between spawning stock and recruitment. The new estimates also included discards and recreational catch. The SSC will consider the stock-recruitment relationship used by the Stock Assessment Review Committee (SARC), the contribution of several factors to the large change in the biomass target and whether a biomass target based on spawning stock biomass (SSB_{MSY}) is more robust. The SSC also will consider the basis for the SARC's determination that the stock was overfished and that overfishing was occurring. Finally the SSC will consider (1) whether the assessment included all sources of significant catch to estimate mortality and stock size; (2) what was the contribution of discards and recreational catch; (3) were there sufficient reasons for not estimating these sources of mortality. With respect to the redfish assessment the SSC will consider whether there is sufficient rationale for using mortality threshold more conservative than F0.1 and whether adopting a new proxy for F_{MSY} implies a new B_{MSY} proxy. With respect to the white hake assessment, the SSC will consider whether trends in abundance and exploitation of fish larger than 60 cm adequately characterize the stock condition, whether the assessment accounted for sources of removals other than fishing, and why the abundance of fish less than 60 cm increased, while the abundance of fish greater than 60 cm decreased over the assessment.

Monday, December 10, 2001 at 9:30 a.m. and Tuesday, December 11, 2001 at 8:30 a.m. – Scallop Oversight Committee Meeting.

Location: Holiday Inn, Boston Logan Airport, 225 McClellan Highway, Boston, MA 02128; telephone: (617) 569–5250.

The Oversight Committee will continue development of management alternatives for Draft Amendment 10 to the Sea Scallop Fishery Management Plan (FMP). The committee discussion will focus on measures (bycatch Total Allowable Catch (TACs), gear modifications, etc.) to reduce bycatch and habitat impacts, a potential bag tag

system to monitor landings, measures to manage scallop fishing by vessels with General Category permits, a 12–day maximum trip length proposal, a minimum 120–day allocation principal, restrictions on future use of unused day-at-sea allocations and Confirmation of Permit Histories, and hardship exemptions for carrying forward day-at-sea allocations. The Oversight Committee will also hold a closed session to review Advisory Committee applications and recommend appointments to new terms. Other issues and measures associated with Amendment 10 may also be developed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. 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 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 Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: November 15, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–29162 Filed 11–20–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110201A]

Marine Mammals; File No. 774–1649–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, California 92038 (Principal Investigator: Rennie Holt, Ph.D.) has been issued a permit to take Antarctic pinnipeds for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018;

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Tammy Adams (301) 713–2289.

SUPPLEMENTARY INFORMATION: On August 22, 2001, notice was published in the **Federal Register** (66 FR 44120) that a request for a scientific research permit to take Antarctic pinnipeds had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: November 14, 2001.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–29163 Filed 11–20–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Czech Republic

November 16, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Czech Republic and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2002 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the availability of the 2002 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 16, 2001.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in the Czech Republic and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following limits:

Category	Restraint limit
410	1,701,501 square meters.
433	6,682 dozen.
435	4,396 dozen.
443	81,462 numbers.
624	3,111,021 square meters.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated October 26, 2000) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29141 Filed 11–20–01; 8:45 am]

I68BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

November 14, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels (GALs) for textile products, produced or manufactured in the Dominican Republic and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2002 limits and guaranteed access levels.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the availability of the 2002 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

D. Michael Hutchinson

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 2001.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in the Dominican Republic and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Restraint limit
338/638	1,279,144 dozen.
339/639	1,522,179 dozen.
340/640	1,316,808 dozen.
342/642	926,668 dozen.
347/348/647/648.	3,152,180 dozen of which not more than 1,665,300 dozen shall be in Categories 647/648.
351/651	1,578,627 dozen.
433	23,252 dozen.
442	78,942 dozen.
443	144,426 numbers.
444	78,942 numbers.
448	40,668 dozen.
633	193,214 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated November 28, 2000) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), effective on January 1, 2002, you are directed to establish guaranteed access levels for properly certified textile products in the following categories which are assembled in the Dominican Republic from fabric formed and cut in the United States and re-exported to the United States from the Dominican Republic during the period January 1, 2002 through December 31, 2002:

Category	Guaranteed access level
338/638	1,150,000 dozen.
339/639	1,150,000 dozen.
340/640	1,000,000 dozen.
342/642	1,000,000 dozen.
347/348/647/648.	8,050,000 dozen.
351/651	1,000,000 dozen.
433	21,000 dozen.
442	65,000 dozen.
443	50,000 numbers.
444	30,000 numbers.
448	40,000 dozen.
633	60,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of February 25, 1987 (52 FR 6595), as amended, shall be denied entry unless the Government of the Dominican Republic authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption

to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–29013 Filed 11–20–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit and Guaranteed Access Level for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

November 16, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing an import limit and guaranteed access level.

EFFECTIVE DATE:

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limit and Guaranteed Access Level (GAL) for textile products in Categories 340/640, produced or manufactured in El Salvador and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limit and guaranteed access level for 2002.

This specific limit and guaranteed access level do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the availability of the 2002 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 16, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in El Salvador and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of 1,653,201 dozen.

The limit set forth above is subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in Categories 340/640 exported during 2001 shall be charged to the applicable category limit for that year (see directive dated November 28, 2000) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), effective on January 1, 2002, a guaranteed access level of 1,000,000 dozen is being established for properly certified textile products in Categories 340/640 assembled in El Salvador from fabric formed and cut in the United States which are re-exported to the United States from El Salvador during the period beginning on January 1, 2002 and extending through December 31, 2002.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of January 6, 1995 (60 FR 2740), as amended, shall be denied entry unless the Government of El Salvador authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

This specific limit and guaranteed access level do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29142 Filed 11–20–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Fiji

November 14, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854);

Executive Order 11651 of March 3, 1972, as amended.

The import restraint limit for textile products, produced or manufactured in Fiji and exported during the period January 1, 2002 through December 31, 2002 is based on a limit notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limit for the 2002 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the availability of the 2002 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 338/339/638/639, produced or manufactured in Fiji and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of 1,885,025 dozen of which not more than 1,570,857 dozen shall be in Categories 338–S/339–S/638–S/639–S [1]

The limit set forth above is subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2001 shall be charged to the applicable category limit for that year (see directive dated November 15, 2000) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29014 Filed 11–20–01; 8:45 am]

BILLING CODE 3510–DR–S

[1] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers in Category 638 except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers in Category 639 except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Hungary

November 16, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Hungary and exported during the period January 1, 2002 through December 31, 2002 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2002 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the availability of the 2002 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 16, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
351/651	390,757 dozen.
410	1,000,959 square meters.
433	18,982 dozen.
434	16,106 dozen.
435	27,839 dozen.
443	178,315 numbers
444	57,522 numbers.
448	24,603 dozen.
604	1,934,031 kilograms.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated October 27, 2000) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe

entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29143 Filed 11–20–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Kuwait

November 14, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Kuwait and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2002 period. The 2002 level for Category 361 is zero.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the 2002 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 2001.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Kuwait and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	400,776 dozen.
341/641	220,427 dozen.
361	–0–

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated October 27, 2000) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29015 Filed 11–20–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Laos

November 14, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of June 23, 2000 between the Governments of the United States and the Lao People's Democratic Republic, establishes a limit for Categories 340/640 for the period January 1, 2002 through December 31, 2002.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2002 limit for Categories 340/640.

This limit may be revised if Laos becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Laos.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the 2002

CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of June 23, 2000 between the Governments of the United States and the Lao People's Democratic Republic, you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Laos and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of 193,917 dozen.

The limit set forth above is subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Lao People's Democratic Republic.

Products in the above categories exported during 2001 shall be charged to the applicable category limit for that year (see directive dated November 14, 2000) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

This limit may be revised if Laos becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Laos.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29016 Filed 11–20–01; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–10]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–10 with attached transmittal and policy justification.

Dated: November 14, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

6 November 2001

In reply refer to:
I-01/012573

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 02-10, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $77 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Attachments

Transmittal No. 02-10

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Egypt**

(ii) **Total Estimated Value:**

Major Defense Equipment*	**$ 0 million**
Other	**$ 77 million**
TOTAL	**$ 77 million**

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Overhaul/refurbishment of 201 M109A2/A3 155mm self-propelled howitzers, communication equipment, spare and repair parts, publications and technical data, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support.**

(iv) **Military Department: Army (UUN)**

(v) **Prior Related Cases, if any: FMS case UTM - $46 million - 10Jul00**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none**

(viii) **Date Report Delivered to Congress:**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Egypt - Overhaul/Refurbishment of M109A2/A3 155mm Self-propelled Howitzers

The Government of Egypt has requested a possible overhaul/refurbishment of 201 M109A2/A3 155mm self-propelled howitzers, communication equipment, spare and repair parts, publications and technical data, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support. The estimated cost is $77 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Egypt will use these howitzers to replace aging Soviet towed artillery and to complement the modernization of the M1A1/M60A3 divisions. The refurbishing of the equipment is necessary because they are not operational. Egypt will have no difficulty absorbing these howitzers into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be United Defense, LP of York, Pennsylvania. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of five U.S. Government and contractor representatives for one-week intervals five trips for program management and technical review.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 01–29006 Filed 11–20–01; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0039]

Federal Acquisition Regulation; Proposed Collection; Descriptive Literature

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning descriptive literature. The clearance currently expires March 31, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 22, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Streets, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Descriptive literature means information which shows the characteristics or construction of a product or explains its operation. It is furnished by bidders as a part of their bids to describe the products offered. Bidders are not required to furnish descriptive literature unless the contracting office needs it to determine before award whether the products offered meet the specification and to establish exactly what the bidder proposes to furnish.

B. Annual Reporting Burden

Respondents: 2,503.
Responses Per Respondent: 3.
Annual Responses: 7,509.
Hours Per Response: .167.
Total Burden Hours: 1,254.

Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0039, Descriptive Literature, in all correspondence.

Dated: November 7, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–29120 Filed 11–20–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0004]

Federal Acquisition Regulation; Proposed Collection; Architect-Engineer and Related Services Questionnaire (SF 254)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0004).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Architect-Engineer and Related Services Questionnaire (SF 254). The clearance currently expires on March 31, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 22, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Cecelia Davis, Acquisition Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 254 is used by all Executive agencies to obtain uniform information about a firm's experience in architect-engineering (A–E) projects. The form is submitted annually as required by 40 U.S.C. 541–544 by firms wishing to be considered for Government A–E contracts. The information obtained on this form is used to determine if a firm should be solicited for A–E projects.

B. Annual Reporting Burden

Respondents: 5,000.
Responses Per Respondent: 7.
Total Responses: 35,000.
Hours Per Response: 1.
Total Burden Hours: 35,000.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0004, Architect-Engineer and Related Services Questionnaire (SF 254), in all correspondence.

Dated: November 7, 2001.

Al Matera,

Director, Federal Acquisition Policy Division.

[FR Doc. 01–29123 Filed 11–20–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0043]

Federal Acquisition Regulation; Proposed Collection; Delivery Schedules

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning delivery schedules. The clearance currently expires on March 31, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 22, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

The time of delivery or performance is an essential contract element and must be clearly stated in solicitations and contracts. The contracting officer may set forth a required delivery schedule or may allow an offeror to propose an alternate delivery schedule. The information is needed to assure supplies or services are obtained in a timely manner.

B. Annual Reporting Burden

Respondents: 3,440.
Responses Per Respondent: 5.
Total Responses: 17,200.

Hours Per Response: .167.
Total Burden Hours: 2,872.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0043, Delivery Schedules, in all correspondence.

Dated: November 7, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–29124 Filed 11–20–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0065]

Federal Acquisition Regulation; Proposed Collection; Overtime

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0065).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning overtime. The clearance currently expires on March 31, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 22, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Streets, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Acquisition Policy Division, GSA (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal solicitations normally do not specify delivery schedules that will require overtime at the Government's expense. However, when overtime is required under a contract and it exceeds the dollar ceiling established during negotiations, the contractor must request approval from the contracting officer for overtime. With the request, the contractor must provide information regarding the need for overtime.

B. Annual Reporting Burden

Respondents: 1,270.
Responses Per Respondent: 1.
Total Responses: 1,270.
Hours Per Response: .25.
Total Burden Hours: 318.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0065, Overtime, in all correspondence.

Dated: November 7, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–29125 Filed 11–20–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0048]

Federal Acquisition Regulation; Proposed Collection; Authorized Negotiators

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0048).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning authorized negotiators. The clearance currently expires on March 31, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 22, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Streets, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms offering supplies or services to the Government under negotiated solicitations must provide the names, titles, and telephone numbers of authorized negotiators to assure that discussions are held with authorized individuals. The information collected is referred to before contract negotiations and it becomes part of the official contract file.

B. Annual Reporting Burden

Respondents: 61,875.
Responses Per Respondent: 8.
Total Responses: 495,000.
Hours Per Response: .017.
Total Burden Hours: 8,415.

Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0048, Authorized Negotiators, in all correspondence.

Dated: November 7, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–29126 Filed 11–20–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0047]

Federal Acquisition Regulation; Proposed Collection; Place of Performance

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning place of performance. The clearance currently expires on March 31, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 22, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

The information relative to the place of performance and owner of plant or facility, if other than the prospective contractor, is a basic requirement when contracting for supplies or services (including construction). This information is instrumental in determining bidder responsibility, responsiveness, and price reasonableness. A prospective contractor must affirmatively demonstrate its responsibility. Hence, the Government must be apprised of this information prior to award. The contracting officer must know the place of performance and the owner of the plant or facility to (1) Determine bidder responsibility; (2) determine price reasonableness; (3) conduct plant or source inspections; and (4) determine whether the prospective contractor is a manufacturer or a regular dealer. The information is used to determine the firm's eligibility for awards and to assure proper preparation of the contract.

B. Annual Reporting Burden

Respondents: 79,397.

Responses Per Respondent: 14.

Total Responses: 1,111,558.

Hours Per Response: .07.

Total Burden Hours: 77,810.

Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0047, Place of Performance, in all correspondence.

Dated: November 7, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–29127 Filed 11–20–01; 8:45 am]

BILLING CODE 6820–EP–P]

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Meeting

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting:

SUMMARY: The Defense Science Board will meet in closed session on February 27–28, 2002; May 15–16, 2002; and October 23–24, 2002, at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is 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 Defense Science Board will discuss interim findings and recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture and homeland security.

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 Defense Science Board meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meeting will be closed to the public.

Dated: November 14, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–29007 Filed 11–20–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter systems of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on December 21, 2001 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 601–4725, x124.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 14, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 14, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHA 07

SYSTEM NAME:

Defense Medical Information System (DMIS) (September 21, 1999, 64 FR 51101).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Military Health Information System'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Uniformed services medical beneficiaries enrolled in the Defense Enrollment Eligibility Reporting System (DEERS) who receive or have received medical care at one or more of DoD's medical treatment facilities (MTFs), Uniformed Services Treatment Facilities (USTFs), or care provided under TRICARE programs'.

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'PERSONAL IDENTIFICATION DATA: Selected Electronic data elements extracted from the Defense Enrollment and Eligibility Reporting System (DEERS) beneficiary and enrollment records that include data regarding personal identification including demographic characteristics.

ELIGIBILITY AND ENROLLMENT DATA:

Selected electronic data elements extracted from DEERS regarding personal eligibility for and enrollment in various health care programs within the Department of Defense (DoD) and among DoD and other federal healthcare programs including those of the Department of Veterans Affairs (DVA), the Department of Health and Human Services (DHHS), and contracted health care provided through funding provided by one of these three Departments.

CLINICAL ENCOUNTER DATA:

Electronic data regarding beneficiaries' interaction with the MHS including health care encounters, health care screenings and education, wellness and satisfaction surveys, and cost data relative to such healthcare interactions. Electronic data regarding Military Health System (MHS) beneficiaries' interactions with the DVA or DHHS healthcare delivery programs where such programs effect benefits determinations between these Department-level programs, continuity of clinical care, or effect payment for care between Departmental programs inclusive of care provided by commercial entities under contract to these three Departments.

BUDGETARY AND MANAGERIAL COST ACCOUNTING DATA:

Electronic budgetary and managerial cost accounting data associated with beneficiaries interactions with the MHS, DVA, DHHS or contractual commercial healthcare providers.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'Data collected within and maintained by the Military Health Information System supports benefits determination for MHS beneficiaries between DoD, DVA, and DHHS healthcare programs, provides the ability to support continuity of care across Federal programs including use of the data in the provision of care, ensures more efficient adjudication of claims and supports healthcare policy analysis and clinical research to improve the quality and efficiency of care within the MHS.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete paragraph four and replace with 'To the Department of Veterans Affairs (DVA) for the purpose of providing medical care to former service members and retirees, to determine the eligibility for or entitlement to benefits, to coordinate cost sharing activities, and to facilitate collaborative research activities between the DoD and DVA.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are maintained until no longer needed for current business'.

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'The individual data records that are assembled to form the MHIS are submitted by the Military Departments' medical treatment facilities, commercial healthcare providers under contract to the MHS, the Defense Enrollment Eligibility Reporting System, the Uniformed Service Treatment Facility Managed Care System, the Department of Health and Human Services, the Department of Veterans Affairs, and any other source financed through the Defense Health Program'.

* * * * *

DHA 07

SYSTEM NAME:

Military Health Information System.

SYSTEM LOCATION:

Primary location: Defense Enterprise Computing Center-Denver/WEE, 6760 E. Irvington Place Denver, CO 80279–5000.

SECONDARY LOCATION:

Directorate of Information Management, Building 1422, Fort Detrick, MD 21702–5000, Service Medical Treatment Facility Medical Centers and Hospitals, Uniformed Services Treatment Facilities and Defense Enterprise Computing Centers (DECCs). For a complete listing of all facility addresses write to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Uniformed services medical beneficiaries enrolled in the Defense Enrollment Eligibility Reporting System (DEERS) who receive or have received medical care at one or more of DoD's medical treatment facilities (MTFs), Uniformed Services Treatment Facilities (USTFs), or care provided under TRICARE programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal Identification Data: Selected electronic data elements extracted from the Defense Enrollment and Eligibility Reporting System (DEERS) beneficiary and enrollment records that include

data regarding personal identification including demographic characteristics.

ELIGIBILITY AND ENROLLMENT DATA:

Selected electronic data elements extracted from DEERS regarding personal eligibility for and enrollment in various health care programs within the Department of Defense (DoD) and among DoD and other federal healthcare programs including those of the Department of Veterans Affairs (DVA), the Department of Health and Human Services (DHHS), and contracted health care provided through funding provided by one of these three Departments.

CLINICAL ENCOUNTER DATA:

Electronic data regarding beneficiaries' interaction with the MHS including health care encounters, health care screenings and education, wellness and satisfaction surveys, and cost data relative to such healthcare interactions. Electronic data regarding Military Health System beneficiaries' interactions with the DVA or DHHS healthcare delivery programs where such programs effect benefits determinations between these Department-level programs, continuity of clinical care, or effect payment for care between Departmental programs inclusive of care provided by commercial entities under contract to these three Departments.

BUDGETARY AND MANAGERIAL COST ACCOUNTING DATA:

Electronic budgetary and managerial cost accounting data associated with beneficiaries interactions with the MHS, DVA, DHHS or contractual commercial healthcare providers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; 10 U.S.C., Chapter 55; and E.O. 9397 (SSN).

PURPOSE(S):

Data collected within and maintained by the Military Health Information System supports benefits determination for MHS beneficiaries between DoD, DVA, and DHHS healthcare programs, provides the ability to support continuity of care across Federal programs including use of the data in the provision of care, ensures more efficient adjudication of claims and supports healthcare policy analysis and clinical research to improve the quality and efficiency of care within the MHS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To permit the disclosure of records to the Department of Health and Human Services (HHS) and its components for the purpose of conducting research and analytical projects, and to facilitate collaborative research activities between DoD and HHS.

To the Congressional Budget Office for projecting costs and workloads associated with DoD Medical benefits.

To the Department of Veterans Affairs (DVA) for the purpose of providing medical care to former service members and retirees, to determine the eligibility for or entitlement to benefits, to coordinate cost sharing activities, and to facilitate collaborative research activities between the DoD and DVA.

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on optical and magnetic media.

RETRIEVABILITY:

Records may be retrieved by individual's Social Security Number, sponsor's Social Security Number, Beneficiary ID (sponsor's ID, patient's name, patient's DOB, and family member prefix or DEERS dependent suffix).

SAFEGUARDS:

Automated records are maintained in controlled areas accessible only to authorized personnel. Entry to these areas is restricted to personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of a cipher lock. Back-up data maintained at each location is stored in a locked room. The system will complies with the DoD Information Technology Security Certification and Accreditation Process (DITSCAP)

Access to HMIS records is restricted to individuals who require the data in the performance of official duties. Access is controlled through use of passwords.

RETENTION AND DISPOSAL:

Records are maintained until no longer needed for current business.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Information/Decision Support Program Office, Six Skyline Place, Suite 809, 5111 Leesburg Pike, Falls Church, VA 22041–3201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Executive Information/Decision Support Program Office, Six Skyline Place, Suite 809, 5111 Leesburg Pike, Falls Church, VA 22041–3201.

Requests should contain the full names of the beneficiary and sponsor, sponsor Social Security Number, sponsor service, beneficiary date of birth, beneficiary sex, treatment facility(ies), and fiscal year(s) of interest.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written requests to Executive Information/Decision Support Program Office, Six Skyline Place, Suite 809, 5111 Leesburg Pike, Falls Church, VA 22041–3201.

Requests should contain the full names of the beneficiary and sponsor, sponsor's Social Security Number, sponsor's service, beneficiary date of birth, beneficiary sex, treatment facility(ies) that have provided care, and fiscal year(s) of interest.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual data records that are assembled to form the MHIS are submitted by the Military Departments' medical treatment facilities, commercial healthcare providers under contract to the MHS, the Defense Enrollment Eligibility Reporting System, the Uniformed Service Treatment Facility Managed Care System, the Department of Health and Human Services, the Department of Veterans Affairs, and any other source financed through the Defense Health Program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–29009 Filed 11–20–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of the Final Environmental Impact Statement for the Title VI Land Transfer to the State of South Dakota

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: In accordance with the National Environmental Policy Act and implementing regulations, an Environmental Impact Statement (EIS) has been prepared to evaluate the environmental impacts of a transfer of approximately 91,178 acres of recreation lands and other lands from the Army Corps of Engineers to the State of South Dakota. As a result of the legislation of the Water Resources Development Act (WRDA) Pub. L. 106–53, August 17, 1999, Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, and State of South Dakota Terrestrial Wildlife Habitat Restoration Act, as amended by Pub. L. 106–541, December 11, 2000, WRDA 2000, the Secretary of the Army is required to transfer certain lands and recreation areas at Lake Oahe, Lake Sharpe, Lewis & Clark Lake and Lake Francis Case in South Dakota to the Department of Game, Fish & Parks of the State of South Dakota (SDGFP) for fish and wildlife purposes, or recreation uses, in perpetuity.

FOR FURTHER INFORMATION CONTACT: Questions regarding the EIS can be addressed to Patsy Freeman, U.S. Army Corps of Engineers, 106 South 15th Street, Omaha, Nebraska 68102, telephone at (402) 221–3803, or E-Mail: Patricia.L.Freeman@usace.army.mil

SUPPLEMENTARY INFORMATION: The legislation requires the transfer in fee title of Corps of Engineers lands (outside the boundaries of Indian reservations) above the top of the exclusive flood pools at Oahe, Big Bend, Fort Randall and Gavins Point dam/reservoir projects in the State of South Dakota to the SDGFP. The technical amendments (Pub. L. 106–54) also require that with certain exceptions, the recreation areas on Corps lands at the 4 projects in South Dakota outside of reservation boundaries be transferred to the State no later than January 1, 2002. Of the 123 recreation areas around the four reservoirs within the state, 63 would transfer to the state, 9 would be leased in perpetuity to the state, and 51 are either on reservation lands or outside the state of South Dakota and therefore would not be affected by this action.

The purpose of and need for this proposed action is simply to comply with the Congressional mandate of transferring the lands to the SDGFP. Although NEPA documents normally assist the decision maker, this document is only prepared for the purpose of public disclosure of the environmental impacts of the land transfer, since there is no Federal decision to be made.

The State of South Dakota has provided to the Corps its plans for development and management at the recreation areas to be transferred. These plans have been used to evaluate potential environmental, cultural, and socioeconomic impacts that would be expected to occur as a result of the transfer. The State's plan includes habitat development on Oahe/Sharpe project lands, on Federal lands and on selected State lands. Total habitat development proposed is 25,620 acres.

The no-action alternative traditionally describes what would happen if the proposed action were *not* to occur. Although the non-action alternative is not a reasonable alternative because Congress has mandated the transfer of these properties, it has been addressed in the EIS as required by CEQ regulations (40 CFR 1502.14) providing a baseline against which to measure the impacts of the State's proposed development on the lands to be transferred.

Public meetings to obtain comments on the Draft EIS were held August 13–August 23, 2001. These comments are addressed in the EIS.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–29151 Filed 11–20–01; 8:45 am]

BILLING CODE 3710–62–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environment Impact Statement for the Proposed Royal D'Iberville Casino and Hotel, Located in D'Iberville, Harrison County, MS

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Mobile District (Corps), intends to prepare a Draft Environmental Impact Statement (DEIS) to address the potential impacts associated with the construction of the proposed Royal D'Iberville Casino and Hotel located on the Back Bay of Biloxi, in D'Iberville, Harrison County, Mississippi. The Corps will be evaluating a permit application for the work under the authority of Section 10 of the Rivers and Harbors and Section 404 of the Clean Water Act. The EIS will be used as a basis for the permit decision and to ensure compliance with the National Environmental Policy Act (NEPA).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the DEIS should be addressed to Mr. William R. Bunkley, Regulatory Branch, phone (251) 694–3780 or e-mail at william.r.bunkley@sam.usace.army.mil, or Dr. Susan Ivester Rees, Coastal Environmental Team, phone (251) 694–4141 or e-mail at susan.i.rees@sam.usace.army.mil, Mobile District, U.S. Army Corps of Engineers, P.O. Box 2288, Mobile, AL 36628–0001.

SUPPLEMENTARY INFORMATION:

1. The permit applicant is proposing to construct a casino development on the northern shore of the Bank Bay of Biloxi consisting on the following: A casino mooring facility to accommodate a 100,000 square foot floating casino barge, a concrete access pier, 450 linear feet of steel sheet pile bulkhead, four (4) 35-foot diameter steel, concrete filled, mooring caissons and connection apparatus that will withstand 155 m.p.h. wind speeds. Associated landside work includes the construction of any entry porte cochere, a 2500 space multi-level parking garage, and a 500-room hotel. Road improvements would include I–110/Rodriquez Street interchange, Boney Avenue, and Bay Shore Drive along the width of the project site. Additional would include a sewer lift station and a 6-inch force main from the casino to the D'Iberville sewage treatment facility, a new 700-gallon per minute (gpm) water well, and a new 300,000-gallon elevated water tank. Minimal impacts to vegetated wetlands are proposed. No other wetlands or ''special aquatic sites'' will be excavated or filled. Approximately 9 acres of uplands will be impacted by the proposed development.

2. Alternatives to the applicant's proposal may exist which would reduce the impacts to the Back Bay of Biloxi. These could include alternate sites, alternative site layouts or alternative operational methods.

3. Scoping:

a. The Corps invites full public participation to promote open communication on the issues surrounding the proposal. All Federal, State, and local agencies, and other persons or organizations that have an

interest are urged to participate in the NEPA scoping process. A public meeting will be held to help identify significant issues and to receive public input and comment.

b. The DEIS will analyze the potential social, economic, and environmental impacts to the local area resulting from the proposed project. Specifically, the following major issues will be analyzed in depth in the DEIS: hydrologic and hydraulic regimes, essential fish habitat and other marine habitat, air quality, cultural resources, wastewater treatment capacities and discharges, transportation systems, alternatives, secondary and cumulative impacts, socioeconomics, environmental justice (effect on minorities and low-income groups), and protection of children (Executive Order 13045).

c. The Corps will serve as the lead Federal agency in the preparation of the DEIS. It is anticipated that the following agencies will be invited and will accept cooperating agency status for the preparation of the DEIS: U.S. Environmental Protection Agency. U.S. Department of the Interior, Fish and Wildlife Service, U.S. Department of Commerce, National Marine Fisheries Service, U.S. Department of Transportation, Federal Highway Administration.

4. The scoping meeting will be held on December 11, 2001 at the D'Iberville City Hall, Council Room, 10383 Automall Parkway, D'Iberville, MS beginning at 6:30 p.m.

5. It is anticipated that the DEIS will be made available for public review in spring 2001.

Luz D. Ortiz

Army Federal Register Liaison Officer.

[FR Doc. 01–29150 Filed 11–20–01; 8:45 am]

BILLING CODE 3710–CR–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 December 21, 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: November 15, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Common Core of Data (CCD) Surveys.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden Responses: 284.

Burden Hours: 11,004.

Abstract: The CCD surveys collect data annually from state education agencies about student enrollments, graduation, dropouts, education staff, school and agency characteristics, and revenues and expenditures for public elementary and secondary education.

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 or via her internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–29012 Filed 11–20–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management; Site Recommendation Consideration Process—Announcement of Public Hearings on Supplemental Information

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice of public hearings.

SUMMARY: On November 14, 2001, the Department of Energy (the Department) announced a 30-day supplemental public comment period regarding the consideration of a possible recommendation by the Secretary of Energy of the Yucca Mountain site in Nevada for development as a repository (66 FR 57049). The Department today announces the dates and locations for public hearings during this supplemental comment period.

DATES: The comment period began on November 14, 2001, and will close on December 14, 2001. See Supplementary Information for hearing dates and times.

ADDRESSES: Written comments should be addressed to Carol Hanlon, U.S. Department of Energy, Yucca Mountain Site Characterization Office (M/S #205), P.O. Box 364629, North Las Vegas, Nevada, 89036–8629.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, (M/S #025), P.O. Box 364629, North Las Vegas, Nevada 89036–8629, 1–800–967–3477.

SUPPLEMENTARY INFORMATION: On November 14, 2001, the Department announced a supplemental public comment period regarding the consideration of a possible recommendation by the Secretary of

Energy of the Yucca Mountain site in Nevada for development as a repository. This additional opportunity for public involvement is intended to focus exclusively on issues that could not have been raised in the prior comment period that ended on October 19, 2001.

The Department today is announcing the dates and locations for nine public hearings to be held during the supplemental public comment period. These hearings will provide the public with additional opportunities to raise issues that could not have been raised during the prior comment period and to comment on information not available during the prior comment period.

The hearings are scheduled as follows:

December 5, 2001, at the Cashman Center, Rooms 103–106, 850 Las Vegas Boulevard North, Las Vegas, NV 89101, from 3 pm through 9 pm.

December 5, 2001, at the Bob Ruud Community Center, 150 North Highway #160, Pahrump, NV 89060, from 3 pm through 9 pm.

December 5, 2001, at the Battle Mountain Civic Center, 625 South Broad Street, Battle Mountain, NV 89820, from 3 pm through 9 pm.

December 8, 2001, at the Cashman Center, Rooms 203–206, 850 Las Vegas Boulevard North, Las Vegas, NV 89101, from 11 am through 8 pm.

December 8, 2001, at the Reno/Sparks Convention Center, Meeting Room B3, 4590 South Virginia Street, Reno, NV 89502, from 11 am through 8 pm.

December 8, 2001, at the Bristlecone Convention Center, 150 6th Street, Ely, NV 89301 from 11 am through 8 pm.

December 12, 2001, at the Cashman Center, Rooms 103–106, 850 Las Vegas Boulevard North, Las Vegas, NV 89101, from 5 pm through 9 pm.

December 12, 2001, at the Longstreet Inn and Casino, Highway 373, Amargosa Valley, 89020, from 5 pm through 9 pm.

December 12, 2001, at the Olson Senior Citizens Center, 240 Front Street, Caliente, NV 89008, from 5 pm through 9 pm.

Additional information on the Civilian Radioactive Waste Management program may be obtained at the Yucca Mountain web site at *www.ymp.gov* or by calling 1–800–967–3477.

Issued in Washington, DC on November 16, 2001.

Lake H. Barrett,

Acting Director.

[FR Doc. 01–29168 Filed 11–20–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–22–000]

Allegheny Energy Supply Company, LLC; Notice of Filing

November 15, 2001.

Take notice that on November 9, 2001, Allegheny Energy Supply Company, LLC (Petitioner), filed with the Federal Energy Regulatory Commission a petition for declaratory order disclaiming jurisdiction and request for expedited consideration on behalf of PSEG Resources Inc. and Banc One Capital Corporation, certain to-be-formed wholly-owned subsidiaries thereof which will act as the Owner Participants, Owner Lessors and a to-be identified bank or trust company which will act as the Owner Trustee. Petitioner requests expedited action to permit the transaction to close on or soon after November 30, 2001.

Petitioner is seeking a disclaimer of jurisdiction in connection with a lease financing involving its interest in the Hatfield's Ferry Power Station.

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 November 28, 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.

David P. Boergers,

Secretary.

[FR Doc. 01–29075 Filed 11–20–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–6–000]

Dominion Transmission, Inc.; Notice of Report of Refunds

November 15, 2001.

Take notice that on November 6, 2001, Dominion Transmission, Inc. (DTI) tendered for filing a report of refunds that DTI flowed through to its customers.

DTI states that the purpose of this filing is to report the refunds that resulted from Columbia Gulf Transmission Company's (Columbia Gulf's) settlement in Docket No. RP91–160, which required Columbia Gulf to refund environmental costs reimbursed by its insurance carriers. DTI states that the refunds were allocated based on DTI's customers' fixed cost responsibility as set out on Sheet No. 38 of DTI's FERC Gas Tariff.

DTI states that copies of its filing are being sent by first-class mail, postage prepaid, by DTI to DTI's affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 23, 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. 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.

David P. Boergers,

Secretary.

[FR Doc. 01–29076 Filed 11–20–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–47–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 15, 2001.

Take notice that on November 13, 2001, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, with an effective date of December 14, 2001:

Second Revised Sheet No. 287
Original Sheet No. 287A
Second Revised Sheet No. 288
First Revised Sheet No. 353
Original Sheet No. 353A
First Revised Sheet No. 354

El Paso states that tariff sheets are being filed to specify the procedures for changing primary delivery point rights and to provide flexibility to shippers desiring to change their primary delivery points.

El Paso states that copies of the filing upon all shippers on El Paso's system, and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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. 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.

David P. Boergers,

Secretary.

[FR Doc. 01–29078 Filed 11–20–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–19–000]

Panhandle Eastern Pipe Line Company; Notice of Application

November 15, 2001.

Take notice that on November 5, 2001, Panhandle Eastern Pipe Line Company (Panhandle), P. O. Box 4967, Houston, Texas 77210–4967, filed in Docket No. CP02–19–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, and part 157 of the Federal Energy Regulatory Commission's Regulations (Commission), for authorization to abandon by transfer to CMS Field Services Company, Inc. (CMS Field Services), an affiliate of Panhandle, the Hickok Lateral located in Grant County, Kansas, and the Miles Lateral located in Kearny County, Kansas. Panhandle states that it also requests a finding that the facilities, upon abandonment, be declared as non-jurisdictional gathering facilities exempt from the Commission's jurisdiction under NGA section 1(b), all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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).

Panhandle states that the Hickok and Miles Laterals, which Panhandle proposes to abandon, are wholly-owned by Panhandle. The facilities were constructed pursuant to budget-type blanket certificate authority issued January 23, 1973 and January 30, 1978, as amended, December 21, 1978, in Docket No. CP73–167–000, and Docket No. CP78–83–000, respectively.

Panhandle states that the Hickok Lateral, Line No. 16–03–123–58, is a 16-inch pipeline that extends approximately 6.4 miles from an interconnect with Mobil Exploration & Production Company's Hickok Gathering System and Vastar Resources, Inc's. gathering facilities in Grant County, Kansas. According to Panhandle, there are no firm shippers which utilize the Hickok Lateral as a primary receipt point thus existing shippers will not be adversely affected by this application. Panhandle also states that there are no other wells or facilities connected to the 16-inch Hickok Lateral.

Panhandle states that the Miles Lateral, Line No. 43–03–039–01, is an 8-inch pipeline that extends approximately 16.7 miles from DEFS' Miles booster station to a point on Panhandle's 20-inch Lakin pipeline, which is adjacent to El Paso Field Services' processing plant in Kearny County, Kansas. The Miles pipeline was originally constructed to connect Panhandle's Miles and Hampton Gathering Systems to Panhandle's Lakin pipeline. Those gathering systems are now owned by DEFS. The only portion owned by Panhandle is the Miles Lateral. Currently, the only gas flowing through the Miles Lateral is under interruptible contracts. Panhandle states that there are no firm shippers using the Miles Lateral as a primary receipt point and that September 1998 was the last month that firm transportation service was provided, thus, existing shippers will not be adversely affected by this application. Panhandle also states that there are no other wells or facilities connected to the 8-inch Miles Lateral.

Panhandle states that with this application it is proposing to abandon by transfer to CMS Field Services the Hickok and Miles Laterals. While these laterals are currently classified as transmission, upon abandonment they will be performing a gathering function and thus should more properly be characterized as gathering facilities. Panhandle requests that the Commission determine that the Hickok and Miles Laterals serve a gathering function upon abandonment and transfer.

Panhandle states that as a transporter of natural gas, it no longer needs these facilities to purchase and gather gas for system supply, which was their original intended purpose. According to Panhandle, the proposed sale of these facilities will be beneficial from an operational standpoint in that their abandonment will allow Panhandle to cease the operation of those facilities no longer serving an interstate transmission system function and their sale will eliminate Panhandle's operating and maintenance expenses for them.

Any questions regarding this application should be directed to William W. Grygar, Vice President, Rates and Regulatory Affairs, Panhandle Eastern Pipe Line Company, 5444 Westheimer Road, Houston, Texas 77056–5306, at (713) 989–7000.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before December 6, 2001, file with the Federal Energy Regulatory

Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–29073 Filed 11–20–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–46–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 15, 2001.

Take notice that on November 13, 2001, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Fifth Revised Sheet No. 180, with a proposed effective date of December 1, 2001.

Tennessee states that the tariff sheet is being filed in compliance with 18 CFR 156.217 of the Commission's regulations to reflect the conversion of a portion of Capital District Energy Center Cogeneration Associates' Part 157 service on Tennessee's system to Part 284 service.

Tennessee states that copies of the filing has been mailed to each of Tennessee's customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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. 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.

David P. Boergers,

Secretary.

[FR Doc. 01–29077 Filed 11–20–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DR02–1–000]

The Empire District Electric Company; Notice of Filing

November 15, 2001.

Take notice that on November 8, 2001, The Empire District Electric Company (EDE) tendered for filing with the Federal Energy Regulatory Commission (Commission), an application pursuant to rule 204 of the Commission's rules of practice and procedure, 18 CFR 385.204, seeking approval by the Federal Energy Regulatory Commission of a change in depreciation rates for production, transmission, distribution and general plant utilized by EDE.

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 November 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.

David P. Boergers,

Secretary.

[FR Doc. 01–29074 Filed 11–20–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2156–001, et al.]

New England Power Company, et al.; Electric Rate and Corporate Regulation Filings

November 14, 2001.

Take notice that the following filings have been made with the Commission:

1. New England Power Company

[Docket No. ER01–2156–001]

Take notice that on November 8, 2001, New England Power Company (NEP), as successor in interest to Montaup Electric Company (Montaup) submits for filing notices of cancellation of Montaup's FERC Electric Tariff, First Revised Volume No. 1 (Montaup Tariff No. 1) and all service agreements and supplements thereunder. NEP is canceling Montaup Tariff No. 1 because service is no longer provided under the tariff. In addition, NEP submits for filing a revised tariff, redesignated as NEP tariff, to reflect the service that is currently being offered. The service agreements under Montaup Tariff No. 1 are being cancelled and redesignated to reflect that service is not provided under the revised NEP tariff.

NEP states that copies of the filing have been served upon all affected customers and state regulators in Massachusetts and Rhode Island.

Comment date: November 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Virginia Electric and Power Company

[Docket No. ER01–3032–001]

Take notice that on November 8, 2001, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) with Tenaska Virginia Partners, L.P. (Tenaska). The Interconnection Agreement sets for the terms and conditions governing the interconnection between Tenaska's yet to be built generating facility and Dominion Virginia Power's transmission system. The executed Interconnection Agreement replaces the unexecuted Interconnection Agreement that was filed in the above referenced docket on September 10, 2001.

Dominion Virginia Power respectfully requests that the Commission accept this filing to make the executed Interconnection Agreements effective as of January 8, 2001.

Copies of the filing were served upon Tenaska Virginia Partners, L.P. and the Virginia State Corporation Commission.

Comment date: November 29, 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.

David P. Boergers,

Secretary.

[FR Doc. 01–29024 Filed 11–20–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–4–000, CP01–5–000, and CP01–8–000]

Maritimes & Northeast Pipeline, L.L.C., Algonquin Gas Transmission Company and Texas Eastern Transmission Corporation; Notice of Availability of the Final Environmental Impact Statement for the Proposed Phase III/Hubline Pipeline Project

November 15, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a Final Environmental Impact Statement (FEIS) on the natural gas pipeline facilities proposed by Maritimes & Northeast Pipeline, L.L.C. (Maritimes), and Algonquin Gas Transmission Company (Algonquin) (collectively the Applicants) in the above-referenced docket.

The FEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project with the appropriate mitigating measures as recommended would have limited adverse environmental impact. The FEIS also evaluates alternatives to the proposal, including major route alternatives and route variations.

The FEIS addresses the potential environmental effects of the construction and operation of the following facilities:

- About 24.8 miles of new, primarily onshore, natural gas pipeline (23.8 miles of 30-inch-diameter pipeline and 1.0 mile of 24-inch-diameter pipeline) referred to as the Maritimes Phase III Pipeline;
- About 29.1 miles of new, primarily offshore, natural gas pipeline (24-inch-diameter pipeline) referred to as the HubLine Pipeline;
- About 5.4 miles of new, primarily offshore, natural gas pipeline (16-inch-diameter pipeline) referred to as the Deer Island Lateral; and
- Three new meter stations, four mainline valves, and related facilities.

The purpose of the proposed facilities would be to transport about 150,500 decatherms per day of natural gas to five

customers in Massachusetts and Connecticut. In addition, the project would provide leased capacity of 80,000 decatherms per day of natural gas for Texas Eastern Transmission Corporation.

Joint State and Federal Review

On September 14, 2001, the Secretary of the Executive Office of Environmental Affairs for the Commonwealth of Massachusetts issued a Certificate on the Draft Environmental Impact Report (DEIR) for these projects. The Secretary determined that the DEIR, prepared pursuant to the Massachusetts Environmental Policy Act (MEPA), ''adequately and properly complies with the Massachusetts Environmental Policy Act and with its implementing regulations.'' (Citations omitted). It also indicated that:

As discussed below, I am satisfied that the proponent has presented enough information on alternatives and impacts to demonstrate that the preferred alternative is feasible and less environmentally damaging than other alternatives. The project can advance to the Final EIR stage. However, there are several important issues that must be addressed in the Final EIR, including analysis of local routing alternatives, analysis of construction alternatives, and more information of the impacts and mitigation associated with the preferred alternative.

To accomplish the goal of addressing the requirements of both the state and the Federal government in a single document, the Applicants intend to file the FEIS with the MEPA office along with supplemental materials (Supplement) that will respond to specific issues identified in the state Certificate that may not have been identified or specifically addressed in the FEIS. The Supplement will include an appendix containing comments received since the DEIR with indexed and narrative responses by the Applicants. The Supplement and the FEIS are collectively intended to comprise the Final EIR for purposes of review under MEPA.

FERC Process

The FEIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the FEIS have been mailed to Federal, state, and local agencies; public interest groups; individuals who have requested the FEIS; newspapers, and parties to this proceeding.

In accordance with Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act, no agency decision on a proposed action may be made until 30 days after the U.S. Environmental Protection Agency publishes a notice of availability of an FEIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal appeal process that allows other agencies or the public to make their views known. In such cases, the agency decision may be made at the same time the notice of the FEIS is published, allowing both periods to run concurrently. The Commission decision for this proposed action is subject to a 30-day rehearing period.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 or on the FERC internet website (www.ferc.gov) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC internet web site, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 01–29072 Filed 11–20–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Post-Certificate Environmental Compliance and Environmental Report Preparation Training Seminars

November 15, 2001.

The Office of Energy Projects (OEP) staff will conduct the first of five sessions of its Post-Certificate Environmental Compliance Seminar on December 12 and 13, 200 and the remaining four, as well as five sessions of the Environmental Report Preparation Seminar, throughout 2002. Last offered in 1998, these seminars have been updated to reflect recent regulatory changes and to open for discussion state-of-the-industry advances in compliance management techniques. The format of both seminars has also been revised to include interactive training techniques and increased audience participation. The training seminars will be delivered by FERC staff and consultants with significant industry experience.

Details on the content of both seminars and the scheduled training locations are provided below. For more information for the courses visit the FERC website at *http://www.ferc.gov/industry_seminars_home.htm* and to register for the courses, visit the web site for these training sessions at *www.ferc-envtraining.com* or call (650) 712–6610. Registration for each course will be limited; so, although there is no charge for the course, all participants must register in advance.

Post-Certificate Environmental Compliance (2-Day Seminar)

This two-day seminar will cover the FERC's post-certificate regulatory process and construction and restoration requirements. The seminar will provide each trainee with knowledge of the basic environmental requirements of most FERC certificates and will address the following compliance topics:

- Preconstruction planning
- Post-certificate filings, including cultural resources requirements, implementation plan, threaten and endangered species
- Waterbody crossings
- Wetland construction
- Erosion control
- Residential construction
- Agricultural mitigation
- Variance procedures
- Right-of-way restoration and post-construction activities

Before each morning of the seminar, we will also offer an ''early-bird'' session on Pipeline Construction (Day 1) and Effective Communications (Day 2) for those participants who fell they would benefit. Participants must register for these early-bird sessions when registering for the seminar. The Pipeline Construction session will be for those who are inexperienced in basic pipeline construction practices. The Effective Communications session will discuss how the Environmental Inspector and project representatives may best keep themselves, agencies, and construction contractors informed of the status of the project and various regulatory requirements to avoid misunderstandings to the extent possible.

At the training seminar, we will present updates that are under

consideration for the Upland Erosion Control, Revegetation, and Maintenance Plan (Plan) and the Wetland and Waterbody Construction and Mitigation Procedures (Procedures). Seminar participants will have the opportunity to provide input and comment on the proposed updates. We will also issue separate notice of these potential changes for the general public and the regulated industry to comment on outside of the training venue.

Registered participants will receive a certificate of attendance at the end of the session and an updated copy of the Natural Gas Pipeline Environmental Compliance Workbook.

The December, 2001, Post-Certificate Environmental Compliance Seminar will be held in Houston, Texas at the Sheraton North, 15700 John F. Kennedy Blvd. Participants must register for this course by December 1. Additional courses will be held as shown on the attached table. More information on these future courses will be posted on the website in January 2002.

Environmental Report Preparation

This seminar will discuss the environmental documentation required for certificate applications prepared under subpart A of 18 CFR 157 and sections 7(a), 7(b), and 7(c) of the Natural Gas Act (NGA), subpart F blanket projects, and section 2.55 replacements. The seminar will assist each trainee in preparing the environmental report required for filing with FERC applications for project construction or abandonment. The presentation will address the information necessary to meet the FERC's minimum filing requirements and will cover the following topics:

- General Project Description
- Water Use and Quality
- Fish, Wildlife, and Vegetation
- Cultural Resources
- Socioeconomic and Environmental Justice
- Geological Resources
- Soils
- Land Use, Recreation and Aesthetics
- Air and Noise Quality
- Alternatives
- Reliability and Safety
- PCB Contamination
- Information Related to LNG Facilities
- Landowner Notification

The seminar will also include a discussion of the FERC's efforts to enhance stakeholder involvement during the pre-filing process which potentially includes beginning the National Environmental Policy Act process during the development stage of a project. Participants will receive a certificate of attendance at the end of the session and an updated copy of the Guidance Manual for Environmental Report Preparation.

The Environmental Report Preparation Seminars will be held as shown on the attached table. More information on these future courses will be posted on the website in January 2002.

David P. Boergers,

Secretary.

SCHEDULE OF TRAINING SEMIANRS

(FY 2001–2002)

Dates	Location	Seminar
December 12–13	Houston	Compliance.
March	Las Vegas	Compliance.
April	Atlanta	Compliance ER Preparation.
May	Hartford	Compliance ER Preparation.
June	Salt Lake	ER Preparation.
August	Houston	ER Preparation.
September	St. Louis	Compliance; ER Preparation.

[FR Doc. 01–29071 Filed 11–20–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–42212E; FRL–6812–9]

Endocrine Disruptor Methods Validation Subcommittee under the National Advisory Council for Environmental Policy and Technology; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As mandated by the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, EPA is implementing an Endocrine Disruptor Screening Program (EDSP). As part of the implementation of EDSP, the Endocrine Disruptor Methods Validation Subcommittee (EDMVS) under the National Advisory Council for Environmental Policy and Technology, a Federal Advisory Committee NACEPT, has been established. There will be a 3–day meeting of the EDMVS. EDMVS will provide technical advice on the Tier 1 screening and Tier 2 testing methods for its EDSP. The meeting is open to the public. Seating is on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Jane Smith at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting, so appropriate arrangements can be made.

DATES: The 3–day meeting will be held on December 10, 2001, from 1 p.m. to 6 p.m., December 11, 2001, from 9 a.m. to 5 p.m., and December 12, 2001, from 9 a.m. to noon.

Requests to participate in the meeting must be received on or before December 6, 2001. The public comment period will be late on the afternoon of December 10, 2001.

ADDRESSES: The meeting will be held at RESOLVE 1255 23rd St., NW., Suite 275, Washington, DC. The telephone number at RESOLVE is (202) 944–2300.

Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. listed under **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your request must identify docket control number OPPTS–42212E in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Jane Smith, Designated Federal Official, Office of Science Coordination and Policy (7203M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460;

telephone number: (202) 564–8476; fax number: (202) 564–8483; e-mail address: smith.jane-scott@epa.gov. (Please make note of these new phone/fax numbers).

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest if you produce, manufacture, use, consume, work with, or import pesticide chemicals, substances that may have an effect cumulative to an effect of a pesticide, or substances found in sources of drinking water. To determine whether you or your business may have an interest in this notice you should carefully examine section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996 (Public Law 104–170), 21 U.S.C. 346a(p) and amendments to the Safe Drinking Water Act (SDWA) (Public Law 104–182), 42 U.S.C. 300j–17. 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**.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. The draft meeting agenda is now available. In addition, the Agency may provide additional background documents as the material becomes available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/scipoly/oscpendo. To access this document, on the Home Page select ''Endocrine Disruptor'' which will take you to the OSCP Endocrine Disruptor Screening Program web site. You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an administrative record for this meeting under docket control number OPPTS–42212E. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to Endocrine Disruptor Methods Validation, including any information claimed as Confidential Business Information (CBI). This administrative 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 administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. Your request must be received by EPA on or before December 6, 2001. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–42212E in the subject line on the first page of your request.

1. *By mail*. You may submit a request to: Docket Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. U.S. EPA Confidential Business Information Center (CBIC), Room 6148, Mail Code 7407M, ATTN: NCIC, East Building, 1201 Constitution Ave., NW., Washington, DC 20004. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 564–8930 or 8940. You must call for escort or pick-up.

3. *Electronically*. You may submit your request electronically by e-mail to: oppt.ncic@epa.gov. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket control number OPPTS–42212E. You may also file a request online at many Federal Depository Libraries.

IV. Meeting Topics

December 10, 11, and 12, 2001

- Review summary of previous meeting, (October 30–31, 2001) mission statement and workplan.
- Pubertal studies: Single dose study, multi-dose protocol, and array protocol.
- Mammalian one generation extension study.
- *In utero* through lactation protocol.

List of Subjects

Environmental protection, Endocrine Disruptor Screening Program, EndocrineDisruptor.

Dated: November 14, 2001.

Vanessa Vu,

Director, Office of Science Coordination and Policy, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 01–29105 Filed 11–20–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7105–8]

Office of Research and Development; Board of Scientific Counselors Subcommittee Review of the National Center for Environmental Research

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of review.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2) notification is hereby given that the Environmental Protection Agency, Office of Research and Development (ORD), Board of Scientific Counselors (BOSC), Subcommittee will meet to review the National Center for Environmental Research.

DATES: The review will be held on January 23–24, 2002. On Wednesday, January 23, 2002, the review will begin at 9 a.m., and will recess at 4 p.m. On Thursday, January 24, 2002, the review will reconvene at 8:30 a.m. and adjourn at approximately 12 noon. All times noted are Eastern Time.

ADDRESSES: The review will be held at the Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Glacier Bay Conference Room, Room Number 81102, Washington, DC 20004.

SUPPLEMENTARY INFORMATION: Anyone desiring a draft agenda may fax their request to Shirley R. Hamilton, (202) 565–2444. The meeting is open to the public. Any member of the public wishing to make comments at the meeting should contact Shirley Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Board of Scientific Counselors, Office of Research and Development (8701R), 1200 Pennsylvania Avenue NW., Washington, DC 20460 by telephone at (202) 564–6853. In general, each individual making an oral presentation will be limited to a total of three minutes.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, (8701R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–6853.

Dated: November 13, 2001.

Peter W. Preuss,

Director, National Center for Environmental Research.

[FR Doc. 01–29103 Filed 11–20–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7105–9]

Board of Scientific Counselors, Executive Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of teleconference.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2) notification is hereby given that the Environmental Protection Agency, Office of Research and Development (ORD), The Board of Scientific Counselors (BOSC), will hold an Executive Committee Teleconference.

DATES: The teleconference will be held on December 17, 2001.

ADDRESSES: On Monday, December 17, 2001, the teleconference will begin at 1 p.m. and will adjourn at 3 p.m. All times noted are Eastern Time.

SUPPLEMENTARY INFORMATION: The entire agenda of the BOSC Executive Committee teleconference is to discuss and approve draft BOSC Subcommittees' Reviews of ORD's National Laboratory and Centers. The teleconference is open to the public. Any member of the public wishing to speak on the teleconference should contact Shirley Hamilton, Designated Federal Officer, Office of Research and Development (8701R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or telephone at (202) 564–6853. In general each individual making an oral presentation will be limited to a total of three minutes.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, NCER (MC 8701R), 1200 Pennsylvania Avenue, NW. Washington, DC 20460, (202) 564–6853.

Dated: November 13, 2001.

Peter W. Preuss,

Director, National Center for Environmental Research.

[FR Doc. 01–29104 Filed 11–20–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30000/51B; FRL–6794–4]

1,3–Dichloropropene (Telone); Notice of Final Determination for Termination of the Telone Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Determination and Termination of Special Review.

SUMMARY: In a **Federal Register** Notice of January 12, 2000 (65 FR 1869) (hereafter called the ''Telone PD2'' or ''PD2''), EPA proposed to terminate the Telone Special Review based on the determination that the benefits of use outweigh the risks. The Agency solicited public comments for a 60–day period. Following its review of submitted comments, the Agency believes that the benefits of Telone use continue to outweigh the risks. Thus, with this notice, EPA is announcing that it has terminated the Telone Special Review.

FOR FURTHER INFORMATION CONTACT: Wilhelmena Livingston, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone (703) 308–8025. E-mail address: livingston.wilhelmena@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are a pesticide registrant with registered products which contain 1,3-Dichloropropene (1,3-D or Telone) as an active ingredient, if you are an agricultural producer or worker using products containing 1,3-D as an active ingredient, or if you live in and around agricultural areas where 1,3-D is used.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *By mail.* You may request copies of this document by writing to: Public Information and Records Integrity Branch, Information Resources and Services Division (7202C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or by calling (703) 305–5805 between 8:30 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. Be sure to include the docket control number [OPP–30000/51B] in your request.

2. *In person.* The Agency has established an official record for this action under docket control number [OPP–30000/51B]. The official record consists of all documents in the Telone Special Review docket, **Federal Register** notices pertaining to actions under the Special Review regulations, including supporting documents, 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). The official record includes documents that are physically located in the docket, as well as documents that are referred to in those documents. The public version of the official record does not include any information claimed as CBI. The public version of this record, including printed, paper versions of any electronic comments, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *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/.

II. Response to Comments Submitted on EPA's Proposed Determination to Terminate Special Review

A. Public Comments and Agency Responses to the Toxicological Concerns Contained in the Proposal to Terminate the Special Review

1. *Comment.* Dow Agrosciences commented that EPA omitted the findings of several studies critical to deriving any conclusion regarding the potential genotoxicity of 1,3-D in the PD2 discussion. According to Dow AgroSciences, these studies clearly

indicate a lack of genotoxic potential of 1,3-D.

Response. The studies in question were not available at the time the PD2 was prepared and published in the **Federal Register**. They are:

- Inhalation Dominant Lethal Assay in Rats (MRID No. 44302801)
- P-Post Labeling Assay in Rats (MRID No. 44446302)
- Transgenic Mutagenesis Assay (MRID No. 44470501)
- *In vitro* DNA Binding Assay (MRID No. 44446301)

The studies were either unacceptable or they did not provide evidence of a non-genotoxic mode of action. Findings from these studies can be found in HED document No. 012317 (Dominant Lethal Assay) and HED document No. 013566 (studies 2–4).

2. *Comment*. Dow Agrosciences commented that, contrary to EPA's discussion in Unit III. C of the PD2, the formation of 1,3-D epoxide is not a significant or relevant metabolic pathway in the mouse at non-acute lethal doses and via the conceivably anticipated routes of exposure (inhalation or ingestion) that are expected to occur during product use conditions. Dow Agrosciences questioned the relevance of studies used to come to these conclusions because doses used in the study (Schneider et al.) either were equal to or exceeded the LD_{50} for telone and the route of exposure represented the ''less relevant route.''

Response. The study being questioned by Dow Agrosciences did indeed use doses which exceeded the LD_{50} of 300 milligram/kilogram (mg/kg). However, the purpose of the study and the way HED scientists used the data was to identify the hazard (i.e., the capacity of 1,3-D to produce mutagenic epoxides both *in vitro* and *in vivo*), rather than determine dose levels. Hazard identification, which identifies the components of a toxic response, is a crucial step in the risk assessment process. Qualitatively, therefore, the study of Schneider et al has provided information on the hazard potential resulting from epoxide formation.

3. *Comment*. Dow Agrosciences submitted the results of a series of mammalian and environmental toxicology studies which evaluated the properties of the acid and alcohol metabolites of 1,3-D. Based on this metabolite-specific data base, Dow AgroSciences requested that the acid and alcohol metabolites no longer be judged as having equal toxicity as 1,3-D and that, instead, assessments of exposure and risk should be made for the metabolites separate from the parent.

Response. The Agency is concluding this Special Review with the assumption that the acid and alcohol metabolites have equal toxicity as the parent. Even with this conservative assumption, the Agency has concluded that Telone benefits exceeds the risk. However, for future registration activities, the Agency will review the submitted data to determine whether it is appropriate to conduct a separate exposure and risk assessment for the 1,3-D acid and alcohol metabolites.

4. *Comment*. A number of commenters questioned EPA's reliance on research by the National Toxicology Program (NTP), stating that the NTP's Technical Report Review Subcommittee includes an employee of the parent company for the Telone pesticide registrant. Another commenter (Friends of the Earth) also questioned the validity of the studies conducted by the registrant, which were cited by EPA in its proposed decision. This commenter felt that the Agency should conduct its own studies to verify the findings of registrant sponsored studies.

Response. The Agency routinely requires registrants to conduct studies that help identify potential human health or ecological risks. These studies generally form the majority of studies available to the Agency when assessing the risks associated with pesticide use. Studies are often conducted by independent laboratories and are subject to the Agency's Good Laboratory Practice guidelines found in 40 CFR part 160. The Agency, not the registrants, analyzes the results of each study to determine the data's implications for regulatory purposes. Failure to comply with good laboratory practices may result in EPA's refusal to consider the data reliable for the purpose of supporting regulation of a pesticide. In addition, tampering with study findings can result in both criminal and civil penalties.

5. *Comment*. Friends of the Earth felt that EPA underestimated the ability of Telone to irritate the skin and cause systemic toxicity, citing a 1986 study by Cornell stating that the chemical is a moderate skin irritant, rather than a slight irritant as stated by the EPA. The Occupational Safety and Health Administration's permissible exposure limit for Telone also includes a skin notation to help protect against telone's ability to cause systemic toxicity when absorbed through the skin.

Response. Telone is classified as a slight skin irritant (Toxicity Category III; slight to well-defined erythema and very slight to slight edema observed at 72 hours following exposure), based upon results of the acute primary skin irritation toxicity study, which the Agency has reviewed and determined to be acceptable. Any other study which may be relevant to EPA human health assessment of Telone should be submitted to EPA, so the Agency can determine its validity under the current testing guidelines.

Telone is assigned Toxicity Category II based upon the toxicities identified in three acute mammalian studies (acute oral, acute dermal, and primary eye irritation toxicity studies). The category for labeling purposes is assigned on the basis of the highest hazard shown by specific indicators in the battery of acute toxicity studies. Hence, the product labeling for telone reflects adequate precautionary statements, use precautions, environmental hazards, handling and protective equipment requirements, maximum application rates, and other exposure mitigation, measures for pesticides meeting the Toxicity Category II criteria.

6. *Comment*. In questioning the Agency's conclusions regarding mutagenicity in the PD2, the registrant also referred to the Agency's reference to an ''*in vivo* formation of DNA lesions in various organs, including the stomach, colon, liver, kidney, bladder, brain, and bone marrow.'' The registrant indicated a belief that these results were based on flawed data, making reference to these lesions inappropriate.

Response. This finding appears to have come from the study of Ghia *et al.*, 1993. In this assay, significant DNA fragmentation was observed in the liver ($p<0.01$ to <0.002), gastric mucosa ($p<0.05$), and the kidney ($p<0.01$) of rats 3 hours after the oral gavage administrations of 62.5, 125 or 250 mg/kg. The effect in the liver was dose-related. Based on the Agency's revisit of the study, it also appears that findings for the lungs, brain, and bone marrow were erroneously presented as positive for DNA single strand breaks and the rat bladder was not tested. These errors will be corrected in future risk assessments. However, it should be emphasized that mutagenicity results will not impact the Agency's Special Review determination.

B. Public Comments and Agency Responses to Telone Incident Data

Comment. Dow AgroSciences noted that a reference in the PD2 to a reported case of a farmer contracting leukemia as a result of being accidentally sprayed in the face with Telone as a result of a leaky hose was inaccurate. Dow AgroSciences provided public court records from a related case in California, arguing that the farmer had leukemia

prior to the Telone exposure and, therefore there was no association between the leukemia and Telone exposure.

Response. The Agency agrees that when a disease precedes pesticide exposure, this does not support evidence of risk. However, based solely on the legal brief submitted to the Agency in support of this assertion of diagnosis prior to Telone exposure, it is not possible for the Agency to confirm that this is what occurred. Therefore, this information does not provide EPA with any basis for evaluating the relationship between the Telone exposure and the farmer's leukemia and the usefulness of this incident in evaluating the health risks associated with Telone.

C. Public Comments and Agency Responses to the Groundwater Contamination Potential of Telone

1. *Comment*. Dow AgroSciences commented that it was inappropriate to base potential dietary exposure to Telone in the PD2 on residue values developed using ''on-site'' wells from the Florida prospective groundwater study because of the requirement of a 100–foot setback from any treated field to the nearest potable drinking water well that was added to Telone product labels in 1999.

Response. EPA agrees that the ''on-site'' wells (wells on fields treated with Telone) do not provide the most accurate estimates of Telone concentrations in drinking water for use in calculating dietary exposure. However, these were among the most reliable data available to the Agency at the time of the PD2. The tap water monitoring program, which is currently underway, will allow the Agency to more accurately calculate dietary risk from groundwater sources.

2. *Comment*. A number of commenters questioned why Telone use was not banned in Florida, when it was specifically banned in other states. The prevalence of karst geology and shallow groundwater in Florida make Florida more vulnerable to potential groundwater contamination from Telone.

Response. Telone use is banned in areas of karst geology. The label language currently reads:

Do not apply in areas overlying karst geology. In North Dakota, South Dakota, Wisconsin, Minnesota, New York, Maine, New Hampshire, Vermont, Massachusetts, Utah, and Montana: where groundwater aquifers exist at a depth of 50–feet or less from the surface, do not apply this product where soils are Hydrologic Group A.

The prohibition on use in areas overlying karst geology applies to all states. The prohibition on use where groundwater aquifers are less than 50–feet from the surface and where soils are Hydrologic Group A, on the other hand, applies only to those states specifically listed (based on colder climate conditions identified as promoting the potential for groundwater contamination). The Agency has notified the registrant of the potential misreading of the label language and has encouraged the registrant to place these prohibitions on separate lines to avoid confusion, and to clarify the prohibitions in their product stewardship manual.

Telone use is prohibited in Florida in any areas of karst geology. The Telone Reregistration Eligibility Decision (RED) also includes a tap water monitoring requirement for any future Telone use (should such use occur in areas of non-karst geology) and built-in future restrictions if groundwater levels exceed the Telone drinking water level of comparison (DWLOC).

3. *Comment*. Friends of the Earth commented that the Agency should require a minimum of a 300–foot buffer from water wells, rather than the current 100–foot buffer.

Response. The data currently available do not allow the Agency to quantify the degree of protection afforded by any specific buffer distance. The Agency recognizes that a number of factors can influence the potential for groundwater contamination, including soil temperature, soil type, depth of application, etc. As a result, the tap water monitoring program is designed to help identify any further vulnerable areas. This could result in further restrictions on the set back from drinking water wells in Telone's use areas.

4. *Comment*. The Environmental Center expressed concerns about Telone's potential to contaminate groundwater in Hawaii because the State relies on groundwater as a source of drinking water.

Response. The potential for groundwater contamination is well established for Telone and its degradates. Dow AgroSciences is currently conducting a 5 Region monitoring program to determine if Telone concentrations in groundwater used as a source of drinking water may reach levels of concern, despite extensive mitigation measures already put in place. The state of Hawaii is not included in this program, because it was determined that Telone's use in Hawaiian agriculture is not substantial. Therefore, the potential for widespread contamination or concentrations of concern would not be anticipated. If problem areas are identified from the monitoring program, the results will be extrapolated to other Telone use areas, including Hawaii, while considering the local conditions that may impact environmental occurrence and levels. If Telone use expands to new areas and/or new use patterns as a result of any future phase out of methyl bromide or other nematicides prior to analysis of the monitoring program's results, the potential impact to areas not included in the current 5 region program, based on best available information, will be a primary criterion in requiring monitoring in these areas, including Hawaii.

5. *Comment*. The Shoshone-Bannock Tribes stated that Dow AgroSciences should also sample irrigation wells, not just drinking water wells as part of their tap water monitoring program.

Response. Sampling of drinking water wells provides the most accurate information on dietary risk from drinking water. Data from irrigation wells would only be used in a situation where more representative data is not readily available, as it provides a more conservative estimate of dietary exposure from drinking water, since irrigation wells are not generally used as a source of drinking water.

6. *Comment*. The Shoshone-Bannock Tribes noted that Telone degradates have been found in water and that they are concerned about the presence of the degradates in water, not just the presence of the Telone parent.

Response. The Agency did not have data on the toxicity of the Telone degradates when it conducted its risk assessments for the PD2. The Agency therefore made the conservative assumption that the degradates would be as toxic as the parent compound. The registrant has submitted new data to better characterize the toxicity of the degradates, and has asked that the Agency no longer make the assumption that the degradates are as toxic as the 1,3-D parent. As noted above in response to comment 3, EPA will review these data and will determine whether it is appropriate to conduct a separate risk assessment for degradates. However, the Agency believes that these data are unlikely to change the risk-benefit determination for Telone.

D. Public Comments and Agency Responses to Agency Determination That Benefits of Telone Use Outweigh Benefits

1. *Comment*. The Miami-Dade county Department of Environmental Resource Management commented that it was

premature to remove Telone from Special Review. The Department noted that there is a pending Special Local Need (SLN) registration for Telone use on turf and that EPA had issued a Notice of Intent to Disapprove this SLN. The Department felt that the Special Review determination should be delayed until groundwater monitoring in Miami-Dade county could be completed and air quality concerns expressed by EPA for this SLN are addressed and demonstrate that Telone does not pose an undue risk to human health and the environment.

Response. EPA is reviewing additional data submitted in response to its Notice of Intent to Disapprove the SLN registration for Telone use on turf. The SLN is being held in abeyance until the review of data is completed. If these concerns are not adequately addressed, the Agency will disapprove the SLN registration. It should be noted, however, that this decision is independent of the Special Review action. The Agency's proposal to terminate the Telone Special Review is based on a risk-benefit balancing for current Telone uses. Before any new use can be registered, the registrant must demonstrate that the use will not cause unreasonable adverse effects on the environment.

2. *Comment*. The Shoshone-Bannock Tribes commented that EPA should wait for the results of the ongoing tap water monitoring before terminating the Telone Special Review.

Response. The Agency believes it is appropriate to terminate the Telone Special Review prior to completion of the tap water monitoring study, since additional restrictions will be automatically incorporated into the Telone registration if the tap water monitoring demonstrates remaining groundwater contamination concerns. Since any additional necessary restrictions will be automatically incorporated, it is not necessary to keep the Telone Special Review open. The Special Review process provides a mechanism for the Agency to impose limitations on a pesticide which is already on the market. In the case of Telone, the registrant must, as an outcome of the Agency's Telone Reregistration Eligibility Decision, impose additional mitigation measures if the tap water monitoring indicates such measures are necessary.

Based on available data and conservative assumptions, the Agency has determined that the benefits of telone use outweigh the risks of such use. If the tap water monitoring study demonstrates that certain areas remain vulnerable to groundwater contamination despite existing mitigation measures, the registrants have already committed to imposing additional use restrictions to prevent the potential for such groundwater contamination.

3. *Comment*. The Florida Consumer Action Network, the Farmworkers Association of Florida, Inc., and Friends of the Earth commented that there is insufficient evidence that the benefits of Telone use outweigh the risks. Friends of the Earth noted that there were other methyl bromide alternatives available. The Farmworker's Association of Florida also expressed concern about the lack of information on the synergistic effects of Telone when used in combination with other weed control agents.

Response. As detailed in the Telone PD2, the Agency believes that the benefits of Telone use outweigh the risks and that the Special Review should therefore be terminated. The benefits analysis included an assessment of all Telone nematicide alternatives, not just methyl bromide. EPA agrees that there is a lack of information on the synergistic effects of Telone when used in combination with other weed control agents. The Agency's approach to regulating pesticides is generally to review products by active ingredient. Thus, EPA considers the risks posed by Telone separately from the risks posed by the active ingredients in the other weed control agents. Each active ingredient must demonstrate acceptable risk individually before it can be registered or reregistered. In the absence of data that would show that synergistic risks exist, the Agency is unable to characterize the effects of combining pesticidal active ingredients and does not believe that it is necessary to do so for Telone based on currently available data.

4. *Comment*. The Metam Sodium Task Force commented that EPA had understated the benefits and overstated the risks of Metam sodium, a Telone alternative, in the PD2.

Response. The Agency is currently developing the Metam Sodium Reregistration Eligibility Decision, which will provide a more accurate assessment of Metam sodium risks. At the time of publication of the Telone PD2, the Agency could only develop a very rough risk and benefits assessment for Metam sodium. Although the Agency described the risks of the main Telone alternatives, this was, of necessity, a qualitative rather than quantitative comparison where the database remained incomplete and no risk assessment for the alternative had been conducted due to data deficiencies.

E. Public Comments and Agency Responses on Worker Exposures to Telone

1. *Comment*. The Farmworker Association of Florida, Inc. and Friends of the Earth expressed concern that EPA's worker risk assessment assumed farmworkers comply with Telone labels and use the required protective equipment. These groups noted that farmworkers often do not follow personal protective equipment (PPE) requirements.

Response. When PPE requirements are added to pesticide labels, the Agency considers whether such requirements are realistic. The Agency is aware that farmworkers may not always follow PPE requirements. However, Telone is a Restricted Use Pesticide which must be applied by certified applicators, who have received special training, or by workers who are under their direct supervision. This requirement increases the likelihood that workers handling Telone will comply with PPE.

2. *Comment*. The Environmental Center commented that in addition to label restrictions, some type of applicator training should be mandatory.

Response. Telone is a restricted use pesticide. This means that Telone can only be applied by certified applicators, who must complete a required course of study, or by workers under the direct supervision of a certified applicator. In addition, Dow AgroSciences has compiled a detailed product stewardship manual for Telone users, which provides more specific guidance to users on how to comply with the label restrictions and to ensure the safe use of Telone.

F. Public Comments and Agency Response on Buffer Zones to Address Drift to Bystanders

1. *Comment*. Dow AgroSciences noted a discrepancy between the information summarized in Table 5 of the PD2 and Table 8 in the 1998 Telone Reregistration Eligibility document on the results of off-site air monitoring.

Response. The Agency agrees that Table 5 of the PD2 contained some errors. The corrected table is as follows:

TABLE 5.—OFFSITE AIR MONITORING DATA USING AVERAGE CONCENTRATIONS FROM THREE STUDY SITES (AZ, NC, WA)

Distance from treated field (m)	Mean conc. 7 day (µg/m^3)	Mean conc. 15 day (µg/m^3)
1600 (AZ)	3	2
1,200 (AZ)	6	4
800	11	7
500	19	10
125 Edge of buffer zone[1]	92	56
25	196	63
5	185	67
onsite	181	171

[1]Edge of buffer zone - EPA uses this distance to approximate risks at 300–feet buffer

The errors in Table 5 of the PD2 did not affect the Agency's risk-benefit determination or conclusions about potential bystander exposure to Telone.

2. *Comment*. Friends of the Earth expressed concerns about pesticide drift from telone use and asked that EPA prohibit Telone fumigation within 72 hours of activities in and around schools, nursing homes, and similar structures. Friends of the Earth also requested that ''occupied structures'' for the purposes of the 300–foot buffer be better defined.

Response. The Agency believes that the 300–foot buffer zone around occupied structures provides protection to those in and around schools, nursing homes, and other structures from potential 1,3-D drift. This buffer area provides the same type of protection suggested by the Friends of the Earth's 72–hour prohibition on use.

The term ''occupied structure'' is broadly defined on the label to be a structure ''such as a school, hospital, business, or residence.'' The label further specifies that ''no person shall be present at this structure at any time during the 7 consecutive day period following application'' to ensure that Telone cannot be used around structures, without the 300–foot buffer zone, even if such structures are unoccupied at the time of actual Telone application, if individuals would be returning to the structure earlier than 7 days (or 168 hours) following Telone use. The Agency does not have any information suggesting that users of Telone have experienced confusion from the current label language that would require clarification of the term ''occupied structure.''

G. Request for Extension of Comment Period

Comment. The Florida Consumer Action Network and Farmworker Association of Florida, Inc. requested an extension of the Telone PD2 comment period, because they felt that the farmworker advocacy community had not been adequately notified of EPA's proposed termination of the Special Review, since farmworkers had not been included in the introduction to the PD2 among the list of those affected by the proposal.

Response. A number of national and regional farmworker advocacy groups routinely receive notice of the Agency's proposed actions. The Agency also received a number of comments from farmworker and other advocacy groups in response to the PD2. Although the Agency strives to notify regional groups that may be interested in a given action, it is not possible for the Agency to identify all such groups for every decision. Since these groups requesting an extension did have time to file their comments, and did not identify any other groups who did not have enough time, EPA is not extending the comment period for this action.

H. Telone CIS-Isomer vs. Trans-Isomer

Comment. The Shoshone-Bannock Tribes urged that EPA should only allow the Telone registrant to market the CIS-isomer formulation of Telone, as in Europe, and not the TRANS-isomer, because only the CIS-isomer of Telone is effective as a nematicide.

Response. The Agency does not have any information that the TRANS-Isomer is not effective as a nematicide. Further, Telone has already met the standard for registration in the context of Reregistration and Special Review as a mixture of the CIS-Isomer and TRANS-Isomer. Therefore, the Agency does not see any reason to require the registrant to reformulate Telone as a single-Isomer formulation at this time.

III. Ecological Effects

Comment. Friends of the Earth expressed the opinion that EPA should pay more attention to the ecological effects of Telone use, due to the abundance of wildlife in Florida.

Response. The scope of the Special Review is limited to human health carcinogenicity concerns. However, the Telone RED of 1998 evaluated the ecological risks posed by Telone use. Further through the RED process, under the FIFRA Section 3(c)(2)(b) authority, the Agency required several ecological effects studies which will be evaluated.

IV. The EPA's Decision Regarding Special Review

This notice concludes EPA's administrative Special Review of the risks and benefits of Telone, which was initiated in a **Federal Register** notice of October 8, 1986 (51 FR 36160). In the January 12, 2000 **Federal Register** (65 FR 1869), EPA announced its intent to terminate the Telone Special Review. As stated in that document, based on its risk and benefits assessment, EPA has concluded that the benefits provided from the continued existing uses of Telone outweigh the risks. EPA's review of comments received in response to the January 12, 2000 proposal to terminate the Telone Special Review, have not resulted in a change in the Agency's risk-benefit determination. Accordingly, for the reasons set forth in the January 12, 2000 notice (65 FR 1869) (FRL–6380–6). EPA is announcing that it has terminated the Telone Special Review.

List of Subjects

Environmental protection, Pesticides.

Dated: November 8, 2001.

Stephen Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances

[FR Doc. 01–28972 Filed 11–20–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30475A; FRL–6808–8]

Pesticide Product; Registration Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product, Beetleball Technical containing the active ingredient 4-allyl anisole not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Robyn Rose, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–9581; and e-mail address: rose.robyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get 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/.

To access a fact sheet which provides more detail on this registration, go to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/, and select ''fact sheet.''

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30475A. 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.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

II. Did EPA Approve the Application?

The Agency approved the application after considering all required data on risks associated with the proposed use of 4-allyl anisole, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of 4-allyl anisole when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Application

EPA issued a notice, published in the **Federal Register** of April 20, 1999 (64 FR 19356) (FRL–6072–9), which announced that Taensa, Inc., 26 Sherman Court, P.O. Box 764, Fairfield, CT 06430, had submitted an application to register the pesticide product, Beetleball Technical, a technical product to be used to manufacture invertebrate repellents (EPA File Symbol 72098–U), containing 97.5% 4-allyl anisole. This product was not previously registered.

The application was approved on September 28, 2001, as Beetleball Technical (EPA Registration Number 72098–4) for use in manufacturing invertebrate repellents.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 31, 2001.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

FR Doc. 01–28741 Filed 11–20–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1056; FRL–6811–7]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1056, must be received on or before December 21, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1056 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get 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 PF–1056. 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 Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

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 PF–1056 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 Highway, 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 PF–1056. 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 identified 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. Make sure to submit your comments by the deadline in this notice.

7. 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?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: November 8, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by Gowan Company, P.O. Box 5569, Yuma, AZ 85366–5569, the registrant, and represents the view of Gowan Company. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4

0E6165

EPA has received a pesticide petition (0E6165) from the Interregional Research Project Number 4 (IR–4), 681 US Highway #1 South, North Brunswick, NJ 08902 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.145 by establishing a tolerance for residues of the insecticidal fluorine compounds cryolite and synthetic cryolite (sodium aluminum fluoride) in or on the raw agricultural commodities peppermint tops and spearmint tops at 50 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This notice of filing contains a summary of the petition provided by Gowan Company, the registrant.

A. Residue Chemistry

1. *Plant metabolism*. The qualitative nature of the residue in plants is understood, and that plant residues are inorganic surface residues of cryolite which are measured as fluoride.

2. *Analytical method*. Adequate methodology is available for data collection and tolerance enforcement. Methods for plant residues have undergone successful Agency validation and will be published in Pesticide Analytical Manual (PAM), Vol. II. Using these methods, total fluoride is determined using a pH/ion meter with a fluoride-specific electrode. The residue analytical method does not distinguish between naturally occurring fluoride and fluoride resulting from agricultural use of cryolite. Current Food and Drug Administration (FDA) multi-residue screening protocols are not appropriate for inorganic fluoride residues.

3. *Magnitude of residues*. A tolerance of 50 ppm is supported for fluoride in or on mint tops for the use pattern of 36 pounds active ingredient/acre per season of Gowan cryolite bait (20% granular).

B. Toxicological Profile

1. *Acute toxicity*. A rat acute oral toxicity study showed a lethal dose $(LD)_{50}$ greater than 5,000 milligrams/kilograms (mg/kg). A rabbit acute dermal toxicity study demonstrated an LD_{50} of 2,100 mg/kg. A lethal concentration $(LC)_{50}$ >2.06 milligram per liter (mg/L) and <5.03 mg/L was seen in an acute inhalation study with rats. Technical cryolite is a moderate eye irritant in rabbits. Cryolite is not a skin irritant to rabbits and is not a dermal sensitizer to guinea pigs.

2. *Genotoxicity*. Cryolite was negative in an Ames reverse mutation test using *Salmonella typhimurium* with and without activation at dose levels of 167, 500, 1,670, 5,000, 7,500, and 10,000 µg/plate. Cryolite was tested in an *in vitro* chromosome aberration assay using human lymphocytes at 100, 500, and 1,000 µg/mL, with and without activation. The results were negative. Cryolite also was negative in an unscheduled DNA synthesis (UDS) study with rat hepatocytes at dose levels up to and including 50 µg/mL.

3. *Developmental and reproductive toxicity*. A developmental toxicity study was performed with cryolite in rats at dose levels of 0, 750, 1,500, and 3,000 mg/kg/day (gavage). The no observed adverse effect level (NOAEL) for both developmental and maternal toxicity was 3,000 mg/kg/day. At this dose level, the only observation was whitening of the teeth of dams.

A developmental toxicity study was conducted in female mice with cryolite at dose levels of 0, 30, 100, and 300 mg/kg/day (gavage). The NOAEL for maternal toxicity was 30 mg/kg/day and the lowest observed adverse effect level (LOAEL) was 100 mg/kg/day based on a single mortality in this group. Fetuses at 300 mg/kg/day exhibited bent ribs and bent limb bones. The NOAEL for developmental toxicity was 100 mg/kg/day. The LOAEL was 300 mg/kg/day based on an increase in bent ribs and bent limbs. A range-finding developmental toxicity study in female rabbits tested cryolite at dose levels of 0, 10, 30, 100, 300, and 1,000 mg/kg/day (gavage). The NOAEL for maternal toxicity was determined to be 10 mg/kg/day and the LOAEL was 30 mg/kg/day based on an increased incidence of soft stool and dark colored feces and decreased defecation and urination. The NOAEL for developmental toxicity was 30 mg/kg/day. The developmental LOAEL could not be assessed due to excessive maternal toxicity at dose levels of ≥30 mg/kg/day.

A 2–generation rat reproduction study was conducted with cryolite at dietary dose levels of 0, 200, 600, and 1,800 ppm (representing 0, 14, 42, and 128 mg/kg/day for males and 0, 16, 49, and 149 mg/kg/day for females, respectively, during premating). The systemic toxicity NOAEL was not determined. The LOAEL for systemic toxicity was 200 ppm (15 mg/kg/day) based on dental fluorosis. The NOAEL and LOAEL for reproductive toxicity were 600 and 1,800 ppm, respectively (46 and 138 mg/kg/day) based on decreased pup body weights.

4. *Subchronic toxicity*. Cryolite was tested in a 28–day range-finding feeding study in rats at dose levels of 0, 250, 500, 1,000, 2,000, 4,000, 10,000, 25,000, and 50,000 ppm in the diet (representing approximately 0, 25, 50, 100, 200, 400, 1,000, 2,500, and 5,000 mg/kg/day). The only compound-related effect seen in this study was a change in coloration and physical property of the teeth. A NOAEL was not determined in this study. The LOAEL is 250 ppm (25 mg/kg/day) based on dental fluorosis.

In a 90–day rat feeding study, cryolite was tested at dose levels of 0, 50, 5,000, and 50,000 ppm (corresponding to 0, 3.8, 399.2, and 4,172.3 mg/kg/day in males and 0, 4.5, 455.9, and 4,758.1 mg/kg/day in females). The NOAEL was 50 ppm (3.8 mg/kg/day) for effects other than fluoride accumulation. The LOAEL was 5,000 ppm (399.2 mg/kg/day) based on lesions observed in the stomach. Fluoride accumulated at all dose levels in this study.

Cryolite was tested in a 90–day dog feeding study at dose levels of 0, 500, 10,000, and 50,000 ppm (corresponding to 0, 17, 368, and 1,692 mg/kg/day). The NOAEL was 10,000 ppm (368 mg/kg/day). The LOAEL was 50,000 ppm (1,692 mg/kg/day) for effects other than fluoride accumulation. Fluoride accumulation occurred at all dose levels.

A 21–day subchronic dermal toxicity study in rabbits is considered invalid because it is likely that cryolite was

ingested by the test animals during the study. For this reason, the systemic dermal NOAEL and LOAEL could not be determined from this study.

5. *Chronic toxicity*. A 2–year bioassay in B6C3F1 mice was conducted by the National Toxicology Program (NTP) using sodium fluoride as the test material at dose levels of 0, 25, 100, and 175 ppm, in water, representing 0, 2.4, 9.6, and 16.7 mg/kg/day in males and 0, 2.8, 11.3, and 18.8 mg/kg/day in females. The NOAEL was less than 25 ppm (2.4 mg/kg/day). The LOAEL was 25 ppm (2.4 mg/kg/day) based on attrition of the teeth in males, discoloration and mottling of the teeth in males and females and increased bone fluoride in both sexes. NTP considered that there was no evidence of carcinogenic activity in male and female mice.

A 2–year bioassay in F344/N rats also was conducted by the NTP using sodium fluoride as the test material at dose levels of 0, 25, 100, and 175 ppm, in water, representing 0, 1.3, 5.2, and 8.6 mg/kg/day in males and 0, 1.3, 5.5, and 9.5 mg/kg/day in females. Osteosarcoma of the bone was observed only in 1 male of 50 (1/50) in the 100 ppm group and in 3 of 80 (3/80) males in the 175 ppm group. The NOAEL was less than 25 ppm (1.3 mg/kg/day). The LOAEL was 25 ppm (1.3 mg/kg/day) based on mottling of teeth, dentine incisor dysplasia, increased serum, urine, and bone fluoride levels in males and females and incisor odontoblast and incisor ameloblast degeneration in males. NTP considered that there was equivocal evidence of carcinogenic activity in male rats in this study and no evidence of carcinogenic activity in female rats.

A 1–year chronic dog feeding study was conducted with cryolite at dose levels of 0, 3,000, 10,000, and 30,000 ppm, representing 0, 95, 366, and 1,137 mg/kg/day in males and 0, 105, 387, and 1,139 mg/kg/day in females (in terms of fluoride the doses are 0, 51, 198, and 614 mg F/kg/day for males and 0, 57, 209 and 615 mg F/kg/day for females). The NOAEL was less than 3,000 ppm (95 mg/kg/day in males and 105 mg/kg/day in females). The LOAEL was 3,000 ppm based on increases in emesis, nucleated cells in males, renal lesions, and a decrease in urine-specific gravity in females.

6. *Animal metabolism*. Cryolite metabolism in animals manifests itself as free fluoride, that the qualitative nature of the residue is understood and that total fluoride is the residue of concern.

7. *Metabolite toxicology*. Cryolite behaves toxicologically as free fluoride. That is, dissociation produces free fluoride ions which are assimilated into bone. There are numerous references in the open literature concerning the metabolism of cryolite and other fluoride salts. The National Research Council concluded in their 1993 comprehensive report titled ''Health Effects of Ingested Fluoride,'' that fluoride is readily absorbed by the gut and rapidly becomes associated with teeth and bones. The remaining fluoride is eliminated almost exclusively by the kidneys with the rate of renal clearance related directly to urinary pH.

8. *Endocrine disruption*. The 2–generation rat reproduction study, the rat, rabbit, and mouse developmental studies, and the dog chronic studies summarized above did not demonstrate any effects with cryolite that are similar to those produced by naturally occurring estrogens, or other endocrine effects. No endocrine effects were determined in the rat and mouse (NTP) studies.

C. Aggregate Exposure

1. *Dietary exposure*. For acute dietary exposure, no endpoint of concern could be found from which an acute dietary risk assessment (1 day) should be conducted. There was no endpoint for acute dietary exposure, since acute toxicity in animal studies is absent until very high doses of cryolite were used.

i. *Food*. The Agency has estimated chronic dietary exposure to cryolite using reassessed tolerances for all currently registered crops and percent of crop treated assumptions. The estimated dietary exposure to cryolite from all crops is approximately 0.020 mg/kg/day for the U.S. population, 0.024 mg/kg/day for children 1 to 6 years old, 0.015 mg/kg/day for children 7 to 12 years old, and 0.028 mg/kg/day for nursing females 13+ years. For the highest exposed subgroup (females 20 years old and over), the Agency estimated exposure of 0.038 mg/kg/day.

A Tier 1 chronic dietary risk assessment based on the proposed tolerance of 50 ppm for mint top, the conservative assumption of 1 ppm (limit of detection) in mint oil, and 100 percent crop treated indicates that the additional exposure to fluoride caused by the proposed tolerance would be miniscule. The Tier 1 chronic assessment, performed with Novigen Sciences Inc. Dietary Exposure Evaluation (DEEM) software shows that the highest exposed populations, children 1 to 6 years old and 7 to 12 years old, would be exposed to an additional 0.000001 mg/kg/day. The total U.S. population and all other population subgroups would be exposed to less 1×10^{-6} mg/kg/day, which is the smallest value. Based on the results of this conservative model, additional exposure caused by the proposed tolerance would be negligible.

ii. *Drinking water*. The Agency concluded that the use of cryolite should have negligible impacts on fluoride levels in ground and surface water. For this reason, the contribution of cryolite to potential exposure to fluoride from drinking water need not be considered in the aggregate risk assessment.

However, fluoride is intentionally supplemented to drinking water for prevention of dental caries and may also be present at natural background levels. The U.S. Public Health Service recommends an optimal fluoride concentration of 0.7–1.2 mg/L to prevent dental caries and minimize dental fluorosis. Fluoride levels in public drinking water are regulated under the Safe Drinking Water Act. A maximum concentration limit (MCL) of 4.0 mg/L (0.114 mg/kg/day) has been established.

EPA has previously estimated that levels of fluoride in/on food from the agricultural use of cryolite plus fluoride levels in U.S. drinking water supplies result in a daily dietary intake of fluoride of approximately 0.085 mg/kg/day. This is substantially less than the MCL of 4.0 mg/L (0.144 mg/kg/day), a level which provides no known or anticipated adverse health effect as determined by the Surgeon General.

2. *Non-dietary exposure*. EPA previously concluded on December 5, 1997 (62 FR 64294) (FRL–5756–5), that significant non-dietary (residential) exposure from the use of cryolite is not anticipated.

D. Cumulative Effects

The residue of toxicological concern in cryolite is fluoride. However, current tolerances for insecticidal fluorine-containing compounds are limited to cryolite and synthetic cryolite. For this reason, consideration of potential cumulative effects of residues from pesticidal substances other than sodium aluminofluoride with a common mechanism of toxicity are not applicable.

E. Safety Determination

1. *U.S. population*. As discussed above, non-dietary exposure to cryolite is negligible. For dietary exposure, EPA concluded that rather than establishing a traditional reference dose (RfD), a weight-of-the-evidence risk assessment is a more appropriate approach for cryolite. The toxicological endpoint of

concern for dietary exposure to cryolite is skeletal fluorosis.

EPA estimated that total dietary fluoride exposure, including food and drinking water, is 0.085 mg/kg/day. Of this total exposure, the dietary (food) contribution is about 0.020 mg/kg/day for the U.S. population and 0.028 mg/kg/day for the highest exposed subgroup (nursing females 13 years old and over). The proposed mint tolerances will contribute no more than 0.000001 mg/kg/day to total dietary exposure. Thus, the proposed tolerance would have essentially no effect on total fluoride exposure. The total exposure to fluoride from all sources is well below the MCL of 4.0 mg/L (0.114 mg/kg/day).

2. *Infants and children*. EPA has previously concluded on December 5, 1997 (62 FR 64294), that based on current data requirements, the data base relative to prenatal and postnatal toxicity is complete. This data taken together suggest minimal concern for developmental or reproductive toxicity and do not indicate any increased prenatal or postnatal sensitivity. Therefore, EPA concluded that reliable data support the weight-of-evidence risk assessment approach for the assessment of risks to infants and children associated with the use of cryolite and that an additional safety factor is not needed.

F. International Tolerances

No Codex, European or other international tolerances are in effect for cryolite; thus potential dietary exposure to fluoride from the agricultural use of cryolite on crops would not include imported foodstuffs.

[FR Doc. 01–28861 Filed 11–20–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1042; FRL–6799–1]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1042, must be received on or before Decmber 21, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1042 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Rita Kumar, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8391; e-mail address: kumar.rita@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get 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 PF–1042. 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 Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

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 PF–1042 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 Highway, 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 PF–1042. 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 identified 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. Make sure to submit your comments by the deadline in this notice.
7. 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?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 24, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

ISK Biosciences Corporation

6F4662, 6F4701, 6F4755, 6E4773, 5E4474

EPA has received pesticide petitions (6F4662, 6F4701, 6F4755, 6E4773, 5E4474) from ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH, 44077, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the nematicide, fosthiazate, ((RS)-S-sec-butyl O-ethyl 2-oxo-1,3-thiazolidin-3-ylphosphonothioate) and its metabolite ASC-67131 (BESoP, (RS)-S-sec-butyl O-ethyl N-2(methylsulfonyl)ethyl phosphoramidothioate)] in or on the raw agricultural commodities tomatoes and peanuts at 0.02 parts per million (ppm), potatoes at 0.03 ppm, and import tolerances on bananas and green coffee beans at 0.05 parts per million (ppm). EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism*. Metabolism studies were conducted on tomatoes, potatoes, and peaches. Fosthiazate is extensively metabolized in plants by a combination of hydrolytic and oxidative processes that convert the parent to small polar fragments. Residues in mature edible plant parts consist of polar S-butyl group degradates and radioactivity that is reincorporated into plant natural products from thiazolidinone ring carbon atoms. Analyses of leaf and stem tissues established the identity of intermediate metabolites in the pathway.

2. *Analytical method*. A gas chromatographic analytical method using a flame photoionization detector in the phosphorus mode has been validated for enforcement purposes. The limit of detection for both fosthiazate and its metabolite ASC-67131 is 0.01 ppm for all crops (tomatoes, potatoes, peanuts, bananas, green coffee beans and roasted coffee.) The limit of detection for both parent and metabolite in instant coffee is 0.05 ppm.

3. *Magnitude of residues*—i. *Tomatoes*. The application rate of 4–6 lbs of the active ingredient per acre (a.i./acre) was applied and tomatoes harvested from 80–147 days after application in 6 of 15 test sites. No detectable residues of either parent or the metabolite ASC-67131 were found (LOD = 0.01 ppm). The proposed maximum label rate is 4.5 lb a.i./acre.

ii. *Potatoes*. The application rate of 4–6 lb of the a.i. was applied and potatoes harvested from 82–179 days after application in 11 test sites. The maximum fosthiazate residue found was 0.02 ppm at 4 lb ai/acre and 0.07 ppm at 6 lb ai/acre, while no detectable residues of the metabolite ASC-67131 were found. The proposed maximum label rate is 4.5 lb a.i./acre.

iii. *Peanuts*. The application rate of 4-6 lb of the a.i./acre was applied and peanuts harvested from 99–175 days after application in 16 test sites. No detectable residues of either parent or the metabolite ASC-67131 were found (LOD = 0.01 ppm) in either peanut nutmeat or hay. The proposed maximum label rate is 4.0 lb a.i./acre.

iv. *Bananas*. The maximum application rate of 2 grams of the active

ingredient per mat was applied and bananas harvested from 0–126 days after application in 6 of 15 test sites. The maximum fosthiazate residue found was 0.03 ppm, while no detectable residues of the metabolite ASC-67131 were found.

v. *Coffee*. The maximum application rate of 2 grams of the active ingredient per plant was applied 60 days prior to harvest in eight test sites. The maximum fosthiazate residue found was 0.02 ppm, while no detectable residues of the metabolite ASC-67131 were found. After a single application of fosthiazate at 10 grams per plant 31 days before harvest, roasted coffee beans and instant coffee were analyzed. No residues were found above the limit of detection of the method in the processed fractions.

B. Toxicological Profile

1. *Acute toxicity*. Results of the acute toxicity testing are described below.

Oral toxicity to rats (suspended in corn oil)	LD_{50} is 73 mg/kg bwt (males) 57 mg/kg bwt (females)
Oral toxicity to rats (solution in water)	LD_{50} is 49 mg/kg bwt (males) 28 mg/kg bwt (females)
Dermal toxicity to rats	LD_{50} is 2,372 mg/kg bwt (males) 853 mg/kg bwt (females)
Inhalation toxicity to rats (4-hour) exposure	LC_{50} is 0.83 milligrams per Liter (mg/L) (males) 0.56 mg/L (females)
Dermal irritation, rabbits	No irritation
Eye irritation, rabbits no wash	Irritation reversible in 1 week, mortality
Eye irritation, rabbits with wash	Irritation, reversible in 1 week, no mortality
Skin sensitization Magnusson-Klingman	Positive
Acute delayed neurotoxicity: hen	Negative
Acute cholinesterase no observed adverse effect level (NOAEL): rat	No inhibition of cholinesterase activity at 4 mg/kg bwt in erythrocyte or brain
Acute neurotoxicity: rat	NOEL for functional observation battery, motor activity and neuropathology:10 mg/kg bwt

2. *Genotoxicty*. A battery of tests has been conducted to assess the genotoxic potential of technical fosthiazate. Assays conducted included *in vitro* gene mutation tests in bacteria and mammalian cell systems, a chromosomal aberration test in mammalian cells, a DNA repair test in bacteria and an *in vivo* micronucleus test in mice. Technical fosthiazate did not elicit a genotoxic response in any of the studies conducted.

3. *Reproductive and developmental toxicity*. In a developmental study with rats at 0, 3, 5, and 10 mg/kg bwt/day the NOAEL for maternal toxicity based on the maternal body weight reduction was 5 mg/kg bwt/day. The NOAEL for developmental effects was 10 mg/kg bw/day. Technical fosthiazate did not cause developmental toxicity in rats.

A developmental study with rabbits was conducted at dosages 0, 0.5, 1.0, 1.5 or 2.0 mg/kg bwt/day. The NOAEL for maternal effects in this study was 2.0 mg/kg bwt/day. This dosage was considered very close to a maternally toxic dose because, in the preliminary study, maternal lethality was observed at 5 mg/kg bwt/day and there were isolated incidences of maternal animals in extremis at 2.0 and 2.5 mg/kg bwt/day. The NOAEL for developmental effects was considered 2.0 mg/kg bwt/day. Technical fosthiazate was not teratogenic in rabbits.

In a two generation reproduction study, technical fosthiazate was administered via the diet at concentrations of 0, 3.2, 10.7, 32.2 or 107.2 ppm to CD rats. The group receiving 107.2 ppm was terminated at weaning of the F0 generation due to poor survival of offspring. In the first generation, there was a statistically significant increase in the length of gestation at 107.2 ppm. The difference was not significant at any other dosage or in the second generation. Viability indices and body weight gain of F1 offspring were reduced at 32.2 ppm and higher. These effects were particularly marked at 107.2 ppm. No effects on pup viability were observed in the second generation. The dietary concentration of 10.7 ppm which was equivalent to 0.86 mg/kg bwt/day was the NOAEL for the effects on pup survivability and pup body weight observed in this study.

4. *Subchronic toxicity*. In a 13–week feeding study in rats with a recovery phase, Sprague-Dawley rats received technical fosthiazate via the diet at concentrations of 0, 1.07, 10.7, 53.6 or 429 ppm for 13 weeks. The NOAEL for the study was 10.7 ppm technical fosthiazate in the diet based on inhibition of brain cholinesterase activity and adrenal effects. The effects were reversible.

In a 13–week study, beagle dogs received technical fosthiazate at dosages of 0, 0.054, 0.11, 0.54, or 5.4 mg/kg bwt/day daily. The NOAEL for adrenal effects and cholinesterase inhibition in the erythrocyte and brain, was 0.54 mg/kg bwt/day.

A 90–day dietary neurotoxicity study in rats was conducted at doses of 0, 0.07, 0.56 and 2.4 mg/kg bwt/day and of 0, 0.08, 0.57 and 2.5 mg/kg bwt/day to males and females, respectively. In spite of lower cholinesterase levels, no clinical signs of cholinesterase inhibition, no differences in the functional observational battery, in mean forelimb and hind limb grip strengths, mean foot-spread, mean motor activity values or neuropathology were observed in the animals administered 2.5 mg/kg bwt/day of technical fosthiazate via the diet. The NOAEL for inhibition of cholinesterase activity in the brain was 0.56 mg/kg bwt/day.

In a 21–day dermal toxicity study in rats, at dosages of 0, 0.5, 2.5, 25, or 250 mg/kg bwt/day by occluded dermal application for 21 days, the NOAEL in terms of cholinesterase inhibition in the brain was 2.5 mg/kg bwt/day.

5. *Chronic toxicity*. In a 2–year feeding study in rats, technical fosthiazate was administered to CD rats at dietary concentrations of 0, 1.07, 10.7, 53.6, or 214 ppm. Treatment did not change the incidence of any neoplasm. The NOAEL for the study which was based on adrenal effects and cholinesterase inhibition in the brain, was 10.7 ppm in the diet which was equivalent to 0.41 mg/kg bwt/day.

In the mouse oncogenicity study, technical fosthiazate was administered for a period of 102 weeks to CD–1 mice at concentrations of 0, 10.7, 32.2, 107, or 322 ppm. There was no evidence of oncogenic potential. The NOAEL of technical fosthiazate in CD–1 mice was considered to be 32.2 ppm which was equivalent to 3.32 mg/kg bwt/day.

A 12–month oral chronic toxicity study was conducted in beagle dogs at dose levels of 0, 0.05, 0.1, 0.5 and 5.0 mg/kg bwt/day. No treatment-related change in brain cholinesterase activity was noted. The NOAEL which was based upon adrenal effects was 0.5 mg/kg bwt/day.

Comparison of the toxicology data from subchronic (90 days exposure) and chronic studies showed no major differences in effects or in effect levels. Therefore, a single reference dose (RfD) for subchronic and chronic exposure is proposed.

6. *RfD*. Fosthiazate is nonteratogenic, nononcogenic, and nonmutagenic and there is no evidence of bioaccumulation. Inhibition of cholinesterase activity is considered the primary treatment-related effect from fosthiazate. Although cholinesterase activity was measured in plasma, erythrocytes and brain in the

toxicity studies with fosthiazate, the values from the brain are considered the most relevant for assessing adverse effects. For cholinesterase activity, only data for inhibition of activity in the brain will therefore be included in the selection of a NOAEL for the RfD. In addition to inhibition of cholinesterase activity, fosthiazate treatment was associated with other effects.

The lowest NOAEL value was 0.41 mg/kg bwt/day for the inhibition of brain cholinesterase activity from the 2–year feeding study in rats. In that study, rats were fed a constant dietary concentration of fosthiazate. The NOAEL for inhibition of brain cholinesterase activity was 10.7 ppm in the diet for both males and females. Since relative food consumption is a little lower in males than females, the compound consumption was a little lower in males. Since females have been shown to be more sensitive to the effects of fosthiazate than males, and NOAEL were observed in the female group fed a diet containing 10.7 ppm which gave a dose of 0.54 mg/kg bwt/day, the conclusion could be made that 0.54 mg/kg bwt/day would be an appropriate NOAEL. The more conservative value of 0.41 mg/kg bwt/day will be proposed to add to the certainty of no adverse effects. The standard safety factor of 100 will be applied to the conservative NOAEL of 0.41 mg/kg bwt/day to give a proposed RfD of 0.0041 mg/kg bwt/day.

7. *Animal metabolism*. Fosthiazate is extensively metabolized in rats by a combination of hydrolytic and oxidative processes that rapidly convert the parent molecule to small fragments, including CO_2. The carbon atoms of the thiazolidinone ring appear to be reincorporated into tissues based on the levels found in carcasses at termination. Extensive conjugation via the glutathione pathway appears to occur.

8. *Metabolite toxicology*. Comparison of the metabolism of fosthiazate by plants and in animals indicates that a number of the identified metabolites are common to both plants and animals but metabolism in plants is more extensive than in animals. There are, however, no metabolites of toxicological concern in plants that do not appear in animal studies.

9. *Endocrine disruption*. Although subtle histological changes were observed in the ovary and adrenals which are organs with endocrine function, there were no treatment-related effects associated with fosthiazate treatment which are indicative of an effect on endocrine function. Since the histological changes in the adrenals and ovaries were observed only at dosages which also inhibited cholinesterase activity, it is considered possible that the changes were physiological adaptions secondary to inhibition of cholinesterase activity. There were no other effects observed in the subchronic or chronic studies, such as changes to the uterus or mammary tissue or changes in urine production which might indicate a change in physiology related to the ovarian or adrenal changes.

In the reproduction study with fosthiazate, fertility and gestation indices were unaffected by fosthiazate even when administered at dietary concentrations which would result in severe inhibition of cholinesterase activity. At those high dietary concentrations (107.2 ppm) the only treatment-related difference in reproductive effect was a statistically significant increase in length of gestation. It is considered that the effect on gestation could have been secondary to maternal toxicity. The difference was not significant at any other dosage in the first or second generation.

From the reproduction study, reproductive capacity was unaffected by treatment; ovarian effects were not observed; and adrenal effects were observed only in groups administered 107.2 ppm.

The conclusion can be drawn that no effects on the endocrine system would be expected below the threshold for cholinesterase inhibition. Therefore, a NOAEL set for cholinesterase inhibition should also cover any other effects.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. For purposes of assessing the potential dietary exposure, EPA initially estimates exposure using the tolerance (i.e., 0.02 ppm on tomatoes and peanuts, 0.03 ppm on potatoes, 0.05 ppm on bananas and whole green coffee beans) as a worst case scenario. The potential exposure is obtained by multiplying the tolerance level residues by the consumption data which estimates the amount of treated products consumed by various population subgroups. In chronic analyses, the average consumption for all individuals in a population subgroup is used, while in acute analyses only consumers of treated commodities are included. While both potato and peanut fractions are fed to animals, metabolism studies show that residues are incorporated into natural products, and thus there is no exposure to residues of toxicological concern through secondary residues in meat, milk and eggs.

ii. *Drinking water*. The potential for residues of fosthiazate to occur in tap water, non-tap water, and water in commercially prepared food was also evaluated. Four field dissipation studies were conducted with fosthiazate in California, Georgia, North Carolina and Washington (Doc. # 3931–95-EF-000). These studies clearly demonstrate that fosthiazate and its degradates do not leach under field conditions, and that the DT90 of the parent compound ranged from 48–92 days. It is therefore reasonable to conclude that the potential for fosthiazate to contaminate ground water is extremely low. As fosthiazate will be incorporated into the soil after application, no significant runoff or spray drift is expected. Therefore, contamination of surface water is highly unlikely. Additionally for bananas and coffee, the proposed tolerance of fosthiazate is for import commodities only. Due to these factors, residues of fosthiazate are not expected in drinking water.

2. *Non-dietary exposure*. Since there are no domestic uses (home/garden) for fosthiazate, there are no non-occupational exposures.

D. Cumulative Effects

Fosthiazate is an organophosphate, with the most sensitive indicator of toxicity being inhibition of cholinesterase after both short- and long-term administration. While the exact mechanism for this effect may or may not be identical to other organophosphates, in the case of the present petitions, this effect is considered to be insignificant. This is due primarily to the extremely low exposure to the U.S. population from the proposed uses of fosthiazate. The incremental increase in exposure to organophosphates from the addition of fosthiazate is extremely small. For example, the highest exposed population subgroups from chronic exposure to residues in/on tomatoes, potatoes and peanuts are children 1–6 yrs with an estimated chronic exposure of 0.000132 mg/kg bwt/day, which represents 3.2% of the RfD. The highest exposed population subgroup from chronic exposure to residues in/on bananas is non-nursing infants 1 year old with an estimated chronic exposure of 0.000045 mg/kg bwt/day, which represents 1.1% of the RfD. The highest exposed population subgroup from chronic exposure to residues in/on coffee are seniors (55+), females (20+) and males (20+) with 0.000002 mg/kg bwt/day, which represents an insignificant portion of the RfD. When all crops, are included in the assessment estimated chronic exposure for children 1–6 yrs increases to 0.000173 mg/kg bwt/day, which represents 4.2% of the

RfD. This is particularly relevant in that this assessment assumed tolerance level residues for all crops (0.02 ppm for tomatoes and peanuts, 0.03 ppm for potatoes and 0.05 ppm for bananas and coffee). Indeed, when anticipated residues are used estimated exposure is less than 2% of the RfD for all population groups.

A similar situation applies to acute exposure (and risk) from the proposed uses. For tomatoes, potatoes and peanuts, the highest exposed subgroup is all infants 1 year old, with an acute exposure of 0.000479 mg/kg bwt/day at the 95th percentile for consumers only. This results in a MOE of 8,300, which exceeds the traditional level considered to provide adequate protection by nearly two orders of magnitude. When residues on bananas and coffee beans are included in the assessment, children 1-6 yrs have an estimated acute exposure at the 95th percentile of 0.000588 mg/kg bwt/day, which results in an MOE of 6,800. Again, when anticipated residues, as calculated for acute exposure (i.e., the highest field trial residue), are used in the assessment for all the proposed crops, the highest exposure is only 0.000456 mg/kg bwt/day at the 95th percentile, with an MOE of 8,700 for all infants (consumers only). Indeed MOE's at the 99.9th percentile of exposure are far higher than generally is considered to be safe by the agency for all population subgroups.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions and the proposed RfD and acute NOEL described above, dietary exposure was calculated.

As discussed above, even under the ''worst-case'' chronic exposure scenario, a very small portion of the RfD was used. When anticipated residues for tomatoes, potatoes and peanuts are used in the chronic dietary exposure assessment, the estimated exposure is 0.000068 mg/kg bwt/day, for the total U.S. population (or 1.7% of the RfD). When bananas and coffee beans are included in the assessment, the estimated exposure is 0.000083 mg/kg bwt/day for the total U.S. population (or 2.0% of the RfD).

The acute exposure estimates clearly indicate that exposures provide adequate MOEs at the 95th percentile of exposure. The U.S. population has an estimated 95th percentile exposure value of 0.000246 mg/kg bwt/day, equivalent to an MOE of 16,000 for tomatoes, potatoes and peanuts. When bananas and coffee are included in the assessment, the estimated 95th percentile exposure for the total U.S. population is 0.000279 mg/kg bwt/day, which results in an MOE of 14,000. These values are more than 2 orders of magnitude higher than a level considered to provide adequate protection. The exposure estimate for fosthiazate when highest field trial residue is used is 0.000187 mg/kg bwt/day, representing an MOE of 21,000, including all crops. Therefore, since there are no other avenues of exposure (see aggregate exposure section of this document) ISK Biosciences Corporation concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fosthiazate residues from use on tomatoes, potatoes, peanuts, bananas and coffee.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of fosthiazate, data from developmental toxicity studies and other appropriate studies are considered. ISK Biosciences Corporation calculates that children 1–6 (the highest exposed subgroup) have an estimated chronic dietary exposure of 0.000132 mg/kg bwt/day, which represents only 3.2% of the RfD using worst case assumptions. When bananas and coffee beans are included, these estimates are 0.000173 mg/kg bwt/day and 4.2% of the RfD for children 1–6. When anticipated residues are used in calculating chronic dietary exposure, only 1.1% of the RfD is consumed for this population subgroup and 1.3% of the RfD after bananas and coffee are included in the assessment. Acute exposure estimates similarly show no concern as all infants 1 year of age (the highest exposed subgroup) have MOEs of 8,300 even when using worst case assumptions. When bananas and coffee are included in the assessment, children 1–6 years (the highest exposed subgroup) have an MOE of 6,800. Therefore, since there are no other avenues of exposure other than dietary, there is reasonable certainty that no harm will result to infants and children from aggregate exposure to fosthiazate from use on tomatoes, potatoes, peanuts, bananas and coffee.

F. International Tolerances

There are no Codex maximum residue levels established for residues of fosthiazate.

[FR Doc. 01–28739 Filed 11–20–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1044; FRL–6802–2]

Notice of Filing of Pesticide Petitions to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1044, must be received on or before December 21, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1044 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Driss Benmhend, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9525; e-mail address: Benmhend.driss@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
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This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also

be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed under **FOR FURTHER INFORMATION CONTACT**.

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2. *In person*. The Agency has established an official record for this action under docket control number PF–1044. 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 PF–1044 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 PF–1044. 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 persons 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. Make sure to submit your comments by the deadline in this notice.

7. 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?

EPA has received the following pesticide petitions proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these pesticide petitions contain data or information regarding the elements set forth in section 408(d)(2) of FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of these pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 17, 2001.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner summary for each pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the pesticide petition was prepared by the petitioner and represents the view of the petitioner. The pesticide petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

I. SciReg, Inc./Micro Flo Company

PP 1F6324

EPA has received a pesticide petition 1F6324 from SciReg, Inc., on behalf of Micro Flo Company, 12733 Director's Loop, Woodbridge, VA 22192, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an amendment/expansion of an existing tolerance exemption for the microbial pesticide *Bacillus cereus* strain BP01 in or on all raw agricultural commodities.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, SciReg, Inc., on behalf of Micro Flo Company has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by SciReg, Inc., on behalf of Micro Flo Company and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Micro Flo Company's *Bacillus cereus* strain BPO1 is a foliar-applied plant regulator. When combined with the plant growth regulator, mepiquat chloride, for use on cotton, it allows the grower to manage the cotton plant for short-season production leading to reduced risk of yield and quality loss due to delayed and prolonged harvest. Benefits derived from BPO1 in conjunction with mepiquat chloride include increased early boll retention and/or larger bolls, reduced plant height which provides a more open canopy, less boll rot, improved defoliation, less trash and lower ginning costs, better harvest efficiency, and a darker leaf color. Micro Flo is currently exploring the potential use of BPO1 on soybeans.

The maximum application rate for BPO1 on all crops will be less than 2 grams/acre/application and up to 20 grams/acre/year. This tolerance exemption amendment is for use of *Bacillus cereus* strain BPO1 up to 20 grams/acre/year. There is a 30–day pre-harvest interval (PHI). Livestock should not be fed or permitted to graze on BPO1–treated forage.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues*. The ATCC classification of Micro Flo's *Bacillus cereus* strain BPO1 is 55675. Only residues of BPO1 would be present, and these residues are indistinguishable from naturally occurring *Bacillus cereus* without using specific genetic testing procedures for differentiating them.

2. *Magnitude of residue at the time of harvest and method used to determine the residue*. No magnitude of residue studies have not been conducted on BPO1 as total application rates are exceedingly low, cotton: average, 0.2 gram BPO1/acre/year; maximum, 0.75 gram/acre/year; soybeans and other crops: 20 gram BPO1/acre/year and it is toxicologically innocuous. The PHI is currently 30 days. *Bacillus cereus* is indigenous and widespread throughout the United States and the rest of the world.

3. *Analytical method*. As indicated above, the naturally occurring population of *Bacillus cereus* make it impossible to distinguish between natural and introduced microbial populations without utilizing genetic differentiation techniques and therefore to establish and enforce tolerances for BPO1. In addition, the PHI interval is currently 30 days.

C. Mammalian Toxicological Profile

Acute mammalian toxicity studies via oral, dermal, inhalation, eye, intratracheal, and intravenous routes were conducted with *Bacillus cereus* strain BPO1. No pathogenicity was observed. BPO1 was also tested for entero-toxin and emetic-toxin production; no toxins were detected. In a blood agar hemolysis assay conducted with BPO1, weak alpha hemolysis was observed. Based on the results of the above studies, subchronic, reproductive, teratology, chronic, and mutagenicity studies were not deemed necessary.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. *Bacillus cereus* strain BPO1 is currently registered for use on cotton at rates up to 0.75 gram/acre/year. Micro Flo Company is currently evaluating BPO1 for future registration for use on soybeans and other crops (e.g., corn) at rates up to 20 gram/acre/year. Considering the extremely low application rates, the potential dietary exposure to BPO1 is minuscule.

ii. *Drinking water*. *Bacillus cereus* strain BP01 is prohibited on the label from direct application to water, and is not a known aquatic bacterium, and therefore is not expected to proliferate in aquatic environments. Typical agricultural practices are carried out such that spray drift is minimal. Although possible minimal spray drift may contact drinking water, both soil percolation and municipal drinking water treatment processes would further reduce or eliminate the possibility of exposure via potable water. Again, considering the extremely low application rates, the minimal toxicity, lack of pathogenicity and infectivity, and plant regulator mode of action versus the insecticidal or fungicidal properties of other *Bacillus products*, the potential drinking water exposure to and toxic potential of BP01 are minuscule.

2. *Non-dietary exposure*. There is no anticipated non-dietary exposure to *Bacillus cereus* strain BPO1. Contact with naturally occurring populations of *Bacillus cereus* is common throughout the world, and residue exposure through contact with BPO1-treated crops has been theoretically considered. Based on the absence of toxicity, infectivity, pathogenicity, and mode of action of BPO1, residues that may be present are unlikely to be of concern.

E. Cumulative Exposure

Although there are other currently registered *Bacillus cereus*, *Bacillus subtilis* and *Bacillus thuringiensis* products, some of which hold tolerance exemptions, their modes of action are unlike BP01. Specifically, the other products typically produce toxin which, when the bacteria producing it is consumed by insect pests, causes the pest to die. As previously indicated, BP01 does not produce toxin (diarrheal or emetic), but instead appears to enable the target plant to more readily and

efficiently uptake and utilize growth nutrients. BP01 is a true growth regulator and to our knowledge does not have classic pesticidal activity. Based on the above, it is therefore felt that BP01 should not be considered similar to existing *Bacillus* products.

F. Safety Determination

1. *U.S. population.* Since the maximum current use rate is 0.75 gram BPO1/acre/year for use on cotton and 20 gram/acre/year on soybeans and other crops for which registration applications have not yet been submitted, the associated anticipated minute residue levels are extremely unlikely to add appreciably to the natural, indigenous background levels of *Bacillus cereus*. BPO1 does not produce enterotoxin, diarrheal or emetic, and the toxicity/pathogenicity/infectivity studies show virtually no negative effects, BPO1 should be considered safe when used on raw agricultural commodities and meets the reasonable certainty of no harm requirement.

2. *Infants and children.* As previously discussed, based on the quantities of BPO1 used, its lack of toxicity and pathogenicity, and its mode of action, it is exceedingly improbable that infants or children would be at greater risk to BPO1 exposure than would adults. BPO1 should be considered safe when used on raw agricultural commodities and meets the reasonable certainty of no harm requirement.

G. Effects on the Immune and Endocrine Systems

There are no known effects on the immune and endocrine systems, nor are any effects expected. *Bacillus cereus* strain BP01 is not structurally related to any known neurotoxins or endocrine disruptors. Additionally, per the Agency's Registration Eligibility Document for *Bacillus cereus* strain BP01, July 1997):

There is no known metabolite that acts as an endocrine disrupter produced by this microorganism. The toxicity/pathogenicity studies in the rodent required for microbial pesticides indicate that following several routes of exposure, the immune system is still intact and able to process and clear the active ingredient. Therefore, no adverse effects to the endocrine or immune systems are known or expected.

H. Existing Tolerances

There is currently a tolerance exemption for *Bacillus cereus* strain BPO1 at 40 CFR 180.1181 for residues in or on cottonseed.

I. International Tolerances

There are no Codex Maximum Residue Levels or tolerance exemptions for *Bacillus cereus* strain BPO1.

II. Platte Chemical Company

PP 1F6316

EPA has received a pesticide petition [1F6316] from Platte Chemical Company, 419 18h Street, Greeley, CO 80632, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180, to establish an exemption from the requirement of a tolerance for the biochemical pesticide diallyl sulfides (DADs).

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Platte Chemical Company has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Platte Chemical Company and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

DADs are proposed for use as a soil fumigant solution for the control of white rot (*Sclerotium cepivorum*) in onions, garlic, shallots and leeks. The end-use product (trade name: Alli-Up) contains 90% DADs in a liquid formulation (8.3 lb of active ingredient per gallon). Application is recommended for any field that shows evidence or has a history of white rot infestations. When applied to infected soils in conjunction with a rotational crop, DADs will mimic the presence of an Allium crop, which will in turn stimulate the germination of white rot spores (*sclerotia*). The germinated spores will subsequently perish since no host crop is present. The product is applied through conventional soil fumigation equipment such as an enclosed shanking system.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Diallyl Sulfides (DADs). DADs consist of 86.90% diallyl disulfide, 8.90% diallyl monosulfide, 3.90% diallyl trisulfide, and 0.30% diallyl tetrasulfide. DADs are a composite of diallyl sulfides and exists in a state of dynamic equilibrium. Diallyl disulfide CAS No. 2179–59–9; dially sulfide (monosulfide) CAS No. 592–88–1; diallyl trisulfide CAS No. 2050–87–5; diallyl tetrasulfide CAS No. 2444–49–7.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* Residues of DADs are not expected on agricultural commodities.

3. *Analytical method.* An analytical method for residues is not applicable. Residues of DADs are not expected on agricultural commodities.

C. Mammalian Toxicological Profile

DADs are found naturally in allium crops, including onions and garlic. The acute oral toxicity LD_{50} (rat) of technical DADs are 346 mg/kg. The acute dermal toxicity LD_{50} (rabbit) is 1,967 mg/kg. DADs are considered a moderate eye irritant to the ocular tissue of the rabbit; primary irritation index was found to be 5.42. Dermal irritation is severe to the skin of the rabbit. DADs were found to be a dermal contact sensitizer in guinea pigs. Diallyl disulfide, the main component of DADs, was not mutagenic in an Ames test using *Salmonella typhimurium* strain TA100 with and without S-9 activation. A waiver has been requested for acute inhalation toxicity based on the fact that DADs will be applied by soil injection via an enclosed-cab method of application. Because it is composed of diallyl sulfides that are found in garlic and other allium crops, DADs have an extremely strong, obnoxious odor. As such, every effort will be taken to ensure that mixers and handlers have minimal inhalation potential. Personal protective equipment and the method of application mitigates the potential for exposure. In addition, a waiver has been requested for immunotoxicity based on the fact that no immunotoxic effects, such as induced dysfunction or inappropriate suppressive or stimulatory responses in components of the immune system of test animals, are known, have been reported, or are expected from DADs.

Results from acute toxicological testing show test animals displaying symptoms of hemolytic anemia when exposed to DADs. Hemolytic anemia has been documented for both livestock and laboratory test animals fed either DADs, onion or garlic. Both onion and garlic are rich in DADs and other sulfur containing analogs. Hemolytic anemia results in a reduction of red blood cells and consequently a reduction in the amount of oxygen available to the central nervous system of treated susceptible animal species, such as rats and rabbits. There are no reported incidents of humans experiencing hemolytic anemia following

consumption of either allium crops or DADs enriched products, such as garlic oils and pills. Extensive medical research has shown that garlic is considered a beneficial food with possible medicinal value.

A study done on the antimutagenic activities of garlic extract for the purpose of cancer research indicates that aqueous garlic extract possesses antimutagenic properties toward ionizing radiation, peroxides, adriamycin and N-methyl-N'-nitro-nitroguanidine. Results obtained with garlic extract in preliminary experiments with Chinese hamster ovary cells suggest that the antimutagenic properties of garlic extract were not restricted to prokaryotic cells. Diallyl sulfide and diallyl disulfide were found to have clastogenic activity in a Chinese hamster ovary cell assay and was considered to have potential carcinogenic activity. However, further analysis found that these two compounds might not present a tumorigenic hazard *in vivo* if consumed as part of a normal diet. Diallyl sulfide was found to be among the most effective agents in inhibiting the expression of benzo[a]pyrene-induced nucleotoxicity in the colon. Rats fed 5 mL of raw garlic extract per kg body weight in a prolonged feeding study either died or experienced anemia, weight loss, and retarded growth. Long-term chronic garlic powder administration to rats significantly reduced serum/liver cholesterol, serum triglycerides, phospholipids and transaminase enzyme activity. Garlic has been shown to have a potential reversal effect on the risk of stomach cancer. Research suggests that the antitumor effect of DADs is due to its ability to alter cancer-cell sulfur compounds linked to cell division. Research also suggests that aged garlic extract and its constituents have demonstrated anti-cancer effects in an array of cancer models. There have been no incidents of hypersensitivity reported by researchers, manufacturers or users of Alli-Up or DADs, when used for agricultural purposes.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Dietary exposure from use of DADs, as proposed, is minimal. DADs are applied to the soil by closed system soil injection, they are not applied to growing crops directly. Residues of DADs are not expected on agricultural commodities. DADs are volatile compounds, and tend to move more readily through dry soils at higher soil temperatures. When applied according to label directions, the effective duration of response to DADs is approximately 2.5 months at temperatures of 48 to 70 °F. The class of diallyl sulfides that make up DADs is ubiquitous in garlic and garlic products, such as garlic pills (non-prescription diet or herbal supplements). DADs may also be present as an added food flavoring ingredients. The estimated upper limit for human intake of garlic is reported to be 5.5 g/day, which is equivalent to 3.3 mg/day of DADs. Researchers have measured up to 2.39 mg/g of DADs and related compounds in steam distilled commercial garlic products.

ii. *Drinking water.* Similarly, exposure to humans from residues of DADs in consumed drinking water would be unlikely. DADs are volatile compounds applied to the soil by closed system soil injection; they are not applied to growing crops directly. Potential exposure to surface water would be negligible and exposure to drinking water (well or ground water) would be impossible to measure.

2. *Non-dietary exposure.* The potential for non-dietary exposure to the general population, including infants and children, is unlikely as the proposed use sites are agricultural settings. However, non-dietary exposures would not be expected to pose any quantifiable risk due to a lack of residues of toxicological concern. Personal protective equipment (PPE) mitigates the potential for exposure to applicators and handlers of the proposed products, when used in agricultural settings.

E. Cumulative Exposure

It is not expected that, when used as proposed, DADs would result in residues that would remain in human food items. Levels of exposure resulting from the proposed use of DADs would be significantly lower than those found in the general population's consumption of onion and garlic foods (raw, cook and processed) and diet/herbal supplement products. PPE will mitigate the potential for exposure to applicators and handlers of the proposed product, when used in agricultural settings.

F. Safety Determination

1. *U.S. population.* DADs are applied to the soil, they are applied to growing crops directly. Residues of DADs are not expected on agricultural commodities, and therefore, exposure to the general U.S. population, from the proposed uses, is not anticipated. The class of diallyl sulfides that make up DADs is already ubiquitous in garlic and garlic products, such as garlic pills (non-prescription diet or herbal supplements).

2. *Infants and children.* As mentioned above, residues of DADs are not expected on agricultural commodities. There is a reasonable certainty of no harm for infants and children from exposure to DADs from the proposed uses.

G. Effects on the Immune and Endocrine Systems

To date there is no evidence to suggest that DADs act as an endocrine disrupter. Research on garlic powder has suggested an antiandrogenic activity of garlic on rats. Adult male rats gavaged daily with 50 mg of garlic powder, and sacrificed at 45 and 70 days displayed reduced testicular function. Except for the garlic powder effect on rat testes, no further information suggests DADs will adversely affect the immune or endocrine system in humans and other mammals, or any other animal system.

H. Existing Tolerances

There is no U.S. EPA tolerance. DADs are listed in 21 CFR 172.515 by the Food and Drug Administration (FDA) as an approved direct food additive. Additionally, DADs were given Generally Recognized as Safe (GRAS) status No. 2028, 1965 by the FDA. The Council of Europe (1981) has included it in the list of substances that may be added to food without a hazard to public health.

I. International Tolerances

There is no Codex Alimentarium Commission Maximum Residue Level for DADs.

[FR Doc. 01–28740 Filed 11–20–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00731; FRL–6792–9]

Pesticide Science Policies: Water Treatment Effects on Pesticide Removal and Transformation; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: To assure that EPA's policies related to implementing the Food Quality Protection Act of 1996 (FQPA) are transparent and open to public participation, EPA is soliciting comments on the pesticide draft science policy document entitled ''The Incorporation of Water Treatment

Effects on Pesticide Removal and Transformations in FQPA Drinking Water Assessments.'' This notice is one in a series concerning science policy documents related to the implementation of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by FQPA.

DATES: Comments for the draft science policy document, identified by docket control number OPP–00731, must be received on or before January 22, 2002.

ADDRESSES: 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–00731 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: James Hetrick, Office of Prevention, Pesticides and Toxic Substances (7505C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5237; fax number: (703) 305–6309; e-mail address: hetrick.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Pesticide producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. 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 or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, the draft science policy document, and certain other related documents that might be available from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides/. On the Office of Pesticide Programs' Home Page select ''FQPA'' and then look up the entry for this document under ''Science Policies.'' You can also go directly to the listings at the EPA Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can go directly to the **Federal Register** listings http://www.epa.gov/fedrgstr/.

2. *Fax-on-demand*. You may request a faxed copy of the draft science policy document, as well as supporting information, by using a faxphone to call (202) 401–0527. Select item 6088 for the document entitled ''The Incorporation of Water Treatment Effects on Pesticide Removal and Transformations in FQPA Drinking Water Assessments.'' You may also follow the automated menu.

3. *In person*. The Agency has established an official record for this action under docket control number OPP–00731. In addition, the documents referenced in the framework notice, which published in the **Federal Register** of October 29, 1998 (63 FR 58038) (FRL–6041–5), under docket control number OPP–00557, are considered as part of the official record for this action under docket control number OPP–00731 even though not placed in the official record. The official record consists of the documents specifically referenced in this action, 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–00731 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 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–00731. 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?

EPA invites you to provide your views on the various draft science policy documents, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider. 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 solid technical information and/or data to support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate.
5. Indicate what you support, as well as what you disagree with.
6. Provide specific examples to illustrate your concerns.
7. Make sure to submit your comments by the deadline in this notice.
8. At the beginning of your comments (e.g., as part of the ''Subject'' heading), be sure to properly identify the document you are commenting on. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00731 in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background Information

On August 3, 1996, FQPA was signed into law. The FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the FFDCA. Among other changes, FQPA established a stringent health-based standard (''a reasonable certainty of no harm'') for pesticide residues in foods to assure protection from unacceptable pesticide exposure and strengthened health protections for infants and children from pesticide risks.

Thereafter, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs (OPP). The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that meet the new FFDCA standard, but that could be revisited if additional information became available or as the science evolved. In addition, the Agency seeks independent review and public participation, generally through presentation of the science policy issues to the FIFRA science advisory panel (SAP) a group of independent, outside experts who provide peer review and scientific advice to OPP.

During 1998 and 1999, EPA and the United States Department of Agriculture (USDA) established a second subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC) to address FFDCA issues and implementation. TRAC comprised more than 50 representatives of affected user, producer, consumer, public health, environmental, states, and other interested groups. The TRAC met from May 27, 1998, through April 29, 1999.

In order to continue the constructive discussions about FFDCA, EPA and USDA have established, under the auspices of NACEPT, the Committee to Advise on Reassessment and Transition (CARAT). The CARAT provides a forum for a broad spectrum of stakeholders to consult with and advise the Agency and the Secretary of Agriculture on pest and pesticide management transition issues related to the tolerance reassessment process. The CARAT is intended to further the valuable work initiated by the FSAC and TRAC toward the use of sound science and greater transparency in regulatory decision making, increased stakeholder participation, and reasonable transition strategies that reduce risks without jeopardizing American agriculture and farm communities.

As a result of the 1998 and 1999 TRAC process, EPA decided that the implementation process and related policies would benefit from providing notice and comment on major science policy issues. The TRAC identified nine science policy areas it believed were key to implementation of tolerance reassessment. EPA agreed to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In a notice published in the **Federal Register** of October 29, 1998 (63 FR 58038), EPA described its intended approach. Since then, EPA has been issuing a series of draft documents concerning the nine science policy issues. This notice announces the availability of the draft science policy document concerning drinking water treatment.

III. Summary of ''The Incorporation of Water Treatment Effects on Pesticide Removal and Transformations in Food Quality Protection Act Drinking Water Assessments''

The FQPA of 1996 requires that all tolerances for pesticide chemical residues in or on food consider anticipated dietary exposure and all other exposures for which there is reliable information. Drinking water is considered a potential pathway of dietary exposure to pesticides. Because drinking water for a large percentage of the population is derived from public water systems which normally treat raw water prior to consumption, the impact of water treatment on pesticide removal and transformation needs to be considered in drinking water exposure for risk assessments completed under FQPA. Treated drinking water for the purpose of FQPA exposure assessment will be defined as ambient ground or surface water which is either chemically or physically altered using technology prior to human consumption. Therefore, the objectives of this science policy paper are to:

1. Present a preliminary literature review on the impact of different treatment processes on pesticide removal and transformation in treated drinking water derived from ground and surface water sources.
2. Describe how OPP will consider the impacts of drinking water treatment in drinking water exposure assessments under FQPA.

IV. Literature Review

A wide variety of factors must be taken into account to assess the impact of drinking water treatment on the levels of different pesticides in drinking water. It is important to note that a sizeable proportion of the nation, approximately 23 million people, obtain their drinking water from private wells and other sources that undergo no treatment. For those drinking water sources that are treated, available survey information establishes that there are many distinct types of water treatment processes (and many more combinations of processes) in use throughout the United States. Nearly all public water supply systems use some form of disinfection, and a series of conventional treatment processes (coagulation-flocculation, sedimentation, and filtration). The processes that appear to have the most impact on pesticide removal granular

activated carbon (GAC) and powdered activated carbon (PAC) - are commonly found or used in larger water supply systems but, because of high costs, are rarely used by the smallest systems. Other methods, such as ''softening,'' reverse osmosis, and air stripping are also less frequently used to remediate water quality concerns. In sum, there is enormous spatial and temporal variability in the types of treatment applied to drinking water.

EPA's preliminary review of the literature indicates that conventional treatment (such as coagulation/flocculation, sedimentation, and filtration) has little or no effect on the removal of mobile (hydrophilic or lipophobic) pesticides. Disinfection and softening can facilitate alteration in the chemical structure of the pesticide, or transformation. The type of disinfectant used and the length of contact time between the water and disinfectant are factors which affect the impact on pesticide transformation. There is little information on the chemical identity of transformation products formed as the result of disinfection. However, disinfection can produce toxic by-products of some pesticides (e.g., oxons from organophospates). The impact of softening on pesticide transformation is dependent on the potential for alkaline-catalyzed hydrolysis of the pesticide.

The FIFRA SAP evaluated the literature review and concurred with the conclusions (www.epa.gov/pesticides/scipoly/sap/2000/index.htm#september). The SAP stated that immobile (hydrophobic/lipophilic) pesticides may be removed by conventional water treatment processes.

V. Proposed Policy

OPP is announcing and seeking public comment on a policy to provide a systematic approach for considering drinking water treatment effects on pesticide removal and transformation in FQPA risk assessments. Because most surface source drinking water receives some form of water treatment prior to human consumption, the proposed treatment policy is generally applicable to surface source drinking water. A similar assumption cannot be made for drinking water systems using ground water because of the importance of private wells in rural areas. Private wells are not generally linked to water treatment systems prior to human consumption. This policy is based on scientific conclusions reached as a result of OPP's literature review and on our assessment of the availability of information for specific pesticides on water treatment effects:

- The Environmental Fate and Effects Division (EFED) will provide available information on the potential and measured effects from drinking water treatment (e.g., flocculation, coagulation, sedimentation, filtration, chlorination, softening, and GAC/PAC treatment) to the HED Metabolism Assessment Review Committee (MARC). The MARC will evaluate this information and determine which, if any, transformation and degradation products might be of toxicological concern. This information will also be considered in FQPA Safety Factor decisions.
- OPP will not generally conclude that treatment mitigates exposure for a specific pesticide without supporting evidence. Therefore, if sufficient pesticide-specific information is not available on effects of water treatment processes, or if sufficient information is not available on the extent to which specific processes are employed within the pesticide use area, FQPA drinking water assessments will be conducted using pesticide concentrations in raw or ambient waters to represent pesticide concentrations in finished drinking water. This policy is based on the fact that conventional water treatment processes (coagulation/flocculation, sedimentation, and filtration) are not expected to remove mobile pesticides during treatment.
- If sufficient pesticide-specific information is available on effects of a water treatment processes, as well as information on the extent to which such processes are employed within the pesticide use area, EFED will attempt to describe quantitatively the potential effects of drinking water treatment for that pesticide in the drinking water assessment. This description will include effects of degradation and formation of transformation products.
- Monitoring data on finished drinking water may also represent in aggregate the effects of treatment in the study area. However, because of the inherent variability associated with water treatment processes, with source water quality, and the limited availability of monitoring data on pesticides in finished drinking water, extrapolating such results to areas outside of the area monitored must be considered on a case-by-case basis. It is anticipated that quantitation of drinking water treatment effects will be limited to pesticides with extensive monitoring data on finished water (e.g., atrazine) or pesticides with monitoring data on finished water from focused or limited use areas (e.g., molinate). Extrapolating treatment effects across compounds with similar structures will be considered on a case-by-case basis.

VI. Questions for Public Comment

1. Do the scientific data demonstrate clear quantitative relationships exist between the physical/chemical properties of particular pesticide classes and the impacts of specific water treatment processes?

2. Based on its technical review of the literature on the impacts of different treatment processes on levels of pesticide residues in drinking water, OPP is leaning toward an interim approach which assumes, in the absence of representative pesticide-specific water plant monitoring data, that residues in finished drinking water will be the same as levels in such water prior to treatment. Given the objective of accurately estimating pesticide concentrations in drinking water, do the scientific data support this approach? How would an approach be developed based on the state of knowledge about the impact of treatment on pesticides? Under what circumstances can OPP use data on the impacts of a specific treatment process on several pesticides in a chemical class to support a general conclusion about all pesticide in that class?

3. During disinfection with chlorine, pesticides such as organophosphates can be oxidized to form toxic degradation products. What other classes of pesticides may be transformed by drinking water treatment processes to form toxic byproducts? What issues related to pesticide transformation should OPP be aware of?

4. Laboratory jar tests are often employed to determine if a regulated contaminant, including some pesticides, in raw water can be removed by a given treatment process. What are the advantages and disadvantages of using results of jar tests as the basis of evaluating whether the pesticide will be eventually removed in the actual water treatment plant? How might these results be used to adjust raw water concentrations for use in human health risk assessment? What are the advantages and disadvantages of using other types of data, e.g., paired samples from field monitoring, or pilot plant data.

5. Studies cited in the literature review indicate that many factors, such as raw water composition, water treatment method, and treatment plant conditions, may affect the removal of pesticides. What issues should OPP be considering in determining the potential impact of these factors on the percent removal and transformation of

pesticides by different water treatment plants?

6. What additional water treatment data from other studies, which either support or are inconsistent or contradict the data presented in the preliminary literature review, should OPP consider? Please submit any data that would provide information on the impacts of water treatment on additional pesticides or classes of pesticides.

7. For example, some pesticides, including carbamates and organophosphates, with hydrolysis half-lives of less than 1 day in alkaline (pH 9) water are observed to be ''removed'' during lime-soda softening (pH 10~11) by alkaline hydrolysis. Can this observation be generalized in predicting whether a pesticide with alkaline abiotic hydrolysis half-life of less than 1 day will be ''removed'' through water treatment?

8. The effects of water treatment on pesticide residues in drinking water can be assessed by regression modeling of important parameters with removal efficiency, experimental or laboratory studies, and actual field monitoring. What other approaches or methods can be used to assess water treatment effects? What are the pros and cons of these methods?

9. What types of data are needed regarding the extent and manner of use of a particular drinking water treatment process in order to use the data on the impact of such method on pesticide concentrations in finished drinking water in a deterministic or probabilistic exposure assessment?

VII. Policies Not Rules

The draft science policy document discussed in this notice is intended to provide guidance to EPA personnel and decisionmakers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should be abandoned.

EPA has stated in this notice that it will make available revised guidance after consideration of public comment. Public comment is not being solicited for the purpose of converting any policy document into a binding rule. EPA will not be codifying this policy in the Code of Federal Regulations. EPA is soliciting public comment so that it can make fully informed decisions regarding the content of each guidance document.

The ''revised'' guidance will not be unalterable. Once a ''revised'' guidance document is issued, EPA will continue to treat it as guidance, not a rule. Accordingly, on a case-by-case basis EPA will decide whether it is appropriate to depart from the guidance or to modify the overall approach in the guidance. In the course of inviting comment on each guidance document, EPA would welcome comments that specifically address how a guidance document can be structured so that it provides meaningful guidance without imposing binding requirements.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: November 8, 2001.

Stephen Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 01–28973 Filed 11–20–01; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

November 14, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 22, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT:

For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0065.

Title: Application for New or Modified Radio Stations Authorization Under Part 5 of the FCC Rules—Experimental Radio Service.

Form No.: FCC Form 442.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions; Business or other for-profit; and State, Local or Tribal Government.

Number of Respondents: 700.

Estimated Time Per Response: 4 hours.

Total Annual Burden: 2,800 hours.

Total Estimated Cost: None.

Needs and Uses: FCC Form 442 is required to be filed by Sections 5.55 (a), (b), and (c) of the FCC Rules and Regulations by applicants requiring an FCC license to operate a new or modified experimental radio station. The data supplied by this form are used by communications clerk, legal instruments examiners and engineers of the FCC to determine: (1) If the applicant is eligible for an experimental license; (2) the purpose of the experiment; (3) compliance with the requirements of Part 5 of the FCC Rules; and (4) if the proposed operation will cause interference to existing operations. The FCC could not grant an experimental license without the information contained on this form. Revision of the form is not required.

OMB Approval Number: 3060–0484.

Title: Amendment of Part 63 of the Commission's Rules to Provide for Notification of Common Carriers of Service Disruptions—Section 63.100.

Form No.: None.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions; Business or other for-profit; and State, Local or Tribal Government.

Number of Respondents: 52.

Estimated Time Per Response: 5 hours.

Total Annual Burden: 1,040 hours.

Total Estimated Cost: None.

Needs and Uses: Section 63.100 of the Commission's rules requires that ''any local exchange or inter-exchange common carrier that operates transmission or switching facilities and provides access service or interstate or international telecommunications service that experiences an outage on any facilities which it owns or operates must notify the Commission if such service outage continues for 30 or more minutes. An initial and a final outage report is required for each outage. The reports enable us to monitor developments affecting telecommunications reliability; to serve as a source of information for the public; to encourage and, where appropriate, assist in dissemination of information to those affected; and to take immediate steps, as needed, and after analyzing the information submitted, to determine what, if any, other action is required.

OMB Approval No.: 3060–0062.

Title: Application for Authorization to Construct New or Make Changes In an Instructional Television Fixed and/or Response Station(s), or to Assign or Transfer Such Station(s).

Form No.: FCC 330.

Type of Review: Extension of currently approved collection.

Respondents: Not-for-profit institutions, state, local or tribal government.

Number of Respondents: 500.

Estimated Hours Per Response: 10 hours (1 hour respondent, 6 hours contract engineer, 3 hours contract attorney).

Frequency of Response: Reporting, on occasion.

Cost to Respondents: $750,000.

Estimated Total Annual Burden: 500 hours.

Needs and Uses: FCC Form 330 is used to apply for authority to construct a new or make changes in an Instructional Television Fixed or response station and low power relay station, or for consent to license assignment or transfer of control. The data is used by FCC staff to determine if the applicant meets basic statutory requirements and is qualified to become a licensee of the Commission.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–29082 Filed 11–20–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficient Assets To Satisfy All Claims of Financial Institution in Receivership

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC), as receiver for the financial institution specified in **SUPPLEMENTARY INFORMATION**, has determined that the proceeds that can be realized from the liquidation of assets of the below listed receivership estate are insufficient to wholly satisfy the priority claims of depositors against the receivership estate. Therefore, upon satisfaction of secured claims, depositor claims, and claims which have priority over depositors under applicable law, no amount will remain or will be recovered sufficient to allow a dividend, distribution, or payment to any creditor of lesser priority, including but not limited to claims of general creditors. Any such claims are hereby determined to be worthless.

FOR FURTHER INFORMATION CONTACT: Thomas Bolt, Counsel, Legal Division, FDIC, 550 17th Street, NW., Room H–10160, Washington, DC 20429. Telephone: (202) 736–0168.

SUPPLEMENTARY INFORMATION:

Financial Institution In Receivership Determined To Have Insufficient Assets To Satisfy All Claims

FIN 6003

Mutual Federal Savings Bank of Atlanta, Atlanta, GA

Federal Deposit Insurance Corporation.

Dated: November 15, 2001.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 01–29080 Filed 11–20–01; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

Previously announced date & time: Wednesday, November 14, 2001, Executive session scheduled for 10:00 a.m. This meeting was cancelled.

DATE & TIME: *Tuesday, November 27, 2001 at 10:00 a.m.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: *Thursday, November 29, 2001 at 10:00 a.m.*

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2001–16: Democratic National Committee by counsel, Joseph E. Sandler and Neil P. Reiff.

Statement of Policy Regarding Party Committee Transfers of Nonfederal Funds for Payment of Allocable Expenses.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 01–29294 Filed 11–19–01; 3:26 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011695–003.

Title: CMA CGM/Norasia Reciprocal Space Charter, Sailing and Cooperative Working Agreement.

Parties: Norasia Container Lines Limited CMA CGM, S.A.

Synopsis: The amendment revises the number and size of the vessels utilized,

amends the amount of space exchanged, changes the allocation of slots between the parties, clarifies the legal authority for claims and disputes, changes one party's agent in regard to this agreement and makes changes in the procedures for the termination of the agreement.

Agreement No.: 201062–001.

Title: Philadelphia-Penn City Lease and Operating Agreement.

Parties: Philadelphia Regional Port Authority.

Penn City Investments, Inc.

Synopsis: The agreement amendment adjusts the compensation due under the lease. The agreement continues to run through June 20, 2003.

By Order of the Federal Maritime Commission.

Dated: November 16, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–29134 Filed 11–20–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 14980N.

Name: Blue Ocean Transport, Inc.

Address: 40 Exchange Place, New York, NY 10005.

Date Revoked: October 27, 2001.

Reason: Failed to maintain a valid bond.

License Number: 15777N.

Name: ECU Line U.S.A., LLC.

Address: 11825 NW 100th Road, Suite 3, Miami, FL 33178.

Date Revoked: October 16, 2001.

Reason: Failed to maintain a valid bond.

License Number: 16141N and 16141F.

Name: First Air Express, Inc. dba FAE, Transportation dba Bison Warehouse and Distribution.

Address: 11800 Stonehollow #200, Austin, TX 78758.

Date Revoked: September 7, 2001 and September 16, 2001.

Reason: Failed to maintain valid bonds.

License Number: 16144F.

Name: Fleetwood Shipping, Inc.

Address: 5990 North Belt East, Suite 601, Humble, TX 77396.

Date Revoked: October 20, 2001.

Reason: Failed to maintain a valid bond.

License Number: 861F.

Name: George J. Young & Co.

Address: 110 West Ocean Blvd., Suite 622, Long Beach, CA 90802.

Date Revoked: November 1, 2001.

Reason: Failed to maintain a valid bond.

License Number: 16461N.

Name: Jeong G. Ju dba Korea Express Washington, Inc.

Address: 7912 Yarnwood Ct., Springfield, VA 22153.

Date Revoked: October 17, 2001.

Reason: Failed to maintain a valid bond.

License Number: 16638F.

Name: Kalem Freight Forwarding Inc.

Address: 10505 NW 27th Street, Unit 2, Miami, FL 33172.

Date Revoked: September 16, 2001.

Reason: Failed to maintain a valid bond.

License Number: 16351N.

Name: LTL International Co., Ltd.

Address: 1890 NW 82nd Avenue, Suite 101, Miami, FL 33126.

Date Revoked: October 24, 2001.

Reason: Failed to maintain a valid bond.

License Number: 4406F.

Name: Protrans Logistics & Agency, Inc.

Address: 3371 Cerritos Avenue, Los Alamitos, CA 90808.

Date Revoked: September 24, 2001.

Reason: Surrendered license voluntarily.

License Number: 16225N.

Name: U.S. Consolidators International Corp.

Address: 39 Broadway, Suite 650, New York, NY 10006.

Date Revoked: October 17, 2001.

Reason: Failed to maintain a valid bond.

License Number: 16833N.

Name: United World Express, Inc.

Address: 2065 Ross Street, Vernon, CA 90058.

Date Revoked: October 25, 2001.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 01–29136 Filed 11–20–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/address	Date reissued
3262NF	GES Logistics, Inc. 235 East Broadway Long Beach, CA 90802.	July 2, 2001

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 01–29133 Filed 11–20–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have been filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicant should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

T. Parker Host, Inc.
World Trade Center, Suite 820, Norfolk, VA 23510. Officers: David F. Host, Exec. Vice President (Qualifying Individual) T. Parker Host, Jr., Chairman.

Four Link International, Inc.
184–45 147th Avenue, Springfield Garden, NY 11413. Officers: Ji Hoon Cho, Vice President (Qualifying Individual) Kwangsang Yoon, President.

JBA Transport & Logistics, Inc.
Carr, Estatal #44 KM 1.1 Bo Machete #7, Guayama, PR 00785. Officers: Augie Berastain, President (Qualifying Individual) Betsie E. Giro, Vice President.

Dated: November 16, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–29135 Filed 11–20–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of October 2, 2001

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on October 2, 2001.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with reducing the federal funds rate to an average of around 2½ percent.

By order of the Federal Open Market Committee, November 9, 2001.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 01–29020 Field 11–20–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (''FTC'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC is seeking public comments on its proposal to extend through February 28, 2005 the current PRA clearance for information collection requirements contained in its Funeral Industry Practices Rules (''Funeral Rule'' or ''Rule''). That clearance expires on February 28, 2002.

DATES: Comments must be submitted on or before January 22, 2002.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned ''Funeral Rule: Paperwork comment.''

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Myra Howard, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H–238, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2047.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or private information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the Funeral Rule, 16 CFR part 453 (OMB Control Number 3084–0025).

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The Funeral Rule ensures that consumers who are purchasing funeral goods and service have accurate information about the terms and conditions (especially prices) for such goods and services. The Rule requires that funeral providers disclose this information to consumers and maintain records to facilitate enforcement of the Rule.

Estimated annual hours burden: The estimated burden associated with the collection of information required by the Rule is 22,300 hours for recordkeeping and 57,900 hours for disclosures, for a total of 80,200 hours. This estimate is based on the number of funeral providers (approximately 22,300), the number of funerals annually (approximately 2.3 million), and the time needed to fulfill the information collection tasks required by the Rule.

Recordkeeping: The Rule requires that funeral providers retain copies of price lists and statements of funeral goods and services selected by consumers. Based on a maximum average burden of one hour per provider per year for this task, the total burden for the 22,300 providers is 22,300 hours. This estimate is unchanged from 1998.

Disclosure: The Rule requires that funeral providers (1) maintain current price lists for funeral goods and services, (2) provide written documentation of the funeral goods and services selected by consumers making funeral arrangements, and (3) provide information about funeral prices in response to telephone inquiries.

Maintaining current price lists requires that funeral providers revise their price lists from time to time through the year to reflect price changes. Based on a maximum average burden of two hours per provider per year for this task, the total burden for 22,300 providers is 44,600 hours. This estimate is unchanged from the FTC's prior estimate in 1998.

The original rulemaking record indicated that 87 percent of funeral providers written documentation of funeral arrangements, even absent the Rule's requirements.[1] Accordingly, the Rule imposes a disclosure burden on 2,899 providers (13 percent of 22,300 providers). These providers are typically the smallest funeral homes. The disclosure requirement can be satisfied through the use of a standard form (an example of which is available to the industry in the Compliance Guide to the Funeral Rule). Based on an estimation that these smaller homes arrange, on average, approximately 20 funerals per year and that it would take each of them about 3 minutes to record prices for each consumer on the standard form, FTC staff estimates that the total burden associated with this disclosure

[1] Copies of the Minutes of the Federal Open Market Committee meeting of October 2, 2001, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

[1] The original version of the Funeral Rule required that funeral providers retain a copy of and give each customer a separate ''Statement of Funeral Goods and Services Selected.'' The 1994 amendments to the Rule eliminated that requirement, allowing instead for such disclosures to be incorporated into a written contract, bill of sale, or other record of a transaction that providers use to memorialize sales agreements with customers.

requirement is one hour per provider not already in compliance, for a total of 2,899 hours.

The Funeral Rule also requires funeral providers to answer telephone inquiries about the provider's offerings or prices. Industry data indicate that only about nine percent of funeral purchasers make telephone inquiries, with each call lasting an estimated three minutes. Only about half of that additional time is attributed to disclosures required solely by the Rule, since many providers would provide the requested information even without it. Thus, assuming that the average purchaser makes two calls per funeral to compare prices, the estimated burden is 10,350 hours [(½ × 3 minute call × 2 calls/funeral) × 207,000 funerals (nine percent of 2,300,000 funerals/year)]. This burden likely will decline over time as consumers increasingly rely on the Internet for funeral price information.

In sum, the disclosure total is 57,849 hours (44,600 + 2,899 + 10,350). The total estimated hours burden associated with the Rule for both recordkeeping and disclosure requirements is 80,000, rounded to the nearest thousand (22,300 hours for recordkeeping + 57,849 hours for disclosure).

Estimated annual cost burden: $3,900,000, rounded ($3,560,000 in labor costs and $340,000 in non-labor costs).

Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The hourly rate used below are averages.

Clerical personnel, at an hourly rate of $10, can perform the recordkeeping tasks required under the Rule. Based on the estimated hour burden of 22,300 hours, the estimated cost burden for recordkeeping is $223,000 ($10 × 22,300 hours).

The two hours required of each provider, on average, to update price lists should consist of approximately 1.5 hours of managerial or professional time, at $75 per hour, and .5 hours of clerical time, at $10 per hour, for a total of $117.50 per provider. Thus, the estimated total cost burden for maintaining price lists is $2,620,250 ($117.50 × 22,300 providers).

The cost of providing written documentation of the goods and services selected by the consumer is 2,899 hours of managerial or professional time at approximately $75 per hour, or $217,425.

The cost of responding to telephone inquiries about offerings or prices is 10,350 hours of managerial or professional time at $75, or $776,250.

The total labor cost of the three disclosure requirements imposed by the Funeral Rule is $3,613,925 ($2,620,250 + $217,425 + $776,250). The total labor cost for recordkeeping and disclosures is $3,837,000 ($223,000 for recordkeeping + $3,613,925 for disclosures), rounded to the nearest thousand.

Capital or other non-labor costs: The Rule imposes minimal capital costs and no current startup costs. The Rule first took effect in 1984 and the revised Rule took effect in 1994, so funeral providers should already have in place capital equipment to carry out tasks associated with Rule compliance. Moreover, most funeral homes already have access, for other business purposes, to the ordinary office equipment needed for compliance, so the Rule likely imposes minimal additional capital expense.

Compliance with the Rule, however, does entail some expense to funeral providers for printing and duplication of price lists. Based on a rough estimate of 300 pages per year per provider for copies of the various price lists, at 5 cents per page, and 22,300 providers, the total cost burden associated with printing and copying is $334,500. In addition, the estimated 2,899 providers not already providing written documentation of funeral arrangements apart from the Rule will incur additional printing and copying costs. Assuming that those providers use the standard two-page form shown in the Compliance Guide, at 5 cents per page, at an average of 20 funerals per year, the added cost burden would be $5,798. Thus, estimated non-labor costs are $340,000, rounded to the nearest thousand.

The cost of training associated with Rule compliance is generally included in continuing education requirements for licensing and voluntary certification programs. Moreover, the FTC has provided its Compliance Guide to all funeral providers at no cost, and additional copies are available on the FTC web site or by mail. Accordingly, the Rule imposes no additional training costs.

William E. Kovacic,

General Counsel.

[FR Doc. 01–29119 Filed 11–20–01; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Availability of Final Environmental Impact Statement: United States Mission to the United Nations; Extension of Comment Period

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, as implemented by the Council on Environmental Quality (40 CFR parts 1500–1508), the General Services Administration (GSA) has filed with the U.S. Environmental Protection agency and made available to other government agencies and interested private parties, the Final Environmental Impact Statement (FEIS) for the demolition of the Federal building currently housing the United States Mission to the United Nations (USUN) and the subsequent construction of a new facility on the same site. A public hearing for the Draft Environmental Impact Statement was held on Wednesday, June 13th, 2001.

The FEIS is on file at GSA offices in Manhattan, Manhattan Community District #6 and the Mid-Manhattan Library. Copies of the FEIS Executive Summary or additional information may be obtained from: General Services Administration, Public Buildings Service—2PT, 26 Federal Plaza, Room 1609, New York, New York, 10278, Attn: Peter Sneed.

This notice was originally published on September 6, 2001 (66 FR 46639). The deadline for submitting written comments has been extended until Friday, December 14, 2001 and should be addressed to General Services Administration in care of the above noted individual.

Dated: November 14, 2001.

Edmond F. Schorno,

Regional Administrator.

[FR Doc. 01–29129 Filed 11–20–01; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0153]

Federal Acquisition Regulation; Proposed Collection; OMB Circular A–119

AGENCIES: Department of Defense (DOD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0153).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning OMB Circular A–119. The clearance currently expires on March 31, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 22, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Streets, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

On February 19, 1998, a revised OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' was published in the **Federal Register** at 63 FR 8545, February 19, 1998. FAR Subparts 11.1 and 11.2 were revised and a solicitation provision was added at 52.211–7, Alternatives to Government-Unique Standards, to implement the requirements of the revised OMB circular. If an alternative standard is proposed, the offeror must furnish data and/or information regarding the alternative in sufficient detail for the Government to determine if it meets the Government's requirements.

B. Annual Reporting Burden

Respondents: 100.
Responses Per Respondent: 1.
Total Responses: 100.
Hours Per Response: 1.
Total Burden Hours: 100.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0153, OMB Circular A–119, in all correspondence.

Dated: November 7, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–29121 Filed 11–20–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0038]

Federal Acquisition Regulation; Proposed Collection; Mistake in Bid

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0038).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning mistake in bid. The clearance currently expires on March 31, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 22, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Streets, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

When a mistake in bid is discovered by the contracting officer (CO) after bid opening but before award, the CO obtains verification of the bid intended. This verification is needed to establish the bidder's correct bid. If the bidder requests permission to correct the bid, the bidder must submit clear and convincing evidence that a mistake was made. If the bidder requests permission to correct the bid and submits evidence that a mistake was made, the evidence is analyzed by the CO to determine whether or not the bidder should be allowed to correct the bid. The data (evidence) submitted by the bidder is attached to bidder's bid and placed in the contract file along with the CO's determination.

The verification of the correct bid is attached to the original bid and a copy of the verification is attached to the duplicate bid and placed in the contract file.

B. Annual Reporting Burden

Respondents: 4,673.
Responses Per Respondent: 1.
Total Responses: 4,673.
Hours Per Response: .5.
Total Burden Hours: 2,337.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405, telelphone (202) 501–4755. Please cite OMB Control No. 9000–0038, Mistake in Bid, in all correspondence.

Dated: November 7, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–29122 Filed 11–20–01; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

NATIONAL CAPITAL PLANNING COMMISSION

Record of Decision: Programmatic Development Plan and Phase 1 Implementation for the Suitland Federal Center (SFC) in Suitland, MD

AGENCIES: General Services Administration, National Capital Planning Commission.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) has published an Environmental Impact Statement (EIS) on the Suitland Federal Center (SFC) Programmatic Development Plan and Phase 1 Implementations. The purpose of this Record of Decision (ROD) is to clearly communicate GSA's consideration of all reasonable alternatives, to communicate GSA's rationale for selecting the chosen alternative, and to identify any mitigation measures to be implemented as a part of the selected alternative.

FOR FURTHER INFORMATION CONTACT: Mr. Jag Bhargava, Project Executive, General Services Administration Portfolio Development Division, WPT, 7th and D Streets, SW., Room 2002, Washington, DC.

SUPPLEMENTARY INFORMATION: The General Services Administration has published an Environmental Impact Statement (EIS) on the following project: Suitland Federal Center (SFC) Programmatic Development Plan and Phase 1 Implementation. GSA announces its decision, in accordance with the National Environmental Policy Act of 1969, as amended (NEPA), the regulations issued by the Council on Environmental Quality (40 CFR parts 1500–1508) (CEQ), and the National Historic Preservation Act of 1966, as amended (NHPA). The purpose of this Record of Decision (ROD) is to clearly communicate GSA's consideration of all reasonable alternatives, to communicate GSA's rationale for selecting the chosen alternative, and to identify any mitigation measures to be implemented as a part of the selected alternative. The selected alternative is Alternative A, the mid-density development plan for the SFC.

Record of Decision for the Programmatic Development Plan and Phase 1 Implementation for the Suitland Federal Center (SFC) Suitland, Maryland

The SFC is a 226-acre federal employment center in Suitland, Maryland. GSA's current tenants are the Bureau of Census, the National Oceanographic and Atmospheric Administration (NOAA), and the National Archives. Independent of GSA, the National Maritime Intelligence Center (NMIC) is also located at the SFC.

GSA has prepared a programmatic development plan for the SFC campus to provide a comprehensive examination of its long-range development potential. The implementation of the programmatic development plan is the subject of an Environmental Impact Statement (EIS). The Draft EIS addressed short-term construction/renovation-related impacts and long-term effects from the proposed implementation of the programmatic development plan alternatives, as well as the cumulative impacts that would result from this and other projects that have been completed recently, are currently under development, or are proposed within the study area. The Final EIS (September 2001) includes the Draft EIS, public and federal, state and local agency comments on the Draft EIS, responses to the Draft EIS comments, modifications to the Proposed Action Alternatives, and mitigation measures to be implemented as part of the selected alternative.

Purpose and Need

The purpose of the SFC programmatic development plan is to assess future development opportunities for the underutilized SFC campus. Of particular importance is better meeting the future needs of two current tenants, NOAA and the Census Bureau. Such an analysis is essential due to current conditions at the campus.

Many existing buildings at the SFC are aged and deteriorated. Problems include leaking roofs, outdated building systems, and dilapidated interior finishes. These conditions have created potential health and safety issues, including exposure to asbestos-containing materials, contamination of the drinking water, problems with indoor air quality, and the presence of lead-based paint. The GSA has taken appropriate measures to control these hazards; however, these measures have resulted in considerable restraints on tenant use of the buildings and thus increased operational costs and inefficiencies. In addition, the campus has existing stormwater drainage problems.

There are currently NOAA and Census Bureau employees that cannot be housed at the SFC campus due to space limitations. They are thus located in leased space around the County. The consolidation of these employees will improve operational efficiency and reduce costs.

In addition, the recent opening (January 2001) of the new Suitland Metro Rail Station at the southwest corner of the campus provides an opportunity to better accommodate the commuting needs of SFC employees. Overall, the development of a comprehensive plan for the long-range development of the SFC will allow GSA to make better use of the facility as a whole, while ensuring that valuable open space and natural and cultural resources on the campus are maintained.

Programmatic Development Plan

The Programmatic Development Plan (Plan) for the SFC was completed in the Spring of 2001. The Plan addressed deficiencies and identified opportunities at the campus over the next ten years. The Plan was developed by GSA in close cooperation with the federal agencies located at SFC, other regional planning agencies, and the surrounding community. The general purpose of the plan is as follows:

- Review, maintain, and improve the condition of existing facilities and functions of each federal agency located within the SFC campus;
- Identify potential future development opportunities for existing parcels within the SFC campus for current and potential federal government uses, or other non-federal uses;
- Maximize the value of the SFC campus for federal and other uses through actions that contribute to the redevelopment of the Suitland community;
- Review potential development opportunities provided by new transit access from the Suitland Metro Rail Station;
- Improve pedestrian and vehicular circulation within the campus and adjoining community;
- Assess campus parking requirements and provide a mixture of surface parking and structured parking facilities;
- Provide environmental and public space amenities that complement the established landscape setting of the SFC campus; and

• Promote the improvement of adjoining neighborhood commercial services that could support the needs of current and future federal agency employees and that could enhance the Suitland community.

The planning process ultimately resulted in the articulation of two viable development options for the campus, a Mid-Density Development option and a High-Density Development option. These two Action Alternatives, together with the No Action Alternative, are the subjects of the Final EIS.

Environmental Review Process

GSA issued a Notice of Intent to prepare an EIS on the Suitland Federal Center Programmatic Development Plan in the Fall of 2000 (**Federal Register**, October 3, 2000). A public scoping meeting on the project was held on October 25, 2000. Several scoping meetings with regulatory agencies were also held in September and October of 2000. Following the scoping process and subsequent environmental analysis, a Draft EIS on the project was prepared to assess the environmental consequences and identify mitigation measures. The Draft EIS was circulated on July 13, 2001 to applicable review agencies, organizations and interested citizens, and placed in local libraries. Official notice of the availability of the Draft EIS was published in the **Federal Register** on July 20, 2001, commencing a 45-day review period. A Draft EIS public review meeting was held on August 15, 2001 to receive comments on the document. A transcript of comments received on the Draft EIS during the August 15th public meeting was prepared by a transcriber. Comment letters were also received during the Draft EIS comment period. These oral and written comments, and responses to them, were included in Section C of the Final EIS. GSA adequately addressed all of the substantive comments received on the Draft EIS. The Final EIS was circulated to interested parties on September 21, 2001 and its availability was announced in the **Federal Register** on September 28, 2001. No comments were received on the Final EIS within the subsequent 30-day No Action period.

The design of the NOAA facility prior to the preparation of the Draft EIS was sufficient so that the Final EIS satisfies the NEPA requirements for the NOAA development at the SFC. The development plans for subsequent phases (the Census Bureau and unspecified future development) were more programmatic, providing total employment figures, square footage, number of parking spaces, and circulation, but not specifically siting the buildings. Instead, building and parking envelopes were defined in a number of areas on the campus. The Census Bureau (Phase 2) development and future (Phase 3) development will each require subsequent environmental review as more detailed plans become available. It is anticipated that each phase will include the preparation of an Environmental Assessment that is tiered from the SFC EIS.

Description of Alternatives

Two alternative programmatic development plans (Action Alternatives), as well as a No Action Alternative, were considered for the long-term development of the SFC. The action alternatives, named Alternatives A and B, represent mid-density and high-density levels of development for the SFC campus.

For each of the Build Alternatives, the EIS analyzes three distinct development phases (the NOAA facility, the Census Bureau facilities, and future development) occurring over the ten-year planning horizon. The first two phases are based on the projected requirements of NOAA and the Census Bureau. The final phase of each alternative is intended to (A) accommodate reasonable future development of approximately 1,272,000 square feet and (B) test the development capacity of the site with approximately 2,272,000 square feet.

Alternative A: Mid-Density Development

Alternative A (Mid-Density): Phase 1 (NOAA)

In Phase 1 of Alternative A, a new 208,000 gsf building would be constructed for NOAA on the site of the current ball fields in the northwest portion of the campus. The building would consist of two primary components, a single level office space element set into the landscape with a sod roof, and an approximately 55-foot tall high-tech tower with satellite operations on the roof.

This phase would result in a net increase of 53 employees and the relocation of 500 parking spaces to the Suitland Federal Center. The majority of parking would be located below the main NOAA building. Access to the new NOAA facility would be provided through the existing roadways and entrances. An antenna farm would be located on the western side of the development parcel.

Alternative A (Mid-Density): Phase 2 (Census Bureau)

Through a combination of new construction, renovation, and demolition, Phase 2 of Alternative A would result in a net increase of approximately 464,000 gsf of space above Phase 1 levels at the Suitland Federal Center campus. It would also add 1,267 employees and 363 parking spaces in structured and at-grade lots. Under Phase 2, the additional space would likely occur through a combination of construction, renovation, and demolition. The Census Bureau would be accommodated in two buildings located in the eastern portion of the SFC campus within the building envelope around FOB–3.

As a result of the construction and renovation, FOB–4 and SFB–2 would be demolished. FOB–3 could either be renovated or demolished. The Suitland House, Mechanical Plant, National Records Center, NMIC, and the new NOAA Building would remain unchanged. Phase 2 would include reorganization of the campus circulation network to align with the existing public street network, provide signalization, and improve peak hour access and egress conditions. The environmentally sensitive forested slopes, drainage channels, and wetlands on the southern areas of the project site would be preserved and remain undeveloped in Phase 2 of Alternative A.

Alternative A (Mid-Density): Phase 3 (Future Development)

Phase 3 of Alternative A would add approximately another 600,000 gsf, 444 parking spaces, and 2,000 employees above Phase 2 levels. This building program would be accommodated in three additional office buildings, each probably three to four stories high. The new buildings and associated parking structures would be constructed to provide a density transition for the area between the Census Bureau building envelope and the new NOAA building. Thus, the building densities would step down as they move west along Suitland Road away from the intersection of Suitland and Silver Hill Roads.

Alternative B: High-Density Development

Alternative B (High Density): Phase 1 (NOAA)

Phase 1 of Alternative B is identical to Phase 1 of Alternative A.

Alternative B (High Density): Phase 2 (Census Bureau)

Phase 2 of Alternative B would result in a net increase of 1,164,000 gsf of space above Phase 1 levels through a combination of new construction, renovation, and demolition. It would

also add up to 4,367 employees and 1,053 parking spaces in structured and at-grade lots. Under Phase 2 of Alternative B, a new Census Bureau building (or buildings) would be constructed in the eastern portion of the campus, near existing FOB–3. The capacity of the buildings would consist of 1,500,000 gsf.

It is assumed that FOB–3 would remain in its current condition and could be available for use by a future tenant, either as office space or to serve a storage function. FOB–4 and SFB–2 would be demolished. The existing annex and vault areas would be replaced by approximately 10,000 gsf for new daycare and recreation facilities. The Suitland House, Mechanical Plant, National Records Center, NMIC, and the new NOAA building would remain unchanged. The campus circulation network would be reorganized to align with the existing public street network, provide signalization, and improve peak hour access and egress conditions. The environmentally sensitive forested slopes, drainage channels, and wetlands on the southern areas portion of the site would be preserved.

Alternative B (High Density): Phase 3 (Future Development)

Phase 3 of Alternative B would add approximately 900,000 gsf, 666 parking spaces, and 3,000 employees above Phase 2 levels. It is assumed that, as a result of Phase 3, four new office buildings would be constructed, each probably three to five stories high. These buildings could serve either federal or private sector functions.

Three of the future buildings and associated parking would be constructed in the area between the Census Bureau building envelope and the new NOAA building. Another new three-story office building and a three-story parking structure would be constructed in the area around the Metro Rail station.

No Action Alternative

Under the No Action Alternative, all existing development and tenants would remain; however, there would be no new development at the SFC, nor would there be any reconfiguration of the existing facilities. Thus, the projected relocation of NOAA employees at the SFC, and the growth and consolidation of Census employees at the SFC, would not occur. Any new employees would have to be located in leased space elsewhere in the county.

Environmental Consequences

The following are summaries of the environmental consequences for each of the phases of the two alternatives. Where no impacts are mentioned for a given resource area, there were not significant environmental impacts resulting from the implementation of the phases of each of the alternatives.

Alternative A: Mid-Density Development

Alternative A (Mid-Density): Phase 1 (NOAA)

Construction of the new NOAA facility would help consolidate and enhance existing landscape zones, and add circulation features within the campus while retaining the existing physical character of the SFC as an office and research campus. There would potentially be minor adverse impacts to traffic conditions and air quality; however, these impacts could largely be mitigated by limited road improvements.

Alternative A (Mid-Density): Phase 2 (Census Bureau)

Under Phase 2 of Alternative A, the SFC would continue to retain its character as a lower-density office and research campus with service uses, while also preserving the environmentally sensitive portion of the campus. The increase in Census employees at the SFC could positively affect businesses in the larger Suitland community, increasing retail sales and thus potentially creating new employment opportunities for local residents. It could also contribute to a sense of revitalization in the Suitland area, when considered with other efforts by state and local agencies. The demolition of FOB–4, and potentially FOB–3, would adversely impact historic properties on the campus; however, consultation is currently underway with the Maryland Historical Trust to mitigate these impacts. There would also be adverse impacts to traffic conditions and air quality as a result of Phase 2 of Alternative A; however, these impacts could largely be mitigated by roadway and signal improvements.

Alternative A (Mid-Density): Phase 3 (Future Development)

Under Phase 3 of Alternative A, the amount of development at the SFC would increase to a moderate-density campus of office, retail, and service space with a mixture of structured and at-grade parking. The increase in employees could positively impact businesses in the Suitland area by further increasing retail sales above Phase 2 levels and thus potentially creating new employment opportunities for local residents. It could also contribute to a sense of revitalization in the Suitland area, when considered with other efforts by state and local agencies. There would be adverse impacts to traffic conditions and air quality as a result of Phase 3 of Alternative A; however, these impacts could largely be mitigated by roadway and signal improvements. Peak hour noise levels would slightly exceed the standards established by the Federal Highway Administration and the state of Maryland.

Alternative B: High-Density Development

Alternative B (High Density): Phase 1 (NOAA)

Phase 1 of Alternative B is identical to Phase 1 of Alternative A. Please refer to the discussion of the impacts under Phase 1 of Alternative A above.

Alternative B (High Density): Phase 2 (Census Bureau)

Under Phase 2 of Alternative B, the lower-density suburban character of the SFC would begin to change to a higher-density campus of office, retail, and service space with a mixture of structured and at-grade parking. The environmentally sensitive portions of the campus would remain unchanged. The increase in employees could positively impact businesses in the Suitland area, further increasing retail sales and thus potentially creating new employment opportunities for local residents. It could also contribute to revitalization in the Suitland area, when considered with other efforts by state and local agencies. There would be adverse impacts to traffic conditions and air quality as a result of Phase 2 of Alternative B. These impacts could be mitigated by substantial roadway and signal improvements. Peak hour noise levels would exceed the standards established by the Federal Highway Administration and the state of Maryland.

Alternative B (High Density): Phase 3 (Future Development)

Under Phase 3 of Alternative B, the character of the SFC would further evolve into a higher-density campus of larger buildings containing office, retail, and service space with a mixture of structured and at-grade parking. The increase in employees could have significant positive impacts on businesses in the Suitland area, further increasing retail sales and thus potentially creating new employment opportunities for local residents. It

could also contribute to revitalization in the Suitland area, when considered with other efforts by State and local agencies. There would be substantial adverse impacts to traffic conditions and air quality as a result of Phase 3 of Alternative B. These impacts could be mitigated by extensive roadway and signal improvements. Peak hour noise levels would exceed the standards established by the Federal Highway Administration and the state of Maryland.

No Action Alternative

Under the No Action Alternative, there would be no new impacts. The conditions of the buildings on the site would worsen with time. Erosion of the site from stormwater, particularly in the vicinity of FOB–3, would also worsen over time without a reconfiguration of the campus to address drainage issues. Finally, without the influx of new employees and the redevelopment of the site, the SFC would be less likely to contribute to the redevelopment of the larger Suitland area.

Preferred Alternative

Environmentally Preferred Alternative

Regulations of the Council on Environmental Quality (CEQ) implementing NEPA require a federal agency to identify the alternative or alternatives that are considered to be environmentally preferable. In this case, the No Action Alternative appears to involve the fewest impacts to environmental and historical resources. However, this alternative would not satisfy the underlying purpose and need for the proposed action as it would not meet the future needs of NOAA, the Census Bureau, and the federal government. Moreover, it would require the two tenant agencies to continue to occupy aged and deteriorating buildings. The consolidation of NOAA and Census Bureau employees that are currently located off-site would not occur and thus they would not be better able to meet their mission requirements and serve the public. Finally, it would not allow for the long-range redevelopment of the SFC, which is essential for the revitalization of the greater Suitland area. Therefore, implementation of one of the two action alternatives is necessary to satisfy the purpose and need for the proposed action.

Preferred Action Alternative

GSA selected Alternative A (Mid-Density Development) as the preferred action alternative because it more closely meets the needs of GSA and the tenant agencies with less overall environmental impacts. Phase 1 development is identical between the two action alternatives. Thus, the nature and intensity of the environmental impacts are also identical for Phase 1. However, the development program and density for Phases 2 and 3 are greater under Alternative B (High-Density) than under Alternative A (Mid-Density). As a result, the environmental impacts associated with the number of buildings, employees, vehicles, and other programmatic elements that would be generated under Alternative A would be less extensive than the impacts generated under Alternative B. Overall, because the density under Alternative B would exceed the development capacity of certain resources, Alternative A more closely meets the needs of the GSA and the tenant agencies through a mid-density phasing plan.

Decision

Giving consideration to all factors discovered during the NEPA process, and since Alternative A more closely meets the needs of GSA and the tenant agencies, GSA has decided to advance the redevelopment of the SFC campus under Alternative A, the mid-density alternative.

Mitigation Measures

The implementation of each phase of Alternative A would result in a variety of short- and long-term impacts. GSA received a number of comments and mitigation suggestions from members of the public and from local, state, and federal agencies. Potential mitigation measures were identified in the Final EIS to address environmental impacts resulting from the construction or operation of the new facility. All practicable means of avoiding or minimizing environmental harm from the selected alternative were adopted, through the program of mitigation, monitoring and enforcement outlined below.

Impacted areas	Phase	Mitigation measure
Land Use	Phase 1	• Building design will accommodate employee and public circulation to Metro Rail Station.
	Phase 2	• Building design will accommodate employee and public circulation to Metro Rail Station. • GSA will consider public use for southeast corner of the site and high-density use for Metro Rail parcel.
	Phase 3	• Building design will accommodate employee and public circulation to Metro Rail Station.
Planning Policy	Phase 1	None.
	Phase 2	• Comply with Section 106 of the National Historic Preservation Act.
	Phase 3	None.
Community Facilities	Phase 1	• Identify alternate local recreational facilities to replace ballfields.
	Phase 2	None.
	Phase 3	None.
Public Safety Services	Phase 1	• NOAA building will be sprinkled.
	Phase 2	• Increase the number of on-site safety personnel to meet new demands. • New buildings will be sprinkled.
	Phase 3	• Increase the number of on-site safety personnel to meet new demands. • New buildings will be sprinkled.
Demographics	Phase 1	• Coordinate construction routes and activities with surrounding community.
	Phase 2	• Coordinate construction routes and activities with surrounding community. • Integrate and coordinate project with ongoing plans for Suitland/Silver Hill area.
	Phase 3	• Coordinate construction routes and activities with surrounding community.

Impacted areas	Phase	Mitigation measure
		• Integrate and coordinate project with ongoing plans for Suitland/Silver Hill area.
Environmental Justice	Phase 1	• Coordinate construction routes and activities with surrounding community.
	Phase 2	• Coordinate construction routes and activities with surrounding community.
	Phase 3	• Coordinate construction routes and activities with surrounding community.
Arch./Historic Resources	Phase 1	None.
	Phase 2	• Comply with Section 106 of the National Historic Preservation Act.
	Phase 3	• Comply with Section 106 of the National Historic Preservation Act.
Transportation Systems	Phase 1	• Undertake necessary roadway and signal improvements to ensure that intersections surrounding the SFC operate at acceptable Level of Service (LOS).
		• Commit to net increase in parking.
	Phase 2	• Undertake necessary roadway and signal improvements to ensure that intersections surrounding the SFC operate at acceptable LOS.
	Phase 3	• Undertake necessary roadway and signal improvements to ensure that intersections surrounding the SFC operate at acceptable LOS.
		• Prepare a TMP.
Air Quality	Phase 1	• Conduct detailed analysis of 8-hour CO concentrations at Suitland/Silver Hill Road.
	Phase 2	• Make necessary roadway improvements to ensure that 8-hour CO concentrations at affected intersections do not exceed established thresholds.
	Phase 3	• Make necessary roadway improvements to ensure that 8-hour CO concentrations at affected intersections do not exceed established thresholds.
Noise Levels	Phase 1	• Select truck routes that minimize potential for noise impact during construction.
	Phase 2	• Select truck routes that minimize potential for noise impact during construction.
		• Prepare a TMP.
	Phase 3	• Select truck routes that minimize potential for noise impact during construction.
		• Prepare a TMP.
Water Resources	Phase 1	• Locate structured parking beneath building.
		• Design stormwater facilities to minimize potential contamination of water resources, maintain existing drainage patterns and control erosion and sediment.
	Phase 2	• Control size of building footprints, roads and surface parking lots.
		• Design stormwater facilities to minimize potential contamination of water resources, maintain existing drainage patterns and control erosion and sediment.
	Phase 3	• Control size of building footprints, roads and surface parking lots.
		• Design stormwater facilities to minimize potential contamination of water resources, maintain existing drainage patterns and control erosion and sediment.
Geology/Topography/Soils	Phase 1	• Complete geotechnical studies prior to construction.
		• Minimize erosion and exposed impervious surfaces.
	Phase 2	• Complete geotechnical studies prior to construction.
		• Minimize erosion and exposed impervious surfaces.
	Phase 3	• Complete geotechnical studies prior to construction.
		• Minimize erosion and exposed impervious surfaces.
Vegetation/Wildlife Habitat	Phase 1	• Design will minimize impervious surface and promote erosion and sediment control.
		• Complete geotechnical studies prior to construction.
		• Provide afforestation and landscaping in disturbed areas.
		• Maintenance or creation of vegetative buffers around wildlife habitat.
	Phase 2	• Design will minimize impervious surface and promote erosion and sediment control.
		• Complete geotechnical studies prior to construction.
		• Afforestation and landscaping in disturbed areas.
		• Maintenance or creation of vegetative buffers around wildlife habitat.
	Phase 3	• Design will minimize impervious surface and promote erosion and sediment control.
		• Complete geotechnical studies prior to construction.
		• Afforestation and landscaping in disturbed areas.
		• Maintenance or creation of vegetative buffers around wildlife habitat.
Hazardous Materials	Phase 1	None.
	Phase 2	• Properly handle asbestos or lead-bearing waste and UST systems.
		• Add secondary containment to chemical storage area and initiate Spill Prevention, Control, and Countermeasures Plan.

Impacted areas	Phase	Mitigation measure
	Phase 3	• Add secondary containment to chemical storage area and initiate Spill Prevention, Control, and Countermeasures (SPCC) Plan.
Stormwater Management Systems	Phase 1	• Utilize Best Management Practices (BMP). • Consider bioretention and extended wet ponds.
	Phase 2	• Utilize BMP. • Consider bioretention and extended wet ponds.
	Phase 3	• Utilize BMP. • Consider bioretention and extended wet ponds.
Water Supply	Phase 1	• Reduce water consumption to the extent possible.
	Phase 2	• Reduce water consumption to the extent possible. • Perform flow test to determine necessity of booster pumps.
	Phase 3	• Reduce water consumption to the extent possible. • Perform flow test to determine necessity of booster pumps.
Energy Systems	Phase 1	• Employ energy savings performance contracts. • Employ energy-wise management practices.
	Phase 2	• Employ energy savings performance contracts. • Employ energy-wise management practices.
	Phase 3	• Employ energy savings performance contracts. • Employ energy-wise management practices.
Solid Waste Disposal	Phase 1	• Promote cost effective waste reduction and recycling activities. • Additional dumpsters to accommodate construction. • More frequent waste collection during construction.
	Phase 2	• Promote cost effective waste reduction and recycling activities. • Additional dumpsters to accommodate construction. • More frequent waste collection during construction. • Properly handle asbestos or lead-bearing waste.
	Phase 3	• Promote cost effective waste reduction and recycling activities. • Additional dumpsters to accommodate construction. • More frequent waste collection during construction.
Radiofrequency Communication	Phase 1	• Designate restricted access to all areas where field strengths exceed acceptable levels. • Provide rooftop shielding on NOAA building.
	Phase 2	• Conduct a detailed radiofrequency study and develop appropriate communications plan.
	Phase 3	• Conduct a detailed radiofrequency study and develop appropriate communications plan.

Dated: October 31, 2001.

Annie W. Everett,

Acting Regional Administrator, General Services Administration, National Capital Region.

[FR Doc. 01–29128 Filed 11–20–01; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

White House Commission on Complementary and Alternative Medicine Policy; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the White House Commission on Complementary and Alternative Medicine Policy.

The purpose of this public meeting is to convene the Commission to discuss possible Federal policy regarding complementary and alternative medicine (CAM). The main focus of the meeting is the discussion of key issues before the Commission and the development of draft recommendations that may be included in the Draft Final Report of the White House Commission on Complementary and Alternative Medicine Policy. Major issue areas to be considered by the Commission prior to preparation of its Final Report include the following: Coordination of CAM Research; Access to and Delivery of CAM Practices and Products; Coverage and Reimbursement for CAM Practices and Products; Training and Education of Health Care Practitioners in CAM; Development and Dissemination of CAM Information for Health Care Providers and at the Public; CAM in Wellness, Self-Care, Health Promotion, and Disease Prevention; Coordinating and Centralizing Private Sector and Federal Sector CAM Efforts; and the Definition of CAM and Guiding Principles for the preparation of the Final Report from the Commission. Comments received at the meeting may be used by the Commission to prepare the Report to the President as required by the Executive Order.

Opportunities for oral statements by the public will be provided on December 7, from 4 p.m.–5 p.m. (Time approximate).

Name of Committee: The White House Commission on Complementary and Alternative Medicine Policy.

Date: December 6–7, 2001.

Time: December 6—8 a.m.–5 p.m.; December 7—8 a.m.–5 p.m.

Place: Neuroscience Office Building, National Institutes of Health, Conference Rooms C–D, 6001 Executive Boulevard, Bethesda, MD 20892.

Contact Persons: Michele M. Chang, CMT, MPH, Executive Secretary, or Stephen C. Groft, Pharm.D., Executive Director, 6707 Democracy Boulevard, Room 880, MSC–5467, Bethesda, MD 20892–5467; Phone: (301) 435–7592; Fax: (301) 480–1691; E-mail: *WHCCAMP@mail.nih.gov.*

Because of the need to obtain the views of the public on these issues as soon as possible and because of the deadline for the report required of the Commission, this notice is being provided at the earliest possible time.

Supplementary Information: The White House Commission on Complementary and Alternative Medicine Policy was established on March 7, 2000 by Presidential Executive Order 13147. The mission of the White House Commission on Complementary and Alternative Medicine Policy is to provide a report, through the Secretary of the Department of Health and Human Services, on legislative and administrative recommendations for assuring that public policy maximizes the benefits of

complementary and alternative medicine to Americans.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first served basis. Members of the public who wish to present oral comments may register by faxing a request to register at 301–480–1691 or by accessing the website of the Commission at *http://whccamp.hhs.gov* no later than November 30, 2001.

Oral comments will be limited to five minutes, three minutes to make a statement and two minutes to respond to questions from Commission members. Due to time constraints, only one representative from each organization will be allotted time for oral testimony. The number of speakers and the time allotted may also be limited by the number of registrants. Priority may be given to participants who have not yet addressed the Commission at previous meetings. All request to register should include the name, address, telephone number, and business or professional affiliation of the interested party, and should indicate the area of interest or issue to be addressed.

Any person attending the meeting who has not registered to speak in advance of the meeting will be allowed to make a brief oral statement during the time set aside for public comment if time permits, and at the Chairperson's discretion. Individuals unable to attend the meeting, or any interested parties, may send written comments by mail, fax, or electronically to the staff office of the Commission for inclusion in the public record.

When mailing or faxing comments, please provide your comments, if possible, as an electronic version or on a diskette. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact the Commission staff at the address or telephone number listed above no later than November 30, 2001.

Dated: November 9, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29048 Filed 11–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–08]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: CDC National AIDS and STD Hotline Caller Survey OMB No. 0920–0295—Revision—National Center for HIV, STD, and TB Prevention (NCHSTP), Division of HIV/AIDS Prevention, Intervention, Research, and Support, Technical Information and Communication Branch. The purpose of this request is to continue active and passive data collection from people who call the CDC National AIDS and Sexually Transmitted Disease (STD) Hotlines. The mission of the CDC National AIDS and STD Hotlines is to provide the general population of the United States, its territories, and Puerto Rico with highly visible and readily accessible resources for accurate and timely information on HIV/AIDS and other STDs. The CDC is seeking OMB approval for renewal of the data collection with one proposed change and one proposed system enhancement, both aimed at improving the management and evaluation of collected information.

The change is the ability of CDC to survey every 15th caller, instead of every 30th caller, to the hotlines. The information gathered will assist CDC in the improvement of HIV and STD services, particularly to high-risk populations. Before the integration of the National AIDS and STD Hotlines in 1998, every 15th caller was surveyed in the AIDS hotline, and every 30th caller was surveyed in the STD hotline.

The National AIDS Hotline responded to a maximum of 1.6 million calls per year during the 1980s and early 1990s. Throughout the period, the calls have decreased to approximately 650,000 calls per year due to changes such as treatment advances, a more knowledgeable audience, and access to information on the Internet. However, the number of callers selected for the survey has increased to assure that a substantial amount of data can be submitted to CDC regarding information about the callers who contact the hotline. Respondents (callers) will be the general public, and only the callers to the hotlines will be affected.

The enhancement to the data collection is the employment of a partially integrated system that will allow CDC Information Specialists to answer calls about HIV/AIDS and STDs using the same toll free telephone system. The telephone system will be designed to display telephone numbers for both the AIDS Hotline and the STD Hotline. Thus, when a caller contacts the hotline for AIDS information, the phone for the AIDS Hotline will appear on the caller ID. If the caller wants additional information about STDs, the same Information Specialist can respond to the call rather than requesting that the caller place a separate call to the STD Hotline. This process will also allow for an integrated data collection system for AIDS and STD caller information and service evaluation, as well as allow CDC to provide a more efficient and effective means of addressing the needs of its constituents.

In addition, since both hotlines will still retain their separate telephone numbers, the call volume can be monitored separately with distinct extrapolation of data. This integrated system began in August 2000. The integrated system also supports strategies in the *CDC HIV Prevention Strategic Plan Through 2005*, which also states that HIV prevention must be integrated with STD prevention.

Data will be collected on an active and passive basis for both hotlines. The active data collection method occurs while the caller is on the phone. It allows the Information Specialist to gather information about caller demographics such as age, race, ethnicity and education through a short survey administered at the conclusion of the call. The passive data collection instrument allows the Information Specialist to capture more specific information about the characteristics of the caller such as the callers primary topic for discussion, gender, level of concern of caller. The Information Specialist enters this information into a database once the call is completed.

To assist in completing the surveys and providing accurate data responses, the hotlines will be using the CDC Federal Telecommunications Service (FTS) 2001 telephone systems; call length data from the Integrated Information Program (IIP), which is a computer interface. The hotlines will also be using the Automated Call Distribution (ACD) program which allows the calls to be distributed to the correct numbers (AIDS or STD) and Symposium software which can assist the hotlines in several areas, including quickly (1) determining what happened to a call that may be in the queue,(2) compiling a geographic distribution table of all calls throughout the United States, including ages of callers,(3) and routing calls to the English, Spanish or TTY service.

For the AIDS and STD integrated English service, the estimated number of persons surveyed for the active survey is 34,520, and the average active survey length is 72 seconds with a yearly burden of 691 hours. It is estimated that passive surveys are completed on 29,420 calls, and the average passive survey length for completion is 179 seconds, with a yearly burden of 1,463 hours.

Active surveys for the Spanish service for the AIDS Hotline are estimated to be about 5,040 calls with an average active survey length of 88 seconds. The average number of passive surveys estimated for the Spanish service is 5,000. All callers are surveyed from the TTY service and one out of three callers are surveyed from the Spanish service. There is no cost to the respondents.

Respondents	Number of respondents	Number of responses/respondents	Avg Burden/response (in hours)	Total burden (in hours)
AIDS Hotline Calls/English	21,760	1	1/60	363
AIDS Hotline Calls/Spanish	5,040	1	2/60	168
AIDS Hotline Calls/TTY	350	1	7/60	40
STD Hotline Calls/English	12,760	1	1/60	212
Totals	39,910			783

Dated: November 15, 2001.

John Moore,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01–29050 Filed 11–20–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Advisory Committee on HIV and STD Prevention: Meeting

In accordance with section l0(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: CDC Advisory Committee on HIV and STD Prevention.

Times and Dates: 8:30 a.m.–5 p.m., December 13, 2001. 8:30 a.m.–3 p.m., December 14, 2001.

Place: Corporate Square Office Park, Corporate Square Boulevard, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

PURPOSE: This Committee is charged with advising the Director, CDC, regarding objectives, strategies, and priorities for HIV and STD prevention efforts including maintaining surveillance of HIV infection, AIDS, and STDs, the epidemiologic and laboratory study of HIV/AIDS and STDs, information/education and risk reduction activities designed to prevent the spread of HIV and STDs, and other preventive measures that become available.

Matters to be Discussed: Agenda items include issues pertaining to (1) Global AIDS Activities (2)syphilis elimination (3) issues pertaining to HIV and STD Prevention among Men Who Have Sex With Men (MSM).

Agenda items are subject to change as priorities dictate.

Contact Person for more Information: Paulette Ford-Knights, Committee Management Analyst, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, Mailstop E–07, Atlanta, Georgia 30333. Telephone 404/639–8008, fax 404/639–3125, *e-mail pbf7@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 15, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–29051 Filed 11–20–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Veterinary Medicine Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Veterinary Medicine 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 January 22, 23, and 24, 2002, from 8:30 a.m. to 5 p.m.

Location: The DoubleTree Hotel, Plaza Rooms I and II, 1750 Rockville Pike, Rockville, MD.

Contact: Aleta Sindelar, Center for Veterinary Medicine (CVM) (HFV–3), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4515, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12546. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 22, 23 and 24, 2002, the committee will seek recommendations on the issues of import tolerances under the provisions of the Animal Drug Availability Act of

1996, and the antimicrobial drug effects on pathogen load in food-producing animals as pathogen load relates to the preapproval process of new animal drug applications (NADAs). Information concerning the discussion of import tolerances can be found in the August 13, 2001, CVM Update at: http://www.fda.gov/cvm/index/updates/importol.htm and in the **Federal Register** advance notice of proposed rulemaking of August 10, 2001 (66 FR 42167). Information concerning the issues of pathogen load will be made publicly available to the Veterinary Medicine Advisory Committee members and the public in advance of the meeting and posted on the CVM home page at: http://www.fda.gov/cvm. A limited number of paper copies of the background information will be available at the meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on the issues pending before the committee. Written submissions may be made to the contact person by January 4, 2002. Oral presentations from the public will be scheduled between approximately 3 p.m. and 5 p.m. on January 22, and between approximately 8 a.m. and 10 a.m. on January 24, 2002. The time allotted for each presentation may be limited. Those desiring to make oral presentations should notify the contact person before January 4, 2002, 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. You will be notified of your allotted time prior to the meeting. Your entire statement should be submitted for the record.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 8, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–29003 Filed 11–20–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2405]

''Guidance for Industry: Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act'' dated November 2001. The guidance document provides guidance to industry on the use of certain types of letters by the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) as part of the review of marketing applications for certain drug and biological products. The guidance document announced in this notice finalizes the draft guidance document entitled ''Guidance for Industry: Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act'' dated August 1999.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT:

Michael Anderson, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210; or

Paul Varki, Center for Drug Evaluation and Research (HFD–7), 5600 Fishers Lane, Rockville, MD 20852–1448, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act'' dated November 2001. In a November 1997 letter to Congress regarding the reauthorization of the Prescription Drug User Fee Act (PDUFA) as part of the Food and Drug Administration Modernization Act of 1997 (Public Law 105–115), the Secretary of Health and Human Services (the Secretary) committed FDA to certain user fee performance goals and additional procedures related to the review of products in human drug applications as defined in section 735(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g(1) (PDUFA products)). The guidance document explains how the agency will issue and use information request letters and discipline review letters during the review of PDUFA products. The guidance document announced in this notice finalizes the draft guidance document entitled ''Guidance for Industry: Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act'' dated August 1999 that was announced in the **Federal Register** of August 17, 1999 (64 FR 44741).

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance document represents the agency's current thinking on information request letters under PDUFA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written comments to the Dockets Management Branch (address above) regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document

and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cber/guidelines.htm.

Dated: October 29, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–29004 Filed 11–20–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Children's Hospitals Graduate Medical Education Payment Program (CHGME) (OMB No. 0915–0247): Revision

The CHGME Payment Program was enacted by Public Law 106–129 to provide Federal support for graduate medical education (GME) to ''freestanding'' children's hospitals. This legislation attempts to provide support for GME comparable to the level of Medicare GME support received by other, non-children's hospitals. The legislation indicates that eligible children's hospitals will receive payments for both direct and indirect medical education. Direct payments are designed to offset the expenses associated with operating approved graduate medical residency training programs and indirect payments are designed to compensate hospitals for expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs.

Technical assistance workshops and consultation with applicant hospitals resulted in an opportunity for hospital representatives to raise issues and provide suggestions resulting in proposed revisions in the CHGME application forms and instructions.

Eligible children's teaching hospitals submit relevant data such as weighted and unweighted full-time equivalent (FTE) resident counts, inpatient discharges and case mix index information by which direct and indirect payments are made to the participating hospitals. Data are submitted by children's hospitals in an annual CHGME application in order to receive funding. Through a reconciliation process, participating hospitals are required to correct and furnish final FTE resident count numbers reflecting changes in counts reported in the annual application form. The reconciliation process begins with fiscal year (FY)2002 and occurs before the end of the fiscal year.

The estimated burden is as follows:

Form	Number of respondents	Responses per respondents	Hours per response	Total burden hours
HRSA 99–1	60	1	24	1,440
HRSA 99–1 (Reconciliation)	60	1	8	480
HRSA 99–2	60	1	14	840
HRSA 99–4	60	1	14	840
Total	60			3,600

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 15, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–29058 Filed 11–20–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Training and Technical Assistance Cooperative Agreement Limited Competition Announcement

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of limited competition cooperative agreement.

SUMMARY: The Health Resources and Services Administration's (HRSA) HIV/AIDS Bureau (HAB) announces that applications will be accepted for fiscal year (FY) 2002 awards for a cooperative agreement to support an International AIDS Education and Training Center (IAETC). The IAETC will assist countries severely affected by the HIV/AIDS epidemic to build capacity for HIV care and support services through the training and education of HIV/AIDS care providers, including physicians, nurses, clinical administrators, and other key personnel. The IAETC will enhance training capacity in the areas of diagnosis, treatment, and prevention of HIV disease, including the prevention of perinatal transmission of the disease, measures for the prevention and treatment of opportunistic infections, and appropriate use of antiretroviral therapy. The IAETC will also develop training on the planning, design, and

management of regional or national HIV/AIDS training programs and HIV/AIDS care facilities and programs.

HRSA will assist the IAETC to identify the countries, institutions, and in-country stakeholders with which the IAETC will collaborate. Initial partners are likely to be in Africa and India. However, the number and variety of requests for assistance are expected to expand as relationships develop and additional countries in the Caribbean, Asia, and Latin America finalize specific HIV/AIDS care and support plans. Country needs and resources will vary, so the IAETC must be prepared and able to tailor its response based on the country profile. Because of the diversity in populations and differences in the epidemic, healthcare infrastructure, and educational resources, HRSA expects that a range of ideas and approaches will be implemented.

As an active partner in this cooperative agreement, HRSA will have significant involvement with the applicant regarding program plans, policies and other issues which may have major implications for any activities undertaken by the applicant under the cooperative agreement. HRSA will provide consultation and technical assistance in planning, operating, and evaluating program activities. HRSA will also facilitate the collaboration with program partners, such as CDC/Atlanta, CDC field offices, USAID, foreign governments, and other key stakeholders.

Availability of Funds

It is anticipated that a single recipient will be selected for the IAETC and is expected to be approximately $500,000 for the initial budget period. Initial funding will be available for 6 months, while subsequent budget periods will be 12 months. The entire project period will be three and one-half years. Continuation awards will be made on the basis of satisfactory progress and the availability of funds. Additional funding may be made available from collaborating U.S. agencies. Applications are due January 22, 2002.

Applications will be reviewed according to the following criteria: Organizational Capacity and Qualifications; Management Plan, Staffing, Organization, and Resources; Adequacy of the Proposed Plan for Initial Needs Assessment and Plan for Building Training Capacity; Program Collaboration and Linkages; Program Evaluation and Quality Improvement; Appropriateness and Justification of the Budget; and Adherence to Program Guidance.

Eligible Applicants

Eligible applicants are public and nonprofit private entities and schools and academic health sciences centers, which are currently funded AIDS Education Training Centers.

Authorizing Legislation

The authority of this grant program is Section 307 of the Public Health Service Act. The CFDA number is 93.145.

DATES: A letter of intent to submit an application is due December 5, 2001. Applications for this announced grant must be received in the HRSA Grants application Center by the close of business January 22, 2002. Applications shall be considered as meeting the deadline if they are (1) received on or before the deadline date or (2) are postmarked on or before the deadline date and received in time for orderly processing and submission to the review committee. Applicants should request a legibly dated receipt from a commercial carrier or U.S. Postal Service postmark. Private metered postmarks will not be acceptable as proof of timely mailing. Applications postmarked after the due date will be returned to the applicant.

ADDRESSES: Letters of intent to apply for funding should be mailed to William Oscar Fleming, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–29, Rockville, MD 20857. All applications should be mailed or delivered to HRSA Grants Application Center, 1815 N. Fort Meyer Dr., Suite 300, Arlington, VA 22209. Grant applications sent to any address other than that above are subject to being returned. Application forms and guidance will be sent directly to all eligible participants upon the publishing of this Federal Register notice. **Federal Register** notices are available on the World Wide Web via the Internet. The web site address for HAB is: *http://www.hrsa.gov/hab/*.

FOR FURTHER INFORMATION CONTACT: Additional technical information may be obtained from William Oscar Fleming, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–29, Rockville, MD 20857. The telephone number is (301) 443–4502. The fax number is (301) 443–9887 and the e-mail address is *wfleming@hrsa.gov.* You may also contact Dr. Laura Cheever, HIV Education Branch, HRSA, 5600 Fishers Lane, Parklawn Building, Rm. 7–16, Rockville, Maryland 20857. Telephone number is (301) 443–2123 and the fax: (301) 443–9887.

Dated: November 15, 2001.

Elizabeth M. Duke,

Acting Administrator.

[FR Doc. 01–29005 Fied 11–20–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel FLAIR.

Date: November 27–28, 2001.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8049, Rockville, MD 20852, 301/594–9582.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 14, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29040 Filed 11–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee C—Basic & Preclinical.

Date: December 4–7, 2001.

Time: 7 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Michael B. Small, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8040, Bethesda, MD 20892, 301/402–0996.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 14, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29041 Filed 11–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group, Ethical, Legal, Social Implications Review Committee.

Date: December 4–5, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To revise and evaluate grant applications and/or proposals.

Place: Four Points Sheration, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: November 13, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29037 Filed 11–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: November 28, 2001.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., Room 5E01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, PHD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 13, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29030 Filed 11–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel.

Date: December 11–13, 2001.

Time: 7:30 p.m. to 11:45 a.m.

Agenda: To review and evaluate grant applications.

Place: Portland Marriott Downtown, 1401 SW Naito Parkway, Portland, OR 97201.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel.

Date: December 11, 2001.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: 2 Democracy Plaza, 6707 Democracy Blvd., Room 746, Bethesda, MD 20892.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 746, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, 301–594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel.

Date: December 12–14, 2001.

Time: 6 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Silver Cloud Inn University, 5036 25th Avenue, NE, Seattle, WA 98105.

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892, 301/594–8898.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 13, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29031 Filed 11–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: December 6–7, 2001.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550, *gm145a@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology, and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 13, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29032 Filed 11–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: November 27, 2001.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Craig A. Jordan, PhD, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8683.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS).

Dated: November 13, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29033 Filed 11–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the

Board of Scientific Counselors, National Institute of Mental Health.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: December 4, 2001.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 9000 Rockville Pike, Building 36, Room 1B07, Bethesda, MD 20892.

Contact Person: Susan Koester, PhD, Executive Secretary, Associate Director for Science, Intramural Research Program, National Institute of Mental Health, NIH, Building 10, Room 4N222, MSC 1381, Bethesda, MD 20892–1381, 301–496–3501.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 13, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29035 Filed 11–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: December 5–6, 2001.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 13, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29036 Filed 11–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: December 3–5, 2001.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Arthur D. Schaerdel, DVM, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: December 7, 2001.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Ave., Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: James P. Harwood, PhD., Deputy Chief, Scientific Review Office, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: November 14, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29038 Filed 11–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: November 28, 2001.

Time: 1:30 p.m. to 2:15 p.m.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., Suite 400C, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Graig A. Jordan, PhD, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room

400C, Bethesda, MD 20892–7180, 301–496–8683.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: November 14, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29039 Filed 11–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel

Date: November 29, 2001.

Time: 8 a.m. to 11 a.m.

Agenda: 6700 B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dianne E. Tingley, PhD, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, Bethesda, MD 20892–7610, 301–496–2550.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 9, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29042 Filed 11–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 5452b(c)(6) Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: November 26, 2001.

Time: 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dianne E. Tingley, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, Bethesda, MD 20892–7610, 301–496–2550.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 9, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29043 Filed 11–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: December 2–4, 2001.

Closed: December 2, 2001, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Open: December 3, 2001, 8:15 a.m. to 9:30 a.m.

Agenda: To discuss program planning and program accomplishments.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Closed: December 3, 2001, 9:30 a.m. to 10:45 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Open: December 3, 2001, 10:45 a.m. to 11:25 a.m.

Agenda: To discuss program planning and program accomplishments.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Closed: December 3, 2001, 11:25 a.m. to 1:10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Open: December 3, 2001, 1:10 p.m. to 1:35 p.m.

Agenda: To discuss program planning and program accomplishments.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Closed: December 3, 2001, 1:35 p.m. to 2:35 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Open: December 3, 2001, 2:35 p.m. to 3 p.m.

Agenda: To discuss program planning and program accomplishments.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Closed: December 3, 2001, 3 p.m. to 3:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Open: December 3, 2001, 3:45 p.m. to 4:10 p.m.

Agenda: To discuss program planning and program accomplishments.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Closed: December 3, 2001, 4:10 p.m. to 4:55 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Closed: December 3, 2001, 6 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: December 4, 2001, 8:30 a.m. to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Story C. Landis, PhD, Director, Division of Intramural Research, NINDS, National Institute of Health, Building 36, Room 5A05, Bethesda, MD 20892, 301–435–2232.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 8, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29045 Filed 11–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: November 27, 2001.

Time: 7:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gopal M. Bhatnagar, Phd, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 13, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29047 Filed 11–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15, 2001.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Charles N. Rafferty, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, Bethesda, MD 20892, (301) 435–3562.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 9, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29044 Filed 11–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 21, 2001.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: J. Scott Osborne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 29, 2001.
Time: 4 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, National Cancer Institute, 6130 Executive Blvd., Room 611–A, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, (301) 435–1037, dayc@csr.nih.gov..
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 3, 2001.
Time: 11 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435–1782, 301–435–60681, schwarte@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 3, 2001.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 4, 2001.
Time: 11 a.m. to 11:55 a.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7818, Bethesda, MD 20892, (301) 435–1169. dowellr@drg.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 4, 2001.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 5, 2001.
Time: 1:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 5, 2001.
Time: 12 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, th88q@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 5, 2001.
Time: 12:30 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ann A. Jenkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, (301) 435–4514.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 6, 2001.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 6, 2001.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 6, 2001.
Time: 3:15 p.m. to 4:15 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ellen K. Schwartz, EDD Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435–0681, schwarte@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel OBM SBIR/STTR.
Date: December 6, 2001.
Time: 12 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: J. Terrell Hoffeld, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, th88q@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 10, 2001.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Daniel McPherson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, (301) 435–1175, mcpherson@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 11, 2001.
Time: 10 a.m. to 11 a.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 13, 2001.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 13, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29046 Filed 11–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Board of Governors of the Warren Grant Magnuson Clinical Center.

Date: November 30, 2001.

Time: 10 a.m. to 12 p.m.

Agenda: Review of Clinical Center Strategic Planning, Budgetary and Operational Issues.

Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Maureen E Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/496–2897.

Information is also available on the Institute's/Center's home page: *www.cc.nih.gov/*, where an agenda and any additional information for the meeting will be posted when available.

Dated: November 13, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29034 Filed 11–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4655–N–24]

Notice of Proposed Information Collection; Comment Request; Annual Adjustment Factor (AAF) Rent Income

AGENCY: Office of the Assistant Secretary for Housing; HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 22, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Building, Room 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Peter Giaquinto, Office of Housing Programs and Grant Administration, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–2866 (this is not a toll-free number), for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of the information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Annual Adjustment Factor (AAF) Rent Increase Requirements.

OMB Control Number, if applicable: 2502–0507.

Description of the need for the information and proposed use: On September 28, 1994, Congress enacted the Housing Appropriations Act that authorized HUD's spending authority for Fiscal Year 1995. Among the many measures developed in the bill, emphasis was placed on utilizing the mechanism in the Section 8 Housing Assistance Payment (HAP) contract language that permits an analysis on the reasonableness of the Annual Adjustment Factor (AAF) formula as it's applied to each project unit type. Under this law, review of the AAF under the Overall Limitation clause of the HAP contract would apply only to Section 8 New Construction and Substantial Rehabilitation properties where Section 8 rent levels for a unit type presently exceed the published existing housing fair market rents (FMR's). For Section 8 New Construction and Substantial Rehabilitation properties where rent levels for particular unit type do not exceed the existing FMR and for all other Section 8 contract types without regard for current rent level, review and the overall-limitation clause of the contract would not occur and the method of rent adjustment would be the appropriately published AAF.

Agency form number, if applicable: HUD 92273–S8.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents is 6,000, the frequency of responses is annual, the estimated time to complete responses is 1.50 hours, and the total burden hours requested is 9,000.

Status of the proposed information collection: Reinstatement with change, of previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: November 13, 2001.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 01–29010 Filed 11–20–01; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a scientific research permit to conduct certain activities with endangered species pursuant to sections 10(a)(1)(A) and 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE04–2945–1

Applicant: Melody Myers-Kinzie, Lafayette, Indiana.

The applicant requests to amend her current permit to authorize take (capture, handle, and release) of fanshell (Cyprogenia stegaria) in Indiana. The applicant currently possesses permit TE042945–0 authorizing take of northern riffleshell (Epioblasma torulosa rangiana), clubshell (Pleurobema clava), and rough pigtoe (Pleurobema plenum) in Indiana. The scientific research is aimed at enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who requests a copy from the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, *peter_fasbender@fws.gov,* Telephone: (612) 713–5343, or Fax: (612) 713–5292.

Dated: November 9, 2001.

Charles M. Wooley,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 01–29018 Filed 11–20–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for scientific research and enhancement of survival permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Applicant: Kenneth C. Herin, Kansas Department of Transportation, Topeka, Kansas.

The applicant requests a permit to take American burying beetles (*Nicrophorus americanus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Ocean Journey, Denver, Colorado.

The applicant requests a permit to possess bonytail chub (*Gila elegans*), humpback chub (*Gila cypha*), Colorado pikeminnow (*Ptychocheilus lucius*), razorback sucker (*Xyrauchen texanus*), woundfin (*Plagopterus argentissimus*), Gila topminnow (*Poeciliopsis occidentalis*), Yaqui chub (*Gila purpurea*), and Kanab ambersnails (*Oxyloma haydeni kanabensis*) for public display and propagation in conjunction with recovery activities for the purpose of enhancing their survival and recovery.

Applicant: Dr. Sylvia Torti, Red Butte Botanic Garden and Arboretum, Salt Lake City, Utah.

The applicant requests a permit to take dwarf bear poppy (*Arctomecon humilis*), Barneby ridge cress (*Lepidium barnebyanum*), kodachrome bladderpod (*Lesquerella tumulosa*), San Rafael cactus (*Pediocactus despainii*), clay phacelia (*Phacelia argillacea*), autumn buttercup (*Ranunculus acriformis* L. var. *aestivalis*), Barnaby reed mustard (*Schoenocrambe barnebyi*), Wright fishhook cactus (*Sclerocactus wrightiae*), and toad-flex cress (*Schoenocrambe suffrutescens*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: David Pratt, Three Forks Ranch Corporation, Savery, Wyoming.

The applicant requests a permit for the future take of Colorado cutthroat trout (*Oncorhynchus clarki pleuriticus*) in Colorado and Wyoming. The permit application includes a proposed Candidate Conservation Agreement with Assurances, in which the landowner voluntarily implements conservation activities on his property to benefit the Colorado cutthroat trout *Oncorhynchus clarki pleuriticus.* Candidate Conservation Agreements with Assurances encourage private and other non-Federal property owners to implement conservation efforts and reduce threats to species that are proposed for listing under the Endangered Species Act, candidate species, or other sensitive species by assuring the landowners they will not be subject to increased restrictions if the species are listed in the future. Application requirements and issuance criteria for enhancement of survival permits through Candidate Conservation Agreement with Assurances are found in 50 CFR 12.22(d) and 17.32(d).

Applicant: Ted Alexander, Sun City, Kansas.

The applicant requests a permit for the future take of lesser prairie chicken (*Tympanuchus pallidicinctus*) in conjunction with recovery in Kansas. The permit application includes a proposed Candidate Conservation Agreement with Assurances, in which the landowner voluntarily implements conservation activities on his property to benefit the lesser prairie chicken (*Tympanuchus pallidicinctus*). Candidate Conservation Agreements with Assurances encourage private and other non-Federal property owners to implement conservation efforts and reduce threats to species that are proposed for listing under the Endangered Species Act, candidate species, or other sensitive species by assuring the landowners they will not be subject to increased restrictions if the species are listed in the future. Application requirements and issuance criteria for enhancement of survival permits through Candidate Conservation Agreement with Assurances are found in 50 CFR 12.22(d) and 17.32(d).

DATES: Written comments on these requests for permits must be received within 30 days from the date of publication of this notice.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director-Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; telephone 303–236–7400, facsimile 303–236–0027.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are

available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone 303–236–7400.

Dated: October 24, 2001.

John A. Blankenship,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 01–29052 Filed 11–20–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

Applicant: Thomas S. Powell, Jacksonville, FL, PRT–047939.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Steve Martin, Frazier Park, CA, PRT–783054.

The applicant requests a permit to re-export and re-import tigers (*Panthera tigris*), African leopards (*Panther pardus*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: October 26, 2001.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–29070 Filed 11–20–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Issuance of Permit for Marine Mammals

On August 7, 2001, a notice was published in the **Federal Register** (66 FR 41261), that an application had been filed with the Fish and Wildlife Service by Ernest Meinhardt for a permit (PRT–045925) to import one polar bear (*Ursus maritimus*) taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on October 17, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On August 21, 2001, a notice was published in the **Federal Register** (66 FR 43885), that an application had been filed with the Fish and Wildlife Service by Steve A. Reedy for a permit (PRT–042516) to import one polar bear (*Ursus maritimus*), taken from the Southern Beaufort population, Canada for personal use.

Notice is hereby given that on October 22, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On August 29, 2001, a notice was published in the **Federal Register** (66 FR 45689), that an application had been filed with the Fish and Wildlife Service by Jack A. Wilkinson for a permit (PRT–044833) to import one polar bear (*Ursus maritimus*) taken from the Southern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on October 17, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone (703) 358–2104 or fax (703) 358–2281.

Dated: October 26, 2001.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–29069 Filed 11–20–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of renewal.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs approved an information collection request for emergency clearance under 5 CFR 1320.13. This information collection request for Bureau of Indian Affairs (BIA) Form–4432, Verification of Indian Preference for Employment in the BIA and the Indian Health Service (IHS), is cleared under OMB Control Number 1076–0160 through April 30, 2002. We are now seeking comments from interested parties for renewal of OMB Control #1076–0160.

DATES: Written comments must be submitted by January 22, 2002.

ADDRESSES: Written comments are to be mailed or hand delivered to Duane Bird Bear, Chief, Division of Tribal Government Services, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW, MS–4660–MIB, Washington, DC 20240; Telephone: 202–208–5097.

FOR FURTHER INFORMATION CONTACT: Carolyn Newman, Bureau of Indian

Affairs, 1849 C Street, NW, MS–4660–MIB, Washington, DC 20240; Telephone: 202–208–2473.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of the Indian Preference Form is to encourage qualified Indians to seek preference in employment with the BIA and the IHS. BIA collects information under the proposed regulations to ensure compliance with Indian preference hiring requirements.

II. Method of Collection

The information collection relates only to individuals applying for employment with the BIA and the IHS. The tribe's involvement is limited to verifying membership information submitted by the applicant.

III. Data

Title of the collection of information: Verification of Indian Preference for Employment in the BIA and IHS Form.

Type of review: Renewal of Indian Preference for Employment in the BIA and IHS Form.

Summary of the collection of information: The collection of information provides that certain persons who are of Indian descent receive preference when appointments are made to vacancies in positions with the BIA and IHS as well as in any unit that has been transferred intact from the BIA to a Bureau or office within the Department of the Interior or the Department of Health and Human Services and that continues to perform the functions formerly performed as part of the BIA or IHS. You are eligible for preference if (a) You are a member of a federally recognized Indian tribe; (b) you are a descendant of a member and you were residing within the present boundaries of any Indian reservation on June 1, 1934; (c) you are an Alaska Native; or (d) you possess one-half degree Indian blood derived from tribes that are indigenous to the United States.

Description of the need for the information and proposed use of the information: The information is submitted to obtain or retain a benefit; namely, preference in employment with the BIA and IHS.

Affected entities: Qualified Indian applicants and the tribe's involvement in verifying membership information submitted by the applicant.

Estimated number of respondents: Approximately 5,000 applications for preference in employment are received annually by the BIA field offices.

Proposed frequency of responses: On occasion as needed.

Burden: The average burden of submitting an Indian Preference Form is 30 minutes including time for reviewing instructions, searching data sources and assembling the information needed. We estimate the annual public burden is 2,500 hours.

Estimated cost: There are no costs to consider, except postage and the cost of duplicating the original verification form, because verification of the information is already available for other reasons. The form will be used by an applicant to seek documentation of Indian descent or membership from either a tribal official or the BIA.

IV. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agencies' estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

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; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection. They also will become a matter of public record.

All written comments will be available for public inspection in Room 4660 of the Main Interior Building, 1849 C Street, NW, Washington, DC from 9:00 a.m. until 3:00 p.m., Monday through Friday, excluding legal holidays.

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 Office of Management and Budget control number.

Dated: November 2, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 01–29079 Filed 11–20–01; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–50379–26]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: Notice is hereby given that an appealable decision approving lands for conveyance pursuant to secs. 14(e) and 22(f) of the Alaska Native Claims Settlement Act, 43 U.S.C., 1613(e) and 1621(f), and sec. 1302(h) of the Alaska National Interest Lands Conservation Act of December 2, 1980, (ANILCA), 16 U.S.C. 3192(h), and sec. 1430(a) of the ANILCA, Pub. L. 96–487, 94 stat. 2531 and will be issued to the Chugach Alaska Corporation for secs. 34 and 35, T. 12 S., R. 6 W., Copper River Meridian, Alaska. Notice of the decision will also be published four times in the *Cordova Times.*

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until December 21, 2001 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Chris Sitbon (907) 271–3226.

Authority: 43 CFR 2650.7(d).

Chris Sitbon,

Land Law Examiner.

[FR Doc. 01–29025 Filed 11–20–01; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–01–1320–EL–P; NDM 90783]

Notice of Competitive Coal Lease Offering by Sealed Bid—NDM 90783

AGENCY: Bureau of Land Management, Montana State Office.

SUMMARY: Notice is hereby given that the coal resources in the lands described below, in Mercer County North Dakota, will be offered for competitive lease by sealed bid. This offering is being made as a result of an application filed by The Coteau Properties Company, in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (41 Stat. 437; 30 U.S.C. 181 *et seq.*)

The lease sale will be held at 11 a.m., Tuesday, December 11, 2001, in the Montana State Office 920 conference room, at the Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101. Bids for the tract will be in the form of sealed bids. Sealed bids *clearly marked* ''Sealed Bid for NDM 90783 Coal Sale—Not to be opened before 11 a.m., Tuesday, December 11, 2001'', must be submitted on or before 10 a.m. December 11, 2001, to the cashier, Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Post Office Box 36800, Billings, Montana 59107–6800.

An Environmental Assessment of the proposed coal development and related requirements for consultation, public involvement, and hearings have been completed in accordance with 43 CFR 3425. The results of these activities were a finding of no significant environmental impact.

The coal resource to be offered consists of all recoverable reserves in the following-described lands:

T. 146 N., R. 88 W., 5th P.M.
Sec. 14: SW¼SW¼
Sec. 22: N½N½, SW¼NE¼, S½NW¼ excluding a 4.59-acre tract described by metes and bounds and further described as: Beginning at a point on the west line of said Section 22, said point being 250.00 feet north of the southwest corner of the NW¼ of Section 22; thence north along said west line of Section 22, 500.00 feet; thence east at right angles to the last described line, 400.00 feet; thence south parallel with said west line, 500.00 feet; thence west at right angles, 400.00 feet to the point of beginning.
SW¼ excluding a 12.61-acre tract described by metes and bounds and further described as: Beginning at the southwest corner of the SW¼ of said Section 22, 500.00 feet; thence north at right angles to said south line, 500.00 feet; thence northwesterly to a point on the west line of said Section 22, said point being 1,700.00 feet north of said southwest corner; thence southerly along said west line to the point of beginning.
NW¼SE¼

Containing 502.80-acres, Mercer County, North Dakota.

The tract in this lease offering contains split estate lands. Written consent is on file from all qualified surface owners as defined in the regulations at 43 CFR 3400.0–5.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value of the coal resource. The minimum bid for the tract is $100 per acre, or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand-delivered. The cashier will issue a receipt for each hand-delivered bid. *Bids received after 10 a.m., Tuesday, December 11, 2001, will not be considered.* The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

If identical high bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed-bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof; and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods and 8.0 percent of the value of coal mined by underground methods. The value of the coal shall be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the Montana State Office. Casefile NDM 90783 is also available for public inspection at the Montana State Office.

FOR FURTHER INFORMATION CONTACT: Connie Schaff, Land Law Examiner, or Rebecca Good, Coal Coordinator, at 406–896–5060 or 406–896–5080, respectively.

Dated: October 31, 2001.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

[FR Doc. 01–29026 Filed 11–20–01; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

Alcatraz Island Historic Preservation and Safety Construction Program, Final Environmental Impact Statement, Golden Gate National Recreation Area, San Francisco County, CA; Notice of Availability

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service, Department of the Interior, announces the availability of the Final Environmental Impact Statement identifying and evaluating the environmental effects of the proposed historic preservation and safety construction program on Alcatraz Island, a site within the Golden Gate National Recreation Area (GGNRA).

SUPPLEMENTARY INFORMATION: The Final EIS presents and analyzes two ''action'' alternatives, the Proposed Action and the Reduced Project Alternative, and a ''no-action'' alternative. Based on principles of ''101(b) of the National Environmental Policy Act, the Proposed Action is identified as the environmentally preferred alternative. The Proposed Action is a construction program designed to address serious public health and safety threats and stabilize important historic structures that contribute to the Island's National Historic Landmark Status. The Proposed Action includes ten individual repair projects that would require, in total, approximately 5 years to complete. The repairs include replacement of badly deteriorated piles supporting the dock, the only visitor access point to the Island, seismic retrofit of the Cellhouse, and repair/stabilization of other historic structures, some dating from the Civil War era, to provide for public safety and historic preservation. The projects would be implemented in two phases, Phase One (dock repair and Cellhouse seismic retrofit) and a Subsequent Phase. Using an adaptive management approach, Phase One projects would be implemented and monitored, and information gained through this monitoring will be used to refine and improve implementation for both ongoing and subsequent projects considered in the Final EIS to minimize potential impacts to wildlife. The use of mitigation measures during construction activity, such as staging and lighting restrictions and habitat restoration, would reduce potential impacts to biological resources. No changes in land use or long-term operation of the Island would occur as a result of the Proposed Action. The Proposed Action would not

result in impairment of resources on Alcatraz Island.

The Reduced Project Alternative includes many of the safety and historic preservation actions identified under the Proposed Action. Implementation of mitigation measures during construction activity, as in the Proposed Action, would reduce impacts to biological resources. However, the repair and stabilization of three structures (the Water Tower, New Industries ''Laundry'' Building, and Quartermaster Building) located on the north end of the Island in or near a biologically sensitive area would be minimal. Over the long-term, this alternative would allow continued access to the Island and would meet human health and safety needs in areas currently open to the public. However, the loss of three important historic structures under this alternative would have an indirect effect on the interpretive and recreational values provided on the Island. In addition, the three structures are contributing features of the Alcatraz Island Historic Landmark District and without a more complete rehabilitation these structures will eventually fail. Loss of these cultural resources and others in the same area would cause the loss of the National Historic Landmark District status, which would be considered impairment of the cultural resource values on Alcatraz Island.

The No Action Alternative does not include any of the proposed construction or repair projects. Under this alternative only routine maintenance or other current repair projects would be implemented. As a result, potential construction related impacts to biological resources would be avoided. This alternative would continue the neglect of the Island's significant cultural resources resulting in deterioration of buildings and structures and the eventual loss of the Alcatraz Island Historic Landmark District status. Serious public health and safety threats would result in closure of individual buildings or areas, leading to the closure of the Island to visitors. The irreparable damage to the historic structures associated with this alternative and the eventual closure of the Island would constitute impairment of the cultural resource values and recreational use values, respectively, on Alcatraz Island.

Public Comment

During the scoping process leading to preparation of the Draft Environmental Impact Statement (DEIS), the National Park Service received comments from the individuals, groups, and agencies. NPS staff consulted with Native Americans who participated in the Indian Occupation of Alcatraz Island from 1969 through 1971 to obtain information about the cultural importance of the Indian Occupation. Scoping also included consultation with regulatory agencies, including the State Office of Historic Preservation, the United States Army Corps of Engineers, and the National Marine Fisheries Service. The information gathered was reviewed and used during the preparation of the DEIS.

The DEIS was available for public review from March 27, 2001 to June 11, 2001. The National Park Service (NPS) received 9 letters and verbal comments at the public meetings. Responses were submitted from five organizations, two from individuals, and two public agencies during the comment period. Comments include written letters and oral-testimony given during two meetings of the Advisory Commission for the Golden Gate National Recreation Area and Point Reyes National Seashore on March 27, 2001 and April 24, 2001. The public comments received regarding natural resources focused on the potential impacts to nesting waterbirds from construction activities particularly those associated with the New Industries ''Laundry'' Building and the Water Tower and the potential for phasing these projects. Concerns were also raised regarding implementation of the adaptive management program and the future of public input into the implementation process. Comments were also received supporting the Proposed Action noting that it would have a beneficial effect on cultural resources by providing for the stabilization of historic structures. The Environmental Protection Agency (EPA) supplied comments requesting that additional information be provided in the Final EIS on the removal of hazardous substances encountered during project activities. No comments were received from Native American Tribes or the United States Fish and Wildlife Service. Responses to public comments are addressed in the Final EIS.

Additionally, NPS staff consulted with regulating agencies concerning the rehabilitation of the dock. The National Marine Fisheries Service concurred with the DEIS determination that the proposed project along with mitigation measures would not likely adversely affect listed species or essential fish habitat. In addition, the NPS obtained authorization from the U.S. Army Corps of Engineers, a consistency determination from the San Francisco Bay Conservation and Development Commission, and authorization from the Regional Water Quality Control Board.

Copies

Printed copies of the Final EIS are available at park headquarters, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, 94123 or by calling (415) 561–4936. Public copies of the FEIS will be available for review as well as at libraries in the nine-county San Francisco Bay Area. The document can also be retrieved via internet at *http://www.nps.gov/goga/admin/planning.*

During the ''no action'' period following release of the Final EIS, if any individuals submit comments and request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Decision

A Record of Decision may be approved by the Regional Director, Pacific West Region, no sooner than 30 days after publication of a Notice of Availability of this Final EIS by the Environmental Protection Agency. The official responsible for the final decision is the Regional Director, Pacific West Region; subsequently the official responsible for implementation will be the Superintendent, Golden Gate National Recreation Area.

Dated: October 12, 2001.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 01–29094 Filed 11–20–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Assessment for Proposed Improvements Within Jones Point Park Under the Woodrow Wilson Bridge Project

AGENCY: National Park Service.

ACTION: Availability of the Environmental Assessment (EA) for the proposed mitigation to Jones Point Park (JPP), associated with the Woodrow

Wilson Bridge project. JPP is an approximately 60-acre park owned by the National Park Service (NPS) under the jurisdiction of the George Washington Memorial Parkway (GWMP) located in the southeastern corner of the City of Alexandria, Virginia.

SUMMARY: Pursuant to Council on Environmental Quality regulations and NPS policy, the NPS announces the availability of an EA for the proposed mitigation to JPP, associated with the Woodrow Wilson Bridge project within the GWMP. The EA examines several alternatives aimed to develop a long-range plan for JPP, identify desired resource conditions and visitor experiences, consider feasible alternatives for future development of JPP and provide educational and recreational opportunities for visitors while protecting park resources. The need of the proposed action is based on the lack of a current comprehensive management plan for JPP and the need for mitigation and protection of park resources and recreational opportunities for visitors in conjunction with the Woodrow Wilson Bridge Project. The NPS is soliciting comments on this EA. These comments will be considered in evaluating it and making decisions pursuant to the National Environmental Policy Act.

DATES: The EA will remain available for public comment 30 days from the date of publication in the **Federal Register**. Written comments should be received no later than this date.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Ms. Audrey F. Calhoun, Superintendent, George Washington Memorial Parkway, Turkey Run Park, McLean, Virginia 22101. You may hand deliver comments to GWMP Headquarters, Turkey Run Park, McLean, Virginia. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking 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. The EA will be available for public inspection at several libraries in Alexandria, Fairfax and Arlington, Virginia.

SUPPLEMENTARY INFORMATION: This EA for JPP is tiered, *i.e.,* procedurally connected to the large-scale Woodrow Wilson Bridge Project Environmental Impact Statement (EIS). Specifically, this EA addresses the impacts of improvements to JPP, relative to a 1984 Development Concept Plan, as well as a part of the mitigation measures outlined in the 2000 Record of Decision and 1997 Memorandum of Agreement (MOA) required for the Woodrow Wilson Bridge Project. The 1997 MOA was prepared by the Federal Highway Administration in consultation with the NPS, the Maryland State Historic Preservation Office (SHPO), the Virginia SHPO, the District of Columbia SHPO, the Advisory Council for Historic Preservation, and representatives of a number of other concurring parties. JPP contains many recreational amenities such as soccer fields, natural areas, fishing piers, historic resources, pedestrian trails, and bike paths. The park is traversed by the Woodrow Wilson Bridge, which is currently being considered in a larger EIS for safety improvements. The proposed improvements to JPP are divided into several areas including a park entrance area along South Royal Street; a woodland area on the north side of the park; an active recreation area north of the Woodrow Wilson Bridge; a waterfront area along the Potomac River and Hunting Creek; a parking and ancillary active recreation area under the bridge; and a passive/interpretive area south of the bridge. All interested individuals, agencies, and organizations are urged to provide comments on the EA. The NPS, in making a final decision regarding this matter, will consider all comments received by the closing date.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Sealy (703) 289–2531.

Audrey F. Calhoun,

Superintendent, George Washington Memorial Parkway.

[FR Doc. 01–29095 Filed 11–20–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument, Fritch, TX

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of a Plan of Operations, an Environmental Assessment, and a Statement of Findings for a 30-day public review at Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument, Potter County, Texas.

SUMMARY: The National Park Service (NPS), in accordance with section 9.52(b) of Title 36 of the Code of Federal Regulations and Executive Order 11988, Floodplain Management, has received from Luxor Oil and Gas, Inc. a Plan of Operations and an Environmental Assessment for the continued operations of two natural gas wells at Alibates Flint Quarries National Monument and the exploratory drilling of a new natural gas well at Lake Meredith National Recreation Area. Additionally, the NPS has prepared a Statement of Findings for the siting of the new exploratory well above the 100-year flood event and below the 500-year flood event to protect cultural resources.

DATES: The Plan of Operations, an Environmental Assessment, and the Statement of Findings are available for public review and comment for a period of 30-days from the publication date of this notice in the **Federal Register**.

ADDRESSES: The Plan of Operations, an Environmental Assessment, and the Statement of Findings are available for public review and comment in the Office of the Superintendent, Lake Meredith National Recreation Area, 419 E. Broadway, Fritch, Texas. Copies are available, for a duplication fee, from the Superintendent, Lake Meredith National Recreation Area, P.O. Box 1460, Fritch, TX 79306–1460.

FOR FURTHER INFORMATION CONTACT: Paul Eubank, Environmental Protection Specialist, Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument, P.O. Box 1460, Fritch, TX 79036, Telephone: 806–865–3874.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by mailing them to the post office address provided above, or you may hand-deliver comments to the park at the street address provided above. Our practice is to make comments, including names and home addresses of responders, available for public review during regular business hours.

Individual respondents may request that we withhold their home address from the decision-making record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the decision-making 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: November 14, 2001.

Jim Rancier,

Acting Superintendent, Lake Meredith National Recreation Area and Alibates, Flint Quarries National Monument.

[FR Doc. 01–29090 Filed 11–20–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Supplement to the Environmental Impact Statement for the General Management Plan, Organ Pipe Cactus National Monument

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of final Supplemental Environmental Impact Statement (SEIS) for re-analysis of cumulative impacts on the Sonoran Pronghorn, Organ Pipe Cactus National Monument, Arizona.

SUMMARY: Pursuant to section 102 (2) (c) the National Environmental Policy Act of 1969, the National Park Service announces the availability of a SEIS for Cumulative Impacts on the Sonoran Pronghorn, Organ Pipe Cactus National Monument, Arizona.

DATES: The SEIS will remain available for public review for 30 days from the publication of this notice. If any public meetings are held concerning the SEIS, they will be announced at a later date.

COMMENTS: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Superintendent, Organ Pipe Cactus National Monument, 10 Organ Pipe Drive, Ajo, AZ 85321. Please also include: ''Ref: Supplemental EIS , Sonoran Pronghorn''.

You may also comment via the Internet to *Laurie Domler@nps.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Ref: Supplemental EIS, Sonoran Pronghorn''. Please include your name and return address in your Internet message. Finally, you may hand-deliver comments to Organ Pipe Cactus National Park, Headquarters, 10 Organ Pipe Drive, Ajo AZ 85321. Our practice is to make comments, including names and home addresses of respondents available for public review during regular business hours. Individual respondents may request that we withhold their home 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.

ADDRESSES: Copies of the SEIS for re-analysis of Cumulative Impacts on the Sonoran Pronghorn are available from the Superintendent, Organ Pipe Cactus National Monument, 10 Organ Pipe Drive, Ajo, AZ 85321. Public reading copies of the SEIS will be available for review at the following locations:

Office of the Superintendent, Organ Pipe Cactus National Monument, 10 Organ Pipe Drive, Ajo, AZ 85321, Telephone: (520) 387–7661.

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, 12795 W. Alameda Pkwy., Denver, CO 80225–0287, Telephone: (303) 969–2036.

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW, Washington DC 20240, Telephone: (202) 208–6843.

SUPPLEMENTARY INFORMATION: The Organ Pipe Cactus National Monument Final General Management Plan/Development Concept Plans/Environmental Impact Statement was approved in 1997. On February 12, 2001, The United States District Court for the District of Columbia (Civil Action No. 99–927) found that the EIS did not fully comply with the National Environmental Policy Act (NEPA) of 1969 because the cumulative impacts (re: Sonoran pronghorn) of all agency activities were not fully analyzed.

The major issue to be addressed in the EIS Supplement is the Sonoran Pronghorn. The pronghorn, one of five subspecies of pronghorn, has evolved in a unique desert environment and has distinct adaptations to this environment that distinguish it from other subspecies. In 1967, the US Fish and Wildlife Service (USFWS) designated the Sonoran Pronghorn as endangered. The most recent estimates indicate that approximately 100 pronghorn exist in the United States today. The only habitat in which Sonoran pronghorn currently remain in the United States is federally-owned land in Southwest Arizona. The court order declared that the USFWS issued Biological Opinions that failed to address the impacts of the National Park Service and other surrounding federal agencies current and planning activities on the pronghorn in an ''environmental baseline''. The court order also declared that the National Park Service issued an environmental impact statement that failed to address the cumulative impacts of their activities on the pronghorn, when added to other past, present, and reasonable foreseeable future actions, regardless of what agency undertakes those actions.

Pursuant to the court order, the National Park Service, through a supplement to the GMP/EIS, re-analyzes the cumulative impacts of actions on the Sonoran Pronghorn that were not fully considered at the time of its GMP, regardless of what agency undertakes those actions. Two alternatives that were contained in the Final General Management Plan/Development Concept Plans/Environmental Impact Statement are analyzed; (A) Existing Conditions/No Action; and (B) New Proposed Action. In order to present the current environmental baseline at the park, Alternative (A) Existing Conditions/No Action has been updated with those actions, authorized by the plan, that have either occurred since its approval or are curently underway. Alternative (B) New Proposed Action, appears exactly as it did in the approved plan.

Under Alternative (B) New Proposed Action, the cumulative impacts of all Federal and non-Federal actions are likely to result in a continued, incremental reduction in the ability of Sonoran pronghorn to maintain a viable population in the United States. Although there are many beneficial action include in this cumulative scenario, they are outweighed by adverse impacts.

FOR FURTHER INFORMATION: Contact Superintendent, Organ Pipe Cactus

National Park at the above address and telephone number.

Dated: October 25, 2001.

R. Everhart,

Director, Intermountain Region, National Park Service.

[FR Doc. 01–29169 Filed 11–16–01; 3:59 pm]

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 on the Lincoln Highway Between New York and California

AGENCY: National Park Service, Interior.

SUMMARY: Under provisions of the National Environmental Policy Act of 1969, the National Park Service (NPS) is preparing an environmental impact statement (EIS) for the special resource study (SRS) on the Lincoln Highway (Highway) between New York and California. The purpose of the study is to investigate methods to preserve the historical significance of the highway and the role it played in American popular culture, and to determine the degree and kind of federal actions (if any) necessary to achieve such preservation. The study is being prepared pursuant to Pub. L. 106–563.

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the EIS, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are invited.

ADDRESSES: Written comments and information concerning preparation of the SRS/EIS or issues to be addressed in the SRS/EIS should be sent to Ruth Heikkinen, Project Leader, National Park Service, Midwest Regional Office, 1709 Jackson Street, Omaha, Nebraska 68102, *ruth—heikinen@nps.gov.*

DATES: Any comments on the scope of issues to be addressed in the EIS should be received no later than February 15, 2002.

FOR FURTHER INFORMATION CONTACT: Ruth Heikkinen at the address above or at telephone 402–221–7285. Direct requests to be added to the project mailing list to the same address.

SUPPLEMENTARY INFORMATION: The SRS/EIS will address a range of alternatives including potential roles for the NPS in preservation and interpretation of resources and stories related to the Lincoln Highway. In summary, the SRS will present findings on five topics:

(1) Determination of the national significance of the Lincoln Highway and associated resources;

(2) Determination of the suitability of the Highway and related resources to be included within the National Park System in relation to other sites of the same theme;

(3) Determination of feasibility for the NPS to own, manage, or participate in the conservation and interpretation of resources related to the Highway;

(4) Determination of the need for NPS management of any resources;

(5) 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. The responsible federal official is Mr. William Schenk, Regional Director, Midwest Region, National Park Service.

Our practice is to make comments, including names and addresses of respondents, available for public review. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will honor the request to the extent allowable by law. We are not required to consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

Dated: October 24, 2001.

William W. Schenk,

Regional Director.

[FR Doc. 01–29093 Filed 11–20–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 27, 2001. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240. Written comments should be submitted by December 6, 2001.

Carol D. Shull,

Keeper of the National Register of Historic Places.

MARYLAND

Anne Arundel County

Epiphany Chapel and Church House, 1419 Odenton Rd., Odenton, 01001336

Montgomery County

Davis—Warner House, 8114 Carroll Ave., Takoma Park, 01001335

Wicomico County

Beaudley, 3955 Jesterville Rd., Tyaskin, 01001334

[FR Doc. 01–29091 Filed 11–20–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 3, 2001. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240. Written comments should be submitted by December 6, 2001.

Carol D. Shull,

Keeper of the National Register of Historic Places.

FLORIDA

Polk County

Pope Avenue Historic District, (Winter Haven, Florida MPS), Roughly Avenue A NW., Pope Avenue NW., 6th and 7th Sts NW., Winter Haven, 01001337.

St. Lucie County, Fort Pierce City Hall, Old, 315 Avenue A, Fort Pierce, 01001338.

Sunrise Theatre, 117 S. 2nd St., Ft. Pierce, 01001339.

INDIANA

Allen County

McColloch—Weatherhogg Double House, 334–336 E. Berry St., Fort Wayne, 01001350.

De Kalb County

Downtown Butler Historic District, Roughly 100 & 200 Blks of South Broadway, Butler, 01001347.

Hamilton County

Noblesville Milling Company Mill, South 8th St., Noblesville, 01001346.

Jasper County

Fountain Park Chautauqua, 6244 W. Cty Rd. 1600S, Remington, 01001351.

La Porte County

Barker House, 444 Barker St., Michigan City, 01001349.
First Congregational Church of Michigan City, 531 Washington St., Michigan City, 01001343.
Garrettson—Baine—Bartholomew House, 2921 Franklin St., Michigan City, 01001340.

Marion County

Cumberland Historic District, Roughly bounded by Munsie, Welland, Heflin, and Warehouse Sts., Cumberland, 01001341.
Spink Arms Hotel, 410 N. Meridian St., Indianapolis, 01001345.

Shelby County

Porter Pool Bathhouse, 501 N. Harrison St., Shelbyville, 01001348.

Steuben County

Pleasant Lake Depot, 1469 W. Main St., Pleasant Lake, 01001344.

Tippecanoe County

Varsity, The, 101 Andrew Place, West Lafayette, 01001342.

NEW HAMPSHIRE,

Coos County

Wallace Farm, 27 Wallace Rd., Columbia, 01001353.

Rockingham County

St. Andrew's By-The-Sea, Church Rd., 0.2 mi. SE of jct. with South Rd. and Rte. 1A, Rye, 01001352.

OKLAHOMA

Cleveland County

Bavinger, Eugene, House, (Bruce Goff Designed Resources in Oklahoma MPS), 730 60th Ave., NE., Norman, 01001354.

Oklahoma County

Pollock, Donald, House, (Bruce Goff Designed Resources in Oklahoma MPS) 2400 NW 59th St., Oklahoma City, 01001356.

Tulsa County

Dawson School, Jct. of East Ute Place and N. Kingston Pl., Tulsa, 01001357.
Jones, Robert Lawton, House, 1916 E. 47th St., Tulsa, 01001355.

WEST VIRGINIA

Hancock County

Baker's Bottom Historic District, WV 2, Newell, 01001358.

An Error in notification has been made. The listing of the following resource is not pending:

NEW JERSEY

Bergen County

Bogert-Wilkens Factory Site and the Sandy Beach Swim Club Facility, Address Restricted, Oakland 01001201.

[FR Doc. 01–29092 Filed 11–20–01; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Anchorage Museum of History and Art, Anchorage, AK, and in the Control of the U.S. Department of the Interior, Fish and Wildlife Service, Region 7 Alaska Regional Office, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 433 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Anchorage Museum of History and Art, Anchorage, AK, and in the control of the U.S. Department of the Interior, Fish and Wildlife Service, Region 7 Alaska Regional Office, Anchorage, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2(2). The determination within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Anchorage Museum of History and Art and Aleutian/Prifilof Islands Association, Inc., professional staff in consultation with representatives of the Native Village of Niolski (IRA) and Chaluka Corporation for the native village of Nikolski, Umnak Island, Alaska.

In 1936 or 1938, human remains representing one individual were collected from a burial cave on Kagamil Island, AK, in what was then the Aleutian Islands Refuge, and is now the Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge, by Alan C. May, a member of an authorized Smithsonian Institution expedition to the Aleutian and Commander Islands the direction of Dr. Ales Hrdicka. Expedition members often made personal collections after Dr. Hrdlicka selected items for the Smithsonian collections. In 1983, Mr. May donated the collection to the Anchorage Museum of History and Art. The human remains and associated funerary objects from kagamil Island in the Anchorage Museum of History and Art are associated with a much larger collection of human remains and funerary objects from Kagamil Island saves assembled by Dr. Hrdlicka during the 1936 and 1938 expeditions; this larger collection is in the control of the National Museum of Natural History, Smithsonian Institution, Washington, DC. No known individual was identified. The 126 associated funerary objects are 64 basketry fragments (some include feathers), 2 birdskin garments, I mukluk fragment, 1 bentwood dish, 3 wooden bowls, 2 wooden container fragments, 9 unidentified wood items (some include cordage, sinew, twine, skin, and hair), 4 stone abraders, 1 miniature yo-yo, 26 rapes, 5 lines, 2 grass bundles, 4 fur/skin strips and fur fragments, 1 set of bird wings, and 1 possible baleen item.

There are no radiocarbon dates for any of the Kagmail Island cave collections. The consensus among anthropologists, however, is that the collections date to the Late Prehistoric period, possibly no earlier than 500-1000 B.P. The Aleut practice of cave burials existed into the Protohistoric period in the Aleutian Islands but was not practiced after circa A.D. 1760, During the Russian and American periods, explorers, priest and others recorded Aleut knowledge about burial cave practices and Aleut beliefs about burial sites.

The present-day Aleut cultural affiliation with prehistoric populations is evident in the cultural continuity of artifact assemblage content and artifact form throughout the Aleutian region since the earliest occupation 8700 B.P. Biological data indicate is situ development of Palco-Aleuts to Neo-Aleuts after the Aleut-Eskimo Inguistic stock divergence some 9000 years B.P. Glottochronological evidence indicates that the Aleut language diverged from Eskimoid languages between 4000 and 4600 B.P.

In the 1790s, the Aleut villages of the Islands of the Four Mountains, which includes Kagamil Island, and Aleut villages of western Umnak Island were at war. At the end of that conflict, the remaining villagers from the Islands of the Four Mountains were moved by the Russian skipper Sarychev to villages in western Umnak Island, During the 19th century those villages consolidated into

one village, which is the present-day Nikolski.

Based on the above-mentioned information, officials of the U.S. Fish and Wildlife Service have determined that, pursuant to 433 CFR 10.2(d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the U.S. Fish and Wildlife Service also have determined that, pusaunt to 43 CFR 10.2(d)(2), the 126 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Fish and Wildlife Service have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identify that can be reasonably traced between these Native American human remains and associated funerary objects and the Native Village of Nikolski (IRA) and Chaluka Corporation.

This notice has been sent to officials of the Aleutian/Priblof Islands Association, Inc., Native Village of Nikolski (IRA), and Chaluka Corporation. Repriation of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Debra Corbett, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503, telephone (907) 786–3399, before December 21, 2001. Repatriation of the human remains and associated funerary objects to the Native Village of Nikolski (IRA) and Chaluka Corporation may begin after that date if no additional claimants come forward.

Dated: October 15, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–29097 Filed 11–20–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Robert S. Peabody Museum of Archaeology, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Robert S. Peabody Museum of Archaeology, Andover, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Robert S. Peabody Museum of Archaeology professional staff in consultation with representatives of the Aroostook Band of Micmac Indians of Maine, Houlton Band of Maliseet Indians of Maine, Passamaquoddy Tribe of Maine, and Penobscot Tribe of Maine.

In 1956, human remains representing one individual were recovered from the Pond Island site in Deer Isle, Hancock County, ME, by Douglas Byers under the auspices of the Robert S. Peabody Museum of Archaeology. No known individual was identified. No associated funerary objects are present.

The Pond Island site was occupied 2150–950 B.P./150 B.C.-A.D. 1050 (Middle Ceramic period) based on ceramic assemblages from the site. Cultural continuity is evident in Maine from the Middle Ceramic period through the Late Ceramic period based on ceramic assemblages, and maritime technologies and settlement patterns.

In 1913, human remains representing one individual were recovered from the Boynton's Shellheap in Lamoine, Hancock County, ME, by Warren K. Moorehead and Charles Peabody under the auspices of the Robert S. Peabody Museum of Archaeology. No known individual was identified. No associated funerary objects are present.

The Boynton Shellheap site was occupied from the Middle to the Late Ceramic periods (2150–500 B.P./150 B.C.-A.D. 1500) based on artifact assemblages recovered from the site. Cultural continuity is evident in Maine from the Middle Ceramic period through the Late Ceramic period based on ceramic assemblages, and maritime technologies and settlement patterns.

In 1912, human remains representing five individual were recovered from the Mason's Cemetery site in Orland, Hancock County, ME, by Frances Manning and Warren Moorehead under the auspices of the Robert S. Peabody Museum of Archaeology. No known individuals were identified. The 20 associated funerary objects are 2 perforated ground stone cylinders; 1 large chipped stone biface; 1 polishing stone; 1 possible mini celt; 1 rock; 1 lot of burned earth; 1 lot of organics and copper fragments; 1 lot of soil and charcoal matrix; 1 lot of soil, charcoal, organics, and ochre matrix; 1 lot of charcoal, organics, and copper beads; 6 lots of charcoal, organics, and copper fragments; and 2 lots of charcoal.The Mason's Cemetery site has been dated to the later part of the Early Ceramic period (3150–2150 B.P./1150–150 B.C.) based on artifact assemblages from the site and radiocarbon dating. Though there are some discontinuities between the Early Ceramic and the Middle Ceramic periods in Maine, it seems that the continuities in the archeological record between these periods are stronger than not. Although burial treatment and exchange relations do differ from later periods, maritime technologies, settlement patterns and seasonal occupations are more continuous than not from the Early to Late Ceramic periods. In addition, ceramic technology and morphology indicate gradual change rather than population replacement.

Based on the above-mentioned information, officials of Robert S. Peabody Museum of Archaeology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of seven individuals of Native American ancestry. Officials of the Robert S. Peabody Museum of Archaeology also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 20 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of Robert S. Peabody Museum of Archaeology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Aroostook Band of Micmac Indians of Maine, Houlton Band of Maliseet Indians of Maine, Passamaquoddy Tribe of Maine, and Penobscot Tribe of Maine.

This notice has been sent to officials of the Aroostook Band of Micmac Indians of Maine, Houlton Band of Maliseet Indians of Maine, Passamaquoddy Tribe of Maine, and Penobscot Tribe of Maine. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should

contact Malinda Blustain, Acting Director or Leah Rosenmeier, Director of External Programs, Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA 01810, telephone (978) 749–4490 before December 21 2001. Repatriation of the human remains and associated funerary objects to the Aroostook Band of Micmac Indians of Maine, Houlton Band of Maliseet Indians of Maine, Passamaquoddy Tribe of Maine, and Penobscot Tribe of Maine may begin after that date if no additional claimants come forward.

Dated: October 15, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–29096 Filed 11–20–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

California Bay-Delta Public Advisory Committee Public Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, California Bay-Delta Public Advisory Committee will meet on December 5, 2001. The agenda for the Committee meeting will include discussions about the implementation of the CALFED Bay-Delta Program with State and Federal agency representatives and the Executive Director of the Program and set up Committee operations.

DATES: The meeting will be held Wednesday, December 5, 2001, from 9:00 a.m. to 4:00 p.m. If reasonable accommodation is needed due to a disability, please contact Pauline Nevins at (916) 657–2666 or TDD (800) 735–2929 at least 1 week prior to the meeting.

ADDRESSES: The meeting will be held at the Library Galleria located at 828 I Street, Sacramento, CA.

FOR FURTHER INFORMATION CONTACT: Eugenia Laychak, CALFED Bay-Delta Program, at (916) 654–4214. Nan Yoder or Diane Buzzard, U.S. Bureau of Reclamation, at (916) 978–5022.

SUPPLEMENTARY INFORMATION: The Committee was established to provide assistance and recommendations to Secretary of the Interior Gale Norton and California Gray Davis on implementation of the CALFED Bay-Delta Program. The Committee will advise on annual priorities, integration of the eleven Program elements, and overall balancing of the four Program objectives of ecosystem restoration, water quality, levee system integrity, and water supply reliability. The Program is a consortium of 23 State and Federal agencies with the mission to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the San Francisco/Sacramento and San Joaquin Bay Delta.

Committee and meeting materials will be available on the CALFED Bay-Delta web site: *http://calfed/ca/gov* and at the meeting. This meeting is open to the public. Oral comments will be accepted from members of the public at the meeting and will be limited to 5 minutes.

Authority: The Committee was established pursuant to the Department of the Interior's authority to implement the Fish and Wildlife Coordination Act, 16 U.S.C. § 661 *et. seq.*, the Endangered Species Act, 16 U.S.C. § 1531 *et. seq.* and the Reclamation Act of 1902, 43 U.S.C. § 371 *et. seq.*, and the acts amendatory thereof or supplementary thereto, all collectively referred to as the Federal Reclamation laws, and in particular, the Central Valley Project Implementation Act, Title 34 of Pub. L. 102–575.

Dated: November 16, 2001.

Kirk C. Rodgers,

Acting Regional Director, Mid-Pacific Region.

[FR Doc. 01–29205 Filed 11–20–01; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

Notice of Commission Decision To Waive Requirements in its Rules Regarding the Number of Copies of Complaints, Motions for Temporary Relief, Requests or Petitions for Ancillary Proceedings, and Exhibits Filed in Proceedings Under Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to waive the requirements set forth in its rules regarding the number of copies of complaints, motions for temporary relief, and requests or petitions for ancillary proceedings that must be filed with the Commission in a section 337 investigation, and to require that twelve (12), rather than fourteen (14), copies of those submissions be filed. In addition, the Commission has waived the requirements in its rules regarding the number of sets of exhibits associated with the foregoing pleadings that must be filed in a section 337 investigation, and to require that six (6), rather than fourteen (14), copies of those sets of exhibits be filed with the Commission.

FOR FURTHER INFORMATION CONTACT: Irene H. Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3112. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for section 337 investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: The Commission made this determination after adopting the recommendations of a ''Section 337 Paperwork Reduction Working Group'' (hereinafter called the ''Paperwork Reduction Group'') which was established by the Commission at the request of the Chairman to identify documents filed by parties in investigations conducted pursuant to Section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, that do not need to be circulated among members of the Commission and to propose changes necessary to carry out those recommendations. The Paperwork Reduction Group recommended to the Commission that the number of copies of complaints, motions for temporary relief, and requests or petitions for ancillary relief (hereinafter collectively called ''complaints'') required to be filed with the Commission should be reduced from 14 copies to 12 copies because two of the 14 copies now being filed are not needed by the Commission. The Commission also adopted the recommendation of the Paperwork Reduction Group that the sets of exhibits attached to complaints no longer need to be circulated among the Commissioners in paper form. The Commission recognized that all of the corresponding exhibits filed with complaints are readily available to Commissioners on EDIS in electronic format.

Consequently, the Commission determined to waive the requirements set forth in sections 210.4(f)(2) and 210.8(a) of the Commission's rules of practice and procedure (19 CFR 210.4(f)(2) and 19 CFR 210.8(a)) that 14

copies of confidential and nonconfidential complaints, motions for temporary relief, requests or petitions for ancillary relief, and sets of exhibits must be filed with the Commission in section 337 investigations pending before the Commission. Instead, the Commission will now accept for filing 12 copies of confidential and nonconfidential versions of complaints, motions for temporary relief, and requests or petitions for ancillary relief filed by a party in a section 337 investigation. In addition, the Commission will now accept for filing six copies of the sets of exhibits that are filed with confidential and nonconfidential versions of complaints, motions for temporary relief, and requests for ancillary proceedings by a party in section 337 investigations. The foregoing waiver does not alter the provision in section 210.8 of the rules requiring the filing of additional copies for each party and foreign country named in complaints or supplemental complaints filed with the Commission.

The authority for this waiver is contained in section 201.4(b) of the Commission's rules of practice and procedure (19 CFR 201.4(b)).

Issued: November 16, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–29149 Filed 11–20–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–432]

Certain Semiconductor Chips With Minimized Chip Package Size and Products Containing Same; Notice of Commission Decision To Affirm ALJ Order No. 33 and Not To Review a Final Initial Determination Finding a Violation of Section 337; Schedule for Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm ALJ Order No. 33 issued by the presiding administrative law judge (ALJ) on June 1, 2001, and determined not to review the final initial determination (ID) issued by the ALJ on September 25, 2001, finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3095. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Copies of the public version of ALJ Order No. 33, the ID, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000.

SUPPLEMENTARY INFORMATION: On May 3, 2000, the Commission instituted this investigation of allegations of unfair acts in violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain semiconductor chips with minimized chip package size or products containing same. 65 FR 25758 (May 3, 2000). The complaint alleged that three respondents had infringed at least claims 6 and 22 of U.S. Letters Patent 5,679,977 (the '977 patent) and claims 1, 3, and 11 of U.S. Letters Patent 5,852,326 (the '326 patent) held by complainant Tessera, Inc. of San Jose, California. The notice of investigation named the following respondents: Texas Instruments of Dallas, Texas (''TI''); Sharp Corporation of Osaka, Japan; and Sharp Electronics Corporation of Mahwah, New Jersey (collectively, ''Sharp''). On March 2, 2001, the Commission determined not to review an ID granting Tessera's motion to withdraw the complaint allegations as to TI, and to terminate the investigation as to TI. An evidentiary hearing commenced April 5, 2001 and concluded on April 19, 2001.

On April 13, 2001, Sharp filed a motion with the ALJ to reopen the hearing record to include newly-discovered evidence. Sharp subsequently filed several supplements to its motion. Tessera and the Commission investigative attorney (IA) filed responses, and Sharp filed a reply. On June 1, 2001, the ALJ issued Order No. 33, denying Sharp's motion to reopen.

On September 25, 2001, the presiding ALJ issued his final ID, finding a violation of section 337. On October 9, 2001, Sharp appealed Order No. 33 and petitioned for review of the ID. The IA did not file a petition for review. On October 16, 2001, complainant and the IA filed responses opposing Sharp's petition for review and its appeal of Order No. 33.

Having reviewed the record in this investigation, including the parties' written submissions, the Commission has determined to affirm Order No. 33 and not to review the ID in its entirety.

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in Sharp being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Publication 2843 (Dec. 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions

The parties to the investigation, interested government agencies, and any

other interested parties are encouraged to file written submissions on remedy, the public interest, and bonding. Such submissions should address the October 1, 2001 recommended determination by the ALJ on remedy and bonding. Complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on November 27, 2001. Reply submissions must be filed no later than the close of business on December 4, 2001. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and sections 210.42, 210.43, 210.45, 210.46, and 210.50 of the Commission's rules of practice and procedure, 19 CFR 210.42, 210.43, 210.45, 210.46, and 210.50.

Issued: November 15, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–29057 Filed 11–20–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0126(2002)]

Acrylonitrile Standard (29 CFR 1910.1045); Extension of the Office of Management and Budget's (OMB) Approval of the Information-Collection (Paperwork) Requirements

AGENCY: Occupation Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comments concerning its request to increase the existing burden-hour estimates for, and to extend OMB approval of, the collection-of-information requirements of the Acrylonitrile Standard (29 CFR 1910.1045).[1] This standard protects employees from the adverse health effects that may result from occupational exposure to acrylonitrile, including cancer, skin irritation, and dermatitis.

DATES: Submit written comments on or before January 22, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0126(2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Policy, OSHA, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2444. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified in the Acrylonitrile Standard is available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at *http://www.osha.gov/comp-links.html,* and select ''Information Collection Requests.''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct. The Occupational Safety and Health Act of the 1970 (the ''Act'') authorizes information collection by employers as necessary or appropriate for enforcement of the Act, or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The information-collection requirements specified in the Acrylonitrile Standard (§ 1910.1045; the ''Standard'') protect employees from the adverse health effects that may result from occupational exposure to acrylonitrile, including cancer, skin irritation, and dermatitis. The major information-collection provisions of the Standard require employers to establish a regulated area, to report an emergency (and any available facts related to the emergency) to the nearest OSHA Area Office within 72 hours of its occurrence, and to perform exposure monitoring; exposure monitoring includes initial monitoring to determine the extent of employee exposure to acrylonitrile, periodic (*i.e.*, at least quarterly) monitoring if employees' acrylonitrile exposures equal or exceed the action level (AL), and additional monitoring if any change occurs in production, processes, controls, or personnel. Employers must also notify each employee, in writing, of their exposure-monitoring results within five working days after receiving these results, establish a written compliance program, institute a respiratory-protection program in accordance with 29 CFR 1910.134 (OSHA's Respiratory Protection Standard), develop and implement a written emergency plan for each workplace in which liquid acrylonitrile is present, and inform laundry personnel who clean or launder protective clothing of the potentially harmful effects of acrylonitrile.

Other paperwork requirements of the Standard specify that employers must provide employees with medical examinations, including initial examinations for new employees prior to their job assignments, periodic (*i.e.*, at least annually) medical examinations if employees' acrylonitrile exposures are at or above the Al, and employment-termination examinations to employees covered by the medical-surveillance program. As part of the medical-surveillance program, employers must provide specific written information to the examining physicians, and obtain from these physicians a written opinion regarding the employees' medical results and exposure limitations.

Additional provisions of the Standard require employers to train the following

[1] Based on its assessment of the paperwork requirements contained in this standard, the Agency estimates that the total burden hours increased compared to its previous burden-hour estimate. Under this notice, OSHA is *not* proposing to revise these paperwork requirement in any substantive manner, only to decrease the burden hours imposed by the existing paperwork requirements.

employees prior to their initial assignments, and at least annually thereafter: Employees expose to acrylonitrile above the AL, those having exposures maintained below the AL by engineering controls and work practices, and those who have potential skin or eye contact with acrylonitrile. In addition, employers must post a warning sign in each work area that has an acrylonitrile concentration above the permissible exposure limit, and affix a label to containers of liquid acrylonitrile and acrylonitrile-based materials.

The Standard also requires employers to maintain records of objective data that exempt them from most of the Standard's paperwork requirements, establish and maintain exposure-monitoring and medical-surveillance records for each employee who is subject to these respective requirements, make any record required by the Standard available to OSHA compliance officers and the National Institute for Occupational Safety and Health (NIOSH) for examination and copying, and provide exposure-monitoring and medical-surveillance records to employees and their designated representatives on request. Finally, employers who cease to do business without a successor employer to receive and retain records for the required periods, and employers who plan to dispose of records at the end of the required retention periods, must transfer these records to NIOSH.

Employees and their designated representatives use exposure-monitoring and medical-surveillance records to assess employee medical status over the course of employment, to evaluate the effectiveness of an employer's exposure-reduction program, and for other reasons. In addition, the required records may result in both direct and indirect improvements in the detection, treatment, and prevention of occupational exposure to acrylonitrile. OSHA compliance officers use these records to assess employer compliance with the major requirements of the Standard, while NIOSH may compile these records for research purposes. In addition, with NIOSH serving as a repository for exposure-monitoring and medical-surveillance records, employees have continuous access to their records if needed for health or other reasons.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA is proposing to increase the existing burden-hour estimate for, and to extend OMB approval of, the collection-of-information requirements specified in the Standard. In this regard, the agency is proposing to increase the total burden-hour estimate from 4,428 hours to 4,433 hours, an increase of five hours. Additional burden hours for employee training accounted for much of the net increase in estimated burden hours. In addition, capital costs rose from $197,314 to $222,765 because of an increase in the cost of medical examinations. OSHA will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of this information-collection requirements.

Type of Review: Extension of currently approved information-collection requirements.

Title: Acrylonitrile (29 CFR 1910.1045).

OMB Number: 1218–0126.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local, or tribal governments.

Number of Respondents: 23.

Frequency of Recordkeeping: Occasionally.

Average Time per Response: Varies from five minutes to maintain employee exposure-monitoring and medical records to one and one-half hours for an employee to receive a medical examination.

Estimated Total Burden Hours: 4,433.

Estimated Cost (Operation and Maintenance): $222,765.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC, on November 15, 2001.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 01–29138 Filed 11–20–01; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–150)]

National Environmental Policy Act; NASA Ames Development Plan

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of the Draft Environmental Impact Statement (DEIS) for the NASA Ames Development Plan and notice of meeting.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and the National Aeronautics and Space Administration (NASA) policy and procedures (14 CFR part 1216 subpart 1216.3), NASA has prepared, and is requesting comment on, a DEIS for the proposed NASA Ames Development Plan (NADP). In the NADP, NASA is proposing to develop a world-class, shared-use education, research and development campus at Ames Research Center (ARC) Santa Clara County, California. The proposed shared use campus, which would include the proposed NASA Research Park (NRP), will be focused on astrobiology, life sciences, space sciences, nanotechnology, biotechnology, information technology and aeronautics. As part of the NADP, NASA officials plan to create partnerships with Federal, State and local government agencies, universities, private industry and non-profit organizations in support of NASA's mission to conduct research and develop new technologies. The purpose of the DEIS is to assess the environmental consequences associated with development alternatives under the proposed NADP and the no-action alternative. Implementation of the preferred alternative is expected to result in significant environmental impacts in the following areas: traffic, air quality, and housing supply.

The DEIS also includes, in its appendixes, the General Conformity Determination for Carbon Monoxide prepared pursuant to the Clean Air Act,

the Biological Assessment prepared pursuant to the Endangered Species Act, and the Historic Resources Protection Plan and Programmatic Agreement prepared in compliance with the National Historic Preservation Act. NASA is also requesting comments on these documents.

DATES: The agency must receive written or electronic mail comments on the DEIS and the other documents listed on or before January 14, 2002 or 50 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's notice of availability of the NADP DEIS, whichever is later. Public meetings to receive comments on the DEIS will be held in the vicinity of NASA Ames Research Center during December 2001. The specific times and locations will be published in the *San Jose Mercury News* (*http://www.mercurycenter.com*) and *La Oferta Review* (*http://www.laoferta.com*).

ADDRESSES: The DEIS can be reviewed at the following locations:

1. Mountain View Public Library, Reference Section, 585 Franklin Street, Mountain View, CA (650–903–6887).

2. Sunnyvale Public Library, Reference Section, 665 West Olive Avenue, Sunnyvale, CA (650–730–7300).

3. NASA Headquarters, Library, Room lJ20, 300 E Street SW, Washington, DC 20546 (202–358–0167).

4. Access electronically at *http://researchpark.arc.nasa.gov.*

Limited copies of the DEIS are available, on a first request basis, by contacting Ms. Sandy Olliges, NASA, Ames Research Center, M.S. 218–1/ Building 218, Moffett Field, CA 94035–1000; telephone 650–604–3355; electronic mail (*solliges@arc.nasa.gov*).

Submit all comments in writing to Ms. Sandy Olliges, NASA Ames Research Center, Environmental Services Office, Mail Stop 218–1, Moffett Field, CA 94035–1000 or electronically to *researchpark@arc.nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Sandy Olliges, NASA, Ames Research Center, M.S. 218–1/ Building 218, Moffett Field, CA 94035–1000; telephone 650–604–3355; electronic mail (*solliges@arc.nasa.gov*).

SUPPLEMENTARY INFORMATION: In 1991, the Federal Base Closure and Realignment Commission decided to close Moffett Field Naval Air Station. Subsequently, the U.S. Department of Defense transferred stewardship of the property to NASA. NASA took over administration of 752 hectares (1,857 acres) of Moffett Field in 1994. The immediate issues were how to use the newly acquired land in a manner consistent with NASA's mission, and how to pay for the maintenance and operations of such a large site. These matters were originally addressed in the Moffett Field Comprehensive Use Plan (CUP) and its associated Environmental Assessment (EA), which resulted in a Finding of No Significant Impact (FONSI) in 1994. After transfer of the property, local community leaders formed a Community Action Committee (CAC) and recommended uses for the newly acquired land. The uses proposed in the NADP are consistent with the CAC recommendations.

In addition to the activities described in the CUP, NASA now proposes to develop the NRP and other areas by building on the full range of existing high-technology and aviation resources at Moffett Field and creating partnerships with Federal, State, and local governmental agencies, universities, private industry and non-profit organizations in support of NASA's mission to develop new technologies. With the help of these collaborative organizations and consistent with its mission, NASA proposes to develop a world-class, shared-use educational and research and development (R&D) campus focused on the advancement of human knowledge about nanotechnology, information technology, biotechnology, astrobiology, life sciences, space sciences and aeronautics. By integrating public and private R&D efforts at the NRP, NASA would create a hub for technology transfer, stay abreast of cutting-edge technology advances, and facilitate the commercial applications of NASA's basic scientific research.

Alternatives for the development at ARC in the DEIS include:

Alternative 1: The No Action Alternative. Under the No Action Alternative, NASA would not propose new development for ARC at this time. However, NASA would implement several projects at ARC that are already approved pursuant to the NASA ARC Comprehensive Use Plan Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), and the California Air National Guard Master Plan EA and FONSI.

Alternative 2: In Alternative 2, NASA proposes to develop approximately 360,000 square meters (3.9 million square feet) of new space overall in the following development areas: NRP (located to the south of the present Ames Campus), Bay View (located to the north of the Ames Campus), and the Eastside/Airfield areas (located along the east side of the Bay View, Ames Campus, and NRP areas). Within the NRP area, there would be approximately 190,000 square meters (2 million square feet) of new educational, office, research and development, museum, conference center, housing and retail development. Approximately 52,000 square meters (560,000 square feet) of existing non-historic structures would be demolished, and approximately 46,000 square meters (500,000 square feet) of existing space would be renovated. In this alternative, NASA proposes approximately 121,000 square meters (1.3 million square feet) of new educational and housing development in the Bay View area, and approximately 51,000 square meters (550,000 square feet) of new low density research and development and light industrial space. Hangars 2 and 3 in the Eastside/Airfield area would be renovated. Total build out under this alternative would be approximately 845,000 square meters (9.1 million square feet).

Alternative 3: Based on the ideas of Traditional Neighborhood Design, NASA, in Alternative 3, would create a new mixed-use development within the NRP. In this alternative, NASA proposes: (1) The addition of approximately 280,000 square meters, (3 million square feet) of new educational, office, research and development, museum, conference center, housing and retail development, (2) the demolition of approximately 52,000 square meters (560,000 square feet) of non-historic structures, and 3) the renovation of approximately 46,000 square meters (500,000 square feet) of existing space. NASA does not propose any new construction in the Bay View or Eastside/Airfield areas, although Hangars 2 and 3 in the Eastside/Airfield area would be renovated for low-intensity research and development or light industrial uses. The total build out under Alternative 3 would be approximately 760,000 square meters (8.2 million square feet).

Alternative 4: In Alternative 4, NASA would concentrate more of the new development in the Bay View area than it would in the other alternatives, while creating less dense development in the NRP area. In Alternative 4, NASA proposes: (1) The addition of approximately 145,000 square meters (1.6 million square feet) of new educational office, research and development, museum, conference center, housing and retail space in the NRP area, (2) the demolition of approximately 52,000 square meters (560,000 square feet) of non-historic structures and (3) the renovation of

approximately 46,000 square meters (500,000 square feet) of existing space. In the Bay View area, NASA proposes approximately 251,000 square meters (2.7 million square feet) of new office, research and development, laboratory, educational, and student/faculty housing development. In the Eastside/Airfield area, NASA proposes (1) The creation of approximately 62,000 square meters (670,000 square feet) of new light industrial, research and development, office and educational facility development, and (2) renovation of the historic hangars. The total build out under Alternative 4 would be approximately 940,000 square meters (10.1 million square feet).

Alternative 5: The Preferred Alternative. Under Alternative 5, NASA would allow some new construction in each of the four development areas, but would concentrate most of this construction in the NRP area. In this alternative, NASA proposes: (1) The addition of approximately 192,000 square meters (2 million square feet) of new educational, office, research and development, museum, conference center, housing and retail space in the NRP Area, (2) the demolition of approximately 52,000 square meters (560,000 square feet) of non-historic structures, and (3) the renovation of approximately 56,000 square meters (600,000 square feet) of existing space. In the Bay View area, NASA proposes the addition of approximately 93,000 square meters (1 million square feet) of new development, primarily for housing. In the Eastside/Airfield area, NASA proposes the construction of approximately 1,115 square meters (12,000 square feet) of new space in a new control tower. Finally, in the Ames Campus area, NASA proposes to demolish approximately 37,000 square meters (400,000 square feet) of existing buildings to make way for 46,000 square meters (500,000 square feet) of high density office and research and development space. Total build out under Alternative 5 would be approximately 780,000 square meters (8.4 million square feet).

NASA has selected Alternative Five as the Preferred Alternative. The Preferred Alternative has been identified as the option that best meets NASA's purpose and need.

The DEIS also includes the General Conformity Determination for Carbon Monoxide as an appendix since implementing alternatives 2 through 5 would generate more than 100 tons per year of carbon monoxide, a pollutant regulated in the San Francisco Bay Area under the California State Implementation Plan. Ozone and its precursors (reactive organic gases and nitrogen oxides) are also regulated, but none of the alternatives would generate more than *de minimus* amounts of these pollutants. Although more than 100 tons per year of carbon monoxide would be generated by the preferred alternative, no violation of National Ambient Air Quality Standards is expected.

Pursuant to section 7 of the Endangered Species Act, NASA has initiated consultation with the United States Fish and Wildlife Service, and has prepared a Biological Assessment to describe the effects of the proposed action on the federally listed species at the site. No adverse effect is expected from implementation of any of the alternatives. The Biological Assessment is an appendix to the DEIS.

Since proposed removal of non-historic structures, construction of new buildings, and rehabilitation of historic structures in Alternatives 1 through 5 have the potential to disturb the integrity of the Shenandoah Plaza Historic District and contributing elements in the NRP if not designed carefully to ensure the compatibility of the changes with historic architecture, NASA, pursuant to the National Historic Preservation Act (NHPA), has prepared a Historic Resources Protection Plan (HRPP) for the Shenandoah Plaza Historic District. NASA has also prepared a Programmatic Agreement (PA) with the Advisory Council on Historic Preservation and the California State Historic Preservation Officer to adopt and implement the HRPP. No adverse effect is expected from implementation of Alternative 5, the preferred alternative. The HRPP and PA are an appendix of the DEIS.

Jeffrey E. Sutton,

Associate Administrator for Management Systems.

[FR Doc. 01–29283 Filed 11–20–01; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on December 4, 2001, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, December 4, 2001—9 a.m.–12 Noon.

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Sam Duraiswamy (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 14, 2001.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 01–29130 Filed 11–20–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk

Assessment will hold a meeting on December 4, 2001, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, December 4, 2001—1 p.m. until the conclusion of business.

The Subcommittee will review proposed revisions to the special treatment requirements of 10 CFR part 50 (Option 2), including proposed 10 CFR 50.69, industry guidance in NEI 00–04, and proposed 10 CFR part 50, Appendix T. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding these matters.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: November 14, 2001.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 01–29131 Filed 11–20–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Solicitation of Public Comments on the Second Year of Implementation of the Reactor Oversight Process

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: Nearly 2 years have elapsed since the U.S. Nuclear Regulatory Commission (NRC) implemented its revised Reactor Oversight Process (ROP). The NRC is currently soliciting comments from members of the public, licensees, and interest groups related to the implementation of the ROP. This is a followup to the FRN issued in January 2001, which requested feedback on the first year of implementation.

DATES: The comment period expires on December 28, 2001. The NRC will consider comments received after this date if it is practical to do so, but is only able to ensure consideration of comments received on or before this date.

ADDRESSES: Comments may be e-mailed to nrcrep@nrc.gov or sent to Michael T. Lesar, Chief, Rules and Directives Branch, Office of Administration (Mail Stop T6–D59), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may also be hand-delivered to Mr. Lesar at 11554 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Documents created or received at the NRC after November 1, 1999, are available electronically through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm.html.* From this site, the public can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. For more information, contact the NRC's Public Document Room (PDR) Reference staff at 301–415–4737 or 800–397–4209, or by e-mail at pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Maley, Office of Nuclear Reactor Regulation (Mail Stop OWFN 7A15), U.S. Nuclear Regulatory Commission, Washington DC 20555–0001. Mr. Maley can also be reached by telephone at 301–415–2919 or by e-mail at *mjm3@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Program Overview

The mission of the NRC is to regulate the civilian uses of nuclear materials in the United States to protect the health and safety of the public and the environment, and to promote the common defense and security by preventing the proliferation of nuclear material. This mission is accomplished through the following activities:

- License nuclear facilities and the possession, use, and disposal of nuclear materials.
- Develop and implement requirements governing licensed activities.
- Inspect and enforce of licensee activities to ensure compliance with these requirements and the law.

While the NRC's responsibility is to monitor and regulate licensees' performance, the primary responsibility for safe operation and handling of nuclear materials rests with each licensee.

As the nuclear industry in the United States has matured for more than 25 years, the NRC and its licensees have learned much about how to safely operate nuclear facilities and handle nuclear materials. In April 2000, the NRC began to implement more effective and efficient inspection, assessment, and enforcement approaches, which apply insights from these years of regulatory oversight and nuclear facility operation. The NRC has also incorporated risk-informed principles and techniques into its oversight activities. A risk-informed approach to oversight enables the NRC to more appropriately apply its resources to oversight of operational areas that contribute most to safe operation at nuclear facilities.

After conducting a 6-month pilot program in 1999, assessing the results, and incorporating the lessons learned, the NRC began implementing the revised Reactor Oversight Process (ROP) at all 103 nuclear facilities (except D.C. Cook) on April 2, 2000. Inherent in the ROP are the following key NRC performance goals:

(1) Maintain safety by establishing and implementing a regulatory oversight process that ensures that plants are operated safely.

(2) Enhance public confidence by increasing the predictability, consistency, and objectivity of the oversight process; providing timely and understandable information; and providing opportunities for meaningful involvement by the public.

(3) Improve the effectiveness, efficiency, and realism of the oversight process by implementing a process of continuous improvement.

(4) Reduce unnecessary regulatory burden through the consistent application of the process and incorporation of lessons learned.

Key elements of the ROP include revised NRC inspection procedures, plant performance indicators, a significance determination process, and an assessment program that incorporates various risk-informed thresholds to help determine the level of NRC oversight and enforcement. Since process development began in 1998, the NRC has frequently communicated with the public by various means. These have included conducting public meetings in the vicinity of each licensed commercial nuclear power plant, issuing FRNs soliciting feedback on the process, publishing press releases about the new process, conducting multiple public workshops, placing pertinent background information in the NRC's Public Document Room, and establishing an NRC web site containing easily accessible information about the new program and licensee performance.

NRC Public Stakeholder Comments

The NRC continues to be interested in receiving feedback from members of the public, various public stakeholders, and industry groups on their insights regarding the second year of implementation of the ROP. In particular, the NRC is seeking responses to the questions listed below, which will provide important information that the NRC can use in ongoing program improvement. A summary of the feedback obtained will be provided to the Commission and included in the annual ROP self-assessment report.

Questions

Questions Related to the Efficacy of the Overall Reactor Oversight Process (ROP)

(As appropriate, please provide specific examples and suggestions for improvement.)

(1) Are the ROP oversight activities predictable (i.e., controlled by the process) and objective (i.e., based on supported facts, rather than relying on subjecting judgement)?

(2) Is the ROP risk-informed, in that the NRC's actions are graduated on the basis of increased significance?

(3) Is the ROP understandable and are the procedures and output products clear and written in plain English?

(4) Does the ROP provide adequate assurance that plants are being operated and maintained safely?

(5) Does the ROP improve the efficiency, effectiveness, and realism of the regulatory process?

(6) Does the ROP enhance public confidence?

(7) Has the public been afforded adequate opportunity to participate in the ROP and to provide inputs and comments?

(8) Has the NRC been responsive to public inputs and comments on the ROP?

(9) Has the NRC implemented the ROP as defined by program documents?

(10) Does the ROP reduce unnecessary regulatory burden on licensees?

(11) Does the ROP result in unintended consequences?

Questions Related to Specific ROP Program Areas

(As appropriate, please provide specific examples and suggestions for improvement.)

(12) Does the ROP take appropriate actions to address performance issues for those licensees that fall outside of the Licensee Response Column of the Action Matrix?

(13) Is the information contained in assessment reports relevant, useful, and written in plain language?

(14) Is the information in the inspection reports useful to you?

(15) Does the Performance Indicator Program minimize the potential for licensees to take actions that adversely impact plant safety?

(16) Does appropriate overlap exist between the Performance Indicator Program and the Inspection Program?

(17) Do reporting conflicts exist, or is there unnecessary overlap between reporting requirements of the ROP and those associated with the Institute of Nuclear Power Operations, the World Association of Nuclear Operations, or the Maintenance Rule?

(18) Does NEI 99–02, ''Regulatory Assessment Performance Indicator Guideline'' provide clear guidance regarding Performance Indicators?

(19) Does the Significance Determination Process yield equivalent results for issues of similar significance in all ROP cornerstones?

(20) Please provide any additional information or comments on other program areas related to the Reactor Oversight Process. Other areas of interest may include the treatment of cross-cutting issues in the ROP, the risk-based evaluation process associated with determining event response, and the reduced subjectivity and elevated threshold for documenting issues in inspection reports.

Dated at Rockville, Maryland, this 15th day of November 2001.

For the U.S. Nuclear Regulatory Commission.

Michael R. Johnson,

Inspection Program Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–29132 Filed 11–20–01; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

United States Postal Service Board of Governors; Sunshine Act Meeting

Board Votes to Close November 13 and 15, 2001, Meeting

By telephone vote on November 13 and 15, 2001, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting held in Washington, D.C., via teleconference. The Board determined that prior public notice was not possible.

ITEMS CONSIDERED:

1. Strategic Planning.
2. Rate Case Update, Docket No. R2001–1.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Requests for information about the meeting should be addressed to the Secretary of the Board, David G. Hunter, at (202) 268–4800.

David G. Hunter,

Secretary.

[FR Doc. 01–29292 Filed 11–19–01; 2:45 pm]

BILLING CODE 7710–12–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will public periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance

the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection:

Application for Spouse Annuity Under the Railroad Retirement Act; OMB 3220–0042 section 2(c) of the Railroad Retirement Act (RRA), provides for the payment of annuities to spouses of railroad retirement annuitants who meet the requirements under the RRA. The age requirements for a spouse annuity depend on the employee's age and date of retirement and the employee's years of railroad service. The requirements relating to the annuities are prescribed in 20 CFR parts 216, 218, 219, 232, 234, and 295.

The RRB currently uses Form AA–3, Application for Spouse/Divorced Spouse Annuity, to obtain the information needed to determine an applicant's entitlement to an annuity and the amount of the annuity.

The RRB is proposing the addition of an electronic equivalent of Form AA–3 of the collection. The information collected will include all information obtained on the current manual form AA–3. The electronic equivalent, which will be available for completion over the Internet, will also, depending on circumstances, incorporate information currently collected on RRB Form AA–6, Employee Application for Medicare, Form AA–7, Spouse/Divorce Spouse Application for Medicare, and Form AA–8, Widow/Widower Application for Medicare (OMB approved 3220–0082), Form G–19L, Annual Earnings Questionnaire, Last Pre-Retirement Non-Railroad Employment (OMB approved 3220–0179), and Form G–208, Public Service Pension Questionnaire (OMB approved 3220–0136). Future plans will include the incorporation of information currently collected on RRB Form AA–4, Self-Employment and Substantial Service Questionnaire (OMB approved 3220–0138).

Upon completion of the electronic AA–3 process, the applicant will receive proposed Form AA–3cert, Application Summary and Certification for review and signature. The proposed AA–3cert will summarize information provided by/or verified by the applicant during the application process. Implementation of the AA–3cert will largely eliminate the need for the manual version of AA–3. However, the RRB will continue to use the manual version of the form in instances where the RRB representative is unable to contact the applicant in person or by telephone, *i.e.,* the applicant lives in another country and/or does not wish to use the Internet.

The RRB estimates the burden for the collection as follows:

ESTIMATED BURDEN

Form #	Estimated annual responses	Estimated completion time (per response)	Estimated annual burden (hours)
AA–3 manual (without assistance)	100	58	97
AA–3cert (Internet without assistance)	400	58	387
AA–3cert (with assistance)	8,000	35	4,667
Total	8,500		5,151

No changes are proposed to manual Form AA–3. Completion is required to obtain a benefit. One response is requested of each respondent.

Additional Information or Comments

To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 01–29053 Filed 11–20–01; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection:

Application for Employee Annuity Under the Railroad Retirement Act; OMB 3220–0002 section 2 of the Railroad Retirement Act (RRA), provides for payment of age and service, disability and supplemental annuities to qualified employees. The basic requirements for a regular employee annuity retirement annuity under the RRA is 120 months (10 years) of creditable railroad service. Benefits then become payable after the employee meets certain other requirements, which depend, in turn, on the type of annuity payable. The requirements relating to the annuities are prescribed in 20 CFR parts 216, and 220.

The forms currently used by the RRB to collect information needed for determining entitlement to and the amount of, an employee retirement annuity follow: Form AA–1, Application for Employee Annuity Under the Railroad Retirement Act, is completed by an applicant for either an age and service or disability annuity. It obtains information about an applicant's marital history, work history, military service, benefits from other governmental agencies and railroad pensions. Form AA–1d, Application for Determination of Employee Disability, is completed by an employee who is filing for a disability annuity under the RRA, or a disability freeze under the Social Security Act for early Medicare based on a disability. Form G–204, Verification of Workers Compensation/Public Disability Benefit Information, is used to obtain and verify information concerning worker's compensation or

public disability benefits that are or will be paid by a public agency to a disabled railroad employee.

The RRB is proposing the addition of an electronic equivalent of Form AA–1 to the collection. The information collected will include all information obtained on the current form AA–1. The electronic equivalent, which will be available for completion over the Internet through the RRB's web-site, will also, depending on circumstances, incorporate information currently collected on RRB Form AA–6, Employee Application for Medicare, Form AA–7, Spouse/Divorce Spouse Application for Medicare, Form AA–8, Widow/Widower Application for Medicare, (OMB approved 3220–0082), Form G–19L, Annual Earnings Questionnaire, Last Pre-Retirement Non-Railroad Employment (OMB approved 3220–0179), and Form G–208, Public Service Pension Questionnaire (OMB approved 3220–0136). Future plans will include the incorporation of information currently collected on RRB Forms AA–4, Self-Employment and Substantial Service Questionnaire (OMB approved 3220–0138) G–209, Employee Non-Covered Service Pension Questionnaire (OMB approved 3220–0154) and G–319 Statement Regarding Family and Earnings for Special Guaranty Computation and G–320, Statement By Employee Annuitant Regarding Student Age 18–19 (OMB approved (3220–0083) into the process.

Upon completion of the electronic AA–1 process, the applicant will receive Form AA–1cert for review and signature. The AA–1cert will summarize information provided by/or verified by the applicant during the application process. Implementation of the AA–1cert will largely eliminate the need for the manual version of Form AA–1. However, the RRB will continue to use the manual version of the AA–1 in instances where the RRB representative is unable to contact the applicant in-person or by telephone i.e., the applicant lives in another country and/or does not wish to use the Internet.

The RRB estimates the burden for the collection as follows:

ESTIMATED BURDEN

Form #	Estimated annual responses	Estimated completion time (per response)	Estimated annual burden (hours)
AA–1 manual (without assistance)	100	62	103
AA–1cert (Internet without assistance)	650	62	672
AA–1cert (with assistance)	12,650	37	7,801
AA–1d (manual without assistance)	50	60	50
AA–1d (manual) (with assistance)	5,650	35	3,296
G–204	50	15	13
Total	19,100	.....	11,935

The RRB proposes no changes to manual Form AA–1, Form AA–1d and Form G–204. Completion is required to obtain a benefit. One response is requested of each respondent.

Additional Information or Comments

To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 01–29054 Filed 11–20–01; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Sick Pay and Miscellaneous Payments Report.

(2) *Form(s) submitted:* BA–10.

(3) *OMB Number:* 3220–0175.

(4) *Expiration date of current OMB clearance:* 12/31/2001.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other for-profit.

(7) *Estimated annual number of respondents:* 239.

(8) *Total annual reporting hours:* 219.

(10) *Collection description:* The Railroad Retirement Solvency Act of 1983 added Section 1(h)(8) to the Railroad Retirement Act expanding the definition of compensation for purposes of computing the tier I portion of an annuity to include sickness payments and certain payments other than sick pay which are considered compensation within the meaning of Section 1(h)(8). The collection obtains the sick pay and other types of payments considered compensation within the meaning of Section 1(h)(8).

ADDITIONAL INFORMATION OR COMMENTS: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312—751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 01–29055 Filed 11–20–01; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Railroad Service and Compensation Reports.
(2) *Form(s) submitted:* BA–3a, BAZ–4.
(3) *OMB Number:* 3220–0008.
(4) *Expiration date of current OMB clearance:* 12/31/2001.
(5) *Type of request:* Revision of a currently approved collection.
(6) *Respondents:* Business or other for-profit.
(7) *Estimated annual number of respondents:* 579.
(8) *Total annual responses:* 1,028.
(9) *Total annual reporting hours:* 37,980.
(10) *Collection description:* Under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, employers are required to report service and compensation for each employee to update Railroad Retirement Board records for payments of benefits.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 01–29056 Filed 11–20–01; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25263; 812–12116]

MMA Praxis Mutual Funds and MMA Community Development Investments, Inc.; Notice of Application

November 14, 2001.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 (''Act'') for an exemption from section 17(a) of the Act and an order permitting certain transactions under section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY: Applicants request an order to permit MMA Praxis Mutual Funds (''Trust'') and its series to invest in certain securities issued by MMA Community Development Investments, Inc. (''MMA–CDI'').

Applicants: The Trust and MMA–CDI.

Filing Dates: The application was filed on May 25, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 10, 2001, and should be accompanied by proof of service on applicants, 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; Applicants, 3435 Stelzer Road, Columbus, Ohio 43219.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 942–0527 or Mary Kay French, 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 at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust is registered under the Act as an open-end management investment company, and currently consists of three separate investment portfolios. The Trust's investment adviser is Menno Insurance Service d/b/a MMA Capital Management (''MMA Capital''), an investment adviser registered under the Investment Advisers Act of 1940. Applicants request that any relief granted pursuant to the application also apply to future series of the Trust (collectively, the ''Praxis Funds'') and any other registered investment companies and their series that are advised by MMA Capital or any entity controlling, controlled by or under common control with MAA Capital.[1]

2. The board of trustees of the Trust (''Praxis Board'') has authorized each of the Praxis Funds to invest a limited portion of its assets in securities that offer a rate of return below the then prevailing market rate but which present attractive opportunities for furthering social and economic well-being of disadvantaged individuals and their communities. Applicants represent that since May 3, 1999, the prospectus of each of the Praxis Funds has disclosed the intention of the Praxis Funds to make community development investments. Applicants propose that the Praxis Funds invest a limited portion of their assets in securities issued by MMA–CDI, which will seek to channel those resources to national and international community development organizations. MMA–CDI is a not-for-profit corporation that is exempt from registration as an investment company under section 3(c)(10)(A) of the Act. MMA–CDI is designed to operate as a not-for-profit organization as part of the financial services arm of the Mennonite Church (''MMA''). MMA has sought to implement a program of community development investing that is consistent with both prudent financial management and its commitment to stewardship investing.

3. The board of MMA–CDI (''MAA–CDI Board'') consist of six members, a majority of whom are selected by the Mennonite Foundation, one of several organizations that are conducted under the direction of the board of directors of MMA (''MMA–affiliated organizations''). MMA–CDI's initial support has been provided by MAA-affiliated organizations and additional support will be sought from other institutional sources both within and outside of the Mennonite community. MMA–CDI will seek to fund its community development investment program through the sale of variable rate notes (''CDI Notes'') issued by two investment pools that it has established (''Existing Pools'') and similar pools that MMA–CDI may establish in the future (''Future Pools'') (collectively, ''MMA Pools'').[2] Applicants represent that the CDI Notes are exempt from registration under section 3(a)(4) of the Securities Act of 1933.

4. Under the proposed arrangement, each Praxis Fund will receive CDI Notes evidencing its investment in a MMA

[1] All existing investment companies that currently intend to rely on the requested order have been named as applicants, and any other existing or future investment companies that subsequently rely on the order will do so only in accordance with the terms and conditions set forth in the application.

[2] Except for maturities and returns, any Future Pool would have the same characteristics as the Existing Pools and notes issued by such Future Pools would have the same characteristics as CDI Notes.

Pool. The ''below market MMA Pool'' will issue notes with anticipated maturities of between one and five years and anticipated average returns of 60% of the rate then available on U.S. Treasury instruments of similar maturities (''Benchmark Rate''). The ''near market MMA Pool'' will issue notes with maturities ranging between three to five years and expected average returns of 90% of the Benchmark Rate. Interest rates payable on the CDI Notes will be adjusted semi-annually to reflect change in the return of U.S. Treasury instruments with similar maturities. CDI Notes will be issued separately by the below market MMA Pool and the near market MMA Pool and investors will be able to purchase CDI Notes in either the below market or near market MMA Pools in any principal amount. Each prospective investor in MMA–CDI, including the Praxis Funds, will be provided with offering documents describing the MMA–CDI program and the risks associated with investing in CDI Notes. Such documents also will disclose the fact that one or more MMA-affiliated organizations may purchase CDI Notes, but will do so on terms that are no more advantageous than those available to other investors.

5. The proceeds from the sale of the CDI Notes will be commingled to invest in community development organizations. The investments in the community development organizations will be evidenced by promissory notes issued by the community development organizations at below market rates. It is anticipated that the promissory notes will be for terms of one to five years, will be unsecured, general recourse obligations of the borrowing organization, and will call for loan payments to be made semi-annually. MMA–CDI's loan portfolio will be structured so that the aggregate payments on all such loans will be sufficient to meet MMA–CDI's obligations to holders of CDI Notes (''CDI Noteholders'') and operating expenses.

6. Applicants represent that CDI Noteholders will not be assessed any fee or sales charge in connection with their investment in MMA–CDI, nor will the value of CDI Notes, once issued, or interest paid on those notes to the CDI Noteholders, be affected by any of the ordinary operating expenses associated with the MMA–CDI program. It is anticipated that MMA–CDI will realize a basis point spread on each community development investment to cover administrative and overhead costs. Applicants represent that all CDI Noteholders, including the Praxis Funds, will be afforded the same opportunity to acquire or dispose of the CDI Notes on terms that are no less advantageous than those upon which any MMA-affiliated organization is permitted to purchase or liquidate their CDI Notes.

7. The Praxis Board has authorized each of the Praxis Funds to commit up to three percent of its total assets to community development investing. All or any portion of such investments may consist of CDI Notes, provided that not more than one percent of such assets may be committed to investments the return on which is expected to be less than 90% of the rate available on U.S Treasury instruments of similar maturities. Each Praxis Fund will invest its assets in the CDI Notes only in accordance with its investment objectives, policies and restrictions. The Praxis Board will monitor this proposed arrangement to ensure that it is consistent with the Praxis Funds' investment objectives, policies and restrictions. The Paris Board will review the adequacy of each Praxis Fund's disclosure relating to community development investing and the acquisition of CDI Notes, including the possible risks of loss to the fund and its shareholders. The disclosure will identify MMA–CDI and its affiliation with the Praxis Funds' investment adviser, and summarize the manner in which the MMA–CDI program is managed.

8. Neither MMA Capital or any other MMA-affiliated organization will receive any compensation for services provided to MMA–CDI or for the Praxis Funds' investment in CDI Notes, provided that the market value of CDI Notes in which the Praxis Funds may, from time to time, invest will be included in the calculation of any investment advisory fee payable by any Praxis Fund to any MMA-affiliated organization pursuant to the terms of an investment advisory contract that satisfies the requirements of section 15(a) of the Act and subject to section 36 of the Act, where such fee is calculated based on a percentage of the average daily net assets of any such Praxis Fund.

Applicants' Legal Analysis

1. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3)(C) of the Act defines an affiliated person of an investment company as any person directly or indirectly controlling, controlled by, or under common control with such investment company. Section 2(a)(3)(E) provides that the investment adviser of an investment company is an affiliated person of the company. Because the board of directors of MMA could be deemed to have the power to exercise controlling influence over the management or policies of both MMA Capital and MMA–CDI, these entities could be deemed to be under ''common control'' within the meaning of section 2(a)(3) of the Act. Accordingly, MMA–CDI could be deemed an affiliated person of MMA Capital and thus an affiliated person of an affiliated person of the Praxis Funds. Section 2(a)(36) defines a security to include, among other things, any note, stock, treasury stock, or evidence of indebtedness. As a result, investment by the Praxis Funds in the CDI Notes may be prohibited by section 17(a).

2. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act. Section 6(c) authorizes the Commission to exempt transactions from the provisions of the Act to the extent that such exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

3. Applicants believe that the Praxis Funds' proposed investment in the MMA Pools meets the standards of sections 17(b) and 6(c). Applicants state that the Praxis Funds' investment in the MMA Pools will be consistent with each Fund's investment objectives, policies and restrictions. Applicants assert that the Praxis Board weighed the possible risks associated with investing through MMA–CDI against the benefits of obtaining certain cost efficiencies and sharing the risk of community development investing with other CDI Noteholders. The Praxis Board determined that it was appropriate for the Praxis Funds to purchase the CDI Notes to carry out their commitment to community development investing.

4. Section 17(d) of the Act and rule 17d–1 prohibit an affiliated person of a registered investment company, acting as principal, from participating in any joint arrangement with the investment company unless the Commission has issued an order authorizing the arrangement. Applicants state that each Praxis Fund may be deemed to be

participating in a joint transaction with each other Praxis Fund through the pooling of assets in the MMA Pools, and that the Praxis Funds could be deemed to be participating in a joint transaction with MMA–CDI through their investment in CDI Notes.

5. In determining whether to grant an exemption under rule 17d–1, the Commission considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants assert that the Praxis Funds' purchases of CDI Notes will be on a basis that is no less advantageous than that of other participants.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–29022 Filed 11–20–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25262; File No. 812–12216]

Security Benefit Life Insurance Company, et al.

November 14, 2001.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order pursuant to section 6(c) of the Investment Company Act of 1940(the ''1940 Act'' or ''Act'') granting exemptions from the provisions of sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit, under specified circumstances, the recapture of certain credit enhancement applied to the Contract value under (a) two flexible premium deferred variable annuity contracts (the ''Contracts'') issued by Security Benefit Life Insurance Company (''Security Benefit'') through SBL Variable Annuity Account XIV (''Variable Account XIV''), and (b) future variable contracts offered by Security Benefit and First Security Benefit Life Insurance and Annuity Company of New York (''First Security Benefit'') through a Separate Account (defined below) or Future Accounts (defined below) which contracts are substantially similar in all material respects to the Contracts (''Future Contracts'').

Applicants: Security Benefit and First Security Benefit (the ''SBL Insurers''); Variable Account XIV; any other separate account of the SBL Insurers supporting variable annuity contracts (together with Variable Account XIV ''Separate Accounts''); any other separate accounts that will be established in the future by the SBL Insurers to support variable contracts (''Future Accounts''), and Security Distributors, Inc. (''SDI'').

Filing Dates: The application was filed on August 9, 2000 and amended and restated on October 25, 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 SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m., on December 10, 2001, and should be accompanied by proof of service on the 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 may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Amy J. Lee, Esq., Associated General Counsel, Security Benefit Life Insurance Company, 700 Harrison Street, Topeka, Kansas 66636–0001.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Keith E. Carpenter, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch at 450 Fifth Street, NW., Washington, DC 20549–0102 [tel. (202) 942–8090].

Applicants' Representations

1. Security Benefit is a Life insurance company organized under the laws of the State of Kansas. Security Benefit offers life insurance policies and annuity contracts, as well as financial and retirement services. It is authorized to conduct life insurance and annuity business in the District of Columbia and all states except New York. Together with its subsidiaries, Security Benefit has total funds under management of approximately $10.3 billion.

2. First Security Benefit is a stock life insurance company organized under the laws of the State of New York. First Security Benefit offers variable contracts in New York and is admitted to do business in that state. It is an indirect wholly owned subsidiary of Security Benefit.

3. Security Benefit established Variable Account XIV on June 26, 2000 pursuant to Kansas law. Variable Account XIV is registered with the Commission as a unit investment trust and is currently divided into 60 subaccounts (''Subaccounts''). Each Subaccounts invests exclusively in shares of a corresponding open-end management investment company (''Series''). Certain of the Series are managed by Security Management Company, LLC, a wholly owned subsidiary of Security Benefit. Variable Account XIV funds the variable benefits available under the Contracts. Security Benefit has filed registration statements on Form N–4 under the 1940 Act and the Securities Act of 1933, as amended (the ''1933 Act'') to register interests in Variable Account XIV under the Contracts. The Contracts are the Initial Contract (File No. 333–41180) and a New Contract (File No. 333–52114) (each a ''Contract'' and together, the ''Contracts'').

4. SDI, a wholly owned subsidiary of Security Benefit, serves as the principal underwriter for the variable contracts issued by Security Benefit, including the Contracts. SDI is registered as a broker/dealer with the Commission under the Securities Exchange Act of 1934, as amended, and is a wholly owned subsidiary of Security Benefit Group, Inc.,, a financial services holding company wholly owned by Security Benefit.

5. Security Benefit does not deduct a sales load from purchase payments. If a Contract holder withdraws Contract value, Security Benefit may deduct a contingent deferred sales charge (''withdrawal charge''). The withdrawal charge depends on how long a purchase payment has been held under a Contract. The withdrawal charge on a payment withdrawal during the first and second year is subject to a 7% withdrawal charge. The charge is 6% for payments withdrawn in the third year, 5% in year four, 4% in year five, 3% in year six and 2% in year seven. There is not withdrawal charge for payments that have been held under a Contract for seven complete years.

6. The withdrawal charge will be waived on withdrawals to the extent that total withdrawals in any 12-month period, measured from the Contract date, do not exceed the free withdrawal

amount. The free withdrawal amount in the first Contract year is equal to 10% of Purchase Payments made during the year. In any subsequent Contract year, the free withdrawal amount is equal to 10% of Contract value as of the first day of that Contract year.

7. Security Benefit deducts a charge for mortality and expense risks assumed by Security Benefit under the Contracts. The mortality and expense risk charge is determined each month by reference to the amount of the Contract value as follows:

Contract value	Initial contract (percent)	New contract (percent)
Less than $25,000	.85	1.10
At least $25,000 but less than $100,000	.70	.95
$100,000 or more	.60	.85

8. Security Benefit deducts a monthly charge for optional riders that may be elected by a Contract holder. The charge may not exceed 1% of Contract value for the Initial Contract and 2% for the New Contract.

9. Security Benefit also deducts a daily administration charge under the Contracts. The charge is equal to .15% annually for assets allocated to the Subaccounts under the Initial Contract. The daily charge under the New Contract differs by Subaccounts and ranges from an annual rate of .25% to .60%. In addition, a $30 administration charge is deducted under both Contracts on the Contract anniversary. Security Benefit also assesses a premium tax charge to reimburse itself or premium taxes that it incurs in connection with a Contract.

10. An optional Extra Credit Rider (the ''Rider'') under the Contract makes available a credit enhancement (''Credit Enhancement''), which is an amount added to Contract value by Security Benefit. A Contract holder must purchase the Rider at issue. If purchased, a Credit Enhancement of 3%, 4% or 5% or purchase payments, as elected in the application, will be added to Contract value for each purchase payment made in the first Contract year. Any Credit Enhancement will be allocated among the Subaccounts in the same proportion as the purchase payment is allocated.

11. Security Benefit deducts a charge for the Rider for a period of seven years from a Contract's date of issue. After the end of seven years from a Contract's date of issue, Security Benefit will no longer assess a charge for the Rider and the Credit Enhancements will be fully vested. The charge for this Rider, which is equal to a percentage, on an annual basis, of Contract value, varies based upon the interest rate selected by the Contract holder as set forth below:

Interest rate (percent)	Rider charge (percent)
3	.45
4	.60
5	.75

12. The Contracts permit Contract holders to cancel their Contracts and to receive a refund during the Free-Look Period. The Free-Look Period generally is a 10-day period beginning on the day a Contract holder receives his or her Contract. If a Contract holder returns a Contract during the Free-Look Period, the Contract will be canceled and treated as void from the Contract date.

13. In most instances, a Contract holder who returns a Contract during the Free-Look Period is entitled to a refund of his or her Contract value plus any charges deducted from such Contract value, as of the end of the business day on which the Contract is received for cancellation. A Contract holder will also receive a refund of any amounts that may have been deducted to pay for state premium taxes and/or other taxes. As is disclosed in the Contract prospectus, the value of any Credit Enhancement added to the Contract value will be deducted if the Contract holder returns the Contract during the Free-Look Period.

14. In the event of a full or partial withdrawal under a Contract with a Rider in force, Security Benefit will recapture all or part of any Credit Enhancement that has not yet vested. An amount equal to 1/7 of the Credit Enhancement will vest as of each anniversary of the Contract's date of issue and the Credit Enhancement will be fully vested at the end of seven years from that date. The amount to be forfeited in the event of a withdrawal is equal to a percentage of the Credit Enhancement that has not yet vested. The percentage is determined for each withdrawal as of the date of the withdrawal by dividing the amount of the withdrawal, including any withdrawal charges, by the Contract value immediately prior to the withdrawal.

15. The Contracts provide for a death benefit upon the death of the Contract holder prior to the annuity start date. The death benefit proceeds will be the death benefit reduced by any outstanding loan balance including loan interest, any pro rata account administration charge and any uncollected premium tax. If a Contract holder dies before the annuity start date, the amount of the death benefit generally will be the greater of: (a) The sum of all Purchase Payments (not including Credit Enhancement if an Extra Credit Rider was in effect), less any reductions caused by previous withdrawals, including withdrawal charges (''Purchase Payment Death Benefit''); or (b) the Contract value on the date due proof of death and instructions regarding payment are received by Security Benefit (less the amount of any Credit Enhancement applied during the 12 months prior to the date of the Contract holder's death if an Extra Credit Rider was in effect) (''Contract Value Death Benefit''). If a Contract holder dies prior to the annuity start date and due proof of death and instructions regarding payment are not received by Security Benefit at its home office within six months of the date of the Contract holder's death, the death benefit will be the Contract Value Death Benefit. If a Contract holder has purchased one of the following riders, the death benefit will be as determined under the terms of the applicable rider: (a) Annual Stepped Up Death Benefit; (b) Guaranteed Growth Death Benefit; (c) Combined Annual Stepped Up and Guaranteed Growth Death Benefit; and (d) Combined Guaranteed Growth Death Benefit and Guaranteed Minimum Income Benefit. Each of those riders also excludes Credit Enhancements from any Purchase Payment Death Benefit and reduces the amount of any other death benefit by an amount equal to any Credit Enhancements applied during the 12 months prior to the date of the Contract holder's death.

16. Applicants seek exemptions pursuant to section 6(c) from sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and rule 22c–1 thereunder to the extent necessary to permit the SBL Insurers with respect to the Contracts to: (a) deduct from any full or partial withdrawal a proportionate amount of any Credit Enhancement that has not yet vested; and (b) deduct from any death benefit, except the Purchase Payment Death Benefit, the amount of any Credit Enhancement applied during the 12 months prior to the date of the Contract holder's death. The requested exemptions would also apply to any Future Contract funded by the Separate Accounts or Future Accounts that recapture Credit Enhancements provided that any such Future Contract is substantially similar in all material respects to the Contracts.

Applicants' Legal Analysis

1. Subsection (i) of section 27 of the 1940 Act provides that section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such separate account, except as provided in paragraph (2) of that subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless ''(A) such contract is a redeemable security.''

2. Section 2(a)(32) of the 1940 Act defines ''redeemable security'' as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his or her proportionate shares of the issuer's current net assets, or the cash equivalent thereof.

3. Applicants state that the amount paid in the event of a full or partial withdrawal excludes a proportionate amount of any Credit Enhancement conditionally applied to the Contract in the seven years prior to the date of the full or partial withdrawal. The amount of any death benefit that is based upon Contract value does not include the amount of any Credit Enhancement conditionally applied to the Contract in the 12 months prior to the date of the Contract holder's death. In each instance, the Contract holder arguably is not receiving his or her proportionate share of applicable Separate Account's then-current net assets. Applicants submit, however, that the recapture of the amount of any Credit Enhancement conditionally applied to the Contract during the seven-year period beginning on the date of issue of the Contract or the 12-month period prior to the date of the Contract holder's death would not deprive a Contract holder of his or her proportionate share of the issuer's current net assets. Until or unless the Credit Enhancement is vested, Security Benefit retains a right and interest in the Credit Enhancement. The prospectus clearly discloses that, for purposes of withdrawals, a Credit Enhancement will vest only at the end of the seven-year period beginning on the Contract's date of issue. The prospects also clearly discloses that, for purposes of the death benefit, a Credit Enhancement will vest only if it has been added to the Contract value of a Contract holder as of a date more than 12 months prior to the date of the Contract holder's death.

4. Applicants submit that annuity contracts, unlike life insurance contracts, are not intended to insure against the risk of the premature death of the insured. Instead, annuity contracts are intended to provide an income stream to the Contract holder or a named beneficiary, for the life of the annuitant or for a period of years. The risk to an insurer under an annuity contract typically is that the annuitant lives longer than the insurer's prediction.

5. According to the Applicants, if Credit Enhancements are applied unconditionally to the death benefit under an annuity contract before a minimum period of time has elapsed from the time that a Credit Enhancement has been credited, the insurer runs the risk of adverse selection. The insurer runs the risk that, for example, a terminally ill Contract holder will make a large purchase payment in order to leverage the amount of money he or she is able to transfer to the beneficiary. Applicants that requiring a year to elapse before a Credit Enhancement may be included in a death benefit is an appropriate means to ensure that the Contracts are not used as a risk-free vehicle for persons to leverage the amount of money they wish to transfer to a beneficiary.

6. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by section 22(a). Rule 22c–1 thereunder prohibits a registered investment company issuing a redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

7. Applicants state that Security Benefit's recapture of the Credit Enhancement with respect to the Contracts in instances in which: (a) A withdrawal is made and fewer than seven years have elapsed since the issue date of the Contract, or (b) a death benefit is paid, other than the Purchase Payment Death Benefit, and fewer than 12 months have elapsed between the time that the Credit Enhancement has been applied to the Contract, and the death of the Contract holder, might arguably be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the applicable Subaccount of a Separate Account. In other words, because any such Credit Enhancement paid by Security Benefit is immediately added, on a conditional basis, to the Contract value of certain Contract holders, and further because these amounts are allocated to certain Subaccounts for the benefit of the participating Contract holder, the net asset value of each Subaccount arguably is affected by these credits.

8. Applicants content, however, that the recapture of the Credit Enhancement under the circumstances described in the application should not be deemed to be a violation of section 22(c) and rule 22c–1. To the extent that the recapture practices described in the application are considered to be technical violations of these provisions, Applicants request relief from Section 22(c) and rule 22c–1 in order to recapture Credit Enhancements as discussed above for the Contracts and Future Contracts to the extent that an SBL Insurer has provided Credit Enhancements to a Control holder within: (a) Seven years of a full or partial withdrawal; or (b) 12 months of the Contract holder's death before the Annuity Start Date where the death benefit is not a Purchase Payment Death Benefit.

9. Applicants assert that the recapture of the Credit Enhancement does not involve either of the practices that rule 22c–1 was intended to eliminate or reduce as far as reasonably practicable, namely: (a) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (b) other unfair results, including speculative trading practices.

10. Applicants submit that the proposed recapture of the Credit Enhancement poses no threat of dilution. To effect a recapture of a Credit Enhancement, Security Benefit redeems (and the other SBL Insurer will redeem) interests in the Subaccounts at a price determined on the basis of the current accumulation unit value of each of the Subaccounts of the Separate Account in which the Contract holder's Contract value is allocated. The amount recaptured in the event of a full or partial withdrawal or death benefit, will be equal to the amount of the Credit Enhancement paid out of the General Account assets of Security Benefit. That amount will be redeemed at the current accumulation unit value of the applicable Subaccount(s) as of the date

of receipt of the death claim, or withdrawal request, in proper order. Thus, no dilution will occur upon the recapture of a Credit Enhancement.

11. Applicants also submit that the second practice that rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit Enhancement.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are necessary and 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.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–29023 Filed 11–20–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25270; File No. 812–12660]

John Hancock Variable Series Trust I, et al.

November 15, 2001.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application under section 17(g) of the Investment Company Act of 1940 (''Act'') for an exemption from section 17(a) of the Act.

Summary of Application: Applicants request an order to permit (a) two series of John Hancock Variable Series Trust I (''Trust I'') each to acquire all of the assets and liabilities of one of two series of John Hancock Declaration Trust (''Declaration Trust'') and (b) four other series of Trust I each to acquire all of the assets and liabilities of one of four additional series of Trust I.

Applicants: The Declaration Trust, Trust I, John Hancock Advisers, Inc. (''Hancock Advisers''), and John Hancock Life Insurance Company (''John Hancock'').

Filing Date: The application (''Application'') was filed on October 10, 2001 and amended and restated on November 15, 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 Secretary of the Commission and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 6, 2001, and should be accompanied by proof of service on Applicants, 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 my writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, The Declaration Trust and Hancock Advisers, 101 Huntington Avenue, Boston, MA 02198; Trust I and John Hancock, 197 Charendon Street, Boston, MA 02117.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Counsel, or Keith Carpenter, Branch Chief, Division of Investment Management, Office of Insurance Products, 202–942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549Θ–0102.

Applicants' Representations

1. The Declaration Trust and Trust I are both Massachusetts business trusts and each is registered as an open-end management investment company. The Declaration Trust is comprised of 15 series (or ''Funds''), and Trust I is comprised of 33 such Funds.

2. Hancock Advisers is the investment manager of the Declaration Fund and John Hancock is the investment manager of the Trust I Funds.

3. Two of the Declaration Trust's Funds are party to one of the transactions for which the application seeks exemptive relief: the V.A. International Fund and the V.A. Mid Cap growth Fund (''Declaration Funds'').

4. Ten of Trust I's Funds are party to a transaction for which the application seeks exemptive relief: the International Equity Fund, the Fundamental Growth Fund, the Large Cap Value CORE II Fund, the Large Cap Value CORE Fund, the Active Bond II Fund, the Active Bond Fund, the Aggressive Balance Fund, the Managed Fund, the Mid Cap Blend Fund, and the Growth & Income Fund (collectively, the ''Trust I Funds'').

5. The application requests exemptive relief with respect to mergers of certain of the Funds listed in 3 and 4 above (''Acquired Funds'') into the remaining Funds listed there (''Acquiring Funds'') with each Fund listed as an Acquired Fund below to be merged into the corresponding Fund listed as an Acquiring Fund, as follows:

Acquired fund	Corresponding acquiring fund
V.A. International	International Equity.
V.A. Mid Cap Growth	Fundamental Growth.
Large Cap Value CORE II.	Large Cap Value CORE.
Active Bond II	Active Bond.
Aggressive Balanced	Managed.
Mid Cap Blend	Growth & Income.

6. The shares of the Funds are currently sold exclusively to John Hancock and certain insurance companies affiliated with John Hancock (collectively, the ''Insurance Companies'') for allocation to separate accounts (''Separate Accounts'') established to fund benefits under variable annuity contracts and variable life insurance policies (collectively, the ''Contracts'') issued by these companies. The Separate Accounts are registered as investment companies of the unit investment trust type under the Act. The Insurance Companies no longer are making available any of the Acquired Funds as investment options under new Contracts. Sharesheld by an investment manager exceed five percent of the outstanding shares of one of the Funds in each of the mergers described above.

7. Contract owners may choose to allocate their contract premiums and account values among various investment options, including one or more of the Acquired funds and/or the Acquiring Funds. As a result, owners may participate, indirectly, in the performance of those Funds.

8. With one exception, the investment objective of each Acquired Fund is identical to that of its corresponding Acquiring Fund.

9. The exception involves the proposed merger of the Mid Cap Blend Fund, whose investment objective is ''long-term capital appreciation,'' into the Growth & Income Fund, whose objective is ''income and long-term capitalization.'' Income, however, does not always form a major portion of the Growth & Income Fund's total investment return. The Growth & Income Fund's income was approximately 1% of its average net assets for its two most recent fiscal years.

10. The investment objective of each Fund is non-fundamental.

11. In the case of two of the mergers (''Clone Mergers''), the Acquiring Fund

and the corresponding Acquired Fund follow an identical investment program and share the same investment manager, sub-adviser and portfolio manager: Large Cap Value CORE II Fund into Large Cap Value CORE Fund and Active Bond II Fund into Active Bond Fund.

12. In the case of each of the other four proposed mergers, the investment programs of the Acquired Fund and the corresponding Acquiring Fund are similar but not identical. In one case (V.A. International Fund into International Equity Fund), the Acquiring Fund may be more conservatively managed. Applicants indicate that no definitive generalization can be made about the relative conservatism or aggressiveness of the constituent Funds in any of the three remaining mergers.

13. Except for the Managed and Growth and Income Funds, each of the Funds is ''diversified'' within the meaning of section 5(b)(1) of the Act. John Hancock and Trust I assert, however, that neither the Managed Fund nor the Growth and Income Fund exercises its latitude to concentrate in particular issuers in a way that has practical significance for investors, in terms of distinguishing it from its corresponding Acquired Fund (*i.e.*, The Aggressive Balance Fund and the Mid Cap Blend Fund, respectively).

14. Except for the V.A. Mid Cap Growth Fund, each Fund has at least one sub-investment adviser, who is responsible for making and implementing day-to-day investment decisions. The Acquired and Acquiring Funds in each of the Clone Mergers have the same sub-adviser. Two of the Acquiring Funds (the Managed Fund and the Growth & Income Fund) have co-sub-advisers. In each case, one of these co-sub-advisers (Independence Investment LLC) also is the sole sub-adviser to the corresponding Acquired Fund.

15. The approximate net assets of each Acquired Fund and its corresponding Acquiring Fund as of June 30, 2001 were as follows:

Acquired fund	Corresponding acquiring fund
V.A. International—$5 million.	International Equity—$21 million.
V.A. Mid Cap Growth—$6 million.	Fundamental Growth—$40 million.
Large Cap Value CORE II—$7 million.	Large Cap Value CORE—$44 million.
Active Bond II—$7 million.	Active Bond—$816 million.
Aggressive Balance—$20 million.	Managed—$2,730 million.
Mid Cap Blend—$23 million.	Growth & Income—$2,800 million.

16. The Funds' annualized total returns for the indicated periods ended June 30, 2001 were as follows:

Fund	Twelve months (In percent)	Since fund's inception date
V.A. International	−31.56	.83% (8/29/96)
International Equity	−25.00	−6.23% (8/31/99)
V.A. Mid Cap Growth	−36.99	4.50% (1/7/98)
Fundamental Growth	−35.19	9.51% (8/31/99)
Large Cap Value CORESM II	7.66	7.66% (6/30/01)
Large Cap Value CORESM	8.97	4.36% (8/31/99)
Active Bond II	10.46	10.46% (6/30/00)
Active Bond	10.73	8.02% (3/29/86)
Aggressive Balanced	−6.00	.74% (8/31/99)
Managed	−2.89	11.02% (3/29/86)
Mid Cap Blend	4.35	16.15% (8/31/99)
Growth & Income	−20.09	13.13% (3/29/86)

17. Although the above table shows that the V.A. International Fund has outperformed the International Equity Fund for the life of both Funds, most of the V.A. International Fund's performance was achieved under a different sub-adviser. For the six-months ended June 30, 2001, when both the current sub-advisers were serving the total return of the V.A. International fund was—19.26% and that of the International Equity Fund was—14.56%.

18. Both Acquired Funds in the Clone Mergers (*i.e.*, the Large Cap Value CORE II fund and the Active Bond II Fund) had other sub-advisers and followed somewhat different investment programs prior to January 1, 2001. This may reduce the value of performance comparisons for the period prior to that date.

19. As a contractual commitment in the investment advisory agreements for each of the Trust I Funds, John Hancock reimburses each such Fund for most of its operating expenses (other than advisory fees) that exceed .10% per annum of the Fund's average daily net asset value.

20. Hancock Advisers, through at least the first four months of 2002 has agreed to reimburse each of the V.A. International Fund and the V.A. Mid Cap Growth Fund for most of its operating expenses (other than advisory fees) that exceed .25% per annum of the Fund's average daily net assets.

21. The terms and conditions of each of the six proposed mergers will be as set forth in an Agreement and Plan of Reorganization (''Plan''). Each merger will occur on a ''Closing Date,'' which is expected to be December 7, 2001 for one of the mergers, December 19, 2001 for another, and December 14, 2001 for the remainder.

22. Under the Plans, each Acquiring Fund will acquire substantially all of the assets, subject to the liabilities, of the corresponding Acquired Fund in consideration of the issuance by the Acquiring Fund of shares having an aggregate net asset value (''NAV'') equal to the aggregate NAV of the Acquired Fund's shares, determined as of 4 p.m. Eastern Time (''Effective Time'') on the Closing Date. The NAV of each Fund's shares for these purposes will be computed in the same manner as that Fund normally uses in pricing its shares for purchase and redemption. The aforementioned Acquiring Fund Shares will be delivered pro-rata to the Acquired Fund's shareholders of record as of the close of business on the Closing Date.

23. The Plans are subject to a number of conditions precedent, including that the mergers will have been approved by the vote of shareholders of their respective Acquired Funds. In connection with that vote, the Insurance Companies are soliciting instructions from contract owners as to how to vote each Acquired Fund's outstanding shares. The Insurance Companies will vote their shares of an Acquired Fund

held in a Separate Account based on instructions received from contract owners who are participating in that Fund. Shares of an Acquired Fund for which no instructions are received in time to be voted will be represented by the Insurance Companies at the meeting and voted in the same proportion as shares of that Fund that are being held in the same Separate Account and for which instructions have been received in time to be voted.

24. The Plans may be terminated at any time by mutual agreement between the parties. Applicants have agreed to the relief they are requesting being conditioned on their obtaining period approval from the SEC of any material change in the applicable Plan.

25. Each merger has been structured so as to be a tax-free reorganization.

26. Because of the similarity of each Acquired Fund's investment program to that of its corresponding Acquiring Fund, applicants do not expect it will be necessary to acquire or dispose of portfolio securities outside the normal course in connection with any of the proposed mergers.

27. Whether or not the mergers are consummated, each Fund will incur certain other expenses attributable to the Fund's discharging its role in connection with the mergers. This includes each Fund's attributable portion of such items as (a) the costs of preparing filing, printing and mailing of proxy solicitation materials, (b) the cost of conducting a Fund shareholders meeting, and (c) the costs of obtaining any appropriate legal opinions and regulatory approvals.

28. The proposed mergers will have no effect on the economic or other rights and interests of contract owners. The rates of fees and charges under the contracts will be unaffected by the mergers.

29. The six tables below show, for each of the mergers as to which applicants request relief, the constituent Funds' fees and expenses for the twelve months ended June 30, 2001, as well as on a ''pro-forma'' basis as if those Funds had merged at the beginning of that twelve month period. The fees and expenses are expressed as an annual percentage of the Funds' average daily net assets.

Type of fee or expense	V.A. International fund (acquired fund)	International equity fund (acquiring fund)	Pro-forma of combined acquired fund and acquiring fund
Investment Management Fees	0.90%	1.20%	1.20%
Other Expenses (Before Reimbursement)	2.70%	0.80%	0.80%
Total Annual Fund Operating Expenses (Before Reimbursement)	3.60%	2.00%	2.00%
Reimbursement From Investment Manager	2.45%	.70%	.70%
Total Annual Fund Operating Expenses (After Reimbursement)	1.15%	1.30%	1.30%

Type of fee or expense	V.A. Mid cap growth fund (acquired fund)	Fundamental growth fund (acquiring fund)	Pro-forma of combined acquired fund and acquiring fund
Investment Management Fees	0.75%	0.90%	0.90%
Other Expenses (Before Reimbursement)	0.35%	0.24%	0.23%
Total Annual Fund Operating Expenses (Before Reimbursement)	1.10%	1.14%	1.13%
Reimbursement From Investment Manager	.10%	.14%	.13%
Total Annual Fund Operating Expenses (After Reimbursement)	1.00%	1.00%	1.00%

Type of fee or expense	Large cap value CORE SM II fund (acquired fund) (percent)	Large cap value CORE SM fund (acquiring fund) (percent)	Pro forma of combined acquired fund and acquiring fund (percent)
Investment Management Fees	.75*	.75	.75
Other Expenses (Before Reimbursement)	.66	.20	.31
Total Annual Fund Operating Expenses (Before Reimbursement)	1.41*	.95	1.06
Reimbursement from Investment Manager	.56	.10	.21
Total Annual Fund Operating Expenses (After Reimbursement)	.85*	.85	.85

*Restated to reflect a .05% investment management fee decrease effective as of May 1, 2001.

Type of fee or expense	Active bond II fund (acquired fund) (percent)	Active bond fund (acquiring fund) (percent)	Pro-forma of combined acquired fund and acquiring fund (percent)
Investment Management Fees	.70	.62*	.62
Other Expenses (Before Reimbursement)	.48	.5	.15
Total Annual Fund Operating Expenses (Before Reimbursement)	1.18	.77*	.77
Reimbursement from Investment Manager	.38	.05	.05
Total Annual Fund Operating Expenses (After Reimbursement)	.80	.72*	.72

*Restated to reflect an increase in the investment management fee (which previously had been .25%) effective as of November 1, 2001.

Type of fee or expense	Aggressive balanced fund (acquired fund) (In percent)	Managed (acquiring fund) (In percent)	Pro-forma of combined acquired fund and acquiring fund (In percent)
Investment Management Fees	.67	*.67	67
Other Expenses (Before Reimbursement)	.28	*.11	.11
Total Annual Fund Operating Expenses. (Before Reimbursement)	.95	*.78	.78
Reimbursement from Investment Manager)	18	*.01	.01
Total Annual Fund Operating Expenses. (After Reimbursement)	.77	*.77	.77

*Restated to reflect an investment management fee increase of approximately .35% effective as of November 1, 2000.

Type of fee or expense	Mid cap blend fund (acquired fund) (In percent)	Growth & Income (acquiring fund) (In percent)	Pro-forma of combined acquired fund and acquiring fund (In percent)
Investment Management Fees	.75	*.67	67
Other Expenses (Before Reimbursement)	.23	.12	.12
Total Annual Fund Operating Expenses. (Before Reimbursement)	.98	*.79	.79
Reimbursement from Investment Manager)	13	.02	.02
Total Annual Fund Operating Expenses. (After Reimbursement)	.85	*.77	.77

*Restated to reflect an investment management fee increase effective as of November 1, 2000. Prior to that date, the fee was .25% per annum.

30. None of the Funds impose any front-end or back-end sales charge.

31. The Declaration Trust's Board of Trustees considered the mergers to which the Declaration Funds are party at a meeting on September 11, 2001. Among other things, the Board considered the following matters:

a. The Declaration Funds are no longer being offered to new Contract purchasers, making it increasingly difficult for those Funds to attract additional assets.

b. Shareholders may be better served by larger Funds (such as the corresponding Acquiring Funds), because those Funds may be able to invest in a broader range of securities and increase diversification.

c. The International Equity Fund shares have performed better than the V.A. International Fund over the twelve months ended June 30, 2001; and the Fundamental Growth Fund has outperformed the V.A. Mid Cap Growth Fund over the life of both Funds. The Trustees believed that each of these Acquiring Funds is better positioned than the corresponding Declaration Fund to generate strong future returns, because of its greater flexibility to choose from among a broader range of investments.

d. The proposed mergers may lead to economics of scale that can lead to better control over expenses than is possible for the Declaration Funds alone.

e. The proposed mergers may also benefit John Hancock and John Hancock Advisers by reducing the amount of resources the John Hancock organization currently expends in the management and administration of these Funds. The Board concluded, however, that any such savings would not be significant.

f. The historical expense ratio of each Declaration Fund and its corresponding Acquiring Fund, as well as the pro-forma expense ratio assuming a combination of the two Funds.

g. Given the Acquiring Funds' current size and historical growth rate, the Trustees did not believe that, under all the circumstances, either Declaration Fund would grow to an asset size that would allow it to realize economics of scale or to significantly broaden diversification of its investment portfolio.

32. Based on such considerations, and all the other information available to them, the Declaration Trust's Board, including all of its trustees who are not ''interested persons'' of the Declaration Trust or of any of its ''affiliated persons'' as those terms are defined in section 2(a) of the Act (''Independent Trustees''), unanimously approved both of the mergers to which a Declaration Fund is party. In addition, the Board, including all of the Independent Trustees, in the exercise of their reasonable business judgment, unanimously determined that each such merger would be in the best interest of the affected Declaration Fund and its shareholders, and that the interests of such shareholders would not be diluted as a result of the merger.

33. Trust I's Board of Trustees considered each merger at a meeting on September 12, 2001.

34. As to each Acquiring Fund, the Trust I Board considered, among other things, the following matters:

a. The mergers would add substantial assets to each Acquiring Fund, which may help the Acquiring Funds to be managed more efficiently and effectively over time.

b. The acquisition of these assets would involve little effort or expense on behalf of the Acquiring Funds.

c. The fact that the mergers will not in any way disadvantage these Funds.

35. As to the Acquired Funds, the Board considered, among other things, the following matters:

a. The fact that the investment programs of the constituent Funds in each proposed merger are similar (or identical), except for the relative size of each Fund.

b. The fact that, due to their relatively small size, the Acquired Funds are not economic to operate, and there is no reasonable prospect for any of these Funds, by itself, to remedy this.

c. The fact that a merger of each of these Funds with its corresponding Acquiring Fund would address this problem in a way that permits the shareholder of the Acquired Fund to continue to have the same or similar

investment program, as well as the expected benefits of lower expenses over time and more effective management.

d. The relative performance records of the Large Cap Value CORE and Active Bond Funds, since their respective commencements of operations. The performance records of the Acquired Funds corresponding to these two Acquiring Funds were less relevant to the Board, for two reasons. First, in each case, part of the acquired Fund's historical performance was achieved by a sub-adviser that has since been terminated and that follow a somewhat different investment program. Second, because the investment program and sub-adviser of each of these two Acquired Funds are now the same as those of its corresponding Acquiring Fund, the future performance of either of these Acquired Funds should not differ from that of its corresponding Acquiring Fund, except to the extent that the Acquired Fund cannot be managed as efficiently and effectively due to its smaller size.

e. The investment performance records of the Managed Fund and the Growth & Income Funds over the relatively long period of their existence. The investment performance record of the corresponding Acquired Funds was less relevant to the Board, because each of those Funds commenced operations only on August 31, 1999.

f. The fact that the merger will afford Aggressive Balanced and Mid Cap Blend Fund shareholders an opportunity to benefit from the investment expertise of a second sub-adviser, in addition to that of their current sub-adviser.

g. The fact that the proposed transactions will not in any way disadvantage any of the Trust I constituent Funds.

36. Based on such considerations, and all other information available to them, Trust I's Board, including all of its Independent Trustees, unanimously approved each merger. In addition, the Board, including all of the Independent Trustees, in the exercise of their reasonable business judgment, unanimously determined that each such merger for which this application seeks relief would be in the best interest of each affected Trust I Fund and its shareholders, and that the interests of such shareholders would not be diluted as a result of any of the mergers for which the application seeks relief.

37. Each Fund will be charged with those expenditures incurred in connection with the mergers described above that are properly attributable to it. The expenses for a Fund are expected to range from $12,000 to $22,500. These costs are within the category of reimbursable expenses under the Funds' expense reimbursement arrangements. Applicants assert that, as a practical matter only the Managed, Growth and Income, and Active Bond Funds may bear any merger costs and expenses. Applicants also assert that the amount of expenses that they would bear is insufficient to affect their per share net asset value or their published expense ratios.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person % or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person is an investment company, any investment adviser of that company. Applicants state that each Acquired Fund and its corresponding Acquiring Fund may be deemed affiliated persons and, thus, absent an exemption, the reorganization may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rules are satisfied.

3. Applicants believe that rule 17a–8 may be unavailable in connection with the mergers, because one of the constituent Funds in each merger may be deemed to be affiliated for reasons other than those set forth in the rule. Most particularly, the investment manager of one of the Funds in each of the mergers is an affiliated person of that Fund, because that Fund's shares held by the investment manager and reflecting ''seed money'' that the investment manager has maintained in the Fund constitute more than 5% of the Fund's outstanding shares. These shares will be voted in accordance with Contract owner instructions (*i.e.,* in the same manner as if they were shares attributable to Contracts as to which voting instructions have not been received from the Contract owners).

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit applicants to consummate the mergers. Applicants submit that the mergers satisfy the standards of section 17(b) of the Act.

6. In support of their claim that the mergers satisfy the standards of section 17(b) of the Act, Applicants state that (a) the aggregate value of the interest of a contract owner participating in an Acquired Fund or an Acquiring Fund will not change as a result of the proposed merger; (b) the investment program and fundamental investment policies of each Acquired Fund and the corresponding Fund are substantially similar (or in some cases identical); (c) the Board of Trustees of each Fund, including all Independent Trustees have determined that each merger is in the best interest of that Fund and its shareholders; (d) no sales charges will be imposed in connection with the mergers; (e) the mergers will impose no direct or indirect tax liability upon any Fund or its shareholders or participating contract owners; (f) the requirements of rule 17a–8 relating to the actions of the Boards of Trustees for the Declaration Trust and Trust I will be satisfied (g) the mergers will be submitted to shareholders of the Acquired Funds pursuant to registration statements on Form N–14; (h) the transfer of securities will be made on the basis of relative net asset value; (i) those merger related costs that will be borne by a Fund will not affect the value of its per share net asset value or their published expense ratios; (j) the total annual operating expense ratio of each of the Acquiring Funds, before reimbursement, is lower (or, in the case of Fundamental Growth Fund, no more than a few basis point higher) than the Fund it is acquiring; and (k) the investment manager for each Fund votes all of its shares in the same proportion as the instruction received

from contract owners who are participating in that Fund.

7. Specifically, Applicants believe the fairness, reasonableness and absence of overreaching are evidenced and supported by the Board determinations set out above and the factors that the Boards considered in connection with that determination; by the terms of the mergers, as described above; by the absence of any negative impact on the value of any shareholder's or contract owner's interest; by the expected benefits to all of the Funds from the proposed mergers; and by the fact that, as applicants represent in the application, the mergers will be effected in compliance with all the requirements of Rule 17a–8, except for the existence of an impermissible affiliation through ownership of seed money shares by an investment adviser.

8. In view of the similarity of each Acquired Fund to its corresponding Acquiring Fund, Applicants contend that each merger will be consistent with the constituent Funds' policies as recited in their respective registration statements and reports filed under the Act.

9. Applicants also believe that each merger is consistent with the policies and purposes of the Act, particularly in view of the fact that each merger is subject to approval by the Acquired Fund's sharesholders and that none of the mergers will result in any diminution or dilution of the value of any security holder's interests or any other loss or diminution of his or rights or privileges.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–29164 Filed 11–20–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of November 26, 2001: Closed meetings will be held on Tuesday, November 27, 2001, and Thursday, November 29, 2001, at 10:00 a.m.

Commissioner, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (6), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (6), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matters of the closed meeting scheduled for Tuesday, November 27, 2001 will be: Institution and settlement of injunctive actions; institution and settlement of administrative proceedings of an enforcement nature; and formal orders.

The subject matters of the closed meeting scheduled for Thursday, November 29, 2001, will be: Institution and settlement of injunctive actions; institution and settlement of administrative proceedings of an enforcement nature; and consideration of amicus participation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: November 19, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–29307 Filed 11–19–01; 3:52 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45059; File No. SR–CHX–2001–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Incorporated To Extend Pilot Rules for Decimals

November 15, 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 October 30, 2001, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On November 6, 2001, the Exchange filed an amendment that completely replaces and supersedes the original proposal.[3] The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[4] and rule 19b–4(f)(6)[5] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposed to extend through January 14, 2002, the pilot amendments to certain CHX rules that were impacted by the securities industry transition to a decimal pricing environment. The pilot rules are due to expire on November 5, 2001. The CHX does not propose any substantive or typographical changes to the pilot; the only change is an extension of the pilot's expiration date through January 14, 2002. The text of the proposed rule change is available at the Commission and at the CHX.

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 CHX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 24, 2000, the Commission approved, on a pilot basis through February 28, 2001, changes proposed by the Exchange to amend certain CHX rules that would be impacted by the securities industry transition to a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* October 31, 2001 letter from Kathleen M. Boege, Associate General Counsel, CHX, to Alton S. Harvey, Division of Market Regulation (''Division''), Commission and attachments (''Amendment No. 1''). *See* November 13, 2001 telephone conversation between Kathleen M. Boege, CHX, and Joseph Morra, Special Counsel, Division, Commission.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6). The Commission waived the 5-day pre-filing notice requirement.

decimal pricing environment.[6] The pilot was extended twice.[7] The Exchange now requests an extension of the current pilot through January 14, 2002. Other than extending the date of the pilot through January 14, 2002, the Exchange does not propose to make any substantive or typographical changes to the pilot.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[8] In particular, the CHX believes the proposal is consistent with section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[10] and rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal both effective and operative upon filing with the Commission because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through January 14, 2002, the deadline for which self-regulatory organizations must file proposed rule changes to set the minimum price variation for quoting in a decimals environment. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submission 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 CHX. All submissions should refer to file number SR–CHX–2001–20 and should be submitted by December 12, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–29118 Filed 11–20–01; 8:45 am]

BILLING CODE 8010–01–M

[6] *See* Securities Exchange Act Release No. 43204 (August 24, 2000), 65 FR 53065 (August 31, 2000)(SR–CHX–00–22).

[7] *See* Securities Exchange Act Release Nos. 43974 (February 16, 2001), 66 FR 11621 (February 26, 2001)(SR–CHX–2001–03)(extending pilot through July 9, 2001) and 44488 (June 28, 2001), 66 FR 35684 (July 6, 2001)(SR–CHX–2001–13)(extending pilot through November 5, 2001).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

President's Commission to Strengthen Social Security

AGENCY: Social Security Administration (SSA).

ACTION: Announcement of meeting location.

DATES: November 29, 2001 10:00 a.m.–6:00 p.m.

ADDRESSES: Hampton Ballroom, the Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC 20008, (202) 234–0700.

SUPPLEMENTARY INFORMATION: The **Federal Register** notice announcing the November 29 meeting of the President's Commission to Strengthen Social Security did not include a meeting location. The purpose of this announcement is to provide the meeting location.

The Commission will meet commencing Thursday, November 29, at 10:00 a.m. and ending at 6:00 p.m., with a break for lunch between 1:00 p.m. and 2:00 p.m. The Commission will be deliberating on how to administer personal accounts and how to ensure long-term solvency in the Social Security program.

Dated: November 16, 2001.

Michael A. Anzick,

Designated Federal Officer.

[FR Doc. 01–29284 Filed 11–20–01; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF STATE

[Public Notice No. 3802]

Notice of Declaration of Foreign Countries as Reciprocating Countries for the Enforcement of Family Support (Maintenance) Obligations

AGENCY: Office of the Legal Adviser, U.S. Department of State.

This notice amends and supplements Department of State Public Notice 3315, 65 FR 31953 (May 19, 2000).

Section 459A of the Social Security Act (42 U.S.C. 659A) authorizes the Secretary of State with the concurrence of the Secretary of Health and Human

Services to declare foreign countries or their political subdivisions to be reciprocating countries for the purpose of the enforcement of family support obligations if the country has established or has undertaken to establish procedures for the establishment and enforcement of duties of support for residents of the United States. These procedures must be in substantial conformity with mandatory elements set out in the statute: procedures for the establishment of paternity and support orders for children and custodial parents; a system for the enforcement of orders, including procedures for the collection and distribution of payments under such orders; providing administrative and legal services without cost to the U.S. applicant; and the designation of an agency to serve as a Central Authority.

Once such a declaration is made, support agencies in jurisdictions of the United States participating in the program established by Title IV–D of the Social Security Act (the IV–D program) must provide enforcement services under that program to such reciprocating countries as if the request for service came from a U.S. state.

The declaration authorized by the statute may be made ''in the form of an international agreement, in connection with an international agreement or corresponding foreign declaration, or on a unilateral basis.'' The Secretary of State has authorized either the Legal Adviser or the Assistant Secretary for Consular Affairs to make such a declaration after consultation with the other.

As of this date, the following countries (or Canadian provinces) have been designated foreign reciprocating countries:

Country	Effective date
Australia	May 21, 2001.
Canadian Provinces:	
British Columbia	Dec. 15,1999.
Manitoba	July 11, 2000.
Nova Scotia	Dec. 18, 1998.
Czech Republic	May 3, 2000.
Ireland	Sept. 10, 1997.
Poland	June 14, 1999.
Portugal	Mar. 17, 2001.
Slovak Republic	Feb. 1, 1998.

Information

Each of these countries (or Canadian provinces) has designated a Central Authority to facilitate enforcement and ensure compliance with the standards of the statute. Information relating to the designated Central Authorities, and the procedures for processing requests may be obtained by contacting Stephen Grant, Director, Office of the United States Central Authority for International Child Support, Department of Health and Human Services, Office of Child Support Enforcement (OCSE), 370 L'Enfant Promenade SW, 4 Aerospace Building, Washington, DC 20447; phone (202) 260–5943, fax (202) 401–5539, email *sgrant@acf.dhhs.gov*.

Questions regarding this notice, the status of negotiations, declarations and agreements may be obtained by contacting Mary Helen Carlson at the Office of the Assistant Legal Adviser for Private International Law, Suite 203 South Building, 2430 E Street, NW., Washington, DC 20037–2851; phone (202) 776–8420, fax (202) 776–8482, email *carlsonmh@ms.state.gov*.

The law also permits individual states of the United States to establish or continue existing reciprocating arrangements with foreign countries when there has been no federal declaration. Many states have such arrangements with additional countries not yet the subject of a federal declaration. Information as to these arrangements may be obtained from the individual state IV–D Agency.

Jeffrey D. Kovar,

Assistant Legal Adviser for Private International Law, Department of State.

[FR Doc. 01–29153 Filed 11–20–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice No. 3805]

Defense Trade Advisory Group; Notice of Open Meeting

The Defense Trade Advisory Group (DTAG) will meet in open session beginning at 8:30 a.m. on Wednesday, December 12, 2001, in Room F–3420 at the National Foreign Affairs Training Center (NFATC), 4000 Arlington Blvd., Arlington, VA. The membership of this advisory committee consists of private sector defense trade specialists, appointed by the Assistant Secretary of State for Political-Military Affairs, who advise the Department on policies, regulations, and technical issues affecting defense trade.

The purpose of the meeting will be to review progress of the working groups and to discuss current defense trade issues and topics for further study.

Members of the public may attend the open session as seating capacity allows, and will be permitted to participate in the discussion in accordance with the Chairman's instructions. Members of the public may, if they wish, submit a brief statement to the committee in writing.

As access to the Department of State facilities is controlled, persons wishing to attend the meeting must notify the DTAG Executive Secretariat by COB Thursday, December 6, 2001. If notified after this date, the DTAG Secretariat cannot guarantee that State's Bureau of Diplomatic Security can complete the necessary processing required to attend the December 12 plenary.

Each non-member observer wishing to attend should provide his/her name, company or organizational affiliation, date of birth, and social security number to the DTAG Secretariat by fax to (202) 647–9779 (Attention: Mike Slack). A list will be made up for Diplomatic Security and that Reception Desk at the NFATC Visitor Center. Attendees must present a driver's license with photo, a passport, a U.S. Government ID, or other valid photo ID for entry.

FOR FURTHER INFORMATION CONTACT: Mike Slack, DTAG Secretariat, U.S. Department of State, Office of Regional Security and Arms Transfers (PM/RSAT), Room 7424 Main State, Washington, DC 20520–2422. Phone (202) 647–2882. Fax: (202) 647–9779.

Dated: November 14, 2001.

Robert W. Maggi,

Acting Deputy Assistant Secretary, Bureau of Political-Military Affairs, Deparment of State.

[FR Doc. 01–29154 Filed 11–20–01; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice No. 3827]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 ''C'' Street NW., Washington, DC, December 17–18, 2001 in Conference Room 1105. Prior notification and a valid photo are mandatory for entrance into the building. One week before the meeting, members of the public planning to attend must notify Gloria Walker, Office of Historian (202–663–1124) to provide relevant dates of birth, Social Security numbers, and telephone numbers.

The Committee will meet in open session from 1:30 p.m. through 3 p.m. on Monday, December 17, 2001, to discuss declassification and transfer of Department of State electronic records to the National Archives and Records Administration and the modernization

of the Foreign Relations series. The remainder of the Committee's sessions from 3:15 p.m. until 4:30 p.m. on Monday, December 17, 2001, and 9 a.m. until 1 p.m. on Tuesday, December 18, 2001, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (P.L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the Foreign Relations series.

These are matters not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to Marc J. Susser, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail *history@state.gov*).

Dated: November 8, 2001.

Marc J. Susser,

Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State.

[FR Doc. 01–29155 Filed 11–20–01; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Notice Number 3845]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Tuesday, December 11, 2001, in room 1303 at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC, 20593–0001.

The purpose of the meeting is to review the agenda items to be considered at the twenty-ninth session of the Facilitation Committee (FAL 29) of the International Maritime Organization (IMO), which is scheduled for January 7 to 11, 2002, at the IMO headquarters in London. Proposed U.S. positions on the agenda items for FAL 29 will be discussed.

The major items for discussion for FAL 29 will include the following:

—Convention on Facilitation of International Maritime Traffic
—Consideration and adoption of proposed amendments to the Annex to the Convention
—EDI messages for the clearance of ships
—Application of the Committee's Guidelines
—General review of the Convention including harmonization with other international instruments
—Formalities connected with the arrival, stay and departure of ships
—Formalities connected with the arrival, stay and departure of persons—Stowaways
—Facilitation aspects of other IMO forms and certificates
—Technical co-operation sub-programme for facilitation
—Ship-port interface

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Chief, Office of Standards Evaluation and Development, U.S. Coast Guard Headquarters, Commandant (G-MSR), room 1400, 2100 Second Street, SW., Washington, DC, 20593–0001 or by calling Mr. David A. Du Pont at: (202) 267–0971.

Dated: November 9, 2001.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 01–29157 Filed 11–20–01; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 3844]

Extension of the Restriction on the Use of United States Passports for Travel to, in, or Through Libya

On December 11, 1981, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73 (a) (3), all United States passports were declared invalid for travel to, in, or through Libya unless specifically validated for such travel. This restriction has been renewed yearly because of the unsettled relations between the United States and the Government of Libya and the possibility of hostile acts against Americans in Libya. The American Embassy in Tripoli remains closed, thus preventing the United States from providing routine diplomatic protection or consular assistance to Americans who may travel to Libya.

In light of these events and circumstances, I have determined that Libya continues to be an area ''* * * where there is imminent danger to the public health or physical safety of United States travelers'' within the meaning of 22 U.S.C. 211a and 22 CFR 51.73 (a) (3).

Accordingly, all United States passports shall remain invalid for travel to, in, or through Libya unless specifically validated for such travel under the authority of the Secretary of State.

The Public Notice shall be effective upon publication in the **Federal Register** and shall expire at midnight November 24, 2002, unless extended or sooner revoked by Public Notice.

Dated: December 13, 2001.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 01–29156 Filed 11–20–01; 8:45 am]

BILLING CODE 4710–10–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–239]

WTO Dispute Settlement Proceeding Brought by Brazil Regarding Antidumping Duties Imposed by the United States on Silicon Metal From Brazil

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on November 1, 2001, the United States received from Brazil a revised request for consultations under the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement) pertaining to certain measures regarding antidumping methodology as applied by the U.S. Department of Commerce (DOC) in its administrative review of an antidumping duty order on silicon metal from Brazil. This revised request replaces a request received from Brazil on September 21, 2001 (see notice published in the **Federal Register** on October 9, 2001, titled ''WTO Dispute Settlement Proceeding Brought by Brazil Pertaining to Certain Measures Regarding Antidumping Methodology''). Brazil alleges that:

• The DOC's administrative review is inconsistent with Articles 5, 9, and 11 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Agreement, or ADA). According to Brazil, current U.S. methodology pursuant to which the DOC applies a *de minimis* standard of 0.5 percent in reviews is inconsistent insofar as these provisions allegedly require a 2 percent *de minimis* standard to be applied to both investigations and reviews; and

• The DOC's administrative review is also inconsistent with Article 2 of the ADA. Brazil alleges that the DOC's practice of ''zeroing'', when calculating the dumping margin, is disallowed in reviews as well as in investigations.

USTR invites written comments from the public concerning the issues raised in this dispute. Persons who submitted comments in response to the earlier notice in the **Federal Register** published on October 9, 2001, regarding this dispute are requested to resubmit their comments in accordance with the instructions given below.

DATES: Although USTR will accept any comments received during the course of the dispute settlement process, comments should be submitted on or before December 6, 2001, to be assured of timely consideration by USTR.

ADDRESSES: We strongly encourage the public to submit comments by email to *brazilsimetal@ustr.gov,* or by fax to (202) 395–3640. Alternatively, comments may be submitted by U.S. mail, first class, postage prepaid, to Sandy McKinzy, Attn: Brazil Silicon Metal Dispute, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. Comments delivered by messenger or commercial overnight delivery service will not be accepted.

FOR FURTHER INFORMATION CONTACT: Katharine J. Mueller, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–0317.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding (DSU). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by Brazil

Section 213 of the URAA (amending Section 733(b)(3) of the Tariff Act of 1930) provides, in accordance with Article 5.8 of the ADA, that, for purposes of antidumping investigations, a dumping margin less than or equal to 2 percent is *de minimis.* However, section 351.106(c) of the DOC's regulation, 19 CFR 351.106(c), applies a 0.5 percent *de minimis* standard in the case of ''sunset'' reviews, which are conducted for purposes of determining whether an antidumping duty order should be revoked. In the eighth administrative review of a 1991 antidumping duty order on silicon metal from Brazil, notice of which was published in the **Federal Register** on February 23, 2001, the DOC calculated a dumping margin of 0.63 percent for one of the Brazilian importers. Using the 0.5 percent *de minimis* standard, DOC determined that the requirement for revocation was not met because the dumping margin exceeded the *de minimis* standard. Brazil claims that this determination violates the ADA because, according to Brazil, the ADA requires that the 2 percent standard must be used in both investigations and reviews.

Brazil also argues that the method by which the 0.63 percent dumping margin was calculated is inconsistent with the ADA because it is a result of the DOC's use of ''zeroing''. Chapter 6 of the DOC's Antidumping Manual and Sections 771(35)(A) and (B) of the Tariff Act of 1930 prescribe the use of ''zeroing'', according to which negative dumping margins are counted as ''zero'' in both investigations and reviews. Brazil claims that ''zeroing'' is inconsistent with the principle of fair comparison set out in Article 2 of the ADA. Brazil points out that the panel in *European Communities—Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India,* WT/DS141/R, concluded that ''zeroing'' is inconsistent with the ADA, and that this finding was affirmed by the Appellate Body, Wt/DS141/AB/R.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and, if sent by U.S. mail, provided in fifteen copies. Commenters are requested not to submit any confidential information at this time. All comments submitted will be made available to the public.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–239, Brazil Silicon Metal Dispute) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 01–29140 Filed 11–20–01; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–10998]

National Coast Guard Museum; Environmental Assessment

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability; request for public comments.

SUMMARY: The Coast Guard announces the availability of a draft Environmental Assessment on its proposal to accept a gift of land for purposes of relocating the Coast Guard Museum to a site near the U.S. Coast Guard Academy in New London, Connecticut. We request your comments on this draft assessment.

DATES: Comments and related material must reach the Docket Management Facility on or before January 7, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–2001–10998), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the web site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as the draft Environmental Assessment (EA), will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket, including the draft EA, on the Internet at *http://dms.dot.gov.* (Once you enter the web site, click on ''Search,'' enter the last five digits of the docket number (''10998'') in the search box, and press the Enter key.)

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, the proposed project, or the associated draft EA, call Frank Esposito, Coast Guard Headquarters, at 202–267–0053. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related material on the draft Environmental Assessment (EA). If you do so, please include your name and address, identify the docket number for this notice (USCG–2001–10998) and give the reasons for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under ADDRESSES; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Proposed Action

The Coast Guard seeks to obtain and operate a new national museum to record and display its rich history and artifacts which document the development of America's oldest continuous sea-going service. A feasibility study has been performed. The study found that many large artifacts, such as historic lifesaving watercraft and helicopters, as well as the vast number of artifacts, cannot be displayed at the current site, Waesche Hall on the grounds of the U.S. Coast Guard Academy in New London, Connecticut, because of a lack of space. The new museum, located in proximity to the Academy, would permit the Coast Guard to bring its large collection of artifacts together for exhibition in a single museum that would serve as an institution of enduring value providing professional growth and development for current and future leaders of the Coast Guard.

The existing 5,000-square-foot museum serves some 20,000 visitors annually. The proposed 40,000-square-foot museum would offer a potential tenfold increase in visitation—up to 200,000 visitors per year.

Draft Environmental Assessment

The Environmental Impact Analysis Process (EIAP) is the process federal agencies use to facilitate compliance with relevant environmental requirements relating to their actions. The primary environmental legislation affecting the agency decision-making process is the National Environmental Policy Act (NEPA). This Environmental Assessment (EA) considers the potential environmental impacts of a decision by the Coast Guard, subject to site requirement criteria, whether or not to accept land on which to construct a new National Coast Guard Museum to replace its existing museum.

We are requesting your comments on environmental concerns you may have related to the draft EA. This includes suggesting analyses and methodologies for use in the EA or possible sources of data or information not included in the draft EA. Your comments will be considered in preparing the final EA.

Dated: November 15, 2001.

G.P. Fleming,

Acting Assistant Commandant for Governmental and Public Affairs.

[FR Doc. 01–29081 Filed 11–20–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Agency Information Collection Activities: Submission for OMB Review

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for review and approval. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on August 23, 2001 (66 FR 44432). We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by December 21, 2001.

ADDRESSES: You may send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information.

SUPPLEMENTARY INFORMATION:

Title: FHWA Highway Design Handbook For Older Drivers and Pedestrians Workshop Participants' Feedback Survey.

Abstract: The FHWA published a revised handbook, ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' in 2001 that documents new research findings and technical developments that occurred since the 1998 publication of the ''Older Driver Highway Design Handbook, Recommendation and Guidelines.'' The revised Handbook provides practitioners with a practical information source that links older driver road user characteristics to highway design, operational, and traffic engineering recommendations by addressing specific roadway features. A series of workshops began in 1998 and are continuing. The workshops are designed for highway designers, traffic engineers and highway safety specialists involved in the design and operation of highway facilities and are presented in order to familiarize practitioners with the recommendations and guidelines.

The FHWA will conduct a survey of past and continuing workshop participants. This survey is needed to determine if recommendations and guidelines presented to practitioners in workshops are being utilized in new and redesigned highway facilities to accommodate the needs and functional limitations of an aging population of road users. The survey is also needed to gauge the success of the workshop presentations in imparting information

and determine if adjustments should be considered for future workshops.

Respondents: Participants in past workshops, including highway designers, highway engineers and highway safety specialists; and future workshop participants.

Frequency: This one-time survey will be conducted initially with a selection of past participants (approximately 500). Thereafter, a survey of participants will be conducted annually, consisting of approximately 50 percent of the participants who attended workshops during that year (approximately 125). The survey will be mailed, and for those participants with known e-mail addresses, the survey will be administered electronically to reduce completion time.

Estimated Total Annual Burden Hours: The FHWA estimates that each respondent will be able to complete the survey in approximately 10 minutes. For the initial survey to approximately 500 respondents, total burden hours would be 84 hours. Future annual surveys to approximately 125 respondents are estimated at 21 burden hours.

For Further Information Contact: David Smith, 202–366–6614, Department of Transportation, Federal Highway Administration, Safety Core Business Unit, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Electronic Access: Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at telephone number 202–512–1661. Internet users may reach the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: November 15, 2001.

James R. Kabel,

Chief, Management Programs and, Analysis Division.

[FR Doc. 01–29062 Filed 11–20–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Applications for TIFIA Credit Assistance

AGENCY: Federal Highway Administration (FHWA), U.S. DOT.

ACTION: Notice of availability of funds (NOFA) inviting applications for credit assistance for major surface transportation projects.

SUMMARY: The U.S. DOT's Transportation Infrastructure Finance and Innovation Act (TIFIA) Joint Program Office (JPO) announces the availability of funds to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. Funding for this program is limited, and the TIFIA Joint Program Office will lead U.S. DOT multi-modal teams in evaluating applications for TIFIA credit assistance based on project merits and satisfaction of the TIFIA statutory criteria. This notice announces the availability of funds and outlines the process that applicants must follow when applying for TIFIA credit assistance.

DATES: This notice continues the ''rolling'' application process instituted in May 2001. See a further discussion under the caption ''Application and Selection Process'' in this notice.

ADDRESSES: Both the letters of interest and completed applications should be submitted to the attention of Ms. Stephanie Kaufman, TIFIA Joint Program Office, U.S. Department of Transportation, Room 4301, HABF–50, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: TIFIA Joint Program Office staff: Mr. Duane Callender, (202) 366–9644; Ms. Stephanie Kaufman, (202) 366–9649; and Mr. Mark Sullivan, (202) 366–5785. TIFIA Joint Program Office Staff can be contacted at the above address. Hearing- and speech-impaired persons may use TTY by calling the Federal Information Relay Service at 1–800–877–8339. Additional information, including the current edition of the TIFIA Program Guide and application materials, can be obtained from the TIFIA web site at *http://tifia.fhwa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Transportation Equity Act for the 21st Century TEA–21), Public Law 105–178, 112 stat.107, 241, created the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA), authorizing the U.S. Department of Transportation (DOT) to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. TIFIA regulations (49 CFR part 80) provide specific guidance on the program requirements.

On January 5, 2001, at 65 FR 2827, the Secretary of Transportation (Secretary) delegated to the Federal Highway Administration (FHWA) the authority to act as the Executive Agent for the TIFIA program (49 CFR 1.48(nn)). The TIFIA Joint Program Office (TIFIA JPO), within the FHWA, has responsibility for coordinating program implementation.

Since funding for this program is limited, the U.S. DOT will evaluate and select projects based on their merits and satisfaction of the TIFIA statutory criteria. For each selected project the U.S. DOT will issue a term sheet outlining the basic conditions of the credit assistance. Subsequently, U.S. DOT will negotiate a definitive credit agreement with each of those project sponsors.

Types of Credit Assistance Available

The Secretary may provide credit assistance in the form of secured (direct) loans, loan guarantees, and lines of credit. These types of credit assistance are defined in 23 U.S.C. 181 and 49 CFR 80.3.

Program Funding and Limitations on Assistance

TIFIA establishes annual funding ceilings for both total credit assistance (*i.e.,* the total principal amount that may be committed in the form of direct loans, loan guarantees, or lines of credit) and subsidy costs (*i.e.,* the amount of budget authority available to cover the estimated present value of the Government's expected losses associated with the provision of credit instruments, net of any fee income). Funding for the subsidy costs is provided in the form of budget authority from the Highway Trust Fund (other than the Mass Transit Account).

Total Federal credit assistance currently authorized for the TIFIA program is $2.4 billion in FY 2002 and $2.6 billion in FY 2003. Unused credit amounts lapse at the end of the year for which it is authorized. To support this assistance, TIFIA provides budget authority to fund subsidy costs of $120 million in FY 2002 and $130 million in FY 2003. Any budget authority not obligated in the fiscal year for which it is initially authorized remains available

for obligation in subsequent years. As a result, approximately $140 million in budget authority, including carry over funds from prior years, will be available in FY 2002. The precise amount of budget authority available each fiscal year is affected by the annual obligation limitation on FHWA Federal-aid funds. Furthermore, any Continuing Resolutions (temporary appropriations) may affect the amount of budget authority initially available. In addition, the TIFIA JPO may use up to $2 million each fiscal year for expenses, such as the services of external financial and legal advisors, associated with program implementation.

The amount of credit assistance that may be provided to a project under TIFIA is limited to not more than 33 percent of eligible project costs.

Eligible Projects

Highway, passenger rail, transit, and intermodal projects (including intelligent transportation systems) may receive credit assistance under TIFIA. See the definition of ''project'' in 23 U.S.C. 181(9). For a description of eligible projects, see 49 CFR 80.3.

Threshold Criteria

Projects seeking TIFIA credit assistance must meet certain threshold criteria. These eligibility criteria are detailed in 23 U.S.C. 182(a) and 49 CFR 80.13.

Rating Opinions

A project sponsor must submit, with its application, a preliminary rating opinion letter from at least one nationally recognized credit rating agency, as detailed in 23 U.S.C. 182(b)(2)(B) and 49 CFR 80.11. The letter must be current, must address the creditworthiness of both the senior debt obligations funding the project (*i.e.,* those which have a lien senior to that of the TIFIA credit instrument on the pledged security) and the TIFIA credit instrument, and must conclude that there is a reasonable probability for the senior debt obligations to receive an investment grade rating. This preliminary rating opinion letter will be based on the financing structure proposed by the project sponsor. A project that does not demonstrate the potential for its senior obligations to receive an investment grade rating will not be considered for TIFIA credit assistance.

The TIFIA JPO will use the preliminary rating opinion letter to assess the default risk on the requested TIFIA instrument. Therefore, the letter should provide a preliminary assessment of the financial strength of either the overall project or the requested TIFIA instrument, whichever assessment best reflects the rating agency's preliminary evaluation of the default risk on the requested TIFIA instrument.

Once selected for TIFIA credit assistance, each project must obtain an investment grade rating on its senior debt obligations (which may be the TIFIA credit facility) and a revised opinion on the default risk of its TIFIA credit instrument before the FHWA will execute a credit agreement and disburse funds. More detailed information about these TIFIA credit opinions and ratings may be found in the TIFIA Program Guide. The most current version of the TIFIA Program Guide and application materials can be obtained from the TIFIA web site under the caption **FOR FURTHER INFORMATION CONTACT.**

Application and Selection Process

The TIFIA JPO will accept, at any time, letters of interest from potential applicants. Subsequently, for projects that meet all threshold criteria, the TIFIA JPO will invite the project sponsor to apply. Under the rolling application process, potential applicants can match their TIFIA submissions with their project development timetable. Potential TIFIA applicants must follow the process outlined below to be considered for credit assistance:

1. *Letter of Interest.* A potential applicant for TIFIA credit assistance must first submit a detailed letter of interest to the TIFIA JPO. This letter should include a brief project description (including the project's purpose, design features, and estimated capital cost), information about the proposed financing for the project (including a preliminary summary of sources and uses of funds and the type and amount of credit assistance requested), a description of the proposed project participants, and an assessment of the benefit the project sponsor seeks to achieve through use of a TIFIA credit instrument. The letter also should summarize the status of the project's environmental review (*i.e.,* whether the project has received a Categorical Exclusion, Finding of No Significant Impact, or Record of Decision, or, at a minimum, whether a draft Environmental Impact Statement has been circulated). The letter of interest should not exceed ten pages. The TIFIA JPO will lead a review of this preliminary submission to ensure that the project meets the basic program requirements. The TIFIA JPO will then designate an evaluation team for the project (drawing from the U.S. DOT's various offices and operating administrations, as necessary). The U.S. DOT evaluation team will contact the project sponsor within approximately two to four weeks to review the readiness of the project.

2. *Application.* The project sponsor may not submit an application until it has received preliminary confirmation of eligibility from the TIFIA JPO. The project sponsor may then submit its formal application including all required materials (generally described in 49 CFR 80.7 and detailed in the TIFIA application form) to the TIFIA JPO. The TIFIA JPO and the U.S. DOT evaluation teams will not review incomplete applications or applications for projects that do not fully satisfy the TIFIA program requirements.

The most current version of the application form can be obtained from the TIFIA web site provided under the caption **FOR FURTHER INFORMATION CONTACT.**

3. *Sponsor Presentation.* Each applicant that passes an initial screening of the submitted application for completeness and compliance with the TIFIA program requirements will be invited to make a project presentation to the TIFIA JPO and the U.S. DOT evaluation team. The TIFIA JPO will discuss the structure and content of the presentation with the applicant at the time of the invitation.

4. *Project Selection.* Based upon the application, the project presentation, and any supplemental submission of information, the TIFIA JPO and the U.S. DOT evaluation teams will score each project according to specific weights assigned to each of the eight statutory selection criteria described in 23 U.S.C. 182(b) and 49 CFR 80.15 as follows: National or regional significance, 20 percent; creditworthiness, 12.5 percent; private participation, 20 percent; project acceleration, 12.5 percent; use of new technologies, 5 percent; consumption of budget authority, 5 percent; environmental benefits, 20 percent; and reduced Federal grant assistance, 5 percent.

The U.S. DOT will not select any project before an environmental Record of Decision (if required, or the equivalent final agency decision) has been issued for that project.

5. *Fees.* Unless otherwise notified in a subsequent NOFA published in the **Federal Register**, the TIFIA JPO will require each applicant to pay a non-refundable application fee of $30,000. This fee is based upon historical costs associated with the U.S. DOT's evaluation of TIFIA applications. Checks should be made payable to the Federal Highway Administration. The project sponsor must submit this

payment with the application. No fee is required for a letter of interest. Applicants may not include application fees or any other expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter) among eligible project costs for the purpose of calculating the maximum 33 percent credit amount.

In addition, consistent with 23 U.S.C. 183(b)(7), 183(e)(2), 184(b)(9) and with 49 CFR 80.17, the TIFIA JPO will charge each borrower a credit processing fee equal to a portion of the costs incurred by the TIFIA JPO in negotiating the credit agreement. Each project term sheet will require the borrower to pay at closing, or, in the event no credit agreement is consummated, upon invoicing by the TIFIA JPO, an amount equal to the actual costs incurred by the TIFIA JPO in procuring the assistance of financial advisors and outside legal counsel through execution of the credit agreement(s) and satisfaction of all funding requirements of those agreements. The TIFIA JPO anticipates this fee will typically amount to $100,000 to $300,000, depending on the complexity of the financial structure and the length of negotiations. The borrower may not include the credit processing fee among eligible project costs for the purpose of calculating the maximum 33 percent.

Finally, the TIFIA JPO will continue to charge borrowers a fee of not less than $10,000 per year, which may be adjusted annually, for loan servicing activities associated with each TIFIA credit instrument. The borrower may not include the loan servicing fee among eligible project costs for the purpose of calculating the maximum 33 percent credit amount.

The FHWA will publish in the **Federal Register**, at least once each fiscal year through FY 2003, a NOFA inviting applications for TIFIA credit assistance for major surface transportation projects through the TIFIA program. Such notices will advise potential applicants of the estimated amount of funding available for TIFIA credit instruments as well as any changes to the application process, including the nature and amount of any required fees.

Authority: 23 U.S.C. 181–189; 49 CFR 1.48(nn).

Issued on: October 30, 2001.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 01–29059 Filed 11–20–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Applications for TIFIA Credit Assistance

AGENCY: Federal Railroad Administration (FRA), Department of Transportation.

ACTION: Notice of availability of funds inviting applications for credit assistance for major surface transportation projects.

SUMMARY: Elsewhere in today's **Federal Register**, the Federal Highway Administration (FHWA) published a notice announcing the availability of Transportation Infrastructure Finance and Innovation Act (TIFIA) assistance and inviting applicants to submit applications for credit assistance for major surface transportation projects. The TIFIA authorizes the Department of Transportation (DOT) to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. Highway, passenger rail, transit, and ''intermodal'' projects (including intelligent transportation systems) may receive credit assistance under the TIFIA. Interested persons should review the FHWA Notice in today's **Federal Register** for further information.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne McGowan, Office of Passenger and Freight Services, Freight Program Division, (202) 493–6390, or Mr. Joseph Pomponio, Office of the Chief Counsel, (202) 493–6051.

(Authority: 23, U.S.C. 181–189; 49 CFR 1.49).

Issued: November 9, 2001.

Allan Rutter,

Administrator.

[FR Doc. 01–29060 Filed 11–20–01; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Applications for TIFIA Credit Assistance

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of availability of funds inviting applications for credit assistance for major surface transportation projects.

SUMMARY: Elsewhere in today's **Federal Register**, the the Federal Highway Administration (FHWA) published a notice announcing the availability of Transportation Infrastructure Finance and Innovation Act (TIFIA) assistance and inviting applicants to submit applications for credit assistance for major surface transportation projects. The TIFIA authorizes the Department of Transportation (DOT) to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. Highway, passenger rail, transit, and ''intermodal'' projects (including intelligence transportation systems) may receive credit assistance under the TIFIA. Interested persons should review the FHWA Notice in today's **Federal Register** for further information.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Marx, Office of Policy Development, (202) 366–1675, or Ms. Paula Schwach, Office of the Chief Counsel, (816) 329–3935.

(Authority: 23 U.S.C. 181–189; 49 CFR 1.51).

Issued on: November 13, 2001.

Jennifer L. Dorn,

Administrator.

[FR Doc. 01–29061 Filed 11–20–01; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34107]

Genesee & Wyoming Inc.—Control Exemption—South Buffalo Railway Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 11323, *et seq.*, the acquisition by Genesee & Wyoming Inc. (GWI) of control of Class III rail carrier South Buffalo Railway Company. GWI is a noncarrier holding company that directly controls Buffalo & Pittsburgh Railroad, Inc., a Class II carrier operating in New York and Pennsylvania. GWI also directly controls 13 Class III rail carriers.[1] GWI indirectly controls three Class III rail

[1] Allegheny & Eastern Railroad, Inc., Bradford Industrial Rail, Inc., Corpus Christi Terminal Railroad, Inc., Dansville and Mount Morris Railroad Company, Genesee & Wyoming Railroad Company, Inc., Golden Isles Terminal Railroad, Inc., Savannah Port Terminal Railroad, Inc., Illinois & Midland Railroad, Inc., Louisiana & Delta Railroad, Inc., Pittsburgh & Shawmut Railroad, Inc., Portland & Western Railroad, Inc., Rochester and Southern Railroad, Inc., and Willamette & Pacific Railroad, Inc.

carriers through its ownership of noncarrier Rail Link, Inc.[2] In order to avoid an unlawful control violation, GWI has submitted, under 49 CFR 1013, a proposed voting trust agreement. GWI requests expedited action on the exemption petition, which the Board is granting by making the exemption effective 15 days from the date of service rather than the normal 30 days. This request is addressed in the Board's decision.

DATES: The exemption will be effective December 6, 2001. Petitions for stay must be filed by November 26, 2001. Petitions for reconsideration must be filed by December 11, 2001.

ADDRESSES: Send an original and 10 copies of any pleadings referring to STB Finance Docket No. 34107 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of any pleadings to petitioner's representatives: Jo A. DeRoche and Troy W. Garris, 1300 19th Street, NW., Washington, DC 20036–1609.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600 [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da 2 Da Legal, 1925 K Street NW., Suite 405, Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through TDD services 1–800–877–8339].

Board decisions and notices are available on our web site at ''*WWW.STB.DOT.GOV.*''

Decided: November 14, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–28994 Filed 11–20–01; 8:45 am]

BILLING CODE 4915–00–P

[2] Carolina Coastal Railway, Inc., Commonwealth Railway, Inc., and Talleyrand Terminal Railroad, Inc.

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Grant Program for Research and Development in the Field of Transportation Statistics

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Announcement of grant program.

SUMMARY: The Bureau of Transportation Statistics supports its goal of advancing the field of transportation statistics through the Transportation Statistics Research Grants program. This notice solicits applications for projects that (1) support the development of the field of transportation statistics; and/or (2) involve research or development in transportation statistics. It outlines the purpose, goals, and general procedures for application and award. For this cycle, BTS will make available up to approximately $500,000 in grant funds to eligible organizations.

DATES: For BTS to consider your application, we must receive it by January 25, 2002, at 5 P.M. Eastern Standard Time. Applications received after January 25, 2002, will be held for the next cycle, which is anticipated to be every six to twelve months, unless you request in writing that your application be returned.

ADDRESSES: You must send six copies of the application package to the BTS Grants Program, Room 3430, Bureau of Transportation Statistics, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Promod Chandhok, Office of Statistical Programs and Services, Bureau of Transportation Statistics, Room 3430, 400 Seventh Street, SW., Washington, DC 20590; phone (202) 366–2158; fax: (202) 366–3640; e-mail: promod.chandhok@bts.gov. 1

SUPPLEMENTARY INFORMATION:

I. Background—Advancing the Discipline of Transportation Statistics

The purpose of this grant program is to provide financial assistance to eligible organizations to help advance the discipline of transportation statistics. These grants are authorized by section 5109 of the Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178 (1998), codified at 49 U.S.C. 111(g)). BTS anticipates awarding up to $500,000 per year in grants for projects that (1) support development of the field of transportation statistics; and/or (2) advance research or development in transportation statistics.

BTS is a separate operating administration within the U.S. Department of Transportation (DOT). Its mission is to lead in developing transportation data and information of high quality, and to advance their effective use in public and private transportation decision-making. In accomplishing this mission, BTS works to improve six key attributes of transportation data and analysis—quality, comparability, completeness, timeliness, relevance, and utility.

Our ultimate goal is to make transportation better—to enhance safety, mobility, economic growth, the human and natural environment, and national security (the five strategic goals of the Department of Transportation). BTS's role in this goal is to put together data and information that others need to make decisions concerning transportation. We collect data and compile, analyze, and publish statistics. Many others, both within and outside DOT, are involved in building this knowledge base and BTS could not do it alone.

While there are many excellent transportation data programs and many excellent statistics programs, few are devoted to the intersection of these two disciplines. Bringing a better understanding of statistics to transportation data will improve data quality, increase utility (*e.g.,* by improving measures of travel), and reduce costs (*e.g.,* by using techniques to make data collection, analysis, and dissemination more efficient). BTS wants to foster the transportation statistics discipline and increase its quality and usefulness to the transportation community. This grants program is one way BTS is working toward this goal.

II. Eligibility Requirements

What Organizations May Apply?

BTS invites applications from public and private non-profit institutions of higher education. We strongly encourage Minority Serving Institutions, which have been traditionally under represented in transportation statistics, to submit applications. If organizations partner on a project, the participants should submit a single application. You may submit more than one application as long as the applications are for separate and distinct projects.

What Projects Are Eligible for Funding?

Proposals should serve the broad transportation interests of the country, and we are particularly interested in

high-quality proposals that treat one or more of the following areas:

(1) Visualizing and mining of transportation databases;

(2) Aggregating and analyzing databases maintained by DOT agencies, especially where the research involves multiple modes of transportation;

(3) Improving the quality and usability of federal transportation statistics;

(4) Developing exposure measures (e.g., vehicle miles traveled) for use in risk analyses;

(5) Improving the statistical use of geographic information systems to better understand and quantify travel behavior;

(6) Developing performance measures for the transportation system;

(7) Designing and analyzing transportation surveys;

(8) Improving data quality and data collection;

(9) Enhancing or extending the National Transportation Library to better express or incorporate statistical analyses; and

(10) Applying small area estimation techniques to transportation.

This list is not exhaustive, and we are eager to consider any innovative proposal that supports the development of the field of transportation statistics or involves research and development in transportation statistics.

What Are the Cost Sharing Requirements?

For awards of $100,000 or more, the recipient shall fund at least 50 percent of the project's costs. The nonfederal match must come from sources other than the project sponsor, and must be cash contributions rather than in-kind contributions. In reviewing all applications, even those requesting less than $100,000, the degree of cost-sharing will be considered, with more weight given to cash contributions than in-kind services.

III. Application Contents

For more information about sending your application, please refer to the **ADDRESSES** and **DATES** sections listed above. In order to be considered for funding under this program, your application package must include the following:

(1) A Project Narrative. This must not exceed seven letter-size pages, single-sided and double-spaced. Use at least 12-point type and one inch margins. In general, the information you provide should be in sufficient detail so BTS understands the proposed work and its anticipated benefits. It should also demonstrate that you have the necessary experience and resources to accomplish it. The narrative must identify the organization; how it meets the eligibility criteria; its experience and accomplishments in collecting, analyzing, and/or disseminating transportation data; and the qualifications of the principals proposed to conduct the activities. The narrative must also describe the proposed activity, including how you would accomplish it, a timeline listing major milestones associated with the project, and a list of specific products and/or services with the dates they will be delivered.

(2) An Application for Federal Assistance. Submit OMB SF–424 (Application for Federal Assistance), which is the official form required for all federal grants. It requests basic information about the grantee and the proposed project. Under Part 10 of this form, use 20.920 and Transportation Statistics Research Grants for the Catalog of Federal Domestic Assistance Number and Title. Also submit OMB SF–424A (Budget Information—Nonconstruction Programs). You can download these forms from the OMB Internet site at http://www.whitehouse.gov/omb/grants.

(3) An Evaluation Plan. Include a brief description of how you will evaluate and measure the success of the project, including the anticipated benefits and challenges in completing it. This can be part of the Project Narrative.

(4) Resumes. Include resumes from up to three key personnel who would be significantly involved in the project.

(5) Letters of Commitment. If your proposal includes the significant involvement of other eligible organizations, your application must include letters of commitment from them.

IV. Application Review Process and Selection Criteria

The Transportation Statistics Research Grants program uses a competitive process and applications will be evaluated based on the merit and relevance of the proposed project in relation to the other applications received. BTS anticipates making multiple awards based on this solicitation. While BTS will select the most meritorious proposals, we may choose to not award all available funds.

Upon receiving an application, BTS will conduct an initial review to determine if it meets the eligibility criteria and contains all of the items specified under the Application Contents section of this announcement. A BTS evaluation committee will then review each complete application from an eligible recipient using the evaluation criteria listed below (the order of criteria does not designate priority) and the BTS Director will select the final grants. The evaluation criteria are:

(1) How well does the proposal support BTS's strategic goals of improving the quality, comparability, completeness, timeliness, relevance, and utility of transportation data? How well does the proposal serve the broad transportation interests of the United States?

(2) How innovative is the proposed activity? To what extent is the work being accomplished elsewhere?

(3) How much experience has the applicant demonstrated in one or more of the following areas—collecting, analyzing, storing, or disseminating transportation data, particularly data collected or disseminated by BTS, and working with theoretical statistical issues concerning transportation data?

(4) Does the applicant have the professional qualifications and team members necessary for satisfactory performance of the proposed activity?

(5) How well does the technical approach and proposed costs reflect an understanding of the procedures necessary to complete the required tasks?

(6) To what degree does the proposal include cost-sharing? More weight will be given to proposals with cash contributions than in-kind services. For awards of $100,000 or more, BTS requires cash contributions of 50 percent toward the total project's cost.

V. Amount of Funds Available and Period of Support

We anticipate that approximately $500,000 per year will be designated to support grants over the next five years, subject to the availability of appropriated funds. This estimate does not bind BTS to a specific number of offers or awards, nor to a specific amount of funding support for particular awards or awards in aggregate. It is anticipated that individual award amounts, based upon demonstrated needs, will likely range from $50,000 to $200,000, though BTS has not established minimum or maximum funding levels.

Given the amount of funds available, applicants are strongly encouraged to seek other funding opportunities to supplement the federal funds. Preference will be given to applicants with cost sharing proposals from within or outside their organizations.

The period of time of awards will vary with the complexity of the project and

it is possible that grants will be awarded for periods greater than one year.

VI. BTS Involvement

BTS involvement, if any, will vary by award. If you anticipate BTS involvement, you must note this in your project narrative and any support BTS provides will be specified in the award agreement. BTS will assign a liaison to serve as the primary contact regarding the grant.

VII. Terms and Conditions of Award

(1) Prior to award, each grantee will be required to complete additional government application forms, such as OMB SF–424B (Assurances—Nonconstruction Programs) and with the certification requirements of 49 CFR Part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR Part 29, Department of Transportation Government-Wide Debarment and Suspension (Non-Procurement) and Government-Wide Requirements for Drug Free Workplace (Grants).

(2) Each grantee shall submit a program implementation plan no more than one month after award. The BTS liaison will review and comment, if necessary.

(3) Each grantee shall submit quarterly progress reports, a draft final report, and a final report that reflects the BTS liaison's comments.

Thank you for your interest in our Transportation Statistics Research Grants program.

Ashish Sen,

Director.

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Federal Register

Wednesday,
November 21, 2001

Part II

Environmental Protection Agency

40 CFR Parts 122 and 412
Notice of Data Availability; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 412

[FRL–7104–7]

RIN 2040–AD19

Notice of Data Availability; National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Notice of data availability.

SUMMARY: On January 12, 2001 (66 FR 2959), EPA published a proposal to revise and update two regulations that ensure manure, wastewater, and other process waters generated by concentrated animal feeding operations (CAFOs) do not impair water quality. These two regulations include the National Pollutant Discharge Elimination System (NPDES) provisions that define which operations are CAFOs and establish permit requirements, and the Effluent Limitations Guidelines (ELG), or effluent guidelines, for feedlots (beef, dairy, swine and poultry subcategories), which establish the technology-based effluent discharge standards for CAFOs. EPA proposed revisions to these regulations to address changes that have occurred in the animal industry sectors over the last 25 years, to clarify and improve implementation of CAFO permit requirements, and to improve the environmental protection achieved under these rules.

In the proposal, EPA specifically solicited comment on 28 issues (66 FR 3133), in addition to a general comment solicitation on all aspects of the proposed regulations. EPA received comments from various stakeholders, including State, Tribal and Federal regulatory authorities, environmental groups, industry groups, land grant university researchers, and private citizens. This document presents a summary of certain data received in comments since the proposal and describes how these data may be used by EPA in developing its final CAFO regulations.

Due to the comments and data received, EPA is considering changes to certain aspects of the proposed CAFO rule, including changes to the technology options considered for regulation, as well as changes to the underlying data and methodology that EPA uses to estimate the costs and financial impacts associated with the regulation. Today, EPA is making these data and comments available for public review and comment. EPA solicits public comment on any of the issues or information presented in this notice of data availability and in the administrative record supporting this document.

DATES: You must submit comments by January 15, 2002.

ADDRESSES: Public comments regarding this document should be submitted electronically to CAFOS.comments@epa.gov. Electronic comments must specify docket number W–00–27 and must be submitted as an ASCII, Word, or WordPerfect file avoiding the use of special characters and any form of encryption. Electronic comments on this action may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent via e-mail.

You also may submit comments by mail to: Concentrated Animal Feeding Operation Proposed Rule, Office of Water, Engineering and Analysis Division (4303), USEPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Hand deliveries (including overnight mail) should be submitted to the Concentrated Animal Feeding Operation Proposed Rule, USEPA, Waterside Mall, West Tower, Room 611, 401 M Street, SW., Washington, DC 20460. Please submit an original and three copies of your written comments and enclosures, as well as any references cited in your comments. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

The public record for this action and the proposed rulemaking has been established under docket number W–00–27 and is located in the Water Docket East Tower Basement, Room EB57, 401 M Street SW., Washington, DC 20460. The record is available for inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. For access to the docket materials, call (202) 260–3027 to schedule an appointment. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Renee Selinsky Johnson, Paul Shriner, or Karen Metchis at (202) 564–0766. You may also e-mail the above contacts at johnson.renee@epa.gov, shriner.paul@epa.gov, and metchis.karen@epa.gov.

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I. Purpose of This Document

In today's document, EPA presents a summary of new data and information submitted to EPA during the public comment period on the proposed CAFO regulations, including data received from the U.S. Department of Agriculture (USDA). There are four main components to this notice: (1) Discussion of new data and changes EPA is considering to refine its cost and economics model, (2) discussion of new data and changes EPA is considering to refine its nutrient loading and benefits analysis, (3) new data and changes EPA is considering to the proposed NPDES permit program regulations, and (4) new data and changes EPA is considering to the proposed ELG regulations. This notice addresses these and other issues related to the proposed CAFO regulations. To the extent possible, today's notice describes new analyses that may be performed by EPA and describes revisions that EPA is considering to its financial and engineering models, as well as new data or methodologies that EPA is considering.

This notice also discusses ways that EPA is considering to enhance flexibility for the use of State NPDES and non-NPDES CAFO programs, including options to encourage implementation of environmental management systems (EMS). The notice also describes regulatory thresholds that are being considered for operations that raise ducks and horses, and addresses how cow/calf pairs could be counted. The notice also describes new information received by EPA on the proposed CAFO performance standards.

New data that EPA is considering for use in its cost and economic models include estimates of technology adoption across a range of livestock and poultry operations, financial data specified at the livestock enterprise level only, and new information pertaining to various modeling assumptions used by EPA. Among the specific issues addressed in the discussion of how the Agency is considering to refine its cost and economic models are: expansion of the range of cost estimates per representative farm to account for variability across operations; addition of alternative assessment criteria to measure changes in profitability (post-compliance); new financial data to supplement available data at the farm level with data at the enterprise level; revision of the criteria threshold on a debt-asset test and other considerations of debt feasibility; and consideration of approaches to account for various cost offsets. Specific issues addressed in the discussion of how the Agency is considering to refine its nutrient loading and benefits analysis include: expansion of the number of representative farms to measure changes in nutrient loadings; and the addition of monetized benefit estimates from changes in air emissions. Other new data submitted to EPA include: estimates of the number of animal feeding operations and CAFOs; new information pertaining to the number of CAFOs that are small businesses; estimates of manure nutrient loadings and crop uptake needs; and USDA estimates of the amount of manure addressed by the regulations at different regulatory thresholds.

Through this notice of data availability, EPA is seeking further public comment on any and all aspects of the specific data and issues identified in this notice. However, EPA is seeking public comment *only* on these specific data and issues. Nothing in today's notice is intended to reopen any other issues discussed in the CAFO proposal or to reopen the proposal in general for additional public comments. EPA is continuing to review the comments already submitted on the proposed rule and will address those comments, along with comments submitted on the data and issues identified in today's notice, in the final rulemaking.

II. Public Outreach and Data Gathering

A. Overview of Pre-Proposal Outreach

During the development of the proposed regulations for CAFOs, EPA met with various members of the stakeholder community through meetings, conferences, and site visits. EPA convened a Small Business Advocacy Review Panel to address small entity concerns, provided outreach materials to and met with several national organizations representing State and local governments, and conducted approximately 110 site visits to collect information on waste management practices at livestock and poultry operations. EPA also established a

workgroup that included representatives from USDA, seven states, EPA regions, and EPA headquarters.

More detailed information on EPA's public outreach were published in Section XII of the **Federal Register** notice for the proposed rule (66 FR 3120, January 12, 2001).

B. Post-Proposal Activities

Following proposal of the rule, EPA has encouraged public participation through a series of public meetings, meetings with stakeholders and USDA representatives, and other activities described below.

1. Public Meetings

EPA conducted nine public meetings on the proposed CAFO regulations. Public meetings were held in: Baltimore, Maryland; Ames, Iowa; Riverside, California; Fort Wayne, Indiana; Dallas, Texas; Chattanooga, Tennessee; Denver, Colorado; Boise, Idaho; and Casper, Wyoming. The purpose of the meetings was to enhance public understanding of the proposed regulations for CAFOs and provide an opportunity for EPA to answer questions on the rule directly and to obtain informal feedback on the proposed requirements. The meetings consisted of a brief presentation by EPA officials on the proposed regulation followed by a question and answer session. Additional information on EPA's public meetings is available in the record and also at EPA's website at: http://www.epa.gov/npdes/afo. This website provides summaries of these public meetings and a copy of the presentation materials used at these public meetings, along with additional information on EPA's outreach activities following proposal.

2. Stakeholder Meetings

Since the proposal, EPA has met with representatives of various stakeholder groups, including representatives from various industry trade associations, environmental groups, as well as researchers from select land grant universities and research organizations, including Food and Agricultural Policy Research Institute. Throughout regulatory development, EPA worked with representatives from the national trade groups, including: National Cattlemen's Beef Association; American Veal Association; National Milk Producers Federation; Professional Dairy Heifers Growers Association; Western United Dairymen; National Pork Producers Council; United Egg Producers and United Egg Association; National Turkey Federation; the National Chicken Council; the American Horse Council; and representatives of the duck industry.

EPA has also consulted with State and local governments and also several national associations representing State governments. These include the National Governors' Association, the National League of Cities and the National Association of Conservation Districts and the Association of State and Interstate Water Pollution Control Agencies. Other state level organizations that the Agency has consulted with include the Delaware Nutrient Management Commission, Quad State Poultry Dialogue, National Association of State Departments of Agriculture, and the National Association of State Conservation Agencies. The purpose of these meetings was to provide clarification of the proposed regulations and the analyses supporting the development of these proposed regulations, as well as to discuss new information that stakeholders may have available for further analyses of the costs, impacts, and benefits of the proposed rules. These meetings typically focused on a specific regulatory or technical topic (e.g., permit nutrient plans, EPA's cost analysis supporting the proposal) or a specific animal sector (e.g., dairies). Additional documentation of these stakeholder meetings is available in the rulemaking record.

3. USDA–EPA Workgroup Meetings

In April 2001, USDA initiated a process to review the proposed revisions to EPA's CAFO rule and identify issues and concerns posed by the rule. USDA identified 15 specific areas of concern and a number of overarching issues. As a follow-up to this process, USDA and EPA's Office of Water initiated monthly meetings on issues of significance for agriculture and the environment, specifically water quality. The goal was to improve communication between the two agencies to provide better information to the public and policy makers on areas of mutual concern related to agriculture and water quality, and to facilitate informed decisions on approaches and needs to address the key agriculture and environment issues. In July 2001, EPA and USDA convened a joint workgroup to address the issues identified by the USDA workgroup and begin to develop options for EPA leadership to consider in developing the final rule. The collaboration is intended to strengthen the agricultural systems view in the analysis used to finalize the proposed CAFO rule.

The USDA–EPA workgroup is charged with developing an approach to pursue discussions between the two agencies. The focus of this dialogue is on the issues identified through USDA's review of the proposed revision to the CAFO rule, including identifying additional data or information needs to support analyses and identifying potential options that could be considered by EPA for consideration in its decision-making process. Four major broad topic areas were discussed by the USDA–EPA workgroup, including (1) EPA's proposed scope of the CAFO regulations, (2) EPA's cost and economic analysis supporting the proposed regulations, (3) EPA's proposed technology options, and (4) EPA's proposals for building State program flexibility into the regulations.

USDA's participation in these discussions is to identify issues, suggest strategies or approaches to resolve issues, and provide data and information to support additional analysis. EPA's participation in these discussions is to clarify the intent of sections giving rise to issues, identify additional data or information needed, and thoughtfully assess the information provided by USDA for use in finalizing the CAFO rule. As part of this process, USDA recognizes that the authority to develop the final CAFO regulations rests solely with EPA, as does the final responsibility for the content of the rule.

4. Review of EPA's Economic Analysis by the Food and Agricultural Policy Research Institute (FAPRI)

Researchers at the Food and Agricultural Policy Research Institute (FAPRI) at University of Missouri conducted a review of EPA's economic analysis at the request of the Committee on Agriculture, United States House of Representatives. To respond to this Congressional request, the FAPRI staff worked with other members of its consortium, including researchers at Iowa State University and the Agriculture and Food Policy Center (AFPC) at Texas A&M University.

The stated focus of FAPRI's review is to provide EPA with an alternative methodology for determining the financial impacts of the proposed CAFO regulations on the livestock industry. FAPRI's review did not specifically address technical aspects of the proposed requirements or EPA's data and methodology to estimate compliance costs associated with the management of animal effluents. To that end, FAPRI assembled agricultural and land grant university experts to help conduct an independent economic analysis and construct alternative models of animal feeding operations for use in this analysis. Once alternative

financial information was compiled, FAPRI designed an alternative economic model to first construct a financial baseline for each operation and then analyze the impact of the proposed CAFO regulations. FAPRI's study also predicted the aggregate level impacts in each of the livestock sectors due to implementation of the proposed CAFO regulations. For this study, FAPRI used cost estimates directly computed by EPA, with some exceptions made by FAPRI to improve the accuracy of these cost estimates.

FAPRI's reports on EPA's cost and economic analysis, ''FAPRI's Analysis of the EPA's Proposed CAFO Regulation'' and also ''Financial Impact of Proposed CAFO Regulations on Representative Broiler Farms'' are available in the record and at FAPRI's website at: http://www.fapri.missouri.edu/FAPRI_;Publications.htm. Additional detailed information about FAPRI's baseline model is available at http://www.fapri.missouri.edu.

5. Other Outreach and Data Gathering

EPA initiated several other means of providing outreach to stakeholders. Most notably, EPA manages a number of web sites that post information related to these regulations. Supporting documents for the rule include the Technical Development Document, Economic Analysis, Environmental Assessment, Environmental and Economic Benefit Analysis of the proposed CAFO regulations, and cost methodology reports and guidance related to Permit Nutrient Plans. These are located at http://www.epa.gov/waterscience/cafo/. Other outreach materials are located at http://www.epa.gov/npdes/afo/ and include a copy of the public meeting presentation materials, a fact sheet describing the proposed CAFO regulations, a compendium of AFO-related State program information, and various materials related to permitting issues.

In response to the public meetings, EPA developed a document entitled ''Frequently Asked Questions About the Proposed Revisions to CAFO Regulations'' published on June 27, 2001 and available on the outreach web site. This document identifies the major issues raised during the public meetings and provides brief answers for each question. EPA also developed a Public Commenter's Guide to the Proposed New CAFO Regulations, published on May 31, 2001. The Guide identifies the major issues in the proposal and summarizes how EPA has proposed to treat each issue in the revised regulations. The Guide also provides a cross reference list of the proposed regulatory language and the location of associated discussion in the preamble. This information is available at: http://www.epa.gov/npdes/afo/.

III. Summary of the Proposed ELG and NPDES Rules

The proposed rule, published on January 12, 2001 (66 FR 2959), identified potential revisions to existing NPDES permit provisions and effluent guidelines for CAFOs. The NPDES permit program for CAFOs defines which animal feeding operations are CAFOs and need to obtain a NPDES permit, and establishes the specific compliance requirements under a permit. Effluent guidelines and standards for CAFOs establish the technology-based effluent discharge and performance standards for both existing and new facilities for each of the beef, dairy, veal, swine and poultry subcategories.

In developing its proposed CAFO regulations, EPA considered various technology options and also different options in terms of the number of regulated operations. A summary overview of the ELG options and NPDES scenarios is provided in Table 3–1. For more detailed information, see Sections VII and VIII of the EPA's proposed rulemaking preamble (66 FR 2993–3061).

TABLE 3–1.—SUMMARY DESCRIPTION OF OPTIONS/SCENARIOS CONSIDERED BY EPA

Technology Options
Option 1: N-based land application controls and inspection and recordkeeping requirements for the production area.
Option 2: Same as Option 1, but restricts the rate of manure application to a P-based rate where necessary (depending on specific soil conditions at the CAFO).
Option 3: Adds to Option 2 by requiring the operation to perform ground water monitoring and controls, unless it can show that the ground water beneath manure storage areas or stockpiles does not have a direct hydrologic connection to surface water.
Option 4: Adds to Option 3 by requiring sampling of surface waters adjacent to production area and/or land under control of the CAFO to which manure is applied.
Option 5: Adds to Option 2 by establishing a zero discharge requirement from the production area that does not allow for an overflow under any circumstances.
Option 6: Adds to Option 2 by requiring that large hog and dairy operations install and implement anaerobic digestion and gas combustion to treat their manure.
Option 7: Adds to Option 2 by prohibiting manure application to frozen, snow covered or saturated ground.
Regulatory Scope Options
Scenario 1: Retains existing 3-tier framework and establishes additional requirements.
Scenario 2: Same as Scenario 1; except that operations with 300–1,000 AU would be subject to the regulations based on a revised set of conditions at the feedlot site.
Scenario 3: Same as Scenario 2, but allows operations with 300–1,000 AU to either apply for a NPDES permit or to certify to the permit authority that they do not meet any of the conditions and thus are not required to obtain a permit.
Scenario 4a: Establishes 2-tier framework and applies ELG standard to all operations with more than 500 AU.
Scenario 4b: Establishes 2-tier framework and applies ELG standard to all operations with more than 300 AU.
Scenario 5: Establishes 2-tier framework and applies ELG standard to all operations with more than 750 AU.
Scenario 6: Retains existing 3-tier framework and establishes a simplified certification process.

A. Proposed Effluent Limitations Guidelines and Standards (ELG)

Under the current regulations, CAFOs are already prohibited from discharging process wastewater, except when rainfall events cause an overflow from a facility designed, constructed, and operated to contain all process-generated wastewater plus the runoff from a 25-year, 24-hour rainfall event. Under Option 1, CAFOs would also be required to implement certain best management practices and inspection and monitoring requirements for the production area. Option 1 would also require that land application of manure and wastewater be performed in accordance with a permit nutrient plan that establishes application rates based on crop nitrogen requirements. Option 2 is equal to Option 1, with the exception that application rates would be restricted to phosphorus-based rates where necessary.

Option 3 includes all requirements of Option 2, and would require ground water monitoring and controls unless the CAFO has demonstrated that there is not a direct hydrologic connection between the ground water beneath the production area and surface water. Option 4 includes all requirements of Option 3, with an additional requirement to monitor surface waters adjacent to feedlots and to CAFO cropland to which manure may be

applied that is under control of the CAFO. Option 5 includes all requirements of Option 2, and prohibits overflow from the CAFO production area under any circumstances. Option 6 includes all requirements of Option 2 and requires that large hog and dairy operations install and implement anaerobic digestion to treat manure and capture methane gas for energy or heat generation. Option 7 includes all requirements of Option 2 and prohibits manure application to frozen, snow covered, or saturated ground.

In developing the proposed regulations, EPA assembled information and data on each of the seven technology options considered. This information was used to identify the preferred technology option for each industry subcategory.

For existing operations, EPA proposed to require nitrogen-based and, where necessary, phosphorus-based land application controls of all livestock and poultry CAFOs (Option 2), with the additional requirement that all cattle and dairy operations must conduct ground water monitoring and implement controls, unless they demonstrate that the ground water beneath the production area does not have a direct hydrologic connection to surface water (Option 3), and with the additional requirement that all hog, veal, and poultry CAFOs must also achieve zero discharge from the animal production area with no exception for storm events (Option 5).

For new operations, EPA proposed that operations meet the same requirements that would apply to existing operations based on BAT (Option 3 and Option 5), with the additional requirement that all new hog, veal and poultry operations also would need to implement ground water controls unless they demonstrate that there is no direct hydrologic connection to surface water (Option 3).

In addition, EPA's proposed regulations would make the ELG applicable to all operations defined as a CAFO under the NPDES regulation (not including operations that are *designated* as a CAFO), as well as to establish a new subcategory for veal production. EPA proposed substantial changes to the applicability for chickens, mixed animal operations, and immature animals. EPA also proposed to rename the effluent guidelines regulation from Feedlots Point Source Category to CAFOs Point Source Category.

For more detailed information on these proposed technology options, see Section VIII of the EPA's proposed rulemaking preamble (66 FR 3050–3061).

B. Proposed NPDES Regulations

At proposal, EPA presented seven potential scenarios that differ in the number of operations that would be affected by the proposed regulations (see Table 3–1). Under the existing regulations for CAFOs, animal feeding operations with more than 1,000 animal units (AU) are defined as CAFOs and must obtain a NPDES permit. In addition, operations with between 300 AU and 1,000 AU may be defined as CAFOs, if they meet certain criteria (see 40 CFR 122.23 and Part 122, Appendix B).

Under the proposed revisions, EPA considered a number of alternatives to the existing CAFO definition. The ''two-tier'' structure would define as CAFOs all animal feeding operations with more than a specified number of animals. Operations with fewer animals would become a CAFO only if designated by EPA or the permit authority. Various two-tier alternatives considered by EPA included defining as CAFOs all animal feeding operations with more than 300 AU, 500 AU, 750 AU or 1,000 AU. The ''three-tier'' structure would define as CAFOs all animal feeding operations with more than 1,000 AU and any operation with more than 300 AU if they meet certain conditions at the feedlot site—and, under one alternative, would require all operations with between 300 and 1,000 AU to either apply for a NPDES permit or to certify to the permit authority that they do not meet certain conditions and thus are not required to obtain a permit. These alternatives are presented in Table 3–1.

EPA co-proposed two structures for defining which animal feeding operations (AFOs) are CAFOs. In the first alternative, EPA proposed to replace the existing three-tier structure with a simplified two-tier structure that defines a CAFO based on size alone. For this approach, EPA proposed to set the size threshold for CAFOs at 500 AU (see Table 3–1, Scenario 4a); EPA also requested comment on establishing the threshold at 750 AU (Scenario 5). In the second alternative, EPA proposed to retain the existing three-tier structure, but to revise the conditions that define a CAFO in the middle tier, and to require all middle-tier operations to either apply for a NPDES permit or to certify that they do not meet the conditions for being considered a CAFO (Scenario 3). EPA also requested comment on a three-tier structure with simplified conditions.

In addition, EPA proposed to revise the definition of a CAFO to include poultry operations, stand-alone swine nurseries, and stand-alone heifer operations. The definition of a CAFO would also specifically encompass both the production area and land application area. The definition of an AFO would be revised to clarify that animals are not ''stabled or confined'' when they are in areas such as pasture or rangeland. EPA also proposed that NPDES permits would be required for all CAFOs, even if they only discharge in the event of a 25-year, 24-hour storm. This would include all CAFOs that discharge or have the potential to discharge CAFO wastes to navigable waters via ground water with a direct hydrologic connection.

EPA proposed two alternatives for information reporting in connection with the off-site transfer of excess manure. EPA also proposed that integrators be ''co-permitted'' where they exercise ''substantial operational control'' over the CAFO. As an alternative, EPA proposed waiving co-permitting where the State already has an adequate program to address excess manure or where the processor implements an adequate environmental management system.

EPA proposed that operations that cease to be CAFOs must retain NPDES permits until the facilities are properly closed. That is, the operation must remain permitted until all CAFO wastes no longer have the potential to reach waters of the United States.

For more detailed information on these proposed regulatory scope alternatives, see Section VII of the EPA's proposed rulemaking preamble (66 FR 2993–3050).

IV. New Information Related to the Proposed Revisions to the Effluent Limitations Guidelines and Standards

Since proposal, EPA has obtained additional data and information from the industry, USDA, State and local governments, other stakeholders, and the Agency's continued data collection activities. The Agency has included these data, information, and the preliminary results of EPA's evaluation in sections 14 through 23 of the rulemaking record, available for review in the Water Docket (Docket W–00–27; see Addresses section of this notice). The information includes data received by the Agency during the extended comment period on the CAFO proposal from the above sources, materials submitted by vendors, and materials collected by EPA during outreach and conferences. The specific technical data, information, and comments provided to EPA with respect to various specific issues are discussed throughout the following sections of this document.

A. Effluent Limitations Guidelines and Standards Terminology

As part of EPA's effort to develop national manure management standards, EPA has reviewed comments received on the proposal and worked closely with USDA in refining definitions of some terms contained in EPA's proposed regulatory language (see Section II.B.3). These refinements and alternatives along with comments received on this notice will be considered as the Agency develops the final rules. EPA solicits comments on the appropriateness of the following alternatives, the extent to which they need to become formalized definitions, and data sources used to support these terms.

1. Definition of Proper Agricultural Practices

In the proposal, EPA defined the term ''agricultural stormwater discharge'' with respect to land application of manure and wastewater from animal feeding operations. Under EPA's proposal, an ''agricultural stormwater discharge'' was defined as ''a discharge composed entirely of storm water, as defined in 40 CFR 122.26(a)(13), from a land area upon which manure and/or wastewater from an animal feeding operation or concentrated animal feeding operation has been applied in accordance with proper agricultural practices, including land application of manure or waste water in accordance with either a nitrogen-based or, as required, a phosphorus -based application rate'' (66 FR 3029). Within this definition, EPA used the term ''proper agricultural practices'' as part of defining what qualifies as an agricultural storm water discharge. EPA also used the phrase ''proper agricultural practices'' as part of an alternative proposal for the permit conditions for off-site transfer of manure for the purpose of land application (see 122.23 (a)(3)(ii)(B)(6)). It should be noted that under the proposal, the definitions of ''agricultural stormwater discharge'' and ''proper agricultural practices'' do not provide an exemption for a facility's duty to apply for a permit (see Section VII).

Several comments indicated manure could be used for conditioning of soils to promote soil structure and health, and can be so used for numerous land reclamation practices that some may not consider strictly agricultural. An example is using manure as a resource for reclamation of disturbed or spent lands. Some comments suggest this practice may have some distinct environmental benefits even if it is not strictly ''agricultural.'' EPA solicits comment on the application of manure to disturbed or spent lands, and the extent to which such practices result in discharges to surface waters.

To clarify the term as well as to ensure consistency within the rule, several stakeholders suggested ''proper agricultural practices'' should be formally defined in such a manner as to encompass necessary local practices to protect receiving streams from storm water runoff. EPA did not propose a regulatory definition of proper agricultural practices, but in accordance with these comments, is considering adopting the following definition of ''proper agricultural practices'':

A ''proper agricultural practice'' is one of any number of conservation practices, production measures, or management techniques that the CAFO operator or manure recipient can use to improve the efficiency, economy, or environmental condition of the site and surrounding land areas and waterbodies.

Examples of proper agricultural practices for control of CAFO-generated animal manures and wastewaters include, but are not limited to: adequate and proper storage for manures and wastewaters that facilitates timely and efficient land application practices; chemical/physical treatment of manures and wastewaters to stabilize nutrients in a manner that reduces loss to water and air; manure analysis; soil and plant testing to monitor soil nutrient levels and determine crop nutrient needs; calibration of manure spreaders and irrigation equipment; timely and efficient application of manures relative to nutrient uptake patterns and realistic yield goals of crops; crop management practices that optimize yields and plant nutrient uptake while minimizing nutrient losses to ground and surface waters; and tillage practices and other soil conservation measures that prevent soil erosion and nutrient leaching and runoff. What constitutes proper agricultural practices is a case-by-case decision that depends on the circumstances at each site and may necessitate a combination of one or more of the practices listed above or other practices not listed here.

EPA solicits comment on the proposed definition of ''proper agricultural practices'' and the extent to which the suggested definition reduces ambiguity.

2. Chronic Storm Event

The current effluent guidelines for CAFOs require zero discharge of process waste water pollutants to navigable waters, except that process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25 year, 24 hour rainfall event for the location of the point source (see 40 CFR 412.13). EPA does not define chronic or catastrophic storm events in the current rule (see 40 CFR 412.11).

In EPA's proposed revisions to the effluent guidelines for the production areas for the beef and dairy subcategories, EPA proposed to retain this design standard. EPA did not, however, propose to define chronic or catastrophic storm events. EPA also proposed to remove the terms chronic and catastrophic from the regulations. In the proposal, EPA noted persistent rainfall over a period longer than 24 hours can occasionally overwhelm a system designed for the 25 year 24 hour storm event even though such persistent rainfalls may be expected to occur more frequently than every 25 years (see 66 FR 3042). In EPA's proposal, EPA solicited comment on whether EPA should define chronic events, and whether EPA should develop additional design specifications for handling chronic rainfall events.

Some stakeholders agreed chronic rainfall events could cause a discharge from a system that has been designed, constructed, maintained and operated to contain all process waste waters plus the runoff from a 25 year, 24 hour rainfall event. One analysis performed by the Texas Institute for Applied Environmental Research shows the return interval of the equivalent volume of the 25 year, 24 hour storm event from consecutive wet days occurs every 6 years. Despite the occurrence of such chronic events, none of the stakeholders indicated the volume of any resulting discharges, the extent to which such discharges reached surface waters, or whether such discharges were indeed occurring. EPA solicits comment on the extent to which chronic events cause discharges from the production areas that subsequently reach surface waters.

Some stakeholders requested EPA evaluate a technology option using larger storm events as the design standard, especially in systems that collect runoff in addition to direct precipitation. For example, under one suggested approach, surface impoundments would need to provide storage for 10 year chronic events, or a combination of chronic events plus the 25 year 24 hour storm event. EPA is soliciting comment on the consequences

of establishing design standards based on chronic events, such as standards that would significantly increase the size of manure storage systems, significant increases in costs to expand existing storage capacity, and potentially increased environmental risks of creating larger liquid impoundments. EPA also solicits comment on the extent to which potential CAFOs already have sufficient storage to accommodate chronic events. EPA further solicits comment on an approach for clarifying when a discharge is considered to be caused by ''chronic rainfall;'' whether clarification is needed to enable the operator and the permit authority to be assured that the lagoon is being properly constructed and managed; whether existing state requirements adequately capture chronic storm events while leaving capacity for the 25 year, 24 hour storm events; and whether technology guidelines or permitting regulations are necessary in either Section 412 or 122 to address discharges due to chronic rainfall.

3. Alternative Approach to Nutrient Management Planning

EPA proposed to specify which components of a Comprehensive Nutrient Management Plans (CNMP) would be required under the name ''Permit Nutrient Plan'' (66 FR 3065). Many stakeholders believe the term Permit Nutrient Plan, or ''PNP,'' may cause confusion despite EPA's efforts to clarify that it is not a new or additional plan, but rather the enforceable portions of a CNMP. In light of feedback EPA has already received, EPA is now considering a change in terminology under which the effluent guidelines would specify that, instead of a PNP, each CAFO must have a CNMP that includes, at a minimum, a number of specific components. By eliminating the term ''PNP'', EPA would hope to quell the confusion over terminology. This would be a change in terminology only, since EPA would specify as ''minimum measures of a CNMP'' the same components that EPA described in the proposal as required elements of a PNP.

B. Proposed Performance Standards

1. Ground Water Controls

EPA proposed that in the absence of a certification that there is no direct hydrologic link between ground water below the production area and surface waters, facilities must take ground water samples to demonstrate compliance with the no discharge requirement from the manure storage areas. Some stakeholders incorrectly interpret the ground water controls to apply to the entire production area, or to the land application areas. EPA is clarifying that the proposed performance standard for ground water in § 412.33 is intended to apply to any liquid manure storage areas (e.g., ponds, lagoons, pits) or uncovered solid manure storage areas (e.g. stockpiles). EPA did not intend for this requirement to apply to the temporary mounding of manure in cattle dry lots. EPA also reiterates it did not propose that the requirement of zero discharge to ground water that has a direct hydrologic connection to surface waters would apply to discharges at the land application areas. Several stakeholders stated that ensuring zero discharge to ground water is not technologically feasible with the technologies identified by EPA as best available technologies, i.e., synthetic and clay double liners. These stakeholders assert all lagoons, including those lined with clay and some synthetic materials, leak to some degree. EPA continues to believe that the information in the record supports the Agency's determination that the technology we identified as BAT (synthetic/clay double liners) will achieve a standard of zero discharge to ground water. At proposal, EPA also identified additional technologies that the Agency believes would achieve a zero discharge standard, including glass-lined steel tanks, above ground tanks, and new liquid-impermeable synthetic liners. Because these technologies are more expensive than synthetic/clay double liners, EPA did not identify them as BAT or analyze their economic impacts.

Nevertheless, in light of the comments and information received, EPA intends to reexamine whether synthetic/clay double liners are truly capable of achieving zero discharge to ground water, based on the information in the record, including any new information received since the proposal. If EPA concludes that this technology is not available to achieve zero discharge, EPA is considering two further ways to proceed. First, EPA may examine whether it can identify the alternative technologies described above (glass-lined tanks, above ground tanks and liquid-impermeable liners) as BAT technologies, after evaluating their economic impacts. (The proposal already contained information on their costs.) Based on this analysis, EPA could retain the zero discharge standard based on identifying these alternative technologies as BAT technologies.

Second, if EPA cannot identify any alternative technologies as best available technologies economically achievable, EPA may reevaluate the performance achievable using synthetic/clay double liners. If these materials cannot achieve zero discharge, EPA may consider adopting a performance standard based on their permeability. Literature information in the record, as reflected in regulations adopted by several States, indicates that these materials can, at the very least, minimize discharges and achieve a leakage rate of no more than 10^{-7} cm per second. EPA would generally reevaluate the technological availability and economic achievability of adopting this numeric standard as a BAT standard based on the performance and costs and economic impacts associated with this technology. EPA solicits additional comment on these issues. EPA is also considering a variation on the above alternative standard. If EPA adopts a numeric BAT standard such as 10^{-7} cm per second, EPA is considering an option where a facility could demonstrate compliance with this standard by demonstrating that when it was first constructed or last modified, it was built to NRCS conservation practice standards, including criteria and considerations for design, used in conjunction with the Agricultural Waste Field Handbook and other technical references. This option would be based on a determination that meeting the NRCS practice standards will ensure that the 10^{-7} cm per second standard will be met. Information on the NRCS practice standards is contained in the record. EPA solicits comment on this alternative approach as a performance standard applicable to all CAFOs. EPA further solicits comments on the extent to which the alternative approaches under consideration may reduce costs, remove burden, reduce uncertainty associated with assessments of hydrologic connections, and possibly reduce monitoring and reporting requirements.

At proposal, EPA solicited comment on an approach that would narrow the ground water sampling requirements to only those facilities located in areas with topographical characteristics that indicate the presence of ground water that is likely to have a direct hydrologic connection to surface waters (*e.g.*, sandy soils, karst topography, and shallow water tables). Despite its narrowed focus, this approach would retain the proposal's presumption of a direct hydrologic connection, but only for those operations located in sensitive areas; operations not located in sensitive areas could still be subject to ground water sampling requirements if the permitting authority deemed it appropriate. EPA is clarifying that an alternative approach would be to

include ground water sampling provisions in the effluent guidelines but not to presume that there is a direct hydrologic connection for any facility. Thus, the need for ground water sampling or an assessment would not be specified in the effluent guidelines but would be left to the discretion of the permitting authority in all cases. EPA solicits comment on this approach. Should ground water requirements be included in the final rule, EPA further solicits comment on the level of discretion that is appropriate in the application of such requirements.

2. Alternatives to Proposed 100-foot Setback

EPA proposed a manure application setback of 100 feet from surface waters, open tile drain inlets, sinkholes, and agricultural drainage wells (see proposed rule § 412.37). EPA intended such setbacks would provide an additional barrier for pollutants in the runoff from land applied manure. EPA also determined the setback would provide an additional measure to prevent trace amounts of metals, pathogens, and antibiotics in the manure from leaving the field with runoff. In the proposal, EPA acknowledged and continues to believe the most effective combination of setbacks and vegetated buffers will be site specific. EPA believes the appropriate site specific combination will depend, among other things, the type of vegetation present, the use of soil conservation practices in or adjacent to the setback, the consideration of slope in determining the potential risk to water courses, and the method and timing of manure and wastewater applications in the setback zone. EPA further solicited comment on EPA's concern that a setback from these select features might preclude manure based fertilization of large areas of crop land in certain geographic locations.

To evaluate the costs of this proposed requirement, EPA assumed facilities would establish vegetated buffers with a width of 100 feet on each side of any streams. EPA assumed the net loss of tillable land for facilities to establish these buffers as 3.5 percent of total crop land. EPA believed this approach could overstate the costs of requiring a setback, but would encourage vegetated buffers and other practices to supplement the setback. EPA solicited comment on the use of vegetated buffers or other management practices to minimize pollutants in the runoff from land application. EPA also solicited comment on how it might revise the setback requirement and still adequately protect water quality. Many stakeholders agreed the determination should be site specific, but most stakeholders did not provide any information to indicate that there are any other practices that would perform equal to or better than EPA's proposed setback requirement. Therefore, EPA continues to solicit comments on the proposed 100 foot setback requirement; specifically, as to whether any such superior practices exist. EPA reiterates that nothing in today's notice, including this section, is intended to reopen the proposal in general for further comment. EPA is seeking additional public comment only on the discrete issues identified in this notice. In this case, EPA is interested in further comments on this specific issue to see whether there is any additional information of which we are unaware. EPA solicits comment on whether there are any specific practices that could be established on a site specific basis that would perform as well as or better than EPA's proposed setbacks or buffers.

3. Manure Application Rates Based on Limiting Nutrients

EPA proposed the determination of manure application rates to crop land must, at a minimum, consider the limiting nutrient phosphorus (*See* proposed rule at § 412.31). Where phosphorus levels pose a low to medium risk, the limiting nutrient is typically nitrogen, although in certain cases other factors, such as salt concentrations, could limit manure application rates. EPA proposed the criteria for phosphorus-based management for CAFOs be those that are specified in each state's Nutrient Management Standard (NRCS Conservation Practice 590) so that the decision on the most effective approach(es) and the exact criteria and definitions (either agronomic soil test P levels, soil P thresholds, or the P Site Index) would be state specific.

At the time of proposal, EPA noted that several States already required animal feeding operations to develop nutrient management that consider phosphorus. Several stakeholders stated the nutrient management standards, especially the P-index, were not sufficiently developed to allow their implementation with EPA's final rule. Since proposal, most states have developed their P-index or a nutrient standard based on the P-index, as indicated in additional information that EPA has received from NRCS and is making available today. Since the proposal, 45 States have updated their Nutrient Management Standard; 44 States are using the P-index and one State is opting to use soil test P values. The remaining 5 States have been granted an extension by USDA to revise their Nutrient Management Standards. EPA solicits specific comment on this new information, on whether there is any other information indicating the extent to which States are already mandating phosphorus-based management of manure, and on the extent to which States are implementing their recently revised Nutrient Management Standards in newly written nutrient management plans. EPA intends to use the information received, and any new information, to reevaluate the existing or ''baseline'' requirements for P-based application under State law and the costs of complying with those requirements. Any change to the baseline costs and economic impacts could affect EPA's analysis of the overall economic impacts of the revised regulations.

Several stakeholders expressed concern that EPA was mandating phosphorus application rates for land application under all circumstances. Quite to the contrary, EPA's proposed use of NRCS'' recommended nutrient risk assessment tools contained in the Nutrient Management Standards (NRCS Conservation Practice 590) such as the P-index would allow application rates to be managed differently for each field. The phosphorus index considers many circumstances that affect nutrient transport from the field, and rates each field's potential for nutrient losses accordingly. For States using soil test levels as a screening tool, only fields with excessively high phosphorus levels would be required to undergo the development of a more rigorous phosphorus-based strategy. While EPA's approach may limit land application to phosphorus-based rates on some fields, particularly those fields that have received manure every year for decades, other fields could continue to receive manure at a nitrogen rate.

Some comments suggest EPA's proposal is too prescriptive by requiring one of three methods for phosphorus-based management. Indeed many stakeholders in academia feel nutrient management is continuously evolving in each State. These stakeholders felt EPA should allow for other State-approved nutrient management standards based on the Nutrient Management Standard, such as the PLAT (phosphorus loss assessment tool) under development in North Carolina. PLAT is intended for application on a field-by-field basis as part of the nutrient management planning process. This tool will rate each site as low, medium, high, or very high. Based on this site-specific assessment, phosphorus may be

identified as the ''limiting'' nutrient in the development of the specified nutrient application rate being developed by North Carolina.

EPA continues to consider other nutrient management approaches developed by States while maintaining EPA's need for enforceable standards. Based on comments, EPA is now considering an approach that bases the determination of application rates on the Nutrient Management Standards (NRCS Conservation Practice 590) without mandating the use of one of the three methods described in EPA's proposal. EPA solicits comment on this possible approach.

EPA believes there are regions where crop removal rates of nutrients are unusually low, or where manure is typically stored in a concentrated form such as poultry litter or under house slurry storage. Some application equipment may not be able to evenly distribute this form of manure nutrients at very low application rates. EPA determined this could prevent some facilities from applying manure to land on a phosphorus-based rate. Therefore EPA proposed poultry litter could be applied to fields above the phosphorus rate, but no additional manure or litter could be spread until the phosphorus applied has been removed by harvest. This type of application of phosphorus in excess of the current year's crop requirements is often referred to as ''banking''. Some comments expressed the need for more flexibility in multi-year phosphorus application rates, because of the limitations imposed by current manure application equipment on the ability to apply manure at single-year crop removal rates. Some stakeholders also stated the need to apply commercial fertilizer to fields that receive manure on a phosphorus-based rate would increase soil compaction and reduce crop yields. EPA believes the agricultural industry will continue to develop new modifications for application equipment that, in combination with GIS based monitoring systems, will make precision applications feasible and affordable. EPA also believes the combination of feed management (precision feeding, feed additives), improved animal genetics, and manure handling practices that minimize nitrogen losses will result in land applied manure that more closely meets the needs of the crops.

Nevertheless, EPA is considering alternative nutrient management strategies that balance the nutrient needs of the crop plus the ''banking'' of phosphorus in the soil, if necessary, so the facility can realistically land apply manure on the acreage available, or find alternatives if necessary. For those fields that require manure be applied at a phosphorus-based rate, EPA is considering an approach that would continue to allow manure application up to the nitrogen-based rate. Under this approach, no additional manure application to these same fields could occur until all phosphorus applied has been removed through plant uptake and or crop removal.

The Agency is considering determining that this practice would be acceptable as part of what constitutes ''proper agricultural practices.'' EPA believes such an approach would result in from 2 to 8 years ''phosphorus banking'' for most manure, but more than 10 years ''phosphorus banking'' in the more concentrated manure. EPA envisions commercial fertilizers would continue to be used to meet the nitrogen requirements of the crops in subsequent years. EPA is concerned some levels of phosphorus banking would no more prevent discharges to the waters than would unrestricted application rates or application of manure on a nitrogen basis, especially after prolonged storage. Therefore EPA solicits comment on reasonable amounts of phosphorus banking that could be considered an acceptable nutrient management practice. EPA also solicits comment on whether banking practices should be limited to solids and slurries, or whether banking should be considered for all manure applications. EPA specifically solicits data comparing runoff from fields receiving manure on a phosphorus based rate and runoff from fields where phosphorus has been ''banked.''

4. Alternative Requirements for Soil Sampling

EPA proposed the CAFO must take soil phosphorus samples every three years if the manure is applied to crop or pasture land under the control of the CAFO. EPA proposed samples should be collected in accordance with accepted State agricultural extension protocols and the analyses must be conducted in accordance with the state nutrient standards. Records of the sampling methods and sampling results should be maintained by the CAFO for five years.

EPA has obtained new data indicating local protocols may already consider the site-specific nature of soils. Consequently, EPA is considering allowing relatively less frequent sampling of those soils slow to accumulate nutrients, but requiring multiple soil phosphorus samples each year in mobile soils and high risk areas. EPA solicits comment on the appropriate frequency for soil sampling under such conditions.

After reviewing comments, EPA discussed sampling frequencies and protocols with USDA, and is considering an approach where soil sampling should be done at a frequency as specified by state protocols, but at least once per five years to allow at least one sample to be conducted per field unit per NPDES permit cycle. EPA believes sampling methods and analyses still need to be conducted locally to allow for meaningful information to be gathered from the sampling. EPA also believes the documentation of soil sampling is an important tool for managing phosphorus buildup in soils, but is interested in ways to minimize the recordkeeping burden, especially for small businesses. EPA solicits comment on the approach of allowing States to determine appropriate sampling frequencies and protocols.

5. Alternative Requirements for Manure Sampling

EPA proposed annual minimum sampling frequencies for nitrogen, phosphorus, and potassium in manure (§ 412.37). EPA believes an essential component to sampling is ensuring the manure sampled is ''representative.'' Therefore, under the proposal, such samples were to be collected from all manure storage areas and wastewater storage areas to provide representative samples of each waste stream at the CAFO. Manure transported off site would need to be sampled at least once a year for nitrogen, phosphorus, and potassium. EPA proposed samples must be collected in accordance with accepted Extension protocols, and the analyses must be conducted in accordance with the state nutrient standards. Records of the sampling methods and sampling results would need to be maintained by the CAFO for five years.

Some stakeholders expressed concerns over the burden of annual manure sampling all waste streams, particular if nothing has changed at the farm that would affect the results of manure analysis. For example, after a ''history'' or profile of manure analyses has been documented, these stakeholders assert less frequent analysis may be sufficient as long as production practices remain constant. EPA solicits comment on allowing less frequent manure sampling after such a profile has been established by the CAFO. Similar to the approach described for soil sampling, EPA is considering an approach where manure sampling periodicity can be set to follow state protocols, with a minimal

sampling rate of once per year per waste stream. EPA also believes the documentation of manure sampling is very important, but is interested in ways to minimize the recordkeeping burden, especially for small businesses. EPA solicits comment on the approach of allowing States to determine appropriate sampling frequencies and protocols, and whether EPA should establish a minimum sampling requirement and testing frequency.

6. Feasibility of Zero Discharge Standard

EPA proposed a zero-discharge performance standard for the production area (technology option 5) for the swine, veal, and poultry subcategories without allowance for discharges from chronic or catastrophic storms (see § 412.43). EPA's proposed technology option 5 assumes outside liquid manure storage (lagoons) that do not collect open lot runoff could be designed and maintained to handle precipitation from virtually any storm through the use of liquid-impermeable covers. Some facilities could choose to close out their lagoons and construct smaller covered liquid storage or new slurry storage. As described in the preamble, manure stored under the confinement housing (such as swine deep pits or layers in high-rise houses) could meet the performance standard at generally little or no additional cost. Dry manure systems (most broilers, pullets, and turkeys) where litter is stored under cover (storage sheds or stored in bermed areas with tarps) could also meet the standard.

Some stakeholders felt impermeable lagoon covers in particular posed a number of operational challenges: freezing, biogas collection, clean storm water management, wind shear, cover repair, and disposal of spent covers. For these reasons, these stakeholders concluded the zero discharge standard was technologically unfeasible.

EPA believes the record information on the demonstration status of impermeable lagoon covers, including those in use in other industries, adequately addresses these feasibility concerns. EPA has data from several vendors; one such vendor has developed over a dozen such systems ranging in size from 3 acres to almost 20 acres. Covered lagoon systems have been successfully implemented in colder climates such as northern Illinois, South Dakota, and Wisconsin, and in high rainfall areas such as South Carolina, North Carolina, and Georgia. These systems are routinely exposed to and resist freezing, high winds, and other extreme weather events. Furthermore, the systems are typically retrofit to existing lagoon applications, and EPA believes the technology is further established in the municipal and food processing sectors. To date, EPA has not received any additional information demonstrating cover susceptibility to extreme weather events.

Since proposal, EPA has received additional information on one type of lagoon cover technology used in other industries (food processing, municipal wastewater treatment) that uses a heavy HDPE floating cover. The cover, including additional slack to compensate for changing liquid levels, is anchored in a trench filled with concrete. The cover system also has ballast pipes to keep the cover in place during high winds and peak methane production periods. Current membrane technologies include heavier synthetic materials approaching a 25-year useful life. The systems utilize supports under the cover for buoyancy, and a sump collection system is fabricated into the cover to remove storm water during periods of rain and snow melt. One series of plumbing allows liquid to be pulled from the top of the lagoons under the cover. A second series of piping allows sludge to be periodically removed with a vacuum truck, eliminating the need to move the cover. In addition to eliminating all discharges in dozens of lagoon applications, the technology has demonstrated an ability to reduce air emissions, to mitigate odors, and in some limited cases to provide cost offsets in the form of alternative energy. EPA believes this is useful additional information in indicating the feasibility and availability of this type of technology. The Agency believes this technology would be equally available for use in the animal feeding operations industry. EPA solicits comment on the use of these demonstrated technologies for application in the animal feeding operations industries.

EPA also has extensive experience in the use of impermeable lagoon covers in the AgStar program. While these systems were not designed for the purpose of preventing discharges under any storm event, these systems have routinely demonstrated zero discharge is attainable. Digesters such as heated tanks further incorporate features to contain possible discharges that can occur from pipe penetration points in the tank. Additional experiences of those farms participating in EPA's AgStar program demonstrate gas generation and collection is crucial to the profitability of anaerobic digesters. Despite the potential for energy generation and other cost offsets, EPA does not believe anaerobic digesters are necessarily suitable for all locations and conditions. EPA believes the sizable capital expenditure coupled with today's low energy costs make it difficult for many anaerobic digesters to be cost effective. EPA also noted digesters need to be properly managed, which can pose challenges for smaller facilities because they have fewer resources available to control a digester. Material vendors and digester consultants also point to the gas collection system as a critical component. A properly sized and managed collection system does not experience foaming, freezing, and cover bubbling. The covers are designed to support weights such as workers during routine inspection or repair and maintenance, and as noted the covers are routinely and safely installed as a retrofit. Therefore EPA's costs for the proposed performance standards assume all such biogas is flared to simplify management and time constraints of operating a covered lagoon system.

EPA will continue to evaluate the feasibility of the proposed technology option 5, especially for smaller facilities that are more likely to employ open lot or partially housed confinement practices (see section V.B.2 for additional discussion of EPA's extension of its model farm approach). To reiterate, EPA is not reopening the proposal in general for further comment, however EPA solicits additional comment and information on the identification of impermeable lagoon covers as BAT technologies to meet a zero discharge performance standard. Specifically, EPA solicits additional information on CAFOs (or other facilities with similar liquid impoundments) where impermeable covers are in use, including detailed information describing the system design, construction, cost, and operation. As EPA stated above in this section, some commenters speculate that impermeable covers pose certain operational challenges that would lead to the zero discharge standard being technologically infeasible. To further investigate the commenters' concerns about technological feasibility, EPA also solicits data that would support a determination that the technologies serving as a basis for the proposed BAT and NSPS are infeasible. Examples of such data include detailed information on specific locations where the technologies were attempted but failed, data regarding the design and size of the system employed (both physical

dimensions and wastewater throughput), construction materials and methods employed, and detailed descriptions of the manner in which the technology failed and the reasons for the failure.

V. Changes EPA Is Considering to its Cost and Economic Impact Models

EPA received a number of comments questioning the approach EPA used to assess costs and financial impacts to regulated CAFOs. In general, commenters expressed concern that EPA had underestimated the costs associated with the proposed rule and also overestimated the CAFO's ability to absorb expected compliance costs. In particular, commenters question the accuracy of EPA's estimated average compliance costs associated with the proposed requirements as well as the appropriateness of EPA's financial model to evaluate financial impacts from these expected costs. For these reasons, many comments received by EPA challenge the Agency's proposal that the proposed revisions to the CAFO regulations are ''economically achievable.'' Some commenters provided EPA with alternative data and suggestions on ways that EPA could improve its analyses supporting the rule. Today EPA presents these data and describes modifications to its existing cost and economic models that the Agency is considering in order to address commenter's concerns.

EPA received additional cost and financial data from USDA, FAPRI (Food and Agricultural Policy Research Institute), some industry trade associations, and researchers at some land grant universities. In addition, since proposal, EPA has considered ways to refine its cost and financial models and has received many suggestions on how to modify its modeling approach by these major stakeholder groups. A summary of these additional data and information are summarized in this section.

A summary of the principal concerns about EPA's cost and economic analyses that were raised during the public comment period include: (1) EPA's assumption that CAFOs are already in full compliance with existing Federal and State regulations for operations with more than 1,000 AU, (2) EPA's approach for estimating expected incremental compliance costs that would be incurred by CAFOs, (3) financial data used as inputs to EPA's economic models to depict baseline financial conditions, particularly for certain sectors, (4) EPA's failure to assess the feasibility of an operation to incur new debt associated with additional capital investments required under the proposed requirements, and (5) EPA's suggested criteria and overall analytical approach to evaluate post-regulatory changes and to determine economic achievability.

Following a discussion of the alternate data and information obtained by EPA to update its industry profile of the individual CAFO sectors (Section V.A), this section describes alternative data and information obtained by EPA that the Agency is considering to use to further refine the analytical models that it will use to develop and evaluate the final CAFO regulations. Section V.B describes alternative data and approaches that EPA is considering to address comments about its cost models to estimate compliance costs; Section V.C describes alternative data and approaches that EPA is considering to address comments about its economic model to evaluate financial impacts to regulated CAFOs.

All record materials cited in today's notice are available for public review in the rulemaking record located at EPA's docket office.

A. Industry Profile

1. Estimates of the Total Number of AFOs and Regulated CAFOs

For the proposal, EPA used publicly available data from the *1997 Census of Agriculture,* supplemented by other data sources, to estimate the number of AFOs and potential CAFOs nationwide that would be required to obtain a permit. EPA used this information to assess the costs and evaluate the financial impacts to CAFOs under the proposed regulations. Today EPA is presenting alternative data provided by USDA on total number of AFOs and regulated CAFOs. EPA is soliciting comment on these revised USDA AFO–CAFO estimates for use in EPA's cost and economic impact analyses.

Following proposal, USDA evaluated available information from the *1997 Census of Agriculture* to estimate the number of animal feeding operations at different size thresholds. USDA estimates the number of operations with confined animals by focusing on those operations that meet certain minimum characteristics based on USDA-assumptions in terms of the number of animals and the amount of revenue generated at an operation. This approach does not specifically focus on characteristics that meet the regulatory definition of an animal feeding operation, as codified at 40 CFR 122, in terms of the number of days animals are confined or the amount of vegetative cover at the production area.

For this analysis, USDA assumed that operations that confine animals consist of commercial operations only, excluding: (1) operations with less than $5,000 in annual sales of specialty livestock products, and (2) operations with few animals, defined by USDA as farms with less than 7 animal units of any combination of fattened cattle, milk cows, swine, chickens and turkeys (as well as farms with less than 10 animal units of cattle other than fattened cattle and milk cows, farms with less than 15 horses, ponies, mules, burros, or donkeys, and farms with less than 40 sheep, lambs, or goats). In USDA's analysis, the use of animal units to establish the 7 AU cutoff is based on the USDA definitions of 1,000 pounds of liveweight and not EPA's regulatory definitions which are expressed in terms of the number of animals on-site (codified in 40 CFR 122). However, USDA estimates of the number of confinement operations at different AU thresholds is based on EPA's regulatory definitions.

Table 5–1 reflects revised estimates by USDA on the number of AFOs that confine livestock and poultry and the number of potential CAFOs. These estimates are preliminary and may be subject to further revision by USDA. The table compares these numbers against those used by EPA for the proposed rulemaking. Detailed information on USDA's estimated AFO and CAFO counts are provided in the record (see USDA/NRCS ''Profile of Farms with Livestock in the United States: A Statistical Summary,'' most recent draft available).

As shown in the table, there is a substantial difference between USDA's and EPA's estimates of the total number of AFOs. For the proposal, EPA estimated that there were a total of 376,000 AFOs nationwide in 1997. In contrast, USDA estimates indicate that there are about 218,000 AFOs during that year. One reason for this discrepancy is that EPA used publicly available data from the *1997 Census of Agriculture,* supplemented by other data sources, to estimate the number of AFOs for its proposed rule. In some cases, EPA estimates were extrapolated from available information. Since EPA did not have access to the underlying farm level census data it was unable to fully evaluate the data and exclude certain operations that are likely not AFOs that may be included in EPA's estimates, such as some operations that raise animals for on-farm consumption only as well as grazing or pasture-based operations that are not AFOs. Instead EPA assumed that all operations listed in the published census data, with

limited exceptions, were potential AFOs. As shown in Table 5–1, EPA's estimate of the total number of AFOs greatly exceeds that estimated by USDA across all sectors: EPA estimated more than 420,000 AFOs with fewer than 300 AU; USDA estimates that there are less than 170,000 AFOs with fewer than 300 AU.

Another reason for the difference between EPA and USDA estimates of the total number of AFOs is that USDA excludes certain operations based on the size of the operation (number of animals or annual revenue generated), regardless of whether they would otherwise fall within the regulatory definition of an animal feeding operation, as codified in 40 CFR 122. This information is a regulatory definition and generally not reflected in any available data sets of the number of livestock and poultry operations. Nevertheless, EPA believes USDA estimates that exclude these smaller sized operations provide a reasonable approximation of the total number of animal feeding operations from which to determine the relevant regulated universe because it is unlikely that many of the smaller, non-commercial operations would meet EPA's definition of an AFO. EPA solicits comment on this assumption.

There is less of a difference between USDA's and EPA's estimates of the total number of potentially regulated CAFOs at the varying size thresholds (operations with more than 1,000 AU and, at select increments, operations with fewer than 1,000 AU but with more than 300 AU). However, USDA estimates that there are more than 6,000 additional operations with between 300 AU and 1,000 AU (see Table 5–1 where EPA estimates indicate about 26,500 operations and USDA estimates are about 32,800 operations for that size group). This difference could raise the number of potential CAFOs, depending on how the Agency defines a CAFO. The principal reason for this difference between EPA and USDA estimates is attributable to EPA's use of a simple correction factor to account for the number of operations with more than a single animal type (described further below). Table 5–2 presents data that delineate the number of facilities in each sector by broad size grouping that are expected to be affected by the proposed regulations.

For the purposes of developing and evaluating the final CAFO regulations, EPA is considering using revised estimates provided by USDA. Tables 5–1 through Table 5–3 present preliminary estimates of these data. These estimates are subject to further revision by USDA. More information on these data and how they were developed are included in EPA's record.

Preliminary estimates presented in Table 5–1 would supplement data previously presented by EPA in Table 6–1, also published in the proposal (66 FR 2984). Data presented in Table 5–2 would supplement data previously presented by EPA in Table 6–2, published in the **Federal Register** notice of the proposed rulemaking (66 FR 2985). Where USDA estimates are provided at a higher level of aggregation than that needed by EPA to conduct its analyses, EPA will extrapolate from available USDA estimates. For example, USDA estimates shown in Table 5–2 does not distinguish between the number of operations with chickens that are broiler and egg laying operations, as well as the number of hog operations that are grow-finish and farrow-finish.

Table 5–3 presents preliminary estimates that delineate the number of facilities in each State and each EPA Region that are expected to be affected by the proposed regulations. Data presented in this table replaces data previously presented in Tables 9–1 and 9–2 of the proposal (66 FR 3074–3077). Where USDA estimates are provided at a higher level of aggregation than that needed by EPA to conduct its analyses, EPA will extrapolate from available USDA estimates. For example, USDA data does not distinguish between the number of operations within some individual States, including Alaska, Arizona, Connecticut, Hawaii, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Maine, Massachusetts, Montana, Oregon, Rhode Island, Utah, Vermont, and Wyoming (see Table 5–3). These base data would also need to be further distributed out onto a county level basis for use in EPA's analysis of the estimated reduction in nutrient loadings that is expected under the proposed regulations.

EPA's use of these data will affect underlying assumptions of the number of operations reflected in various analyses supporting the CAFO proposal, including EPA's estimate of the number of regulated CAFOs for the purposes of estimating costs and financial impacts to regulated CAFOs and estimating benefits in terms of reduced nutrient loadings, and EPA's estimate of the number of permits required under the proposed regulation to estimate the costs to the State and Federal permitting authority.

EPA is also interested in obtaining preliminary data and information on general trends in the U.S. livestock and poultry sectors in terms of changes in the number of operations since 1997—the last available *Census of Agriculture* year used by USDA to estimate the number of potential CAFOs. EPA is requesting this information to determine whether there has been a substantial increase in the number of larger sized operations since 1997 and to consider whether the Agency should revise available USDA estimates of the number of potential CAFOs. Specifically, EPA requests recent sector level data on the number of operations with more than 1,000 AU and also the number of operations with between 300 AU and 1,000 AU. To ensure uniformity within a sector, these data should be national in scope and reflect trends across all producing States. EPA will consider using these data to update USDA estimates of the number potential CAFOs for some sectors, to the extent that these new data allow.

An advantage of using these alternate data is that the USDA data reflect the number of operations based on dominant production type at the facility and do not need to be corrected to account for ''mixed'' operations that have more than one animal type. For the proposed rulemaking, EPA adjusted the sum total number of operations from the published data to eliminate double counting of operations with mixed animal types. The factors EPA used were based on data from the *1992 Census of Agriculture* indicating that operations with mixed animal types account for roughly 200 operations with more than 1,000 AU and about 25 percent of all operations with less than 1,000 AU. (This latter correction factor is likely more representative of smaller operations; information was not available to better identify the number of operations with mixed animals with between 300 and 1,000 AU.) Use of USDA's revised estimates of the number of operations avoids the need to correct the data using a simple adjustment factor. This will ultimately contribute to more accurate cost analyses by minimizing the chance of error associated with deriving an estimate of the number of potential CAFOs that require a permit.

Under the USDA–EPA Unified National Strategy for Animal Feeding Operations, EPA predicted that approximately 20,000 animal feeding operations would be subject to regulation, estimated at that time to comprise roughly 5 percent of the estimated 450,000 AFOs. Estimates of the number of AFOs reported in the Strategy were based on the published data from the *1992 Census of Agriculture* and so include smaller, non-commercial operations. The data presented here provide updated

estimates of the AFO base population and have been substantially revised to eliminate smaller, non-commercial operations. However, EPA's expected *number* of potentially regulated CAFOs remains unchanged and consistent with the goals of the Strategy—estimated at about 20,000 regulated entities or CAFOs.

TABLE 5–1.—COMPARISON OF ESTIMATES BY EPA AND USDA OF THE NUMBER OF AFOS BY SIZE GROUP

Sector/size category	EPA estimates at proposal				USDA's revised estimates			
	All AFOs	>1000 AU	300–1000 AU	<300 AU	All AFOs	>1000 AU	300–1000 AU	<300 AU
	(Number of operations grouped by AU [1])							
Cattle	106,080	2,080	2,000	102,000	43,560	1,970	3,130	38,460
Veal	850	10	200	640	4,250	30	90	3,550
Heifers	1,250	300	750	200		310	270	
Dairy	116,870	1,450	5,680	109,740	92,610	1,470	5,670	85,480
Hogs	117,880	4,090	10,280	103,510	48,180	4,080	10,150	33,950
Broilers	34,860	3,940	10,200	20,720	17,740	3,720	12,380	8,020
Layers	75,170	640	1,410	73,120	6,380			
Turkeys	13,720	370	1,330	12,020	3,290	450	1,600	1,240
Sum Total	466,680	12,880	31,850	421,950	216,010	12,020	33,290	170,700
Total AFOs [2]	375,700	12,660	26,450	336,590	218,320	11,380	32,820	NA

[1] As defined for the proposed CAFO regulations, one AU is equivalent to: One slaughter or feeder cattle, calf or heifer; 0.7 mature dairy cattle; 2.5 hogs (over 55 pounds) or 5 nursery pigs; 55 turkeys; and 100 chickens regardless of the animal waste system used.

[2] For EPA data, ''Total'' eliminates double counting of operations with mixed animal types based on *1992 Census of Agriculture* data (operations with mixed animal types account for roughly 25 percent of total AFOs). USDA data reflect number of operations based on dominant production type. The difference between the sum total and total AFOs is about 2,000 operations (reflect operations that are difficult to classify including dairies that have gone out of business, farms with only feeder pigs, and egg-hatching operations).

Source: EPA estimates, see proposed CAFO regulations (Section 6 of 66 FR 2959). USDA estimates, see NRCS ''Profile of Farms with Livestock in the United States: A Statistical Summary'' most recent draft available. Rounded to nearest tenth.

TABLE 5–2.—ESTIMATED NUMBER OF CAFOS BY SECTOR AND SIZE

Sector	Potential CAFOs >1,000 AU	Potential CAFOs 750–1,000 AU	Potential CAFOs 500–750 AU	Potential CAFOs 300–500 AU
	(Number of Operations grouped by AU)			
Cattle	1,970	500	940	1,690
Heifers	310	40	90	150
Veal	30	10	20	60
Dairy	1,470	600	1,360	3,710
Hogs	4,080	1,570	2,920	5,670
Chickens	3,720	2,660	4,440	5,280
Turkeys	450	260	470	870
Sum over all	12,020	5,630	10,240	17,420
Adjustment	640	140	180	150
Total CAFOs	11,380	5,490	10,060	17,280

Source: USDA/NRCS (''Profile of Farms with Livestock in the United States: A Statistical Summary'' most recent draft available). Rounded to nearest tenth. AU groupings defined in Table 5–1.

TABLE 5–3.—ESTIMATED NUMBER OF POTENTIAL CAFOS BY REGION, STATE AND SIZE [1]

State/EPA region	Potential CAFOs >1000 AU	Potential CAFOs >750 AU	Potential CAFOs >500 AU	Potential CAFOs >300 AU
	(Number of Operations grouped by AU)			
Alabama	410	760	1,390	2,200
Arkansas	510	920	1,730	2,970
California	950	1,240	1,660	2,150
Colorado	190	230	300	410
Delaware	70	140	310	580
Florida	140	220	330	450
Georgia	660	1,060	1,640	2,350
Idaho	140	170	240	380
Illinois	360	550	910	1,680

TABLE 5–3.—ESTIMATED NUMBER OF POTENTIAL CAFOS BY REGION, STATE AND SIZE [1]—Continued

State/EPA region	Potential CAFOs >1000 AU	Potential CAFOs >750 AU	Potential CAFOs >500 AU	Potential CAFOs >300 AU
Indiana	370	520	830	1,450
Iowa	1,080	1,670	2,900	5,300
Kansas	350	420	570	840
Kentucky	110	160	270	440
Louisiana	70	150	250	350
Maryland	90	200	430	740
Michigan	170	230	340	670
Minnesota	590	850	1,370	2,380
Mississippi	340	630	990	1,290
Missouri	290	430	660	1,270
N. Carolina	1,310	1,760	2,450	3,470
Nebraska	700	860	1,220	1,960
New York	70	120	250	650
Ohio	180	280	450	930
Oklahoma	130	220	420	700
Pennsylvania	240	380	680	1,250
S. Carolina	180	280	400	570
South Dakota	190	250	360	630
Tennessee	60	110	230	490
Texas	610	790	1,170	1,680
Virginia	160	310	560	940
Washington	140	190	290	500
West Virginia	60	90	150	200
Wisconsin	100	160	380	960
UT, MT, WY, ND, NV	140	190	290	540
OR, AK, HI	50	80	140	250
AZ, NM	190	220	260	280
ME, VT, NH, MA, RI, CT, and NJ	30	60	120	300
All states	11,380	16,870	26,920	44,200

Source: USDA/NRCS (''Profile of Farms with Livestock in the United States: A Statistical Summary'' most recent draft available). Rounded to nearest tenth. AU groupings defined in Table 5–1.

2. Estimates of the Amount of Manure Nutrients Covered at Different Regulatory Thresholds

For the proposal, EPA estimated the amount of manure nutrients covered under the different regulatory scenarios. These estimates were based on publicly available data from the *1997 Census of Agriculture* supplemented by other data sources. EPA used this information, among other factors, to determine the proposed regulatory thresholds based on the number of animals on-site (inventory basis). As cited in the Agency's proposal, EPA estimated that about 50 percent to 64 percent of manure nutrients *generated* (nitrogen and phosphorous) would be addressed by the proposed regulations at the 1,000 AU threshold and proposed 500 AU threshold, respectively. Today EPA presents new information on the manure nutrient coverage under the different regulatory scenarios based on a supplemental analysis conducted by USDA. EPA is soliciting comment on this analysis for consideration in the final rulemaking.

In its analysis that re-estimates the number of AFOs and CAFOs nationwide using data from the *1997 Census of Agriculture* (presented in Section V.A.1 of this notice), USDA also conducted an analysis of the expected amount of manure nutrients addressed at each regulatory threshold. These results are presented in this notice both in terms of the amount of manure nutrients *generated* at potential CAFOs and also the estimated amount of nutrients in *excess* of crop needs through land application. (USDA defines farm level ''excess'' of manure nutrients on a confined livestock farm as manure nutrient production less crop assimilative capacity. USDA has estimated manure nutrient production using the number of animals by species, standard manure production per animal unit, and nutrient composition of each type of manure. Recoverable manure is the amount that can be collected and disposed by spreading on fields or transporting off the producing farm.)

Table 5–4 presents USDA's estimates of the amount of manure nutrients addressed by the proposed regulations and compared against the expected number of potential permits that would be required at different threshold levels. USDA submitted these data to EPA for consideration in establishing its regulatory threshold for defining a CAFO as part of the Agency's final rulemaking. The information presented today would replace and supplement previous estimates by EPA, which was presented in Table 6–3 of in the **Federal Register** notice of the proposed rule (66 FR 2986–2987). USDA estimates of the amount of coverage of manure nutrients generated are more or less consistent with EPA's estimates for the proposed regulations. (See 66 FR 2986–2987.) For proposal, EPA was not able to estimate the amount of excess manure nutrients because of data limitations.

USDA's analysis supplements EPA estimates by assessing the amount of excess manure nutrients addressed by the regulations using *1997 Census of Agriculture* data. This analysis is available at USDA's website at: http://www.ers.usda.gov/briefing/ConservationAndEnvironment/. Information on USDA's approach for conducting this analysis is documented in two published USDA reports, including ''Manure Nutrients Relative to the Capacity of Cropland and Pastureland to Assimilate Nutrients: Spatial and Temporal Trends for the United States'' available at http://www.nhq.nrcs.usda.gov/land/pubs/manntr.html and also ''Confined Animal

Production and Manure Nutrients'' available at http://www.ers.usda.gov/publications/aib771/. These documents are also available in EPA's record for the proposed rule.

Some commenters endorse USDA's analysis and cite these results to highlight the perceived lower environmental gain relative to the increase in the number of operations affected as the regulatory threshold is lowered. EPA will consider this information when re-evaluating the range of proposed CAFO threshold definitions for the final CAFO regulations. EPA solicits comment on the use of these USDA estimates for the development of EPA's final regulations.

TABLE 5–4.—POTENTIAL CAFOS, ANIMAL UNITS, AND MANURE NUTRIENTS, 1997 CENSUS OF AGRICULTURE

Item	Units	Total for Item	AFOs defined as CAFOs, by threshold			
			1000AU	750AU	500AU	300AU
	Percent of Total					
Farms/AFOs	number	218,000	5.4	8.0	12.8	21.1
Animal Units	million	36.3	51.8	56.9	64.0	72.9
Recoverable Nutrients:						
Nitrogen	1000 tons	1,260	48.6	56.3	66.3	76.6
Phosphorus	1000 tons	689	52.2	59.4	68.8	78.9
Excess Nutrients:						
Nitrogen	1000 tons	743	64.4	73.4	84.1	92.8
Phosphorus	1000 tons	467	67.3	75.1	84.5	92.7

Source: USDA. Includes operations with feedlot beef, dairy (including confined heifer and veal), swine, and poultry (including layers, broilers, pullets, and turkeys). For AU definitions, see Table 5–1

3. Changes in SBA's Small Business Definition and EPA's Estimates of the Total Number of Small Businesses Affected by the Proposed Regulations

For the proposal, EPA estimated the number of small businesses that are CAFOs that would be subject to the proposed regulations. Today EPA presents revised estimates of the number of affected small business using new small business definitions as revised by the Small Business Administration (SBA) in June, 2001. EPA is soliciting comment on these estimates for consideration in the final rulemaking.

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires EPA to define small businesses according to size standards as defined by the Small Business Administration (SBA). For these regulated industries, SBA sets size standards for defining small businesses by the amount of annual revenue generated, representing total facility revenue at the farm level (i.e., includes revenue from all sources, including livestock, crop and other farm-related income at a livestock or poultry operation) and expressed as an average over a 3-year period. These size standards vary by North American Industry Classification System (NAICS) code; CAFOs are listed under NAICS 11 (Agriculture, Forestry, and Fishing).

Prior to 2001, SBA defined a ''small business'' for most agriculture enterprises as operations with annual sales of less than $0.5 million per year, averaged over the most recent three fiscal years. For the proposed rulemaking, SBA standards used by EPA to define a ''small business'' in the hog, dairy, broiler, and turkey sectors assumed a threshold of less than $0.5 million in annual sales. In the beef feedlot sector, SBA defines small businesses as those with less than $1.5 million in annual sales. EPA assumed an alternative definition for small businesses in the egg laying sector of operations with less than $1.5 million in annual revenue and did not use SBA's definition of $9 million in annual sales. The rationale for this decision is discussed in detail in EPA's record and in the Economic Analysis that supports this rulemaking. A summary of EPA's rationale for using an alternative definition is provided in the **Federal Register** notice of the proposed rulemaking (66 FR 3099).

On June 7, 2001, SBA increased the size standards used to define small businesses for most agriculture sectors listed under NAICS 11. These size standards were raised from $0.5 million to $0.75 million in average annual receipts (see 66 FR 30646). This change affects EPA's assumptions of small business in the hog, dairy, broiler, and turkey sectors and effectively raises EPA's estimate of the number of small businesses that are animal feeding operations and are potentially defined as CAFOs and subject to the proposed requirements. (This change does not affect EPA's assumptions of small business in the beef feedlot and egg laying sectors.)

For the proposed regulations, EPA estimated that 11,000 to 15,000 confinement operations that will be subject to the proposed requirements are small businesses (depending on the proposed regulatory alternative). As a result of this change in SBA's small business definition, preliminary estimates by EPA now indicate that roughly 19,000 to 25,000 of the affected operations are small businesses. Although these estimates may be subject to further revision, data presented in Table 5–5 would replace information previously presented by EPA in Table 10–17 of the **Federal Register** notice of the proposed rulemaking (66 FR 3100). EPA solicits comment on these preliminary estimates of the number of small businesses affected by the proposed regulations.

TABLE 5–5.—NUMBER OF SMALL CAFOS THAT MAY BE AFFECTED BY THE PROPOSED REGULATIONS

Sector	Total Annual ($million) Revenue [1] (a)		Total Farm Revenue per Head [2] (b)	No. of Animals (Avg. U.S.) (c=a/b)		Number of ''Small'' CAFOs Affected by Proposed Regulations	
	Old	New		Old	New	Old	New
Cattle [3]	$1.5	NC	$1,060	1,400	NC	2,280–2,600	NC
Dairy	0.5	$0.75	2,573	200	300	50	1,000–2,000
Hogs	0.5	0.75	363	1,400	2,100	300	4,000–5,000
Broilers	0.5	0.75	2	260,000	375,000	9,470–13,410	10,000–14,000
Egg Layers	9.0	NC	25	365,000	ND	ND	ND
	1.5	NC		61,000	NC	200–590	NC
Turkeys	0.5	0.75	20	25,000	37,500	0	500–1,000
All AFOs	NA	NA	NA	NA	NA	10,550–14,360	19,000–25,000

NA=Not Applicable. ND = Not Determined. NC = No Change from original proposal. ''AFOs'' have confined animals on-site. ''Old'' refers to SBA size definitions prior to June, 2001. ''New'' refers to revised SBA size definitions published on June 7, 2001.

[1] SBA Size Standards by NAICS industry (13 CFR Part 121). EPA assumes an alternative definition of $1.5 million in annual revenues for egg layers.

[2] Average total farm revenue (i.e., including livestock, crop and other farm-related income at a livestock or poultry operation) expressed on a per animal basis across all operations for each sector. Per-animal (inventory) calculations as derived by EPA using aggregated farm level data from USDA's 1997 ARMS database.

[3] Includes fed cattle, veal and heifers.

B. Data and Analytical Approach to Estimate Compliance Costs to CAFOs

This section describes alternative data and approaches that EPA is considering to address commenters' concerns about the methodology to estimate compliance costs.

1. Alternate Analytical Approaches for Estimating Compliance Costs

This section describes alternative approaches that EPA is considering to address concerns about the methodology used to estimate compliance costs.

a. EPA's Assumptions of Full Compliance With Existing Regulations for CAFOs With More Than 1,000 AU

In the proposal, EPA assumed that all operations with more than 1,000 AU that are defined as CAFOs by the existing regulations are currently in compliance with the existing regulatory program. This includes the NPDES regulations and the effluent limitations guidelines and standards for feedlots, and existing State laws and regulations. For those operations with less than 1,000 AU, EPA used available data regarding current waste treatment practices at these operations to estimate the incremental cost they would incur to comply with the requirements of the proposed regulations.

A number of commenters disagree with this approach, claiming that many CAFOs do not have the necessary waste management components in place to comply with the existing CAFO regulations promulgated in the early 1970s. Despite the fact that the existing regulations were issued over 25 years ago, these commenters claim that many operations with more than 1,000 AU are not currently in compliance with these baseline requirements and would therefore incur substantial costs just to meet the 1970s requirements, in addition to any additional costs that would be incurred to comply with the new requirements of the proposed rule. The commenters thus assert that EPA's failure to acknowledge this widespread noncompliance has the effect of underestimating the full costs that CAFOs will ultimately pay. The commenters further assert that by underestimating costs in this manner, EPA understates the financial impacts to CAFOs.

It is EPA's longstanding practice to assume compliance with current regulatory requirements when revising existing regulations. This assumption is consistent with EPA's guidance for conducting regulatory analysis, outlined in EPA's ''Guidelines for Preparing Economic Analyses.'' EPA's guidance is available online at http://www.epa.gov/economics/. In accordance with EPA practice and guidance, EPA assumes that operations with more than 1,000 AU are in compliance with existing requirements promulgated in the 1970s; these operations are assumed to have already incurred whatever costs were necessary to achieve compliance with these existing requirements. Guidance from the Office of Management and Budget (OMB), as outlined in ''Economic Analysis of Federal Regulations Under Executive Order 12866,'' recommends that the baseline for assessing the costs and benefits of a regulation be, ''* * * the best assessment of the way the world would look absent the proposed regulation.'' OMB's guidance goes on to discuss various factors that may be considered in choosing an appropriate baseline, including existing regulations and the likely degree of compliance with these regulations, and recommends that, ''when more than one baseline appears reasonable or the baseline is very uncertain, and when the estimated benefits and costs of proposed rules are likely to vary significantly with the baseline selected, the agency may choose to measure benefits and costs against multiple alternative baselines as a form of sensitivity analysis.'' OMB's guidance is available online at http://www.whitehouse.gov/omb/inforeg/riaguide.html.

Because of the possibility that there may be widespread noncompliance with the existing regulations and because the potential costs associated with the existing regulations might be substantial, particularly when added to EPA's estimated incremental cost associated with the proposed revisions, EPA is considering ways to evaluate these additional potential costs as a supplement to its cost and economic analyses.

To evaluate the cost of the existing regulations, EPA is requesting additional data and information on current rates of non-compliance. Specifically, information is needed on the number or share of operations with more than 1,000 AU that are not in compliance with the existing regulations. During the development of the proposed CAFO rulemaking, EPA requested additional data and information to substantiate industry claims of widespread non-compliance with the existing regulations. As part of

today's notice, EPA is again requesting any information on current rates of non-compliance with the existing regulation, differentiated to the extent possible by production type or facility size for each of the major livestock and poultry sectors. This information would need to account for animal waste management systems and practices that are already being implemented at the CAFO to manage manure and wastewater, including practices associated with various voluntary programs as well as practices to assist with basic day-to-day production needs at the facility.

EPA is considering to use this information to conduct an evaluation of the combined additional cost to comply with the existing regulations plus the incremental costs of the proposed regulations. EPA is soliciting comment on an approach that would be conducted in two stages, which is outlined as follows. The first stage of this analysis would assess the cost to CAFOs to comply with current requirements—specified for the production area—promulgated under the existing 1970s regulations and further evaluate the expected financial impacts of these costs. Using a representative farm approach, where the Agency determines that compliance with the existing regulations would have resulted in financial stress and potential closure of a representative facility, this operation would be removed from the analysis under the assumptions that this operation would not have remained in business. This representative facility would now constitute a baseline closure for purposes of evaluating the proposed revisions to the existing rule. This approach by which baseline closures are removed from any subsequent analyses is consistent with longstanding Agency practice to assess only the incremental costs associated with a specific regulatory action.

The second stage of this analysis would evaluate costs and financial impacts to comply with the proposed new requirements. These costs and impacts would be assessed for operations within the assumed remaining CAFO universe based on the number of operations assumed to have remained in business while complying with the existing regulations (i.e., excluding assumed baseline closures determined to close under the existing regulations in the first stage of this analysis). EPA solicits comment on this approach and requests data and information in order to conduct this supplemental analysis.

b. EPA's Cost Model Assumptions and Use of ''Frequency Factors''

For the proposal, EPA estimated compliance costs for a model CAFO facility by first estimating the total cost to an individual facility to employ a given technology and then calculating the average facility level cost by adjusting this total cost to account for current use of the technology or management practice nationwide. Average costs were obtained by multiplying the total cost of a particular technology or practice by the percent of operations that are believed to use this particular technology or practice in order to derive the average expected cost that could be incurred by a model CAFO. EPA refers to this adjustment factor as the ''frequency factor'' and has developed such a factor for each individual cost (i.e. each technology) and cost component (i.e. capital and annual costs) in each of its CAFO models. More detailed information on the methodology used by EPA to estimate compliance costs and the actual frequency factors assumed by EPA for this analysis are provided in the *Development Document for the Proposed Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations* (referred to as the ''Development Document'').

Comments about EPA's cost and economic analysis express concerns about EPA's use of frequency factors to generate a set of single average compliance costs to further evaluate financial impacts to CAFOs as well as to assess larger-scale market impacts. The overarching concern with EPA's use of this approach is that the weighted average costs might either understate costs or overstate costs, depending on the range of production practices at a facility. Use of these estimated costs to assess financial impacts might, therefore, either understate or overstate economic impacts to CAFOs in EPA's analysis. To address this concern, EPA is considering alternative ways to characterize the variability of costs that may be incurred by increasing the number of representative models EPA uses to assess compliance costs.

Today EPA presents data and information on an alternative approach that would refine its existing cost models to account for greater variability among producers by calculating costs across a broader range of potential scenarios, including costs to operations that have implemented a wider array of technology controls and management practices and also costs to operations that have little or no management practices in place. This alternative approach would generate three sets of compliance costs per representative model CAFO, instead of a single average cost per representative model. EPA attempted to develop such a approach for its proposal, but was unable to obtain the data necessary to support this approach.

This notice presents the availability of new data and information that would allow EPA to adopt such an approach, including data received from USDA. This approach would build upon an approach that is being developed by USDA to assess costs and economic impacts at livestock facilities as part of USDA's Report to Congress on the USDA–EPA Unified Strategy that seeks to estimate the costs to animal feeding operation to implement Comprehensive Nutrient Management Plans (CNMP) (forthcoming: ''Cost and Capability Assessment of the Unified Strategy for Animal Feeding Operations''). Details on the approach that is being developed to support this forthcoming study is provided in USDA's ongoing work in progress titled ''Estimated Private and Public Costs Associated with Comprehensive Nutrient Management Plan Implementation: A Documentation.'' Preliminary versions of this latter report are provided in EPA's rulemaking record.

In these reports, USDA outlines an approach that, first, defines a set of representative CAFOs that represent typical or dominant production practices; second, identifies the expected compliance costs associated with the proposed CAFO rule requirements; and, third, adjusts these costs according to how many CAFOs are expected to need upgrades to their facility or practices to meet requirements. This approach is consistent with that used by EPA for the proposal. The difference is the third step in USDA's analysis further breaks out these costs into three categories of farms based on the ''average'' operation and also operations with ''least needs'' and ''most needs.'' USDA's simplifying assumption for this approach is that 50 percent of all operations within each representative farm group represents the average while each representative group representing operations outside the average accounts for 25 percent each of all operations.

For USDA's analysis, it compiled data representing the percent of facilities needing upgrades to meet CNMP requirements. For example, a value of 80 percent indicates that 20 percent of the operations in that category meet the requirements and 80 percent of the

operations need to install or adopt the required controls or practices. USDA's estimates reflect five broad cost components: manure and wastewater handling and storage, nutrient management, record keeping, feed management, and off-farm export. These estimates are contained in USDA's Appendix to its ongoing work in progress (see, ''Estimated Private and Public Costs Associated with Comprehensive Nutrient Management Plan Implementation'').

For EPA's analysis, the Agency is considering using USDA's data and approach, with some modifications to supplement USDA's information and approach where necessary to fit within EPA's existing analytical framework. These additional cost scenarios include costs to operations that have implemented a wider array of technology controls and management practices, as well as costs to operations that have little or no management practices in place. To do this, EPA is considering breaking out its estimated average compliance costs across three different performance group scenarios: below average performers, average performers, and above average performers. For the purpose of this analysis, average performers would represent 50 percent of all operations that employ an average mix of waste management practices and technology controls. These costs would be roughly equivalent to the average costs assumed by EPA for the proposal, with some refinements to incorporate new data and information as necessary. Costs incurred by operations assumed to be above (below) this average would reflect 25 percent of all operations with a higher (lower) mix of practices and controls in place. Stated differently, operations with little or no environmental controls on-site to manage manure would be considered a below average performer, whereas operations that already have substantial manure management practices and controls in place would be considered to perform above average.

Table 5–6 presents an example of this proposed approach for an operation that compares the approach used by EPA for proposal and the alternative approach that EPA is considering using for its analysis to support the final regulations. As shown with this simple example, EPA would develop revised compliance cost estimates arrayed onto three different cost categories for each representative CAFO model, resulting in greater refinement of its estimated costs. These three sets of costs would each be used to assess financial impacts to CAFOs, instead of the single weighted-average cost used by EPA to assess impacts for the proposal. As discussed previously, for proposal, EPA developed its own estimates of the average percent of operations needing upgrade to adjust estimated total costs assumed across all operations. For the analysis supporting the final analysis, EPA is considering using estimates of the average percent of operations needing upgrade across three groups of operations—operations categorized as ''average needs,'' ''least needs,'' and ''most needs'' operations. Financial impacts would therefore be measured against these three sets of average costs per representative model facility, rather than a single average cost. Preliminary estimates that USDA has developed depicting the percent of operations needing upgrade across these three groups of operations that EPA is considering to use for the final analysis are provided in the EPA's record.

TABLE 5–6.—EXAMPLE OF ALTERNATIVE APPROACH TO EPA'S MODEL FARMS BEING CONSIDERED FOR THE FINAL RULE

Cost component	Approach used for proposal		Alternative approach considered		
	Frequency factor	Avg. weighted cost	Least needs (25%) Average	Average (50%)	Most needs (25%)
Cost component #1 ..... Cost Component #2 Cost Component #	Average percent of operations needing upgrade (each cost component).	Average cost across all operations (each cost component).	Average percent of ''least needs'' operations needing upgrade (each cost component).	Average percent of ''average needs'' operations needing upgrade (each cost component).	Average percent of ''most needs'' operations needing upgrade (each cost component)
Total Costs	.....	Average Costs all operations (per Model CAFO).	Average Costs ''least needs'' operations (per Model CAFO).	Average Costs ''average needs'' operations (per Model CAFO).	Average Costs ''most needs'' operations (per Model CAFO)

In order to adopt this approach EPA needs additional information on the adoption and use of various types of management practices and technology controls employed at different types of livestock and poultry operations. In part, USDA is in the process of compiling such estimates that EPA will consider using for the purpose of refining its compliance cost models. These data are based on existing published data and USDA surveys conducted by the Animal and Plant Health Information Service (APHIS) and other State level or industry supplied data and information. This data set covers each of the key sectors (including: Fattened cattle, dairies, confined heifers and veal, swine, broilers, layers, chicken pullets, and turkeys) differentiated by select production regions, facility size, and dominant production type. Additional information on these data and USDA's supporting documentation on how these data were obtained are available for public review in the rulemaking record located at EPA's docket office. The record also contains various supplemental information collected by EPA using this general modeling framework. EPA solicits comment on these data and the alternative approach described here to refine EPA's compliance cost models.

c. Engineering Cost Test To Determine Appropriate Technology Systems

EPA's engineering costs models incorporated an engineering cost test to determine the least expensive combination of technologies that could be used to meet EPA's proposed performance standards. EPA used this cost test to compare the costs of various technology trains that could be used to meet a specific performance standard (a technology train is the combination of linked technologies or BMPs that could be used as part of a manure management system). For example, the engineering cost test was used to compare the overall system cost of various land application methods, nutrient management strategies, capital expenses

for improvements at the production area, and other technologies (see the Development Document).

The engineering costs test was performed by addition of the start-up costs, the fixed costs, and the annual costs, plus a percentage of the capital expenditures to determine the total costs incurred in year one. The percent of capital costs included in this equation depended on the interest rate, period of payback, and down payment consistent with those criteria used in the economic analysis. EPA used 14 percent of the capital expenses to reflect a 10-year depreciation at 7 percent interest (see Economic Analysis). Table 5–7 provides an example of the engineering cost test used for proposal.

TABLE 5–7.—EXAMPLE OF EPA'S ENGINEERING COST TEST USED FOR PROPOSAL

Cost component	Technology train A		
	Technology A	BMP A	Total for technology train A
(1) Start-up Costs	$200	$10	$210
(2) Other Fixed Costs	300	50	350
(3) Annual Costs (O&M)	40	400	440
(4) Capital Costs	5,000	0	-
(5) 14 Percent of Capital Costs	700	0	700
Total Cost for Technology Train A Incurred in Year (1+2+3+5)			$1,700

EPA is considering alternative payback terms and lending arrangements, as discussed in Section V.C. EPA intends to modify the engineering cost test to be consistent with the alternative loan terms under consideration in this notice. For example, if the economic analysis methodology assumes 30 percent of capital would be incurred in year one as a result of down payments, closing costs, and other fees, for consistency the engineering costs test would add 30 percent of the capital to the total start-up costs, fixed costs, and recurring costs in the engineering costs test. Table 5–8 provides an example of the modified engineering cost test applied to the same technology train presented in Table 5–7.

TABLE 5–8.—EXAMPLE OF EPA'S MODIFIED ENGINEERING COST TEST

Cost component	Technology Train A		
	Technology A	BMP A	Total for Technology Train A
(1) Start-up Costs	$200	$10	$210
(2) Other Fixed Costs	300	50	350
(3) Annual Costs (O&M)	40	400	440
(4) Capital Costs	5,000	0	-
(5) 30 Percent of Capital Costs	1,500	0	1,500
(6) Remaining Capital Costs (4–5)	3,500	0	-
(7) 14 Percent of Remaining Capital Costs	490	0	490
Total Cost for Technology Train A Incurred in Year (1+2+3+5+7)			$2,990

The cost incurred for development and implementation of technology train A in the first year is $1,700 using EPA's engineering cost test used for proposal. The total cost for Technology Train A incurred in year 1 would be $2,990 using EPA's modified cost test. EPA solicits comment on the use of the engineering cost test, and the changes to the cost test under consideration.

d. Changes to Costs for Land Application of Lagoon Liquids for Beef and Dairy Operations

The purchase of new or additional land application equipment is often a primary contributor to the overall costs in the beef and dairy cost models. EPA's cost model estimates the costs to purchase irrigation equipment to apply liquid from ponds and lagoons to the crop fields; the model assumed facilities already had access to equipment for solid manure applications. The poultry models assumed dry manure/litter equipment was already available. The swine models considered certain cases where new or different application equipment would be needed, especially under technology option 5 which could change the composition of land applied manures. EPA selected center pivot irrigation for costing land application of liquids from runoff ponds. EPA is considering three additional areas pertaining to the costs for land application; alternative irrigation and land application equipment; additional sludge removal; and limits to land application based on hydraulic loadings (hydraulic loading is used to measure how much water can be applied before the ground approaches saturation and pooling on the surface occurs).

For proposal, EPA costed facilities to spread manure over all acres owned or rented. EPA costed many of these facilities for new or additional land application and irrigation equipment to land apply liquid manure. EPA calculated these costs of irrigation equipment based on all acres owned, even when the facility owned more acres than was needed to utilize all manure as a fertilizer based on nitrogen or phosphorus rates, as appropriate. EPA believes as a practical matter, facilities will irrigate closest fields first, saving solids hauling for the fields farther away from the liquid storage areas. EPA is considering adjusting the model farms to reflect this practice,

which would reduce a facility's overall compliance costs.

For proposal, EPA assumed excess nutrients (excess nutrients are those nutrients beyond the farm's total annual crop requirements) would be hauled off site each year. In the case of liquid storage, EPA costed solids separation for facilities with a large nutrient excess. For other facilities with minimal nutrient excess, EPA costed hauling of liquid assuming the lagoon was mixed prior to pumping. EPA is evaluating an approach where excess nutrients, particularly the excess phosphorus that tends to settle on the bottom of the liquid storage area, would be assumed to accumulate for a period of approximately 3 years. The top liquid fraction would continue to be land applied locally each season, but without mixing of the bottom sludge. The bottom sludge would be removed every three years to maintain capacity of the lagoon, but also to facilitate hauling of a more concentrated slurry. EPA believes this will reduce the volume to be hauled, the number of trips needed, and therefore reduce costs. EPA data suggests facilities are not likely to haul liquid manures more than one mile. EPA believes one mile is approximately the distance the manure can be hauled based on the nutrient value of the manure as compared to the costs of hauling. EPA believes these facilities are more likely to haul a concentrated slurry longer distances and still maintain a net positive value for the transported nutrients.

EPA acknowledged in the proposal that in some cases factors other than nutrients could limit the application rates of manure to crop land. EPA is evaluating those areas where the water holding capacity of the soil could result in a manure application rate more limiting than the phosphorus based rate. For these areas, EPA intends to perform a sensitivity analysis of application rates that considers the hydraulic loading limitations of the crop land. EPA believes facilities currently applying manure on a nitrogen based rate and that need to go to a phosphorus based rate will be mostly unaffected by hydraulic limitations. EPA solicits comments and information on the extent to which hydraulic loading limitations may affect the costs of applying manure.

EPA also assumed that all manures would be distributed evenly on all land available to the animal feeding operation. EPA is considering revisions to the cost estimates for hauling manure to the closest fields first, particularly under a scenario that would allow phosphorus banking. Under such a scenario, additional commercial nitrogen fertilizer would not be needed the year the manure was ''banked''. EPA solicits comments on these modeling assumptions, as well as the baseline model changes under consideration.

e. Cost Offsets and Savings

For proposal, EPA's incremental costs of compliance were potentially overstated because EPA did not include all cost offsets and savings associated with animal production. For example, in the proposal EPA acknowledged some facilities give away manure, and some must pay for the transport of excess manure. To the extent EPA's proposal would require additional transport, EPA has included this expense in its cost models. EPA also accounted for the costs of commercial fertilizer when facilities apply manure on a phosphorus basis, but did not account for the nutrient value of the manure. In EPA's cost reports, EPA estimated an incremental value of $1.70 per ton of for composted manure for Option 5 for beef and dairy. This nutrient value is equal to the difference between the nutrient value of manure versus the nutrient value of compost. EPA is considering an approach that places a nutrient value on manure when it is used on the farm as a resource, especially as a fertilizer replacement. EPA also intends to consider the 1997 (EPA's baseline year) Commercial Fertilizer Institute values of nitrogen and phosphorus for purposes of estimating the nutrient value of manure. EPA solicits comment on the value of the nutrients in manure when used as a fertilizer replacement.

EPA has further estimated that sales of dry poultry litter could offset the costs of meeting the regulatory requirements on the order of more than 50 percent. Some stakeholders have confirmed manure sales, in some cases, can exceed the value of livestock sales. U.S. Poultry conducted a producer survey, the results of which indicate that the producer directly sells 34 percent of litter, and an additional 17 percent is ''traded out'' with a broker, normally for fresh bedding material. EPA analysis and data further indicate concentration of manure nutrients through changes in the moisture and form of the manure allow longer economical hauling distances, particularly with the current increases in fuel prices and increasing costs of diesel-based commercial fertilizers. Similarly wetter manures have increased value after composting or treatment, on the order of $17 per ton for composted dairy and steer manure.

EPA believes its current approach to account for the cost of hauling excess manure off-site is further overstated, as EPA did not consider alternative uses and destinations of manure in its cost analysis. For example, EPA has documented an increasing trend in centralized manure treatment and value-added processing, as well as increased integrator involvement in manure marketing. Poultry litter in particular is considered more valuable than most other animal manures due to its low moisture content and relatively high nutrient value. EPA conservatively estimates litter sales generates an average of $8 per ton. In some circumstances, wetter manures, such as layer manures, are successfully transported and sold at a profit. Market opportunities are further increased by providing a value added or composted product, or by offering custom application services. Bagged compost can be bought at local garden centers for $4 per 40 pound bag, or $200 per ton.

Therefore, EPA is considering *limited* amounts of litter and manure sales with those model farms corresponding to the geographic regions where the data indicates manure is sold. EPA solicits comment on the costs and data used with this approach, and solicits comment on EPA's calculated value of $8 per ton for litter. EPA notes it does not intend to use retail values for value added manure, but will use the information in support of considering cost offsets due to manure value. EPA solicits comment on these data and assumptions.

2. Alternate Data and Information for Estimating Compliance Costs

This section describes additional cost data and information obtained by EPA to address concerns about its cost methodology to estimate compliance costs. This section also presents corrections to EPA's estimated compliance costs as well as clarification on cost information presented in the preamble to the proposed rulemaking.

a. Alternative Costs and Information to EPA's Ground Water Assessment

EPA proposed all new sources and existing beef and dairy farms must provide a certification that the ground water in their area is not hydrologically connected to surface water. Without a certification, facilities must monitor the ground water surrounding the manure storage areas and take necessary measures to ensure no discharge to ground water that is hydrologically connected to surface waters. Some stakeholders stated EPA's cost estimate for obtaining the assessment

(approximately $3,000) is reasonable only if the statement is based on a site visit and records review with no intrusive sampling. However , these stakeholders believe even if there is no hydrologically connected ground water on a site, it will be difficult for a permit applicant to obtain a hydrologist's statement to this effect that is acceptable to the permitting agency. Several vendors indicated such an assessment would require additional soil core sampling and monitoring data, and a certified statement that proves the absence of a direct hydrological connection to ground water to the satisfaction of the permitting agency would probably cost two or three times as much as EPA proposed. EPA solicits additional comment on the costs of obtaining a hydrologist's certification.

EPA is considering alternatives to the assessment that might reduce costs and burden. Under one alternative, EPA would require ground water controls at a given site based on certain high risk geographical criteria. EPA would consider sandy soils, karst topographies, and shallow ground water tables, among other factors, in its determination of high risk criteria. As described in Section IV, EPA solicits comment on an option that would define the high risk criteria that would automatically trigger the requirement for additional ground water controls, replacing the cost of an assessment.

b. Gas Collection Systems and Cover Materials for Proposed Technology Option 5

As part of proposed technology option 5, EPA estimated the cost of flares for covered lagoon systems for all swine facilities. EPA has solicited additional comment on the feasibility of technology option 5, and will continue to evaluate the costs and affordability of such technologies. In particular EPA will consider its estimate of costs associated with the gas collection systems and the installation costs of the cover materials. EPA will also reconsider the gas collection system costs for certain veal operations that employ open lagoons for storage. EPA solicits additional data on the component costs for covered lagoon systems, such as cover materials, additional berm development for anchoring the cover, flotation and ballast systems, and sump pump systems. EPA also solicits additional data and information on the operation and management of gas collection systems, such as automated flares.

c. Engineering Costs for Nutrient Management Planning Costs

EPA intends to use the USDA Cost and Capability Study to update the costs of nutrient management planning. In particular, EPA will add a one-time fixed cost for engineering assessments associated with the development of a Comprehensive Nutrient Management Plan. EPA will also reevaluate the costs of hiring a certified consultant to write or approve the plan. Data provided by the University of Tennessee suggests the cost for a certified planner ranges from $50 per hour to $125 per hour. Other comparable data sources in the record include state assessments of nutrient management costs, watershed level experiences with comprehensive nutrient management plan implementation, and vendor supplied costing information. EPA solicits additional comment on the component costs of nutrient management planning such as engineering assessments, mapping and planning activities, and the annual record keeping costs associated with nutrient management.

d. Correction to EPA's Compliance Costs and Economic Analysis Due to Omitted Costs for a Subset of Hog Operations

In the cost analysis supporting the proposed CAFO regulations, EPA inadvertently omitted the cost of impermeable lagoon covers for a subset of hog operations under the proposed BAT Option 5 (refers to EPA's proposal to require nitrogen-based and, where necessary, phosphorus-based land application controls of all livestock and poultry CAFOs, with the additional requirement that all hog, veal, and poultry CAFOs must also achieve zero discharge from the animal production area with no exception for storm events). The subset of operations that were not correctly costed in the analysis included hog operations classified as ''Category 3'' operations, which are assumed to represent CAFOs without adequate landbase for application of manure on cropland; Category 3 CAFOs are those operations that would likely need to transport manure offsite for alternative use or to be spread as fertilizer. This cost omission in EPA's analysis does not affect any other livestock or poultry sectors or other land-use categories (Category 1 and Category 2 CAFOs) in EPA's cost analysis.

The number of hog operations with understated costs due to the omission of lagoon cover costs includes 210 hog operations, or about 1 percent of the total number of 14,370 hog facilities assumed in EPA's analysis. By broad facility size grouping, an estimated 81 hog operations with more than 1,000 AU and 129 hog operations with fewer than 1,000 AU were undercosted.

EPA estimates that the effects of these omitted costs understates EPA's estimated total compliance costs for the hog sector as follows. These omitted costs would result in additional capital costs to hog facilities of $33 million to $68 million over a 10-year period (1997 dollars). On an annual basis, additional costs to the hog sector would total $5 million to $10 million, or a 2 percent to 3 percent increase in estimated industry costs (based on EPA's original cost analysis that estimated costs to the hog sector at $294 million to $306 million per year). Expressed on a per-hog basis for this subgroup of hog operations, the additional annual cost to hog facilities could be as much as $3 to $5 per marketed hog. This represents a 75 percent increase in estimated per-head costs compared to EPA's original estimate at $4 to $7 per head (post-tax) for Category 3 CAFOs in the hog sector.

If these omitted costs were considered in EPA's analysis that evaluates financial impacts to the hog sector, this would raise the estimated total number of hog operations that would be considered to experience financial stress and be vulnerable to facility closure as a result of the proposed regulations. Assuming a worst-case scenario, all of the 129 hog operations with fewer than 1000 AU without landbase for manure application might close. (All 81 hog operations with more than 1,000 AU without landbase for application were already projected to close in EPA's original economic analysis.) This would raise the total number of hog operations that would be vulnerable to facility closure to 1,550 hog operations, up from EPA's original estimate of 1,420 hog CAFOs projected closures. As a percentage of all hog CAFOs, hog operations projected to close would total more than 22 percent of all CAFOs in the hog sector, up from EPA's original estimate of 17 percent of hog CAFOs projected to close as a result of the proposed regulations. EPA has not yet evaluated this change in financial impacts under a cost passthrough scenario. (EPA's original analysis showed that all 1,420 hog CAFOs would be able to afford EPA's estimated compliance costs under a scenario of long-run market adjustment and cost passthrough.)

EPA will consider these costs and projected economic impacts when reviewing alternative technology options for the final rulemaking.

e. Correction to EPA's Summary of the Range of Estimated Compliance Costs Across All Proposed Technology Options

In the preamble to the proposed rulemaking, EPA provided a summary table listing the range of annualized compliance costs developed for EPA's analysis. This table presented the range of estimated costs across all the technology options considered by EPA but inadvertently failed to reflect the full range of costs estimated by EPA across all of the proposed technology options. Even though EPA is in the process of revising all its cost estimates based on new information and is incorporating changes to its cost models in preparation to develop the final CAFO regulations, today's notice presents corrections to this table to clarify omissions to information presented previously for the proposed rulemaking.

Costs presented in the preamble to the proposed rule (Table 10–1, see 66 FR 3083) listed annualized costs for each sector, summarized across the estimated range of minimum and maximum costs across all facility sizes, production regions and land use category. Prior to publication in the **Federal Register**, this table was not updated to reflect EPA's final cost estimates, as well as expected higher compliance costs, to some facilities under the proposed BAT Option 3 (refers to EPA's proposal to require nitrogen-based and, where necessary, phosphorus-based land application controls of all livestock and poultry CAFOs, with the additional requirement that all cattle and dairy operations must conduct ground water monitoring and implement controls, if the ground water beneath the production area has a direct hydrologic connection to surface water). However, these costs were correctly documented in EPA's *Economic Analysis of the Proposed Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations* (referred to as ''Economic Analysis''). In addition, all the costs and financial impact results presented in subsequent sections of the preamble (66 FR 3084–3103) were correctly evaluated based on EPA's final compliance cost estimates for the proposal.

Corrections to these estimated annualized costs are presented in Table 5–9 (1999 dollars, post-tax). In this table, upper bound costs for the cattle sectors reflect higher costs associated with operations where there is a hydrologic connection from ground water to surface waters at the CAFO. These higher costs reflect the need for ground water controls and monitoring at some operations (referred to in EPA's supporting analyses as Option 3A costs). The previous table shown in the preamble only presented average cost conditions across all operations—both operations with and without a hydrologic link (referred to as Option 3 costs). Compared to the original estimates previously presented by EPA, these costs are in some cases much higher, especially in the beef and dairy sectors. Data presented in Table 5–9 would replace information previously presented by EPA in Table 10–1, published in the **Federal Register** notice of the proposed rulemaking (66 FR 3083). EPA's Economic Analysis for the proposed rule provides more detailed cost information, including annualized costs broken out by production region, land use category, and broad facility size groupings, as well as costs expressed on a per-head inventory basis.

As part of EPA's ongoing efforts to develop final regulations for CAFOs, EPA is reviewing the data, methodology and assumptions that were used to its develop estimated compliance costs assumed for the proposed rulemaking and, in some cases, might use alternative data and information to develop its compliance cost estimates for the final CAFO regulations. Consequently, EPA's final cost estimates will likely undergo further refinement and revision and might vary from those presented in this notice.

TABLE 5–9.—RANGE OF ANNUALIZED MODEL CAFO COMPLIANCE COSTS ($1999, POST-TAX)

Sector	Category 1		Category 2		Category 3	
	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
	(1999 dollars per model CAFO across all size groups)					
Beef	$2,100	$984,500	$7,300	$1,217,900	$1,000	$895,400
Veal	1,500	7,800	1,100	6,100	1,000	6,000
Heifers	1,500	37,300	1,600	42,300	1,000	34,700
Dairy	3,600	148,100	4,100	179,300	2,600	143,600
Hogs: GF	300	52,300	1,400	63,500	7,000	81,400
Hogs: FF	300	83,800	1,300	100,500	5,900	115,300
Broilers	3,600	36,300	3,400	25,800	2,900	21,300
Layers: wet	300	24,800	2,100	29,300	1,500	18,000
Layers: dry	900	59,000	900	31,600	700	27,600
Turkeys	2,500	111,700	2,500	29,400	1,700	20,800

Source: EPA. Category 1 CAFOs have sufficient cropland for all on-farm nutrients generated; Category 2 CAFOs have insufficient cropland; and Category 3 CAFOs have no cropland. ''Hogs: FF'' are farrow-finish (includes breeder and nursery pigs); ''Hogs: GF'' are grower-finish only. ''Layers: wet'' are operations with liquid manure systems; ''Layers: dry'' are operations with dry systems.

C. Data and Analytical Approach To Estimate Financial Impacts to CAFOs

This section describes alternative data and approaches that EPA is considering to address commenters' concerns about its economic model and associated input data and assumptions to evaluate financial impacts to regulated CAFOs.

1. Alternate Analytical Methodology for Determining Economic Achievability

For the proposal, EPA developed an economic model to assess financial impacts to regulated CAFOs based on predicted changes to select financial criteria. As introduced in Section II.B.4 of today's notice, researchers at FAPRI have conducted a review of EPA's economic analysis at the request of the Committee on Agriculture, United States House of Representatives. The results of this study were submitted to EPA for its consideration. The stated purpose of FAPRI's study was to provide EPA with an alternative methodology of calculating the expected financial impacts to CAFOs under the proposed regulations. Although the results of FAPRI's analysis are not

directly comparable to EPA's own analysis because the underlying model and input data are different, FAPRI's results do indicate some degree of sensitivity in the conclusions of EPA's economic analysis using different input data and modeling assumptions. FAPRI's study also provides EPA with additional information and suggested approaches for further refining and improving its economic model to assess financial impacts to regulated CAFOs. Today, EPA presents two alternative approaches that the Agency is considering to modify and refine its existing model.

The economic model that EPA used to evaluate financial impacts to CAFOs under the proposed regulations uses a representative farm approach. Such an approach is consistent with research conducted by other industry experts, including FAPRI. This approach provides a means to assess average impacts across numerous facilities by grouping facilities into broader categories to account for the multitude of differences among animal confinement operations. Under this general framework, EPA constructed a series of model facilities (''model CAFOs'') that reflect the EPA's estimated compliance costs and available financial data. EPA uses these model CAFOs to develop an average characterization for a group of operations based on certain distinguishing characteristics for each sector, such as facility size and production region, that may be shared across a broad range of facilities.

For the proposal, EPA evaluated the economic achievability of the proposed regulatory options at existing animal feeding operations based on changes in representative financial conditions across three criteria. These criteria include: a comparison of incremental costs to total gross revenue (sales test), projected post-compliance cash flow over a 10-year period, and an assessment of an operation's debt-to-asset ratio under a post-compliance scenario. EPA used the financial criteria to divide the impacts of the proposed regulations into three impact categories: affordable, moderate, and financial stress. Operations experiencing affordable or moderate impacts are considered to have some financial impact on operations at the affected CAFOs, but EPA does not consider these operations to be vulnerable to closure as a result of compliance. Operations experiencing financial stress impacts are considered to be vulnerable to closure post-compliance. More information on these criteria is provided in the proposal (66 FR 3088). Additional information on EPA's economic models is available in EPA's Economic Analysis; EPA's cost models are described in EPA's Development Document.

Specific recommendations on how EPA might improve its modeling framework include an expansion of the types of financial criteria that EPA examines and incorporation of uncertainty into the analysis, along with other suggestions on the use of various modeling assumptions and input data to depict financial conditions at the facility. For example, many commenters recommend that EPA evaluate impacts in terms of additional profitability criteria, such as return on assets or equity, internal rate of return, profit margins, or returns to labor and overhead before taxes. Many commenters also point to FAPRI's baseline model which generates results that place probability distributions around each of the point estimates of the baseline. By comparison, EPA's economic model used for the proposal, utilizes a point estimate deterministic approach—an approach that is consistent with recent regulatory analyses of financial impacts of many EPA regulations. Many representatives of the major trade associations and researchers at USDA publicly endorse FAPRI's suggested modeling approach and the results of its analyses.

FAPRI's comments to EPA's CAFO rule generally focus on the process EPA adopted to develop cost and economic analyses to support the proposed rulemaking rather than to address specific policies in the proposed CAFO regulations. To review EPA's economic analysis, FAPRI assembled industry experts to help construct alternative CAFO models and designed spreadsheets to, first, construct a financial baseline for each operation and, second, to analyze the impact of the proposed CAFO regulations. (FAPRI did not develop alternative compliance cost estimates but instead used EPA's estimated costs for the proposal.) The underlying model that FAPRI uses for its study is its 2001 long-term agriculture baseline model that is used to analyze agriculture policy requests from the U.S. Congress. This model consists of a large scale econometric model of both U.S. and world agriculture containing roughly 5,000 behavioral equations and identities. Additional detailed information about FAPRI's baseline model is available at http://www.fapri.missouri.edu. FAPRI's reports on EPA's cost and economic analysis are available in the record and at FAPRI's website: http://www.fapri.missouri.edu/FAPRI_Publications.htm.

At the market level, FAPRI's analysis is largely in agreement with EPA's economic analysis in terms of the magnitude of market price increases associated with production shifts due higher production costs from complying with the regulation. However, at the representative CAFO level, FAPRI's analysis generates a different set of results with respect to financial impacts based on its use of alternative input data, assessment criteria, and methodology for determining impacts. As a result of this review, FAPRI identified several areas of concern associated with EPA's analysis that assesses the financial impact to CAFOs. These range from the way in which EPA tracked the cost components to the basic approach used by EPA related to the financial viability of the respective CAFO operations. Other concerns highlighted by FAPRI's report are recommendations that EPA conduct its analysis on an enterprise basis only and also consider an operation's ability to incur new debt, among other analytical issues.

Based on these comments, EPA is considering ways to further refine the analytical models and assessment criteria that it uses to determine financial impacts to regulated CAFOs, as well as consider the use of alternative input data for conducting this analysis. This section describes the approaches that EPA is considering to refine its financial impact models. As discussed below, EPA would potentially add modules to its existing economic model and incorporate changes to various assumptions as well as additional financial data, but would retain the basic internal structure of EPA's existing economic model. These model refinements are described in the following subsections and include: addition of new assessment criteria to evaluate changes in profitability (Section V.C.1(a)); examination of impacts at both the farm and enterprise level (Section V.C.1(b)); revision of threshold levels on a debt-to-asset test for some sectors (Section V.C.1(c)); considerations of debt feasibility (Section V.C.1(d)); and consideration of various assumptions by EPA in its analysis for the proposal, including whether to use post-tax costs and other cost offsets that may be available to producers, such as cost share assistance and income from manure and litter sales (Sections V.C.1(e) and V.C.1(f)). EPA solicits comment on these approaches to further refine its economic impact analysis and, where indicated, EPA requests additional information to

follow through on these suggested modifications.

Section V.C.2 of this notice describes additional sources of data to depict baseline financial conditions that the Agency is considering to supplement available financial data provided by USDA that was used for the proposal.

At this time EPA is not proposing an alternative, more comprehensive overhaul of EPA's existing model based on recommendations by some commenters that the Agency instead design an entirely new modeling framework. Nevertheless, Section V.C.1(g) concludes with a brief discussion of a possible alternative approach for further refining EPA's model by incorporating an extensive sensitivity analysis within its baseline process and providing a fuller treatment of the range of expected outcomes than would be the case with only a point estimate deterministic approach, as used by EPA for the proposal. EPA also solicits comment on the use of such an alternative approach.

a. Inclusion of New Assessment Criteria to Measure Changes in Profitability

As described in more detail in the preceding introduction, for the proposal, EPA evaluated the potential financial impacts of the proposed regulatory options based on changes in representative financial conditions across select criteria. Among these criteria were a comparison of incremental costs to total gross revenue (sales test), intended to broadly measure changes in a regulated facility's profitability under a post-compliance scenario. This test was largely considered as a screening test for further analysis and assessment using discounted cash flow analysis and an assessment of an operation's debt-to-asset ratio.

Several commenters claim that the sales test is not a useful measure of whether producers can afford the regulations. They suggested that it should be replaced with a rate of return measure, such as return on assets, equity, or investment. One commenter suggested a criterion based on cost as a percent of profit margin (measured as revenue less cost of goods sold) or gross margin (measured as returns to labor and overhead before taxes). Another commenter recommended evaluating profits measured as earnings before interest, taxes, depreciation, and amortization (EBITDA). Others indicated that the sales test, if retained, should be measured against a lower threshold value due to the lower profit margins on sales in agriculture. In general, commenters state that potential impacts, even at lower cost-sales ratios, can result in proportionately large reductions in net returns and erode the attractiveness of reinvestment in animal agriculture.

To address these concerns, EPA is considering adding additional assessment criteria that would measure changes in an operation's profitability from complying with the regulations. One potential criterion would assess compliance costs as a share of profit margin or, alternatively, EBITDA (''profit test''). EPA is considering a 20 percent to 30 percent threshold value on a profit test, for profits measured as revenue less cost of goods sold, but not including returns to unpaid labor and overhead. Using this threshold value, if compliance costs as a share of profit margin is less than 20 percent this would be considered affordable; compliance costs as a share of profits greater than 30 percent could indicate potentially significant impacts. This proposed threshold range is consistent with past analyses supporting regulatory actions by EPA, including standards for pesticide containment structures under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), arsenic residue standards for preserved wood, and also regulations under the Resource Conservation and Recovery Act (RCRA). Additional supporting information for this proposed threshold value is provided in EPA's record. EPA solicits comment on the use of this additional criterion and the range of suggested threshold values to evaluate this criterion. EPA will consider adding this criterion to the extent that the available financial data for each of the affected regulated sectors allow.

EPA requests comment on alternate profitability thresholds and the basis for them. EPA also solicits comment and requests information on the use of a profit test and applicable threshold values for this test should EPA use available USDA financial data that defines ''net farm income'' to include depreciation and interest, as well as other nonmoney expenses and returns to unpaid farm labor.

EPA did consider evaluating regulatory impacts to CAFOs using profitability measures for the proposal, but decided not to include such criteria because of limitations in the financial data available to EPA to conduct its regulatory analysis. Specifically, given boom and bust conditions that are common in the agricultural sectors, these financial data often show negative returns to risk, management, and unpaid labor. Consequently, the only way for EPA to conduct its analysis using these data is either to assume it is a baseline enterprise closure (i.e., it should not be considered in the regulatory analysis since the operation would be discontinued even without considering the impact of the regulations) or to determine that the operation cannot be analyzed at this level (i.e., the operation is remaining in business because of certain mitigating factors). EPA often encounters such problems when analyzing certain multi-facility manufacturing or service firms in other EPA regulations using actual facility level data; in such cases the facility is removed from the analysis since it cannot be analyzed and is considered a baseline closure.

However, in the case of the analysis supporting the CAFO regulations, EPA is using a representative farm approach since it did not conduct a survey of all CAFOs nationwide. Using aggregated published data, this approach analyzes impacts across select groupings of livestock and poultry operations based on certain shared characteristics (e.g., animal production, region, facility size, etc.). Therefore, if the financial data for a certain representative group show negative returns under EPA's traditional approach, EPA would need to consider all operations within a group as a baseline closure. Financial data presented in Tables 5–10 through 5–12 provide an indication of which sectors would likely show large numbers of baseline closures given available data using a profit test with USDA's definitions of net farm income (which includes depreciation and nonmoney expenses). For example, as shown in Table 5–11, if EPA were to use alternate 1998 hog data from USDA, EPA's traditional approach would assume that all operations within each of the representative groups are baseline closures. However, EPA recognizes that when available data show large numbers of baseline closures (including even whole sectors), this may indicate limitations with the underlying data and/or methodologies rather than a realistic picture of the industry. EPA is further aware that facilities identified as baseline closures under EPA's traditional approach may be the very facilities likely to experience stress as a result of additional compliance costs, and that it is therefore important to account for these facilities in the analysis.

For proposal, EPA evaluated impacts using a sales test and not other profit measures. If EPA decides to adopt a profit test as part of its final analysis, EPA will need to consider ways to address concerns regarding the potential number of large baseline closures using available data for operations that show

negative returns. A possible approach that might avoid this concern would be to consider compliance costs as a share of net income excluding depreciation and nonmoney expenses as part of the profit test (e.g., profits defined as profit margin or EBITDA). However, available financial data may be limited to allow for this level of differentiation among individual accounting line items. EPA solicits additional comment on these concerns.

Because of these concerns, EPA is also considering other profitability criteria, including return-on-assets (ROA) and return-on-equity (ROE). ROA is measured as the percent profit before taxes as a share of total assets in the RMA data. ROE is measured as the percent profit before taxes as a share of tangible net worth. EPA has evaluated changes to ROA as a measure of impact in previous effluent guidelines analyses, including analyses for the pharmaceutical manufacturing industry and the pesticide formulating, packaging and repackaging industry. The benchmark that has been used for these criteria are based on data reported by Robert Morris Associates (RMA). Each year, RMA surveys a number of operations in most sectors of economy, including agriculture, to gather basic financial data on which to report various balance sheet and income statement items, as well as key financial ratios. In previous analyses by EPA, it was assumed that operations that are at risk of closure or bankruptcy under a post-compliance scenario are those with, for example, estimated ROA higher than the lowest quartile of value in the baseline that are determined to have ROA below the lowest quartile value reported by RMA after complying with the regulations. Because of issues related to data indicating negative returns within some of these sectors (as discussed previously), the proposed benchmark values using this approach are negative. Accordingly, for the CAFO analysis, EPA has determined that the following relevant ROA and ROE lowest quartile benchmarks would apply based on RMA for 1994–1997: lowest quartile ROA ranges from -0.4 percent for hog operations to -4.3 percent for egg operations; lowest quartile ROE ranged from -0.4 percent for dairy operations to -10.7 percent for egg operations. These benchmarks are preliminary and subject to modification using additional data to ensure a representative ROA or ROE benchmark has been identified. Additional supporting information for these proposed threshold values is provided in EPA's record. EPA solicits comment on the use of these alternative criteria and also the range of suggested threshold values to evaluate these criteria. EPA will consider adding these criteria to the extent that the available financial data for each of the affected regulated sectors allow.

b. Evaluation of Assessment Criteria at Multiple Business Levels

In the proposal, EPA evaluated financial impacts using USDA Agricultural Resource Management Study (ARMS) data that were aggregated at the farm level. EPA's basis for determining economic achievability among regulated CAFOs was therefore measured in terms of the potential for closure of the facility and not as a potential product line closure. Among the principal concerns raised in the FAPRI study as well as by researchers at the land grant universities and also USDA is that EPA should evaluate financial impacts to regulated CAFOs for the single regulated livestock or poultry enterprise only.

Many commenters claim that EPA's use of farm-level financial data raises questions as to whether a CAFO would willingly subsidize one enterprise with dollars from other farm enterprises. These commenters question whether producers at more diversified operations would choose to cross-subsidize an unprofitable enterprise for long periods or whether they would instead shift assets towards other, more profitable enterprises at their operation; these producers might not quit farming but would only remove the non-productive enterprise from their farming mix. Moreover, some commenters point out that larger operations are normally enterprise specific and tend to specialize and focus on a single enterprise and, therefore, an enterprise approach is considered more appropriate for EPA's analysis. Other commenters also note that the use of enterprise level data in the form of ''enterprise budgets'' is more consistent with a representative farm approach, which was the general approach adopted by EPA for evaluating financial impacts for the proposal. FAPRI also noted that while an evaluation of impacts at the farm level has merit, it is also prone to confounded results because enterprise specific costs are spread over a larger share of the business (e.g., non-livestock enterprises bear the cost of livestock regulatory costs).

EPA recognizes the importance of considering financial impacts at multiple levels within a business since this is consistent with economic theory and a more technically sound approach. EPA typically conducts its analyses of regulated entities using data for a business as a whole as opposed to an individual product line at a firm. The main reason for this is that data are often not available at the enterprise or product line level. Similarly, data limitations restricted the types of analyses EPA was able to conduct to support the proposed CAFO regulations; because the available ARMS data obtained by USDA did not provide usable data and information for an individual enterprise at a model facility, EPA was not able to evaluate impacts at the enterprise level. Instead, the ARMS data available to EPA were expressed for an operation's entire business, which includes revenue and cost information across all enterprises at a facility. Although the ARMS data's revenue information is roughly distinguishable between gross income from total livestock production and revenue from other farm source (including crops, government payments, and other farm-related income), the operating cost data are not differentiated by an operation's livestock enterprise but are reported as total cost and reflect joint production and labor costs across all the different enterprises at a facility.

Today, EPA presents options that the Agency is considering to modify its economic analysis to take into consideration new financial data received by EPA in order to assess financial impacts at multiple businesses levels within a representative facility. This addresses recommendations received through public comment in conjunction with new financial data that has been provided to or compiled by EPA at the enterprise level for some sectors (presented in Section V.C.2 of this notice). EPA is considering whether to use these enterprise data to supplement the farm level data used by EPA for the proposal.

Given the availability of these new data for some sectors, EPA is considering an approach that would supplement available data at the farm level with data at the enterprise level. EPA has adopted such an approach for previous regulations where data are available (e.g., regulations related to the Pesticide Formulating, Packaging and Repackaging industry which were evaluated according to product-line closures, see 61 FR 57518). For this analysis, EPA is considering using available financial data to assess changes in a representative facility's profitability based on changes at both the farm and enterprise level. EPA proposes to continue to evaluate changes in solvency using a debt-to-asset test at the farm level. Any additional considerations of a debt

down payment requirement, as discussed later in Section V.C.1(d), would also be assessed at the total farm level. EPA's discounted cash flow analysis will continue to be conducted using farm level data. Using this approach, EPA is considering ways to evaluate the financial impacts of the proposed regulations that consider impacts at these multiple business levels (e.g., both the farm and enterprise sector) to differentiate circumstances under which an enterprise or product line may be discontinued but the farm or larger business entity remains in operation. While closure of the farm business is the focus of EPA's analysis, several commenters have expressed concern about enterprise closure for reasons of risk diversification and industry concentration. EPA solicits comment on the use of this approach and also requests additional input from the public on how to reconcile these issues for purposes of assessing financial impacts to regulated CAFOs for the final rulemaking.

EPA is not considering evaluating financial impacts at the enterprise level only, as some commenters have recommended. One reason for this is that usable enterprise level data are not available across all sectors in order to be able to complete such an analysis. In addition, some components of EPA's analysis are simply only appropriate when conducted at the farm level, such as EPA's standard discounted cash flow analysis or an assessment of an operation's debt. Moreover, EPA is unlikely to ignore available farm level data for some aspects of its analysis. For example, it is a long-standing practice and consistent with Agency guidance to assess impacts to small businesses at the broader business level, as part of EPA's obligation to conduct a regulatory analysis of the impacts to small businesses under the RFA. Furthermore, previously published academic research by both the land grant universities and USDA have typically evaluated impacts using data and methods specified at the farm level or have, at least, taken into consideration information for the larger business concern.

EPA's alternate proposal to supplement available farm level data with new enterprise level data also addresses concerns that EPA has about evaluating impacts at the enterprise level only. These are summarized briefly as follows. As a practical matter, EPA recognizes that often the individual enterprises at an operation are highly interdependent, such as in the case of integrated production systems where there may be considerable cost savings due to shared production and labor costs among multiple enterprises at a farm or as in the case of where one enterprise, e.g., grain crop production, serves as an input to another, e.g., livestock production. In addition, an analysis using enterprise level data may fail to account for the range of assistance to the farming operation through various government programs, which are often noted as a separate source of farm level income in USDA's data compendiums. Also, as pointed out by one lender questioned by EPA, lenders usually look at the debt carrying capacity of the farm operation as a whole, except in the unusual instance when their lien is only on the enterprise. Finally, farms are commonly noted to be motivated by non-economic factors that may influence an operation's decision to weather the boom and bust cycles that are commonplace in agricultural markets. These issues raise questions about whether a decision to conduct EPA's analysis strictly at the enterprise level is simple and straightforward. EPA requests information on how to reconcile these concerns in the context of its analysis.

As part of this approach, however, EPA is not considering modifying its existing economic models to take into consideration financial data for processing firms. Such an approach has been suggested because of the affiliation between some CAFOs (e.g., contract growers) and processing firms through various contractual arrangements in some sectors. Data are not available to conduct such an analysis: EPA does not have market information on which processors and CAFOs participate in such contract agreements; financial data for processing firms that contract out the raising of animals to CAFOs is also not available. Consistent with how EPA conducted its analysis for the proposal, EPA will continue to assume that an assessment of the regulatory impacts of the proposed regulations is more accurately conducted for the regulated CAFO since the CAFO is the operation that would incur the cost of the proposed requirements. EPA solicits comment on this assumption and overall approach. Although EPA is not considering evaluating the financial impacts of the proposed regulations at the processor or integrator level, EPA will continue to evaluate expected broader market level changes using the assumptions of cost passthrough that were developed for the proposal as a surrogate for more complex market level models that would appropriately take into account structural adjustment among farmers as well as market adjustment in the long run.

At this time, EPA has not re-evaluated its analysis using the approach presented in this notice that would determine regulatory impacts based on both farm and enterprise level financial data. However, EPA did evaluate available enterprise level as part of its sensitivity analysis of its study results for the proposal. The results of this sensitivity analysis provide an indication of the potential changes that might occur if enterprise level data are evaluated in conjunction with farm level data used as discussed in this notice. For this assessment, EPA evaluated changes to its sales test criterion using USDA data for total livestock revenue only (i.e., excluding revenue from all other sources, including crops, government payments, and other farm-related income). This approach differed from EPA's main analysis where cost-to-sales ratios were evaluated using financial data for the farm operation as a whole and does not differentiate between an operation's livestock and other business enterprises. EPA was not able to evaluate changes in other financial criteria because enterprise level data was not available with respect to an operation's operating costs. This analysis is provided in Appendix D of EPA's Economic Analysis that supports the proposed rulemaking.

Table 5–9 presents the results of this analysis as well as a comparison of gross revenue at both the enterprise and farm business levels assumed in this sensitivity analysis, expressed on a per-animal basis. Overall, consideration of enterprise level data only could result in these operation's being depicted as having lower ability to pay for additional compliance costs, as compared to consideration of broader farm level data. EPA's analysis using only enterprise level data resulted in an increase in the assessed number of enterprise and potentially farm closures. As shown in the table, the reported USDA data show that livestock revenues comprise roughly one-half of a farm's total operating revenue for most sectors. In the broiler sector, enterprise revenue is about 10 percent of that reported for the entire operation: business revenue is $1.10 to $1.50 per bird when expressed at the farm level, as compared to $0.10 to $0.20 per bird when expressed at the broiler enterprise level only. As is also shown in the table, if cost-to-sales ratios at the enterprise level are assumed to be the sole basis for determining whether the proposed regulations are affordable, the number of potential product line failures would increase significantly as compared to an assessment using farm

level data only. These results do not take into consideration the potential offsetting effects of cost passthrough and longer term market adjustment. In addition, EPA considers the results of this analysis for some operations, particularly broiler operations, to be overstated since this simple test does not take into consideration lower production costs at contract grower operations where production inputs are often provided by the affiliated processor firm under various contractual agreements.

EPA solicits comment on EPA's intention to supplement available farm level financial data with new data received at the enterprise level, and to use these data to determine economic impacts to regulated CAFOs.

TABLE 5–9.—COMPARISON OF INPUT DATA AND RESULTS USING ENTITY (MAIN) AND ENTERPRISE (SENSITIVITY) DATA

Sector	Number of CAFOs	Input revenue data		EPA's analysis result	
		Main analysis entity level revenue/head	Sensitivity analysis enterprise level revenue/head	Main analysis number of CAFOs financial stress	Sensitivity analysis number of CAFOs financial stress
Beef	5,330	$502–$862	$340–$512	90	660
Dairy	7,140	$2,343–$2,620	$2,166–$2,650	700	700
Hog	14,370	$84–$606	$47–$307	1,420	3,020
Broiler	14,140	$1.10–$1.40	$0.10–$0.20	320	14,140
Layer	2,060	$25.00	$17.00	0	0
Turkey	2,100	$11.0–$20.0	$6.0–$17.0	0	100
Total	45,140	n/a	n/a	2,520	18,610

Source: Input data are from USDA's 1997 ARMS data, derived on a per-animal basis. Data used for sensitivity analysis are derived from the data in the main analysis, based on USDA-reported livestock portion of total farm revenue only and disregards revenue from other farm-related sources, including crops.

EPA's analysis compares results in terms of the number of operations that might experience financial stress between the main (entity) and sensitivity (enterprise) analysis (shown for the proposed technology options all operations with more than 300 AU).

c. Revision of Threshold Values on a Debt-to-Asset Test (Some Sectors Only)

For the proposal, data on a representative operation's debt-to-asset ratio were obtained from USDA. These data were used along with other financial criteria to assess an operation's debt-to-asset ratio under a post-compliance scenario and constitute one of the tests used by EPA to assess financial impacts to CAFOs. For the debt-to-asset test, EPA assumed a threshold value of 40 percent, such that if an operation's debt-to-assets measured more than 40 percent after incurring the compliance costs, then EPA might consider this operation to experience financial stress associated with the proposed regulations, subject to other considerations. The basis for EPA's 40 percent test was USDA's financial classification of U.S. farms that identifies an operation with negative net farm income and a debt-asset ratio in excess of 40 percent as ''vulnerable.'' An operation with positive net income and a debt-asset ratio of less than 40 percent is considered ''favorable.'' EPA adopted this classification scheme as part of its economic achievability criteria in assessing the change in debt relative to asset at a regulated CAFO.

Commenters generally approve of using a debt-to-asset ratio in the economic analysis, but criticize the baseline assumptions, how the post-compliance ratio was computed, and the criteria chosen for the threshold. However, some commenters claim that USDA's 40 percent threshold value used by EPA in its baseline model to assess post-regulatory debt-to-asset ratios does not reflect the financial reality of today's livestock or poultry industry. Many commenters also note that debt-to-asset ratios from USDA's ARMS data set do not represent the current state of borrowing in many of these sectors. Specifically, they assert that the ARMS data reflect a current debt position that is too low, given that most operations face higher debt levels; also, these data reflect an assumed equity position of more than 60 percent that is considered too high to be representative of the livestock and poultry industry. Commenters indicate that some operations typically are highly leveraged, especially those operations that finance a large portion of their livestock.

Several commenters noted that EPA's use of average debt-to-asset ratios using the ARMS data fail to account for the wide range of variability among farm operators, based on a variety of factors including facility size and the age of the farm operators. One commenter cited survey data for the hog sector indicating that although average debt-to-asset ratios may fall within a range roughly at the 40 percent threshold, individual operations may operate below or above 40 percent depending on size of operation: generally, the majority of smaller sized operations tended to have debt-to-asset ratios less than 40 percent (roughly 60 percent of operations in that size class) whereas larger operations tended to have debt-to-asset ratios greater than 40 percent (roughly 50–60 percent of operations in that size class). Another commenter noted that operators seeking to expand their operations to better compete may face a higher debt load.

Some commenters support the use of alternate data and assumptions that reflect higher debt-to-asset ratios in the baseline model, approaching 70 percent. Some indicate that a baseline of more than 60 percent is not unusual, with some operations with levels of 70 percent to 80 percent. These comments are generally consistent with new financial data received by EPA that indicates that baseline debt-to-asset levels at some representative facilities in this industry exceeds 40 percent and tends toward 50 percent to 60 percent (see Section V.C.2 for more information).

Because of these comments, EPA is considering revising its debt-to-asset threshold and will look into alternatives to USDA's 40 percent value for those sector where alternative data support this approach (i.e., if EPA uses alternate and/or supplemental data based on submissions by NCBA for cattle feeding operations and FAPRI for hog and dairy operations, as described in Section V.C.2). Most commenters stated that financial stress would occur at operations facing debt-to-assets ratios of roughly 60 percent to 80 percent. One commenter suggested that a ratio of

more than 60 percent would be indicative of stress and that a ratio of more than 70 percent would result in bankruptcy. The basis for this recommendation cites farm credit information from the American Bankers Association's Farm Financial Standards Task Force suggesting that debt-to-asset levels in excess of 60 percent act as ''red light'' indicators to lenders. EPA's own discussions with farm lenders also indicate a 60 percent debt level for ''typical'' operations. Most lenders require an operation to retain a 40 percent equity base in the operation, although lower bases may be acceptable, particularly where the majority of debt is in short-term livestock loans or at very large operations. Therefore, the 70 percent debt-to-asset ratios (reflecting a 30 percent equity stake) at the very large operations represented in the NCBA survey may reflect both of these factors. Another commenter suggested assessing impacts based on the probability that an operation will experience two consecutive years of negative cash balances, in conjunction with a debt-to-asset ratio of greater than 70 percent in the second year of incurring new debt associated with the regulations. EPA requests additional information that further supports these and similar suggestions for modifying the threshold values assumed for purposes of conducting a debt-to-asset test.

Given these recommendations, EPA is considering revising the existing assessment criteria threshold on a debt-to-asset test from a 40 percent level assumed in the proposal, unless EPA obtains substantiated data to the contrary in comments to today's notice. At this time, EPA is considering a threshold value on this test of 60 percent for small and medium operations, and 70 percent to 80 percent for large operations—in certain sectors only. This revised threshold value will be applied as a test within those sectors where available data supports such an approach. At this time, based on available data that EPA has obtained, these revised thresholds will likely be applied within the beef, dairy, and hog sectors only. The basis for this revised threshold value in these sectors is new data obtained by EPA from FAPRI and NCBA indicating that operations in these sectors already carry much higher debt loads than average data reported by USDA. EPA is not considering revisions to the 40 percent threshold value for the debt-to-asset test for the the poultry sectors because available data does not support such an approach. Although a lender survey conducted by EPA indicates that debt levels may also be high within these other sectors, EPA did not receive data or information contrary to that reported by USDA during the comment period. Which applicable threshold level to apply for EPA's analysis will also depend, in part, on which alternate or supplemental data EPA chooses for the purposes of its analysis (for example, if EPA were to use available USDA data then the higher threshold values would not apply). As part of this notice, EPA also requests additional debt and asset data for these sectors, if available.

d. Consideration of Debt Feasibility

For proposal, EPA did not directly assess a representative operation's ability to service new debt. Many commenters criticize EPA for not considering impacts in a way that takes into account all of the cash outlays for an operation, including principal payments on loans to purchase the required technology. These commenters feel that cash outlays in the first year associated with a down payment might be substantial and could critically deplete equity and make second year cash flow requirements difficult. Today EPA presents how it is considering to respond to this comment and solicits comment on this approach.

Many commenters support a general assumption of 40 percent down payment on new debt. The general basis cited for this recommendation is the presumption that capital expenditures associated with compliance are viewed as non-productive investments that are usually sized to a particular operation's needs, therefore they not fungible or saleable as a secondary or tertiary source of repayment for that note and may even have negative value due to costs of removal and disposal. Given these types of single-purpose livestock facility investments, some commenters claim that banks would be reluctant to lend over 60 percent to 65 percent of the total costs. Another commenter made the general claim that a 40 percent down payment assumption is consistent with the typical lender demand that the farm have 40 percent equity in the operation after the loan is made. Few commenters provided documentation from lenders to support a general recommendation of a 40 percent down payment assumption.

Following the close of the comment period, EPA contacted many of the commenters that made this recommendation to solicit additional information on the necessary documentation to support this assumption. In return, EPA received contact information of farm credit specialists and additional information on recommended equity requirements. Because the Agency recognizes the value of taking debt feasibility into consideration, EPA has initiated its own review of what such an assumption would entail, based on information about a typical down payment. As part of this effort, EPA also conducted further evaluation of how lenders assess the ability of an operation to service new debt to determine whether such test is necessary and, if so, how such a test would be incorporated into the Agency's analysis. This section provides a summary of EPA's review. More detailed information is provided in the record.

To review public comments received on this topic, EPA conducted a wider review of documentation on farm lending practices and guidance manuals, as well as contacted each of the farm lender contacts submitted to EPA following the comment period and also other industry credit specialists.

Initially EPA set out to determine a appropriate level of down payment to assume as part of EPA's analysis. Based on EPA's preliminary review of available farm credit information, EPA believes that a 40 percent down payment is not supported by a review of agricultural loan requirements from several agencies. Instead, information collected by EPA supports a down payment assumption of 20 percent to 30 percent. This information is available for review in EPA's record. However, as EPA was reviewing possible down payment assumptions to assume as part of its analysis, it further became clear that the necessary financial data to do such an analysis are limited. Few enterprise budgets report cash reserves, and USDA data do not report cash reserves or cash balances as a line item. As part of its data submission, new data from FAPRI does include ending cash reserves, but these data are available for a limited number of sectors. Without this information, it is not clear whether EPA could evaluate if an operation would be able to provide the necessary cash to make up a shortfall in borrowing. In other words, even if EPA were to determine that it should consider a down payment requirement as part of its analysis, it might not be able to do this because of limitations in the available financial data. EPA requests additional information on first year net cash and/or cash reserves specified at the farm level for these sectors in order to properly apply this recommended debt feasibility test uniformly across each of the sectors. EPA also solicits comment on how EPA would conduct such an analysis given the data limitations and also requests

new information backed by supporting documentation as part of today's notice. Moreover, EPA solicits comment on whether such a test is even necessary, for reasons outlined as follows.

As part of this effort to obtain addition farm credit information to further supplement the Agency's economic models, EPA also investigated how lenders assess the ability of an operation to service new debt. In this process, EPA determined that if an operation has a sufficient equity base, a down payment might be a misleading concept. If a borrower were to take out a fixed term loan for an environmental improvement, a lender would be likely to finance 60 percent of the amount needed, similar to what many commenters pointed out. But the borrower has other choices than cash reserves for the additional funds needed. According to one lender, most farmers have access to other sources of lending limited only by cash flow and equity considerations. For these types of loans lenders are primarily concerned with cash flow and equity base. Operations may typically use their fixed assets as collateral and have access to borrowing (much like a homeowner might have to a home improvement loan) that is limited generally to a point at which their equity base would fall below 35 to 40 percent for a typical operation. This translates to a 60 to 65 percent debt-to-asset ratio on average. Two specialists contacted by EPA indicated that lenders typically demand that the farm have 40 percent equity in the operation after the loan is made. According to one of EPA's contacts, however, borrowers with high levels of equity could borrow up to 100 percent of the necessary funds (and presumably could borrow any necessary down payment under a fixed term loan). Thus as long as their equity base remains sufficient (i.e., they do not exceed their credit line), then obtaining additional funds should not be an insurmountable problem for farms. Stated differently, as long as an operation meets the threshold requirements of a debt-to-asset ratio, the operation should be able to obtain the money needed to meet the requirements of the CAFO regulations as long as cash flow remains sufficient to cover the payments. This would mean that additional tests to account for a down payment requirement as part of EPA's economic analysis are not necessary given the types of analyses (debt-to-asset assessment and cash flow analysis) already in place.

For its analysis supporting the proposed regulations, EPA assumed that operations where the debt-to-asset ratio under a post-compliance scenario exceeded a particular threshold might experience financial stress. These operations are likely those that would have to find ways to finance less than the full amount of the capital expenditure (i.e., make some sort of down payment, in effect, that might entail using any cash reserves, liquidating assets, or undertaking other difficult financial maneuvers). As a practical matter, these operations would be exceeding what might be estimated to be their available credit line. Assuming that these operations are automatically facing financial stress is simpler than trying to determine whether they could somehow manage a 40 percent down payment. Even if EPA was able to determine whether such marginal operations could manage to borrow only a portion of the necessary funds and pay for the rest out of pocket, the data to do such an analysis are limited (as previously noted).

Additionally, at proposal, operations where the equity base is sufficient prior to the regulations, but where the cash flow analysis indicates that they may not be able to cover the annualized costs of the regulations (which include both interest and principal payments, as well as operating costs) are also considered to experience financial stress. This may be considered as equivalent to assuming that lenders would not offer them a credit line sufficient to cover this level of expenditure. Lenders would also have determined that cash flow would not cover this level of debt and consequently would have provided a more limited credit line. EPA thus believes that the analysis performed at proposal that takes into account both the equity base (in the form of the debt-to-asset ratio) and the ability of cash flow to cover annual costs functions in the same way and reflects many of the same decisions used by lenders in granting access to credit.

For reasons presented here, EPA solicits comment on the assumption that a down payment assumption is not necessary given the analysis already in place, including EPA's joint analysis of debt-to-asset ratios and also cash flow. If an operation does not exceed a debt level considered problematic and if the analysis does not indicate cash flow difficulties, EPA would assume that the operation would not face financial stress as a result of the proposed requirements. Consequently, the inclusion of a debt feasibility test that assumes a certain percent down payment in addition to this analysis would not be needed. EPA solicits comment on this assumption and requests that any new information and recommendations as part of today's notice.

e. Consideration of Tax Savings

For the proposal, EPA calculated compliance costs to CAFOs both under pre-tax and post-tax scenarios. The pre-tax costs reflect the estimated total social cost of the proposed regulations, including lost tax revenue to governments. Pre-tax dollars are used when comparing estimated costs to monetized benefits that are estimated to accrue under the proposed regulations. The post-tax costs reflect the fact that a CAFO would be able to depreciate or expense these costs, thus generating a tax savings. Post-tax costs thus are the actual costs the CAFO would face. For this reason, EPA evaluated financial impacts to CAFOs taking into account the tax savings to facilities (i.e., according to estimated post-tax costs) using available Federal and State tax information to compute the expected tax shield for a representative facility. More detail on this approach is provided in Appendix A of EPA's Economic Analysis that supports the proposed rulemaking.

Some commenters oppose EPA's use of post-tax costs to assess financial impacts on the grounds that it is not appropriate to factor tax savings into the cost of compliance for producers. They recommend that EPA base its financial tests without the expected tax offset since operations whose survival is in question would have no positive income against which to offset these ''tax benefits'' but would be forced to bear the full ''pre-tax'' costs of implementation. Related comments recommend that EPA evaluate costs as a share of gross income (''sales test'') using pre-tax and not post-tax costs. In addition, overall commenters have expressed a preference that EPA evaluate compliance cost impacts using various income and profitability measures based on effects prior to consideration of tax offsets (such as net income before taxes).

Previous regulatory impact analyses conducted by EPA have evaluated compliance costs impacts on a post-tax basis using a standard cash flow model, incorporating an annualization approach that accounts for tax savings as well as depreciation at a business since these are more reflective of the costs that are actually incurred by that business. Given this longstanding practice that follows standard business and accounting practices, at this time EPA is not considering revising its approach to assess business impacts as part of the Agency's cash flow analysis.

However, EPA is considering evaluating financial impacts for some financial criteria using both post-tax and

pre-tax costs and will consider whether to jointly include these analyses as part of its overall impact assessment. For example, for proposal, EPA evaluates the ratio of costs to sales using post-tax cost estimates. If EPA retains the sales test as a measure of the impact of compliance, it will consider whether to instead evaluate pre-tax costs of compliance as part of its sales test. If EPA decides to evaluate compliance costs as a share of net farm income, it will consider the use of pre-tax costs for this test as well. EPA solicits comment on this approach.

f. Consideration of Various Cost Offsets

For the proposal, EPA did not consider the range of potential cost offsets available to most farms. One source of cost offset is manure sales, particularly of relatively higher value dry poultry litter. For example, EPA has estimated that sales of dry poultry litter could offset the costs of meeting the regulatory requirements on the order of more than 50 percent; however, EPA did not formally consider this analysis for the proposal. Another source of potential cost offset is cost share and technical assistance available to farmers for on-farm improvements from various State and Federal programs, such as the Environmental Quality Incentives Program (EQIP) administered by USDA. For example, cost sharing for eligible producers under EQIP may cover up to 75 percent of the costs of certain conservation practices, such as grassed waterways, filter strips, manure management facilities, capping abandoned wells, and other practices important to improving and maintaining the health of natural resources in the area. Technical assistance is also available for formulating conservation plans. EPA also did not formally consider these offsets as part of its analysis for the proposal.

Comments by some State representatives have suggested that EPA should account for the availability of cost share and technical assistance in the Agency's cost and economic analysis, including, for example, how producers might use these program dollars to help secure loans for capital investment associated with regulatory compliance. To address these comments, EPA may consider ways to evaluate the potential cost savings to an operation in terms of available cost-share and technical assistance. Such an approach is consistent with various academic studies of economic impact analyses that have been conducted in the past, which often take into account government assistance to a facility as part of an overall assessment. A review of the available literature demonstrating the use of such assumptions is provided in the record. To conduct this analysis, EPA may estimate these cost offsets using an approach similar to that previously conducted for other EPA regulations affecting agricultural producers. For example, available cost share program funding was considered as part of previous analyses of management control measures for CAFOs under the Coastal Zone Management Act, and was estimated at an average rate of $3,500 per facility. EPA anticipates that these estimates will reflect cost share assistance for new capital investments for each representative CAFO model, annualized over the time period of the analysis (and subject to certain program restrictions including program eligibility requirements and other restrictions such as the types of investments covered, as well as overall program funding limitations and availability of program staff to provide assistance.)

In addition, EPA may also consider ways to evaluate the potential income generated and/or cost savings to an operation from the sale or use of manure by the CAFO as a fertilizer substitute. This analysis may be based on the volume of manure nutrients estimated for each representative CAFO model adjusted by the average reported value for these nutrients (according to, for example, market prices for nitrogen, phosphates, and potassium). The use of such an approach is also consistent with much of the academic research conducted by the land grant universities, as summarized in literature review conducted by EPA of previous economic impact analyses to derive an average annual offset.

EPA solicits comment on these approaches to consider various cost offsets to incurred compliance costs, as described in this notice. Also, as part of today's notice EPA requests information from States and others on various conservation and assistance programs, particularly in terms of the amount of program dollars available to livestock and poultry producers through their State level cost-share and technical assistance programs.

2. Alternate Data for Determining Baseline Financial Conditions at CAFOs

For the proposal, EPA did not conduct a survey of all CAFOs to obtain financial budgets for use in its analysis. Instead, EPA relied on financial data from USDA's 1997 ARMS data to evaluate financial impacts at regulated CAFOs. Data for representative farms were obtained by USDA through special tabulations of the 1997 ARMS data, conducted by USDA's Economic Research Service (ERS). These data differentiate financial conditions among operations by commodity sector, facility size (number of animals on site), and major farm producing region. Data that EPA received from USDA were expressed for an operation's entire business and included revenue from an operation's livestock business as well as other enterprises at the facility, e.g., including crops, government payments and other farm-related revenue (but excluding off-farm revenue). Many commenters question the appropriateness of these ARMS data to evaluate financial impacts to CAFOs particularly for certain sectors. Most notably, USDA contends that its ARMS data are not suitable for evaluating impacts to cattle feeding and hog sectors. Other related issues about the ARMS financial input data include concerns about the fact that these data are specified at the farm level and are for a single year only (1997).

Today EPA presents additional data collected by EPA and also data received for the cattle feeding and hog sectors from USDA, National Cattlemen's Beef Association (NCBA), FAPRI, and other sources (Sections V.C.2(a) through (c)). Following a description of the alternate and supplemental financial data received or obtained by EPA is further discussion of sources of alternate data for other sectors that EPA will consider for use in its analysis to address concerns about the use of a single year of data (Section V.C.2(d)) and also how to forecast out data in EPA's financial models over the 10-year analysis period ((Section V.C.2(e)).

a. Alternative Financial Data for Cattle Feeding Operations

During the development of the proposed rulemaking, EPA received alternative enterprise level data for the cattle feeding sector from National Cattlemen's Beef Association (NCBA). These data provided aggregated summary information on financial conditions at cattle feeding operations based on responses to a survey questionnaire of its membership. After a review of these data, however, EPA decided—for reasons discussed below—not to base its economic analysis using NCBA's data for the proposal. Instead, given the lack of other statistically validated survey data for this sector, EPA used USDA's 1997 ARMS data for beef operations despite recognition of the limitations of these data for assessing cattle feeding operations. Both prior to EPA's proposal and during the comment period, NCBA expressed concern that the ARMS data are more

reflective of cow-calf operations and represent few feedlots and, therefore, might not be representative of operations in this sector. In addition, USDA has indicated to EPA that the available ARMS data are more reflective of cow-calf operations and might not suitable for evaluating impacts to cattle feeding operations. Iowa State University also notes the inappropriateness of ARMS financial data to represent beef feedlots.

EPA decided not to use NCBA's survey data for the proposal because of questions about these data, including statistical representativeness given a low survey response rate, lack of information on the statistical methodology used to compute averages, inconsistencies with other reported data by USDA, and other factors. EPA's assessment of the NCBA survey data is contained in EPA's record for the proposed rulemaking. Also, EPA determined that the NCBA survey data, if used, might lead to difficulties in estimating impacts given questions about NCBA's reported high debt-to-asset ratios in the baseline data that appeared inconsistent with other data, including that from USDA. Use of these data would have resulted in most cattle feedlots being assumed as ''baseline closures'' based on the criteria developed for EPA's analysis; these operations would be excluded from analysis since they would be assumed to close in the pre-regulatory baseline.

As part of EPA's public comment period, NCBA has submitted additional financial data and information for cattle feeding operations. This new data submission addresses many of EPA's initial concerns about NCBA's previously submitted survey data by providing additional information about how these data were collected and by including additional diagnostic information that allows EPA to more fully evaluate these survey data. And, based on information provided by NCBA and other commenters, EPA has received additional information indicating that the Agency's initial concerns about NCBA's reported debt-to-asset ratios are largely unfounded (also see discussion in Section V.C.1(c)).

Today EPA presents summary information on alternative financial data for cattle feeding operations provided by NCBA as well as FAPRI and Iowa State University. NCBA provided data developed on the basis of a survey of their members. FAPRI provided enterprise budgets developed by a panel of industry experts. Iowa State University provided information on beef feedlots in Iowa that might be representative of a ''typical'' (roughly 300–500 head) enterprise in Iowa. The data provided by these commenters are summarized briefly below and assessed for their usefulness to EPA's analysis.

NCBA provided the results of a survey of their members. A total of 66 surveys with 1997 financial data, 72 surveys with 1998 data, and 73 surveys with 1999 data were returned by respondents, of which 54, 60, and 58, respectively, were used by NCBA to characterize the finances of the beef feedlots these surveys represent. These data are enterprise level but include information on both company owned cattle and cattle not owned by the feedlot but that are fed on-site (e.g., custom operations). If EPA were to use these data, EPA would consider these representative of both the enterprise and farm since these data are more inclusive of a range of revenue sources. NCBA organized the survey data to present average line items associated with three feedlot size groups (0–10,000 head, 10,001–30,000 head and 30,000+ head). Regional breakouts were not provided. NCBA presented gross receipts, total operating costs, interest payments and receipts, net cash income, depreciation, pretax net income, current assets, total assets, current liabilities, total liabilities, and total equity. NCBA also provided a variety of ratios, including debt-to-assets. These key parameters represent an average over a 3-year period from 1997 to 1999.

FAPRI provided data that might also be used to characterize beef feedlots. For its study, FAPRI convened a panel of experts ''to provide a snapshot of each enterprise at a given point in time.'' These experts developed information on the financial characteristics of each model farm at the enterprise level for 2000. Data submitted are in the form of full financial statements and include other information such as beginning cash reserves, productivity measures, and feed efficiency. The statements represent three sizes and two regions: A 500-head Midwest operation, a 5,000-head Midwest operation, and a 30,000-head Southern Plains operation. Although data are single year, other information provided by FAPRI allow for a more extensive analysis of expected changes over a 10-year period (2001–2011) based on FAPRI's projections that take into account various pricing cycles. FAPRI did not provide corresponding revenue and cost data at the farm level which would allow EPA to appropriately conduct its discounted cash flow analysis at the farm level (see Section V.C.1(b)).

Iowa State University also provided data on average feedlot operations based on actual financial data for feedlots in Iowa. Financial data collected by the university were averaged for 1991–2000 and broken out by type of animal (calf feeder versus yearling feeder).

Table 5–10 shows a summary overview of these alternate data. EPA is considering using these data to characterize financial conditions at beef feedlots and EPA solicits comment on the use of these alternate financial data. EPA is considering using these data in a way that would best match up EPA's estimated representative cost models that are being developed for the final rulemaking (i.e., based on region and facility size characteristics). More detailed information on these data are provided in the record, along with a more thorough assessment and comparison of these data against other available data is provided in the record. This summary also describes publicly available enterprise budget data for this sector that EPA has collected since proposal from various land grant universities. For additional information on how the results of EPA's analysis may change as a result of the use of these alternate enterprise level data, as compared to the farm level data used by EPA for the proposal, see the discussion provided in Section V.C.1(b) of this notice.

TABLE 5–10.—SUMMARY OF ALTERNATE FINANCIAL DATA FOR BEEF FEEDLOTS

State/region date	Sector/assumptions	Revenue	Operating costs	Fixed/overhead costs (incl. depreciation)	Net operating income	Net returns	D–A ratios (In percent)
NCBA 1997–99 [1]	0–10,000 head	$749	$721	$29	$15	($14)	65
NCBA 1997–99 [1]	10,001–30,000 head	853	818	13	26	14	69
NCBA 1997–99 [1]	30,000+ head	1,301	1,267	10	21	10	68
FAPRI 2000	beef 500 head (Midwest)	875	844	33	30	(3)	68

TABLE 5–10.—SUMMARY OF ALTERNATE FINANCIAL DATA FOR BEEF FEEDLOTS—Continued

State/region date	Sector/assumptions	Revenue	Operating costs	Fixed/overhead costs (incl. depreciation)	Net operating income	Net returns	D–A ratios (In percent)
FAPRI 2000	beef 5,000 head (Midwest)	875	850	36	25	(12)	72
FAPRI 2000	beef 30,000 head (Southern Plains).	875	851	35	24	(11)	73
ISU 1991–00	Calves	787	783	NA	NA	5	[2] 39
ISU 1991–00	Yearlings	856	844	NA	NA	12	[2] 39

Sources vary. For more information on the source of these data see EPA's record.
[1] Net operating costs are actually net cash; fixed costs include only depreciation. All values are calculated on a per average occupancy basis, not on a per-marketed head basis.
[2] Average 1997–1999 over all farms.

b. Alternative Financial Data for Hog Operations

For the proposal, EPA used available USDA ARMS data for hog operations to assess financial impacts to this sector. The principal concern among commenters centered around the fact that the data used represented a single year only (1997), a year that happened to be relatively favorable to pork producers. In addition, as recognized by EPA in the proposal, the available 1997 ARMS data used by EPA do not reflect differences in financial conditions associated with differing production and facility types in the hog sector. Specifically, the data are for an average farm and do not distinguish between hog farrow-finish and hog grow-finish operations, as well as independent owner-operator and contract growers. Given potential differences in financial conditions across these types of hog operations and the fact that the prevalence of type varies by factors such as production region and facility size, EPA acknowledged that use of these average data might be problematic in terms of representing specific types of operations within this sector. However, EPA did not have other readily available financial data from which to base its analysis.

Today EPA presents summary information on alternative data provided USDA and FAPRI. EPA is considering use of these data to supplement available data from the 1997 ARMS database used by EPA for the proposal. The USDA data are from a special ARMS survey conducted by USDA in 1998 of the hog sector. FAPRI provided enterprise budgets developed by a panel of industry experts. EPA is considering using these data to characterize financial conditions at hog operations and solicits comment on the use of these alternate financial data. More detailed information on these data are provided in the record, along with a more thorough assessment and comparison of these data against other available data is provided in the record. This summary also describes publicly available enterprise budget data for this sector that EPA has collected since proposal from various land grant universities.

The alternative hog data provided by USDA are based on hog cost and return estimates for 1998 from information collected as part of a special version of USDA's annual ARMS data. The survey obtained more than 1,600 responses from 21 States. The survey target population was farms with 25 or more hogs on the operation at any time during 1998 in order to screen out farms with only a few hogs for on-farm consumption or club project. Each surveyed farm represents a number of similar farms in the population as indicated by its expansion factor. The expansion factor, or survey weight, was determined from the selection probability of each farm and thereby expands the sample to represent the target population. The hog sample expands to represent about 95 percent of the U.S. hog inventory in 1998.

These data have been aggregated by USDA on an enterprise basis and are broken out the four main production groups: Farrow-finish and grow-finish operations, and independent owner-operator and contract grower operations. The main advantage of these data is that they are broken out by production type and reflect varying financial conditions for different types of operations, particularly among contract grower versus independent owner-operators where operating conditions can be very different. However, in order for EPA to properly utilize these data, the Agency needs information on the number of operations nationwide and/or regionally within each of these four production groups. Specifically, EPA does not have information needed in order to estimate the number of contract grower operations in the hog sector. As part of this notice, EPA requests additional data and information on the number of operations within each of these four production hog groups for use in EPA's final analysis of this sector.

These alternative hog data from USDA represent financial conditions for all operations nationwide and do not differentiate by the production region. The data are, however, differentiated by two major size groups, including operations with more than 1,000 AU and operations with between 300 and 1,000 AU. Among the key parameters provided in USDA's aggregation include gross receipts, total operating costs, net cash income, depreciation, pretax net farm income (the latter are measured as USDA's definitions of net farm income, which includes depreciation and nonmoney expenses and, for these data, exclude off-farm income). Data provided to EPA do not include full income statement and balance sheets for representative facilities, which would allow EPA to evaluate other financial variables. The data also include and total assets and liabilities specified at the farm level only, and not the enterprise level. These alternative USDA data do not include information on beginning cash reserves. The data represent financial conditions for a single year (1998) only. All data are expressed on a per animal (inventory) basis.

This initial submission by USDA does not include corresponding data at the farm level. At this time, USDA is considering whether it is possible to provide these data on a farm level basis in order for EPA to conduct its discounted cash flow analysis (which is more appropriately evaluated at the farm level, as discussed in Section V.C.1(d)). If alternative data are not provided at the farm level, EPA will continue to use available 1997 ARMS farm level data used by EPA for the proposal. An alternative approach would be to use available published ARMS farm level data for farrow-finish and grow-finish operations that are expressed on a per animal

(hundredweight gain) basis, adjusted by EPA onto a per animal (inventory) basis. USDA published farm level data is available at http://www.ers.usda.gov/data/arms/Results99/drctab.htm.

FAPRI also provided data that might be used to characterize hog operations. FAPRI provided enterprise budgets that reflect farrow-finish operations in the Midwest and Mid-Atlantic regions. No considerations have been made for differences between contractor and independent operations. For its study, FAPRI convened a panel of experts ''to provide a snapshot of each enterprise at a given point in time.'' These data reflect information on the financial characteristics of each model farm at the enterprise level for 2000. Although data are single year, other information provided by FAPRI allow for a more extensive analysis of expected changes over a 10-year period (2001–2011) based on FAPRI's projections that takes into account various pricing cycles. Data submitted are in the form of full financial statements and include other information such as beginning cash reserves, productivity measures, and feed efficiency. FAPRI did not provide corresponding revenue and cost data at the farm level which would allow EPA to appropriately conduct its discounted cash flow analysis at the farm level (see Section V.C.1(b)).

Table 5–11 shows a summary overview of these alternate data. EPA is considering using these data to characterize financial conditions at hog operations and EPA solicits comment on the use of these alternate financial data. EPA is considering using these data in a way that would best match up EPA's estimated representative cost models that are being developed for the final rulemaking (i.e., based on region and facility size characteristics). More detailed information on these data are provided in the record, along with a more thorough assessment and comparison of these data against other available data is provided in the record. This summary also describes publicly available enterprise budget data for this sector that EPA has collected since proposal from various land grant universities. For additional information on how the results of EPA's analysis may change as a result of the use of these alternate enterprise level data, as compared to the farm level data used by EPA for the proposal, see the discussion provided in Section V.C.1(b) of this notice.

TABLE 5–11.—SUMMARY OF ALTERNATE FINANCIAL DATA FOR HOG OPERATIONS

State/region date	Sector/assumptions	Revenue	Operating costs	Fixed/overhead costs (incl. depreciation)	Net operating income	Net returns	D–A ratios
FAPRI 2000	Hogs 2,400 sows (Midwest).	$46	$37	$6	$9	$3	66
FAPRI 2000	Hogs 2,400 sows (Mid-Atlantic).	46	37	6	8	2	67
FAPRI 2000	Hogs 150 sows (Midwest)	46	39	5	7	3	56
FAPRI 2000	Hogs 500 sow (Midwest) ..	46	37	7	9	4	60
FAPRI 2000	Hogs 500 sow (Mid-Atlantic).	46	37	6	8	460	
FAPRI 2000	Hogs (Pacific)	46	38	5	8	2	56
USDA 1998	Hog contract GF 300–1,000 head.	92	88	32	5	(27)	25
USDA 1998	Hog contract GF 1,000 head.	92	87	17	8	(19)	36
USDA 1998	Hog indep. FF 300–1,000 head.	71	67	61	4	(57)	20
USDA 1998	Hog indep. FF 1,000 head	80	61	38	19	(19)	24
USDA 1998	Hog indep. GF 300–1,000 head.	80	86	39	(6)	(45)	23
USDA 1998	Hog indep. GF 1,000 head	100	95	27	5	(21)	42

Sources vary. For more information on the source of these data see EPA's record.

c. Alternative Financial Data for Dairy and Broiler Operations

For some other sectors where enterprise data are not available or have not been submitted—including the dairy, heifer and poultry sectors—EPA is considering use of available enterprise budget data for these sectors to supplement available data from the 1997 ARMS database used in the proposal. Today EPA solicits comment on these data and requests information on any additional sources of similar or alternate data for the key livestock sectors. At this time, EPA has not received or obtained any enterprise level data for the turkey and egg laying sectors. As part of this notice, EPA is requesting any available data for these two sectors. As part of this notice, EPA requests similar enterprise budget information for the turkey and egg laying sectors.

Since the publication of the proposed CAFO regulations, EPA has collected published ''enterprise budget'' data from various land grant university sources in order to further evaluate the availability of usable enterprise level data and information. Enterprise budgets show some ''typical'' operations able to cover their variable expenses, and in many cases to cover fixed expenses and provide the operator with some return. However, many budgets indicate that—as a stand-alone operation—the enterprise would not generate positive operating earnings (that is, the operator is unable to cover operating expenses). This may be explained by savings due to shared production costs among multiple enterprises at a farm or due to integrated production practices (such as the use of one enterprise, e.g., grain crops, as an input to another, e.g., livestock operation), as well as support through government subsidies.

As part of this effort, EPA has compiled enterprise budgets for beef feedlots (14 budgets), farrow-finish hog operations (10 budgets), grow-finish hog operations (5 budgets), dairy operations (7 budgets), heifer operations (4 budgets), and broiler operations (3 budgets). The range of sources included University of Idaho, Ohio State University, Oklahoma State University,

Kansas State University, North Carolina State University, Ohio State University, Clemson University, and University of Arkansas. The enterprise budgets span a wide range of assumptions, including size and type of operation, the type, age, or sex of animal raised, and also feed and operating efficiency. The budgets varied greatly with respect to line items, which items were considered variable or fixed, whether depreciation and interest were reported separately, or whether a capital recovery item or building and equipment charge was reported. The year for which data in these budgets represents varies, tending to be within the period from 1997 to 2000, with some exceptions. More detailed information on these enterprise budgets are provided in the record, along with a more thorough assessment and comparison of these data against other available data is provided in the record.

For the dairy sector, among the sources of alternative financial data that EPA is considering to supplement available data used for the proposal is available enterprise budget data for dairy and heifer operations compiled by EPA. A second source of alternative data for dairy operations is from FAPRI, submitted to EPA as part of FAPRI's analysis of this sector. These data consist of expert panel data for six representative operations at the enterprise level, and are similar in format to those described for beef feedlots and hog operations in Sections V.C.2(a) and (b). A third source of alternate data for diaries is USDA, who is intending to submit alternate financial data for 2000 from information collected as part of a special version of USDA's annual ARMS data. This survey consist of information obtained from about 900 responses from dairy producers in 22 States. If these alternative ARMS data are provided to EPA, they will reflect enterprise and/or farm level financial conditions similar to that provided by USDA for the hog sector (as described in Section V.C.2(b)). Since data will only be provided for a single year only (2000), EPA is considering ways to derive these data onto a more representative basis by linking these single year data up with other market and financial data for multiple years (as discussed in Section V.C.2(e)). Table 5–11 shows a summary overview of each of these alternate data. EPA is considering using these data to characterize financial conditions at dairy operations and would use these data in a way that would best match up EPA's estimated representative cost models that are being developed for the final rulemaking (i.e., based on region and facility size characteristics). More detailed information on these data are provided in the record. For additional information on how the results of EPA's analysis may change as a result of the use of these alternate enterprise level data, as compared to the farm level data used by EPA for the proposal, see the discussion provided in Section V.C.1(b) of this notice.

For the broiler sector, EPA has collected enterprise budgets that it is considering to use as a supplement to available 1997 ARMS data used by EPA for the proposal. For this sector, three representative broiler operations are available from the University of Arkansas (2000 data), Oklahoma State University (1997 data), and North Carolina State University (1993 data). Table 5–12 shows a summary overview of these alternate enterprise budget data. Given limited financial data at the enterprise level for broiler operations, EPA is considering using these data as a supplement to the 1997 ARMS data used for the proposal for this sector. EPA solicits comment on the use of these alternate financial data. More detailed information on these data is provided in the record.

TABLE 5–12.—SUMMARY OF ALTERNATE FINANCIAL DATA FOR DAIRY, HEIFER AND BROILER OPERATIONS

State/region date	Sector/assumptions	Revenues	Operating costs	Fixed/overhead costs (incl. depreciation)	Net operating income	Net returns	D–A ratios
KS 2000	600 lactating cows, 19,000 lbs./cow.	$2491	$2739	$321	($248)	($569)	NA
KS 2000	600 lactating cows, 24,000 lbs/cow.	3085	2956	321	129	(192)	NA
KS 2000	2,400 lactating cows, 19,000 lbs/cow.	2539	2621	287	(82)	(369)	NA
KS 2000	2,400 lactating cows, 24,000 lbs/cow.	3145	2838	287	307	20	NA
ID 1998	Jerseys, 120 cows, 15,000 lb/cow.	2452	1830	359	622	263	NA
ID 1998	Holsteins, 210 cows, 20,000 lbs/cow.	2775	2258	224	518	294	NA
ID 1998	Holsteins, 210 cows, 22,000 lbs/cow.	3026	2365	350	660	310	NA
FAPRI 2000	250-cow (Mid-Atlantic)	3115	2605	292	510	218	0.41
FAPRI 2000	500-cow (Mid-Atlantic)	3115	2474	291	641	350	0.41
FAPRI 2000	1,000-cow (Southern)	3168	2527	288	641	352	0.45
FAPRI 2000	250-cow (Midwest)	3094	2584	292	510	218	0.41
FAPRI 2000	500-cow (Central)	3072	2510	291	562	271	0.46
FAPRI 2000	1,000-cow (Pacific)	3254	2533	288	721	432	0.40
OH 1999	Small Breed Heifer	1150	1154	123	(4)	[1](127)	NA
OH 1999	Large Breed Heifer	1200	1381	123	(181)	[1](304)	NA
ID 1998	Holstein, 210 head heifer	1268	1053	117	215	98	NA
ID 1998	Jersey, 127 head heifer	942	754	141	189	48	NA
OK 1997	134,300 birds sold per year.	0.275	0.090	0.088	0.184	[1]0.096	NA
NC 1993	105,320 birds sold per year.	0.255	0.077	0.077	0.178	0.102	NA
AR 2000	313,500 birds sold per year.	0.298	0.098	0.159	0.200	0.041	NA

Sources vary. For more information on the source of these data see EPA's record.

[1] Property taxes and interest not included or not broken out in this budget.

d. Alternative Data To Supplement Available Financial Data for a Single Year

For the proposal, EPA used available USDA's ARMS data for each of the livestock and poultry operations affected by the proposed regulations to assess financial impacts to these sectors under post-compliance scenarios. The available data for these sectors was 1997. Although data were only available for a single year, for most sectors, financial data for 1997 was fairly representative of average market conditions in recent years. For some sectors, such as for the hog sector, the available 1997 data was less representative of average conditions in recent years since 1997 happened to relatively favorable to pork producers. By comparison market conditions for the hog sector were particularly poor for this sector during 1998–1999, given large decreases in producer prices. These concerns about the use of 1997 ARMS data to assess facility impacts in the hog sector was acknowledged by EPA to be problematic; however, EPA did not have additional alternate financial data from which to base its analysis.

As discussed in earlier in Section V.C.2, EPA has received alternate data for some sectors, including hog and cattle feeding operations, that it is considering using for its analysis, if convinced of the superiority of that data to the data used for the proposal. To address concerns about the use of a single year of data for the purposes of EPA's analysis, the Agency is considering an approach to link up available financial data to other market and financial data for preceding and subsequent years. The type of data that may be used for this purpose would include, but not be limited to, commodity price and income information to represent changes for a representative facility's revenue, as well as feed costs or corn and/or soybean prices to represent changes for a representative facility's operating costs. This approach would provide an attempt to level out financial conditions over a three- or five-year period to derive data that are more representative of average conditions within a particular sector—for example, providing better characterization of year-to-year changes and pricing cycles—and avoid potential misrepresentation due to use of a single year of available data.

An example of how this approach would be utilized for the purpose of this analysis is as follows using available financial data for the hog sector. This sector is used for this example because financial data used by EPA for the proposal as well as alternate data being considered for EPA's final analysis may be regarded as less than representative or average conditions, since 1997 ARMS data reflect conditions when hog prices were relatively high and 1998 ARMS data reflect conditions when hog prices were relatively low. Because of concerns about misrepresentation, EPA is considering ways to derive more average, representative data across a few years (say, 1997–1999) based on an extrapolation from other available market and financial data to represent a longer-term average representation of revenues, costs and returns.

There are two possible approaches that EPA is considering. The first approach involves using price indices representing hog prices and feed prices, as well as cost indices representing other cost of production factors (Commodities, Services, Interest, Taxes, and Farm Wage Rates). The second approach that EPA is considering would use USDA estimates of hogs costs and returns, which are from the same ARMS survey, to establish a set of indices based on these data. Using available financial data for 1998, on an enterprise specific basis, these indices can be applied to approximate financial returns for other years (e.g., 1996–2000). Given potential data limitations and unforseen difficulties in adopting such an approach, the only other alternative would be to use a single year of data since publicly available data is not available to characterize these sectors over a multiple year period. EPA solicits comment on the preferred approach that the Agency should use—either single year or EPA-derived multiple year data based on available data and information.

e. Alternative Data To Project Out Financial Data Over the 10-Year Analysis Period

For the proposal, EPA projected future earnings from the 1997 ARMS baseline data based on USDA's *Agricultural Baseline Projections to 2009.* USDA projections are expressed on a per-unit basis (*i.e.,* cash returns per animal or per-unit output). These projected values were linked to USDA's 1997 ARMS data by first translating the USDA-projected changes onto a per-animal basis, using available market information, such as average per-animal yields reported by USDA and/or annual marketing cycles based on industry data. Once USDA's projections were expressed on a per-animal basis, future earnings are approximated by applying the incremental national average change (dollars per animal) between each year during the forecast period to the 1997 baseline data for each representative model CAFO. These revised cash streams over the forecast period are presented in EPA's Economic Analysis.

Many commenters express concerns about EPA's use of the USDA's forecasts, primarily because they fail to account for variability of returns year-to-year. Commenters point out that the methods used by USDA to derive these forecasts do not account for supply and demand shocks in the baseline that may dampen pricing cycles common in many of these sectors. Since USDA's price forecasts may not account for the real and emerging price risks faced by producers from exogenous and random shocks, this may understate financial stress with respect to cash flow over the forecast period. Also, according to commenters, the USDA forecasts and methods fail to capture dynamic, secondary effects of interspecies shifts, and the dynamic interaction between an individual operation's year-to-year financial performance and the overall change in supply and demand for the entire meat industry.

To address this concern EPA is considering using other available timeline data by FAPRI that accounts for these types of price shocks in order to develop its long-term agricultural baseline estimates. These data are available for review in FAPRI's ''2001 U.S. Baseline Briefing Book'' available at FAPRI's website. These data may also be used in conjunction with other baseline results generated by FAPRI's model, including upcoming updates to FAPRI's baseline as well as additional work conducted by FAPRI in connection with its review of EPA's proposed CAFO regulation (*see,* ''FAPRI's Analysis of the EPA's Proposed CAFO Regulation'' and also ''Financial Impact of Proposed CAFO Regulations on Representative Broiler Farms''). These reports are provided in EPA's record and are also available at FAPRI's website at: http://www.fapri.missouri.edu/FAPRI_Publications.htm.

EPA solicits comment on the use of these data for depicting expected price changes over EPA's 10-year analysis period (1997–2006). A potential necessary adjustment that EPA may need to make prior to using FAPRI's data is to remove the effects of inflation in these values by backing out the

assumed inflationary rates. This is consistent with EPA's longstanding practice whereby only the effects of a new regulatory action is evaluated without the effects of inflation. This approach is also consistent with OMB and EPA guidance. EPA solicits comment on this approach for the purposes of using FAPRI's data for its analysis.

VI. Changes to EPA's Environmental Assessment

EPA received comments on the methodologies and data used to estimate CAFO pollutant loadings and air emissions associated with the proposed regulatory options, as well as data and methodologies used to perform surface water modeling and to evaluate the presence of pathogens, antibiotics, and hormones in CAFO wastes. Some commenters provided EPA with alternative suggestions for these analyses and estimates. Today's notice presents the suggestions currently under consideration by EPA for use in the environmental assessment.

A. Estimates of ''Edge-of-Field'' Pollutant Loadings

For proposal, EPA modeled ''edge-of-field'' pollutant releases (or ''loadings'') from the application of manure, manure storage structures, and feedlots. The loadings were estimated for several sample farms for baseline conditions and each proposed regulatory option. The Groundwater Loading Effects of Agricultural Management Systems (GLEAMS) model was used to estimate the loadings from land application areas receiving manure and/or commercial fertilizer.

GLEAMS is a field-scale model that simulates hydrologic transport, erosion, and biochemical processes such as chemical transformation and plant uptake. The model uses information on soil characteristics and climate, along with characteristics of the applied manure and commercial fertilizer, to model losses of nutrients, metals, pathogens, and sediment in surface runoff, sediment, and ground water leachate. EPA solicited input from USDA to refine the loadings analysis using the GLEAMS model. Based on these discussions, EPA is considering increasing the number of sample farms to better characterize runoff from CAFOs, in particular to better account for varying climate and soils and to incorporate revised data on crop rotations and nutrient uptake.

More specifically, at proposal, EPA modeled five sample farms for each animal type representing various regions of the country (Central, Mid-Atlantic, Midwest, Pacific, and South). EPA is now considering defining additional sample farms by sector, size, and land availability class using USDA data from the *1997 Census of Agriculture,* as well as the *1997 National Resources Inventory.* This methodology is consistent with the original proposal. Alternatively, EPA may use data derived from USDA's published reports, such as ''Confined Animal Production and Manure Nutrients'', the draft report ''Profile of Farms with Livestock in the United States: A Statistical Summary'', and ''Confined Animal Manure Nutrient Data System,'' for additional sample farm development. These aggregated data modeled from the *1997 Census of Agriculture* and the *1997 National Resources Inventory*, are available in the record. This aggregated state level data provides farm counts, manure application rates based on crop nutrient requirements, and total acres by crop type. EPA would use this aggregated data to develop additional sample farms, representing different farm sizes and soil types. EPA would then disaggregate results from GLEAMS to estimate loadings by size of operation, animal sector, and land availability class based on the distribution of collectible manure described in USDA's report ''Manure Nutrients Relative to the Capacity of Cropland and Pastureland to Assimilate Nutrients'', and subsequent reports.

Improved characterization of cropping rotations and potential nutrient uptake on sample farms may be developed from the *1997 Census of Agriculture* and the *1997 National Resources Inventory*. EPA is also considering increasing the number of soils modeled for each sample farm from one to three to better represent the diversity of soil types at CAFOs. Data summaries from the *1997 Census of Agriculture* and the *1997 National Resources Inventory* are available in the record.

EPA recognizes the potential for subsurface drainage effects on ''edge-of-field'' loadings but data are currently inadequate to model these effects. EPA also recognizes that improved animal genetics and feeding strategies may alter manure nutrient characteristics. Due to a lack of new data and the difficulties of characterizing those changes, EPA anticipates continuing to use manure characteristics used in the original model analysis unless sufficient alternative data become available.

EPA is continuing to evaluate the use of the Better Assessment Science Integrating Point and Nonpoint Sources (BASINS) model (described in Section VI.B) to provide additional information for modeling pathogen loads, loads from the production area, and manure storage lagoon effects.

B. Surface Water Modeling

For proposal, EPA used the estimates of pollutant loadings and a distribution of AFOs and CAFOs in the National Water Pollution Control Assessment Model (NWPCAM) to develop estimates of changes in surface water quality. Based on new data and suggested methodologies, EPA is evaluating whether the Better Assessment Science Integrating Point and Nonpoint Sources (BASINS) model can be used to provide additional analysis of surface water impacts.

The BASINS model supports the analysis of point and nonpoint source management alternatives and can support the analysis of a variety of pollutants at multiple scales. BASINS contains five categories of components: (1) National databases; (2) assessment tools for evaluating water quality and point source loadings at a variety of scales; (3) utilities including local data import, land-use and DEM reclassification, watershed delineation, and management of water quality observation data; (4) watershed and water quality models; and (5) post processing output tools for interpreting model results.

BASINS includes integration of the Soil and Water Assessment Tool (SWAT) model, developed by the USDA's Agricultural Research Service (ARS). SWAT is a watershed-scale model developed to predict the impact of land management practices on water, sediment, and agricultural chemical yields in large complex watersheds with varying soils, land use, and management conditions over long periods of time.

Using BASINS, EPA developed a case study to model environmental impacts and potential improvements associated with the proposed regulations. EPA modeled the Middle Neuse River (HUC# 03020202) in North Carolina for swine farms. The input data sets used include: (1) Farm locations; (2) crop types, cropping dates, and crop rotation from the December 1997 USDA report entitled ''Usual Planting and Harvesting Dates for U.S. Field Crops''; (3) 100-year weather data; (4) manure application rates and timing; and (5) frequency of manure storage type. As part of the case study, EPA estimated baseline loadings to surface waters at specific locations using a yearly average of a 100-year run for nitrogen, phosphorus, sediment, and metals; where feasible, baseline loadings for pathogens, hormones, and antibiotics were also estimated. Relative changes in water quality as a result of

pollutant load changes were assessed for nitrogen, phosphorus, sediment, and metals, and, where feasible, for pathogens, hormones, and antibiotics. EPA is considering expanding this case study method to the dairy, beef, broiler, turkey, and layer sectors. EPA solicits comments on this approach. This case study is available in the record for today's notice.

C. Pathogens, Antibiotics, and Hormones

During the comment period, EPA received new data on the presence of pathogens, antibiotics, or hormones in fresh animal manure, storage lagoons, ground water, and surface water. For example, a review of literature by Mulla et al. (1999) found there were no significant differences in fecal bacteria levels in surface runoff from manured versus unmanured or grazed versus ungrazed lands. Furthermore, rate, method, or timing (spring versus fall) of manure application had little effect on fecal bacteria counts in surface runoff. Much of the new data received by EPA pertains to antibiotic resistance. EPA is considering ways to incorporate these new data into its analyses. These new data are available in the record.

EPA also received data on the effectiveness of certain treatment technologies in reducing the level of pathogens in animal waste and associated effluents. These technologies include anaerobic lagoons, aerobic lagoons, digesters, constructed wetlands, overland flow, solids separation, and alkaline treatment. Many of these technologies have the potential to achieve substantial pathogen reductions, depending on their mode of operation, but several factors may greatly impact the efficiency of these technologies. Most of these technologies are time dependant (some requiring months of residence time) and pathogen reduction may be lower with reduced residence time. Continuous addition of manure also reduces the efficiency of pathogen removal or destruction for some technologies. Other technologies operate best when treating waste with specific solids content (e.g., constructed wetlands and composting), or when operating under specific temperature ranges (e.g., anaerobic thermophilic digesters, constructed wetlands, and thermal processes). EPA is considering ways to incorporate these new data into its analyses. These new data are available in the record.

D. CAFO Air Emissions

Based on additional data and comments received, EPA is considering revising some of the methodologies for estimating air emissions from CAFOs, as well as the quantification of benefits associated with reduced air emissions. EPA solicits comment on these potential revisions, which are discussed below.

1. Estimating Air Emissions from CAFOs

Since proposal, EPA has continued to gather additional data on the type and quantity of air emissions from CAFOs (''Air Emissions from Animal Feeding Operations'', Draft, available in the record). EPA has requested the National Academy of Science (NAS) review the scientific issues and make recommendations related to characterizing the swine, beef, dairy, and poultry AFO industry; measuring and estimating emissions; and analyzing potential best management practices, including costs and technological feasibility. The NAS review is expected to focus on emissions of PM10, PM2.5, hydrogen sulfide, ammonia, odor, VOC, methane, and nitrous oxide. NAS will recommend approaches for characterizing emission profiles and identifying emission mitigation techniques, including: (1) The use of process characterization at model farms to estimate emissions from individual farms, (2) modeling approaches for estimating emissions, (3) monitoring or measurement methods of emissions, (4) modeling approaches for determining off-site impacts, (5) modeling approaches for determining ammonia deposition patterns, (6) emission mitigation technologies and management practices, including capital and operating costs, and methods for validating the effectiveness once installed, and (7) critical research needs with appropriate methodological approaches.

EPA has evaluated the new data presented today to determine whether changes in air emission methodologies are warranted for the non-water quality impacts assessment. Based on these data, EPA has identified three areas for possible revision: alternative emission factors, revised methane methodology for anaerobic lagoons, and revised boundary conditions. Today's record includes a memorandum discussing these potential changes.

a. Revised Emission Factors

EPA has identified the following revisions to emission factors for certain pollutants or animal operations based on values found in the peer reviewed literature: (1) More recent emission factors for transportation emissions of VOC, NO_X, CO, and PM are available from the Mobile 6 model, maintained by the Office of Transportation and Air Quality, (2) additional emission factors for ammonia and hydrogen sulfide emissions from swine deep pit operations, (3) additional emission factors for ammonia emissions from dairy drylots, broiler and turkey cake and litter storage, and land application, (4) an emission factor for hydrogen sulfide emissions from land application of swine manure, and (5) a correction to the emission factor used for nitrous oxide emissions from poultry housing without bedding.

In addition, for proposal, the emission rates for ammonia and hydrogen sulfide from lagoons and ponds were dependent on the size of the impoundment. EPA used this approach to reflect expected increases in emissions that would occur with Option 7, which required larger storage lagoons and ponds. However, EPA now believes the available flux factors may significantly overestimate the increased emissions. Therefore, EPA is considering revising this methodology to use emission factors that do not vary based on the size of the lagoon or pond.

b. Revised Methane Methodology for Anaerobic Lagoons

For proposal, estimates of methane emissions were based on guidance developed for international reporting of greenhouse gas emissions (IPCC 2000) and used by EPA to develop the annual inventory of greenhouse gas emissions. The basic methodology, which bases methane emissions on the mass of volatile solids excreted, the maximum methane production potential per unit mass of volatile solids excreted (which is animal-type specific), and a management-specific methane conversion factor (MCF), has not changed. Since November 2000, EPA refined the methodology to calculate MCFs for anaerobic lagoon systems to better account for long-term storage of manure in these systems.

At proposal, anaerobic lagoon MCFs were calculated using the Van't Hoff-Arrhenius equation and annual average regional temperatures to estimate the effect of temperature on volatile solids degradation and methane generation under anaerobic conditions. The MCFs were then adjusted using a factor of 1.35 for regions with annual average temperatures exceeding 20°C and a factor of 1.75 for regions with annual average temperatures below 20°C. These factors accounted for the relatively long hydraulic and solids retention times associated with these systems, which allows organic matter to break down over time. EPA has, since proposal, refined this methodology to specifically calculate the monthly generation of

methane and the expected retention of volatile solids in the lagoon from month to month. The refined methodology is documented in the ''Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–1999'' (EPA 236–R–01–001, April 2001).

c. Revision of Boundary Conditions

At proposal, EPA estimated non-water quality impacts for changes in air emissions that occurred only at the feedlot's production and land application areas, as well as those transportation-related emissions from hauling manure off site. EPA did not include changes in emissions occurring at the off-site land application area. For example, EPA estimated the loss of nitrogen as ammonia when manure is applied to cropland at the CAFO; however, EPA did not include similar ammonia emissions that occur when CAFO-generated manure is land applied off site. EPA is considering expanding the non-water quality impacts to include off-site releases associated with land application.

2. Quantifying the Benefits of Reduced Air Emissions

At proposal, EPA presented a qualitative discussion of the health and environmental impacts of air emissions from CAFOs in the Environmental Assessment for the proposed rulemaking. EPA also quantified certain air emissions as part of the non-water quality analysis of the proposal, but did not quantify or monetize any of the human health or ecological benefits from any changes in air emissions attributable to the proposed rule. In the analysis for the proposed rule, EPA quantified changes in emissions for methane, carbon dioxide, nitrogen oxides, volatile organic compounds, particulate matter (PM), and carbon monoxide. EPA is now considering the feasibility of developing quantified and monetized estimates of the benefits of changes in health effects resulting from changes in air emissions from CAFOs, if data are available.

PM represents a broad class of chemically and physically diverse substances. It can be principally characterized as discrete particles that exist in the condensed (liquid or solid) phase spanning several orders of magnitude in size. All particles equal to and less than 10 microns are called PM10. Fine particles can be generally defined as those particles with a diameter of 2.5 microns or less (also known as PM2.5). The health and environmental effects of PM are strongly related to the size of the particles; fine particles are considered to be more harmful to human health because their small size enables them to penetrate more deeply into the lungs.

Particulate matter has been linked to a range of serious respiratory health problems. Scientific studies suggest ambient particulate matter likely contributes to a series of health effects. The key health effects categories associated with ambient particulate matter include premature mortality; aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits, school absences, work loss days, and restricted activity days); aggravated asthma; acute respiratory symptoms, including aggravated coughing and difficult or painful breathing; chronic bronchitis; and decreased lung function that can be experienced as shortness of breath. PM also causes damage to materials, soiling of commonly used building materials and culturally important items such as statues and works of art, and is a major cause of substantial visibility impairment in many parts of the U.S.

Livestock production is one of the major sources of air emissions of ammonia which, in turn, leads to PM production when the ammonia volatilizes. Volatilized ammonia can contribute to the formation of both ammonium sulfate and ammonium nitrate, which are two of the main components of fine PM. In some areas of the country, ammonia is believed to be the limiting factor in the formation of ammonium sulfate and ammonium nitrate. In these areas, reductions in ammonia emissions would result in reductions of both ammonium sulfate and ammonium nitrate, with a possible corresponding reduction in fine PM and the associated adverse health effects. Increases in ammonia emissions could, in turn, result in increased adverse health effects. The atmospheric reactions involving PM fine formation are very complex and the changes in health effects would be highly dependent on the formation of other particles in the absence of ammonia, some of which could be more hazardous. Modeling these changes is highly dependent on the accuracy of ammonia emission estimates.

Additional detail and background on this process is contained in the record for today's notice. EPA solicits comment generally on the feasibility of these approaches and requests information on data and studies not included in the record that could be used for these analyses.

VII. New Information Related to the Proposed NPDES Regulations

A. Ducks and Horses

Following publication of the proposed rulemaking, EPA received additional information that is leading the Agency to consider other size thresholds for determining whether duck and horse operations are CAFOs and subject to NPDES permitting. Specifically, EPA is considering two alternative thresholds for ''dry lot'' duck operations. EPA is also presenting for consideration two options for revising the horse threshold that could be used in whatever approach is adopted in the final rulemaking, whether two-tier or three-tier.

The preamble to the proposed rulemaking discusses the relevance of the proposed regulation for the duck, horse and sheep sectors. While the effluent guideline for these sectors is not being revised, the changes to the NPDES regulation would affect them. Operations that are defined as CAFOs that have greater than 1,000 AU would continue to be subject to the existing effluent guidelines and standards (as they are in the existing regulation), while those with 1,000 AU or fewer would be issued permits with technology-based requirements determined by the permit writer based on best professional judgment.

As discussed in the proposed rulemaking, EPA limited its economic analysis to those animal types that produce the greatest amount of manure and wastewater in the aggregate while in confinement and, therefore, did not analyze the horse, sheep/lamb or duck sectors. EPA stated its belief that most horse and sheep/lamb operations are not confined and, therefore, are not subject to permitting; thus, the impacts in these sectors are expected to be minimal. Most duck operations, on the other hand, probably are confined. EPA requested comment on the effect of the proposed regulation on the horse, sheep/lamb, and duck sectors.

EPA used the size thresholds under the existing regulation as a basis for adjustments to be consistent with the general restructuring of the NPDES regulation. Consequently, the size of operations under the different threshold options of the co-proposed two-tier and three-tier alternatives would have been as depicted in Table 7–1.

TABLE 7–1.—SIZE OF OPERATIONS UNDER DIFFERENT THRESHOLD OPTIONS

Sector	1,000 AU	500 AU	300 AU
Ducks	5,000	2,500	1,500
Horses	500	250	150
Sheep/Lambs	10,000	5,000	3,000

Once defined as CAFOs, operations in these sectors would be affected by all the other general changes that were proposed, such as elimination of the 25-year, 24-hour storm permit exemption; the duty to apply for an NPDES permit; land application and Permit Nutrient Plan requirements; and other miscellaneous permit conditions described in the proposed rulemaking.

The horse and duck communities raised a variety of concerns with the proposed regulation. Both sets of commenters specifically questioned the reasonableness of the original threshold values that were used to realign these sectors under the new structure.

As described in the proposed rulemaking (66 FR 3013, January 12, 2001), the legislative history indicates that the threshold numbers initially established by the Agency were based generally on a statement by Senator Muskie when the Clean Water Act was enacted. Senator Muskie, floor manager of the legislation, stated that: ''Guidance with respect to the identification of 'point sources' and 'nonpoint sources,' especially with respect to agriculture, will be provided in regulations and guidelines of the Administrator.'' 2 Legislative History of the Water Pollution Control Act Amendments of 1972 at 1299, 93d Cong, 1st Sess. (January 1973). Senator Muskie then identified the existing policy with respect to identification of agricultural point sources as generally that ''runoff from confined livestock and poultry operations are not considered a ''point source'' unless the following concentrations of animals are exceeded: 1000 beef cattle; 700 dairy cows; 290,000 broiler chickens; 180,000 laying hens; 55,000 turkeys; 4,500 slaughter hogs; 35,000 feeder pigs; 12,000 sheep or lambs; 145,000 ducks.'' *Id.* In the original CAFO regulations, the Agency and commenters agreed that, while Senator Muskie's statement provided useful general guidance, particularly in support of the idea of defining CAFOs based on specified numbers of animals present, it was not a definitive statement of the criteria for defining a CAFO. 41 FR 11458 (Mar. 18, 1976). The Agency thus looked to data with respect to the amount of manure generated by facilities above the threshold, the operating characteristics in each sector, and the number of facilities potentially covered by the regulation.

1. Ducks

EPA is considering retaining the size thresholds contained in the existing regulation for ''wet lot'' duck operations, but is considering two alternative methods for establishing new, separate threshold equivalents for ''dry lot'' duck operations.

TABLE 7–2.—ALTERNATIVE THRESHOLDS FOR DUCK OPERATIONS

	1,000 AU number of ducks	500 AU number of ducks	300 AU number of ducks
Proposed Rule: All Confined Ducks	5,000	2,500	1,500
NODA Option: Wet Lot Systems	5,000	5,000	1,500
NODA Options: Dry Lot Systems—NODA Option A	30,000	15,000	10,000
NODA Option B	100,000	50,000	30,000

The Technical Development Document for the 1974 effluent guideline indicates that there were 13 million ducks raised in 1969, primarily in New York, Indiana, Wisconsin, California and Illinois. At that time wet lots comprised 80 percent of duck operations, predominantly in the eastern U.S., and 45 percent of all ducks were raised on eastern Long Island, New York. Ninety-five percent of ducks were market ducks, and five percent were breeder ducks.

In its analyses for the original rulemaking in 1974, EPA initially evaluated two subcategories for ducks: wet lots and dry lots. Wet lots have sloped edges leading to a swimming area; dry lots are buildings usually with flushing troughs placed under the wire floor. EPA's selection of the 5,000 head threshold for ducks was based largely on the predominance of wet lot systems and the birds' direct contact with water. The effluent guideline applies to both wet lot and dry lot operations.

Information provided by commenters on the demographics of duck operations and the characteristics of duck manure and wastewater argues for reevaluating the number of ''dry lot'' ducks that would meet the thresholds for being defined as CAFOs under either a two-tier or three-tier structure. EPA notes that using the existing threshold under either structure would cause most duck operations to be subject to NPDES regulation.

Today, almost all duck operations are dry lot operations. Commenters provided information to the Agency that indicates that most duck operations now use confinement methods that are similar to those used in the chicken sector, where the animals do not come into contact with water. Therefore, they suggest, the thresholds should be similar to those EPA is considering for poultry (30,000 birds, 50,000 birds, and 100,000 birds, respectively, for the 300 AU, 500 AU and 1,000 AU equivalents). Other commenters suggest setting a threshold (rounded off by EPA) of 10,000 birds (300 AU), 15,000 birds (500 AU) or 30,000 birds (1,000 AU). The latter threshold values would represent a more moderate change from the regulatory threshold of 5,000 ducks, and would take into account the larger quantity of manure that ducks generate compared to chickens. EPA is considering whether to adopt either of these suggested thresholds.

Concomitant with selecting either of these alternatives for dry lot duck operations in the final rulemaking, EPA is considering retaining the existing threshold of 5,000 ducks for wet lot operations. Very few duck operations in

the U.S. use wet lots, and may not warrant increased regulation by lowering the threshold to, say, 2,500 ducks should a two-tier structure at 500 AU be selected. By retaining the current thresholds, operations covered under the existing regulation would remain subject to the revised regulation, but an unnecessary expansion to smaller operations would be avoided.

According to the 1997 Agricultural Census (United States Department of Agriculture, National Agricultural Statistics Service, 1997 Census of Agriculture) there are 30,452 farms with ducks and 8,918 farms with duck sales. Information provided by the duck industry indicates that approximately 24 million ducks are produced in the United States by approximately 7 processors as of 2001. Three-fourths of all ducks are raised by one processor. Approximately 10 million birds are raised at operations located in Indiana, 7 million in Wisconsin, 3 million in California, and the remaining 4 million primarily in New York and Pennsylvania.

An operation with grower ducks would typically have 13 turns per year, although a few operations have as many as 19 turns per year. As shown in Table 7–3, a count of operations from five of the seven major duck processors indicates that most facilities have fewer than 30,000 ducks at a time, and very few have greater than 100,000. Almost all are dry lot operations. Forty-nine percent of duck manure is produced by the largest ten percent of operations.

Table 7–3 summarizes the distribution of duck facilities and manure generated derived from these data.

TABLE 7–3.—DRY LOT DUCKS: FACILITY COUNTS AND MANURE GENERATED

Bird count	Number of facilities	Cumulative percentage of facilities	Manure (tons/yr)	Percentage of manure	Cumulative percentage of manure
2,500–3,000	48	100	132,000	3.6	100.0
4,000–10,000	65	77	455,000	12.5	96.4
11,000–15,000	33	45	429,000	11.8	83.8
16,000–25,000	31	29	635,500	17.5	72.0
26,000–30,000	7	14	196,000	5.4	54.5
31,000–50,000	11	10	445,500	12.3	49.1
90,000	2	5	180,000	5.0	36.9
117,000	3	4	351,000	9.7	31.9
144,000	2	3	288,000	7.9	22.2
165,000	2	1	330,000	9.1	14.3
190,000	1	<1	190,000	5.2	5.2
	205	.....	3,632,000	100.0	.....

Setting the 1,000 AU threshold equivalent at 30,000 birds for dry lot operations would result in an estimated 20 or so facilities subject to NPDES permitting, with another 70 or so potentially subject to provisions of the middle tier (300–1,000 birds) under a three-tier structure. This would account for about 45 percent of all duck operations and provide coverage for 84 percent of duck manure. Under a two-tier structure with a 500 AU threshold, about 60 facilities, or 29 percent of all operations, would be CAFOs subject to permitting, and about 72 percent of duck manure would be covered.

Alternatively, if EPA sets the 1,000 AU threshold for dry lot operations at sizes equivalent to the chicken sectors, 8 facilities would be defined as CAFOs and subject to permitting under the three-tier structure, with another 13 facilities potentially subject to the middle tier provisions (ten percent of operations covering 49 percent of manure). Under a two-tier structure at a 500 AU threshold, approximately 10 facilities, or five percent, would be defined as CAFOs, covering 37 percent of duck manure.

All of these possible alternative thresholds would represent an equivalent or, in most cases, higher threshold than is in the existing regulations and, therefore, would result in fewer duck operations being defined as CAFOs. Accordingly, EPA concludes that the costs and economic impacts that would be associated with the alternatives presented today would be lower than the costs associated with both the existing and proposed regulations regarding duck operations.

Permits for dry lot as well as wet lot duck operations would continue to be based on the existing effluent guideline, which is applicable to all duck operations with greater than 5,000 ducks.

EPA requests comment on whether to adopt either of these alternative options for dry lot and wet lot duck operations. EPA is also soliciting more complete data concerning the number and size of duck operations in the U.S.

2. Horses

EPA is considering revising the threshold for the number of horses that would determine whether or not a facility is a CAFO and subject to NPDES permitting. EPA is presenting for consideration two alternative options for revising the horse threshold that would be used in whatever approach is adopted in the final rulemaking (i.e., whether the Agency decides to adopt a two-tier or three-tier structure).

According to the Technical Development Document supporting the 1974 effluent guideline, the existing guideline applies only to commercial horse operations, defined as racetracks, resort ranches and riding stables, with more than 500 horses. It does not apply to horses kept for commercial farm use or for pleasure uses. Any commercial horse operation that meets the definition of a CAFO, and that has more than 500 horses in confinement, will continue to be subject to the existing effluent guideline as the effluent guideline for horse feedlots is not being revised in this rulemaking. The revised NPDES regulation, on the other hand, could apply to any type of confined horse operation; any permit issued to a horse operation not covered by the existing effluent guideline would contain the technology-based requirements established in the permit based on the best professional judgment of the permit writer, consistent with 40 CFR 122.44(a) and 125.3(c).

Many public commenters requested that EPA classify horses by body weight, with the assumption that one horse weighs 1,000 pounds. The existing regulations establish the animal unit

(AU) equivalent for horses as 2 AU per horse. As a result, 500 horses represent 1,000 AU under the existing regulation. A review of the 1976 Technical Development Document indicates this was based on biochemical oxygen demand (BOD) of manure from thoroughbreds, in comparison to other animal sectors. However, information EPA is making available today on manure content suggests that BOD and phosphorus content of manure from a typical 1,000 pound horse may be more similar to manure from a 1,000 pound beef cow, and that the nitrogen content of manure from horses and beef cattle may be similar. Based on this information, it may not be appropriate to adopt the reduced thresholds considered in the proposed regulation. However, the facilities most likely to be permitted are racetracks, where horses are fed a high carbohydrate diet and manure nutrient content is potentially different from that of typical horses. EPA is still analyzing data submitted to evaluate how nutrient content of race horse manure with specialized diets compares with that of horses with average diets.

Commenters also point out that, in 1976, when the original rule was written, the horse industry numbered approximately 7.5 million horses, of which one percent, or approximately 75,000, were actively involved in racing at any given time—race tracks being the type of horse facility most likely to be permitted. In 2001, there are an estimated 6.9 million horses, with one to two percent involved in racing, and are spread across the nation. Such data indicates that this industry is not growing or consolidating in the same dramatic manner that is seen in other sectors, and, combined with the relatively modest numbers of horses in confinement, poses less risk to the environment than do other animal sectors listed in the NPDES regulations.

Data submitted by industry suggest that there are 225 facilities that offer pari-mutuel horse racing in the U.S. These range from small, fair-type facilities with few stalls which operate for only a few days a year, to large commercial tracks with hundreds of stalls, operating for many months. These facilities involve Thoroughbred, Standardbred, Quarter Horse and Arabian racing. Preliminary data submitted by industry suggests that approximately 90 facilities meet the 45-day-in-confinement criterion, but the stall capacity of all of these is unclear. EPA is interested in receiving more complete information on the racetrack industry, as well as information on the number and size of non-racetrack facilities.

In order to fully evaluate additional regulatory options for horse operations, EPA would need to examine further both the manure content of racetrack horses compared to typical horses, and the extent of the potential impact of the revised thresholds on non-racetrack horse facilities. If the proposed rulemaking primarily affected racetracks, it would be reasonable to change the threshold if racehorses qualify for a change in the threshold. Therefore, EPA needs to examine whether, in fact, race horse manure is similar to beef cattle manure in quantity or content. Conversely, if the altered permitting thresholds would impact a large number of non-racetracks, it could support an upward revision of the thresholds.

TABLE 7–4.—RELATIVE POLLUTANT CHARACTERISTICS OF BEEF COW AND HORSE MANURE

Animal	Size of animal (lbs.)	BOD (lbs/day)	Nitrogen (lb/day)	Phosphorus (lb/day)
Beef Cow	1,000	1.6	0.34	0.092
Horse	1,000	1.7	0.30	0.071

Source: ASAE Standards 2000, ASAE D384.1 Dec99, Manure Production and Characteristics.

As summarized on Table 7–5, EPA is considering two alternative means for addressing the horse sector under the revised regulation.

TABLE 7–5.—ALTERNATIVE HORSE THRESHOLDS

	3-Tier (1,000 AU/300 AU) (horses)	2-Tier (assuming 500 AU) (horses)
Proposed Rule	500/150	250
NODA Option A	500/150	500
NODA Option B	1,000/300	500

In the proposed rulemaking, EPA proposed to use the existing thresholds as the basis to proportionately scale the thresholds under a two-tier structure. Thus, since 500 horses equal 1,000 AU, 250 horses would equal 500 AU.

Under the first alternative option for horses (NODA Option A), EPA would retain 500 horses as the regulatory threshold regardless of whether a two-tier or three-tier structure were selected. In other words, 500 horses would be the equivalent of 500 AU in the proposed two-tier structure, and 1,000 AU in the proposed three-tier structure. Thus, EPA would not change the horse thresholds either higher or lower, but would retain the existing thresholds in whatever structure is adopted in the final regulation. Such a decision would be premised on the recognition that this sector is relatively small and increased regulation is unnecessary. Facilities subject to the existing regulation would continue to be covered. Under the second alternative option for horses (NODA Option B), EPA would adopt commenters' suggestion to modify the threshold such that one horse would be equivalent to one AU under both the three-tier and two-tier scenarios.

EPA requests comment on the two new options, and requests that commenters supply the following additional data to assist EPA in evaluating these options: data comparing nutrient content of race horse manure to that of non-race horses; complete data on the number of confined horse operations, differentiating those at racetracks from those that are not racetracks; and the number of horses confined at each.

B. Cow/Calf Operations

EPA is considering revising how cow/calf pairs are counted in temporary confinement areas such as birthing areas of pasture-based cow/calf operations. It has not been EPA's intention to regulate (through the existing or proposed CAFO rules) pasture-based or rangeland operations. However, a farm or facility that utilizes pastures or rangeland may also have pens, lots, barns, or stables where animals are ''stabled or confined'' for portions of their lives. Provided that these areas meet the other AFO definition requirements, these confinement areas would meet the definition of AFO under either the existing rule or the proposed rule. For example, a beef operation that uses rangeland to support most of its herd may have a number of pens where animals are kept for short periods of time for birthing, veterinary care, or other purposes. Provided that these pens confine animals for 45 days or more in a 12-month period and meet the AFO definition's vegetation criteria, the pens themselves are AFOs. Further, if these pens confine the requisite number of animals and meet other conditions, the AFO would then be considered a CAFO. For purposes of determining whether the facility is a CAFO, only animals in confinement are counted.

EPA received many comments expressing concern over the impact of this regulation on small beef operations. The commenters expressed concern over a wide range of issues potentially

affecting their operations, that in the aggregate assumes EPA proposed to regulate pasture-based operations. While the final rulemaking will address the many different issues raised, EPA wishes to stress that the regulations apply only to animals in confinement. Thus, for example, a 1,000 head rangeland-based beef operation with 200 head in confinement at any given time would only count the 200 head to determine whether the confinement area meets the conditions for being considered a CAFO.

The current regulations do not distinguish between beef cattle of different size or weight. Thus, immature beef cattle have always been counted as one animal and, therefore, a cow/calf pair in confinement would be counted as two animals under both the existing and proposed regulation. As a result of public comment, however, EPA is now considering revising how cow/calf pairs are counted in temporary confinement areas such as birthing areas of pasture-based cow/calf operations. A cow/calf pair potentially would be counted as one animal, which would be consistent with how EPA treats immature animals in other sectors, e.g., dairy and swine. Such a change could alleviate concern expressed by commenters about the effects of the proposed rulemaking on small, pasture-based beef operations with temporary confinement areas.

One possible definition of a cow/calf pair would count the pair as one animal, but would count them as two animals where weaned offspring are kept longer than 120 days. EPA requests comment on whether to count cow/calf pairs as one animal in the beef sector and, if so, for what period of time offspring should be considered part of the cow/calf pair rather than counted independently.

C. State Flexibility and Innovation

1. State Non-NPDES Programs

EPA received many comments from the regulated community and from State agencies saying that many States have active and effective non-NPDES programs that, in many cases, are as effective as or more comprehensive than EPA's NPDES program, although they may differ in certain respects. Commenters felt that requiring States to implement what they view as the inflexible requirements of NPDES would drain State resources and impede effectiveness of their own programs. In particular, many State commenters asserted that facilities with less than 1,000 animal units are often best managed through these existing state programs. Some States requested complete recognition of their non-NPDES programs as ''functionally equivalent'' to NPDES, in order to exempt them from operating an NPDES program for CAFOs. Others requested flexibility to rely on State non-NPDES programs and focus NPDES efforts only where needed, particularly with respect to regulating facilities with fewer than 1,000 AU.

The Clean Water Act specifically defines point sources as including CAFOs, and authorizes EPA to issue NPDES permits to point sources. EPA may approve State programs to implement NPDES, and EPA regulations list the elements that all NPDES programs must contain. Those elements, for example, include (1) federal enforceability; (2) public participation; (3) citizen suits; (4) 5-year permit terms, and (5) permit conditions and limitations designed to limit the discharge of pollutants and protect water quality. Facilities required to be covered by an NPDES permit must obtain a permit from an agency authorized to issue NPDES permits. Thus, in order for a program to be ''functionally equivalent,'' it would have to issue permits that meet all these elements.

The requirements for State NPDES program authorization are specified under § 402(b) of the CWA and within the NPDES regulations (40 CFR part 123). These provisions set out specific requirements for State authorization applicable to the entire NPDES program.

EPA believes, however, that flexibility could be provided to State programs within the design of those portions of the NPDES program relating to CAFOs. For example, although the CWA requires CAFOs, as point sources, to be covered by an NPDES permit, it leaves the definition of CAFO to EPA. While EPA believes that the current and proposed CAFO NPDES program provides a reasonable degree of flexibility consistent with CWA requirements, we are today soliciting comment on alternatives that could more explicitly allow States to continue their non-NPDES programs while still incorporating a degree of federal oversight to ensure public accountability for protection of water quality.

EPA received many comments on whether to adopt either the two-tier or three-tier structure of the NPDES rule. Today's notice is not addressing these comments (including specific elements of the middle tier conditions in the three-tier structure, the proposed certification process, and other elements). Those issues will be addressed in the final rulemaking.

EPA through today's notice is seeking comment on ways to provide additional flexibility for recognizing the value of well-developed non-NPDES State programs. EPA believes the proposed regulation includes several options to provide flexibility under both a two-tier and a three-tier approach. Today's notice discusses two additional ways to provide flexibility for middle-tier facilities under a three-tier approach. In both these new options, EPA would still require permits of the largest CAFOs that meet the regulatory threshold, such as those with greater than 1,000 AU, but States could seek flexibility to address smaller operations (i.e., middle-tier operations with 300 AU to 1,000 AU and those with less than 300 AU) using non-NPDES programs.

Under these two options, for the middle-tier operations, EPA would set forth a definition of CAFO that could vary depending on whether the State had a non-NPDES program that adequately addressed manure management for operations of this size. If the State does have an adequate program, it would be entitled to greater flexibility in how it manages CAFOs under the NPDES program. As discussed below, this flexibility could take two basic forms. First, an NPDES-authorized State could alter its CAFO definition for middle-tier operations to contain a tailored set of conditions different from what would be in the federal regulations defining which operations of this size are CAFOs. Second, the State could adopt a simpler regulatory structure than would otherwise be required (i.e., two-tier versus three-tier). This flexibility in the CAFO definition would recognize that the appropriate management of middle-tier operations under the non-NPDES State programs minimize water quality impacts from these facilities to such a degree that EPA is justified in altering the definition of who needs to be permitted in this category of facilities.

a. State Flexibility Alternative 1: Flexibility Under NPDES for Middle Tier

The first State flexibility alternative would apply in the case where EPA would adopt a three-tier structure in the final rule. All CAFOs with greater than 1,000 AU would be required to obtain an NPDES permit; for those with fewer than 1,000 AU (or whatever regulatory threshold is selected in the final regulation), EPA would in this alternative grant specific negotiated flexibility to a State for a portion or portions of the NPDES program in order to facilitate effective State non-NPDES programs that assist smaller operations

to avoid meeting the middle tier conditions for being defined as a CAFO under NPDES. In this manner, States would be able to utilize their existing non-NPDES programs to minimize the number of AFOs that would otherwise become subject to NPDES permitting. EPA would grant the flexibility through the existing NPDES program modification process, discussed below. EPA would use the relevant program assessment criteria discussed in following sections to evaluate the adequacy of the State program in the areas of the requested flexibility.

One type of flexibility EPA might provide for middle-tier operations is negotiation of the time frame for when the revised CAFO definition would take effect within the State. The intent would be to give States sufficient time to implement their non-NPDES programs, provided that the State has a plan for active enforcement and compliance for middle-tier facilities under the existing regulation during the negotiated period. By allowing the State time to carry out appropriate management of animal feeding operations under its non-NPDES program, the effect could be that fewer operations in the State would meet the conditions for being defined as a CAFO once the revised regulations go into effect. During the phase-in period, the middle-tier conditions under the existing CAFO definition would remain in force (direct discharge, water of the U.S. running through the facility). After the negotiated phase-in period, the revised middle tier conditions would take effect.

Another type of flexibility EPA is now considering in order to recognize an adequate State non-NPDES program is to allow the State to adopt a CAFO definition that has a different set of conditions for being defined as a CAFO for the middle tier operations. EPA would work with a State to determine how to modify the CAFO middle tier conditions. For example, if the State has an alternative method for addressing excess manure statewide, a tailored condition could be devised to replace middle-tier conditions that would otherwise apply in the final rule to address excess manure. Finally, if the State has a program for targeting watersheds at risk, specific conditions or requirements could be developed to target CAFOs in those watersheds. EPA might also offer this flexibility on an interim basis. As a variation on this alternative, a State could implement for a limited period an alternative set of middle tier conditions based on those in the current regulation in order to allow the State to focus resources on high risk facilities.

This alternative could include a good faith flexibility option for first time discharges at middle-tier AFOs that are not CAFOs. The State's regulations could provide that if the State program succeeds in correcting the deficiencies at a middle-tier facility that led to the one-time discharge, the facility remains outside the definition of a CAFO if there is just that one time occurrence. Failure to correct the deficiencies in a timely way, or recurrence of a discharge, would cause the facility to be defined as a CAFO, to require a permit, and to be subject to enforcement under NPDES. Even for first-time discharges, however, owners or operators would have a duty to *notify* the permit authority and to seek assistance in correcting the problem. Failure to do so would result in a reporting violation under Section 308 of the CWA.

EPA seeks comment on this flexibility and on other possible specific means of granting flexibility that States may be interested in to facilitate implementation of their non-NPDES programs for middle-tier facilities. EPA also seeks comment on ways the State could demonstrate an assurance that the program will continue to meet the criteria used to obtain approval for the State program, described below.

b. State Flexibility Alternative 2: Opt-Out From NPDES for State Programs Covering Facilities Below the CAFO Threshold

In the second State flexibility alternative, EPA would recognize effective State non-NPDES programs by allowing States with such programs to define CAFOs under a two-tier NPDES structure, while other States would be required to continue to define CAFOs under a three-tier structure. In this alternative, under the two-tier structure, facilities over 1,000 AU (or the final regulatory threshold) in States with approved non-NPDES programs would be CAFOs and would be required to obtain an NPDES permit while facilities with fewer than 1,000 AU would not be CAFOs, unless designated by EPA or the permit authority.

In this alternative, when States amend their NPDES programs to incorporate the requirements of the final revised regulation, they would submit a description of their non-NPDES program for smaller AFOs, those under 1,000 AU. EPA would evaluate, as part of the modification review process, whether the State non-NPDES program provides enough assurance such that EPA could determine that the AFOs in the middle tier posed sufficiently lowered risk of discharging as to make them unlikely to be considered a point source. Upon approval by EPA, the State would be allowed to operate under a two-tier NPDES structure, in which permits would be required only of large CAFOs (e.g., those over 1,000 AU) or those that are designated. States that do not apply for this alternative, or States that fail to obtain approval of their alternative program, would be required to implement the middle tier requirements of the three-tier structure, assuming it is adopted in the final regulation.

In this case, although States would not be operating an NPDES permitting program for the middle tier, federal accountability would still be retained since the State would be expected to pursue NPDES permitting and enforcement actions against facilities that continue to fail to adopt the controls called for under the State AFO program. States would still have the authority to designate AFOs below the regulatory threshold as CAFOs and, under the proposed rule, EPA itself could also designate facilities of this size as CAFOs if the State has not done so.

EPA is soliciting comment on the flexibility options described above, and is also seeking additional comments on other approaches to provide States with greater flexibility, in recognition of effective State non-NPDES programs for manure management.

c. EMS as a Basis for State Flexibility

States would be encouraged to consider the use of Environmental Management Systems (EMSs) as a tool in either of the flexibility options described above to enhance their State programs, particularly in areas such as manure management, identifying and tracking AFOs, providing systems of accountability, and public participation. EMSs can be a key aspect of a permitting and/or voluntary program in achieving environmental goals and addressing a full range of significant environmental impacts. EMSs currently are being used in certain portions of the AFO industry. As discussed more fully in the section below entitled ''Environmental Management Systems,'' EPA is considering several additional options for including flexibility in the regulations to recognize the value of EMSs as a tool for helping operators to achieve performance goals.

d. Process for Granting Flexibility

EPA envisions that under the alternatives described above, a State would be required to apply for the flexibility it is interested in when it submits an NPDES program modification in order to implement the final CAFO rule. (A State could also do

so at a later date, but would be required to adopt EPA's approach for regulating middle-tier facilities until an alternative State program was approved.) EPA could require public review of the proposed modification by designating the modification as a ''substantial modification'' under 40 CFR 123.62. The NPDES program modification process is described in 40 CFR 123.62 and in guidance issued in 1986 (National Pollutant Discharge Elimination System State Program Guidance for Development and Review of State Program Applications and Evaluation of State Legal Authorities, at 40 CFR parts 122–125 and 403, Volume One, July 29, 1986). The regulations provide that EPA can make a case-by-case determination for each modification as to whether it is ''substantial'' and, therefore, must undergo public notice and comment prior to approving the modification. The basis for making this determination as described in the guidance is (1) the degree of public interest and (2) the magnitude of change to the State's program.

EPA seeks comment on this approach and on the advisability and need to seek public comment prior to granting any flexibility.

e. State Program Assessment Criteria

EPA would establish performance criteria for any alternative non-NPDES State program that is a candidate for NPDES CAFO program flexibility to assure national consistency in facility standards and environmental outcomes. Presented below are a set of performance criteria EPA is considering for making this evaluation. These criteria would enable EPA and the public to assess a State's readiness to operate part or all of its non-NPDES program in lieu of the final rule's requirements for the middle tier. EPA seeks comment on the criteria and their ability to serve as the basis for an assessment of non-NPDES State programs.

The most revealing measure of a State program's effectiveness at reducing the risk of a discharge from AFOs would ultimately be water quality monitoring data and attainment of state water quality standards. EPA is considering whether and to what extent this type of information could be useful in evaluating the effectiveness of the State program. Among the challenges to be addressed would be a need to understand how existing water quality data, including whether the State is achieving water quality standards, could predict the effectiveness of State programs in preventing future discharges and/or maintaining water quality standards in the future. EPA requests comment on these issues.

In addition to actual water quality monitoring, EPA believes certain programmatic performance measures can serve as criteria for assessing the effectiveness of a State program. While favorable answers to questions posed under each criterion in and of themselves do not guarantee program effectiveness, collectively they can serve as indicators of environmental performance and are generally viewed as characteristic of State programs that exhibit leadership in feedlot management. Therefore, to be considered effective, EPA is considering requiring through the regulations that any alternative State program would need to meet some or all of the following criteria, which are discussed in more detail below: (1) Identify and track AFOs in a systematic manner; (2) adopt facility standards for development of technically sound CNMPs for all AFOs and zero discharge from the production area; (3) establish performance measures that provide feedback on the efficacy of CNMPs; (4) implement a system of accountability (e.g., inspection, compliance, enforcement); (5) demonstrate resources are adequate to meet program objectives, including delivery and management mechanisms for technical assistance and funding; and (6) contain provisions for public participation that meet or exceed CWA objectives for participation.

Through today's notice, EPA seeks comment on these criteria as a valid basis for assessing whether a State non-NPDES program is sufficient for allowing the flexibility in the CAFO definition described in this section. EPA also seeks comment on any burden associated with meeting these criteria and whether there is an alternative set of criteria (including some or all of these or other criteria), which would increase flexibility for State non-NPDES programs while ensuring adequate protection of water quality from CAFO discharges.

Identify and track AFOs. EPA has observed in the past that a State's ability to track its AFOs is highly correlated with a program's effectiveness. To assess a State's ability to meet this criterion, EPA would need to determine that the State's program adequately and reasonably addresses the following elements: (1) How does the State identify and track AFOs? (2) Is there a State permitting or registration program for smaller AFOs? (3) What thresholds are used for permits, registration, or other tracking mechanism? (4) What terms and conditions are used for permits or registration? (5) How many facilities are covered by State permit(s)/registration compared to absolute numbers of AFOs? (6) In which cases does the State use non-NPDES general permits and individual permits?

As an example of a effective tracking program, EPA is aware of one State that has a comprehensive registration component that serves as a basis for referring facilities for technical and financial assistance. To identify the target universe of AFOs, the State works with local conservation districts to inventory the facilities. This information is then entered into a tracking system, and serves as the basis for scheduling site visits to the AFOs.

EPA requests comment as to what extent AFOs should be identified and tracked to assure environmental performance of non-NPDES State programs. EPA further solicits examples of how this is done in effective State programs.

Facility standards for development of CNMPs and for zero discharge from the production area. The goal of the NPDES provisions in the CAFO rule is to minimize environmental impacts either directly from a facility's animal production areas or through the use and application of the nutrients generated at the facility. Therefore, EPA would need to find that an alternative State program at a minimum provides for adequate development of CNMPs and ensures that facilities will meet zero discharge standards. To evaluate a State's ability to meet this criterion, EPA would need to evaluate the following: (1) How will the State work with AFOs to help them develop CNMPs? (2) How are overflows from manure storage areas prevented? (3) What lagoon seepage rate is allowed? (4) What other controls does the State promote?

The goal of the USDA/EPA Unified Strategy for Animal Feeding Operations is to promote development of CNMPs for all AFOs. A CNMP incorporates conservation practice standards that go beyond basic nutrient management planning, and incorporates a variety of practices to preserve water quality. In addition, the EPA proposed regulation includes a zero discharge standard, requiring beef and dairy facilities to be designed, operated and maintained to prevent discharge in less than a 25-year, 24-hour storm, and limiting swine and poultry facilities from discharging in any non-catastrophic storm. EPA would evaluate whether the State program adequately addresses both the CNMP and zero discharge goals. EPA solicits comment on whether and to what extent requirements for CNMPs and zero discharge from the production areas for

AFOs in the middle tier could be met through State Non-NPDES programs.

In general, EPA would take into account all aspects of the State program that demonstrate control of pollutants from AFOs. To that end, EPA would also take into account features of the program that go beyond direct NPDES requirements, such as bans on new construction, phase-out of lagoons, or controls on air, odor or ground water. An example of a program that goes beyond the proposed NPDES requirements is a State that requires AFO operators to seek and obtain construction permits based on design standards that are more stringent than NPDES standards. Other examples may exist as well, and EPA would welcome such information.

Establish performance measures. An effective State program would need to have in place measures that provide feedback on the program's ability to control water quality impacts from nutrients, sediment, and other conventional and nonconventional pollutants associated with CAFOs. Despite the challenges often inherent in collecting and analyzing these data, EPA believes that a State's activities in establishing environmental baselines and measuring trends (e.g., trends for nutrient loading) can help demonstrate the program's intent and maturity. In assessing a State's performance measures to control water quality impacts, EPA would consider whether the State has undertaken efforts to understand sources, fate, and transport of pathogens and antibiotics since this is an emerging water quality issue. EPA requests comment on what kind of performance measures, if any, EPA should consider requiring.

Implement a system of accountability. Facility standards, however rigorous, are without value if there is no corresponding effort to ensure adherence to the standards. Consequently EPA believes that an important indicator of an effective State program is how the State works with facilities once they are identified as AFOs. EPA would evaluate whether the State's program provides adequate accountability based on the following criteria: (1) What is the frequency of inspections or site visits? (2) What happens once a complaint is received? (3) What is the relationship with EPA? (4) How is EPA kept informed of actions at facilities? (5) At what point are federal enforcement authorities applied? (6) What steps are taken if a problem or potential problem is detected at a facility (e.g., referral to local industry group, agricultural agency, or other organization for technical assistance services; regulatory agency compliance/enforcement procedures; fines; etc.)? (7) What voluntary efforts are underway to aid facilities in achieving facility standards? (8) Does the State regularly track and evaluate the magnitude and resolution of problem/discharge reports?

States currently have a variety of approaches for ensuring that AFOs adhere to standards. One obvious indicator of effective follow-through would be the vigor of the AFO program's inspection, compliance and follow-up component. These measures must however be analyzed carefully to determine their true correlation with program efficacy. For example, one State AFO program inspects facilities twice a year, as part of its non-NPDES program. However, critics of this particular program note that the State takes little subsequent action to follow up with facilities once a problem is detected. Another example of a program that might be viewed critically is a case where the State has permitted all AFOs down to a very low threshold, but rarely inspects or performs site visits to assess compliance at individual facilities.

AFO programs for smaller facilities could still be judged as providing appropriate oversight regardless of whether the State makes extensive use of permits and enforcement orders. For the majority of AFOs, voluntary programs are often the most appropriate means for guiding the facility to achieving any design or operating standards. For example, one State with an active program uses a graduated system of referrals under which operators who fail to address problems in a timely manner are first referred to technical assistance groups, then State support programs, and then State regulatory programs. If the facility still is deemed to present a problem, it may ultimately be ''designated'' as a CAFO and be required to apply for a permit.

Other States offer varying degrees of technical assistance, and may promote or fund environmental assessment programs such as the America's Clean Water Foundation On-Farm Assessment and Environmental Review (OFAER). For example, one State has an AFO program that provides more funding for AFOs in that State than does EPA and USDA combined. With this in mind, the Agency would plan to give due weight to a State's technical assistance program, including elements that offer education, training, technical or financial assistance.

Demonstrate adequate resources. To be considered effective, a State would also need to demonstrate that it possesses adequate resources to meet the program's objectives. Beyond obvious concerns for staffing and program budgets, EPA would also be interested in State efforts to deliver program resources to particular environmental problems. For example, EPA would evaluate: (1) Is there a State-wide manure management program? (2) How does it work? (3) What mechanisms does the State use for targeting or prioritizing actions on specific AFOs or groups of AFOs (e.g., targeting based on sector of concern, watersheds at risk, citizens complaints). (4) How does the State use non-point source information to guide actions on AFOs?

A State-wide manure management program, for example, could help target geographic areas where nutrient production exceeds demand, and could assist in locating other jurisdictions where a shortfall exists. Another example of environmental targeting occurs in a State whose AFO program uses a watershed-based approach to prioritize actions on facilities. Even though this particular State issues permits on a 10-year cycle (rather than the 5-year cycle called for under NPDES), the program is widely respected for its ability to control AFO impacts in at-risk watersheds. Other States have programs that target inspections and technical assistance to AFOs based on geographic concentration of facilities.

EPA seeks comment on these measures to evaluate whether States possess adequate resources for program objectives and whether alternative measures would be appropriate.

Provisions for public participation. EPA does not believe that a State with a non-NPDES program should receive flexibility without assurance of adequate public participation in its development and implementation. To evaluate State efforts in this area, EPA would assess the adequacy of all of the following factors: (1) Stakeholder involvement in program development and implementation; (2) opportunity for public input on permit issuance; (3) opportunity for the public to request hearings on permits; (4) public availability of permit/registration information; (5) method of tracking and responding to citizen complaints; and (6) provisions for appeals and citizen suits.

EPA requests comment on the appropriate level of public participation in non-NPDES programs and whether these or an alternative set of factors would be more appropriate for States, to ensure adequate public participation.

EPA seeks comment on which of these would be critical factors in making

its determination concerning program adequacy.

EPA in general requests comment on the various ideas for flexibility discussed today, and on how any aspect of them might be used in combination to achieve the goals of providing enhanced flexibility for State non-NPDES programs while ensuring appropriate assurances to the public for protection of water quality from CAFO discharges.

D. Environmental Management Systems

EPA is soliciting comment on three new options concerning the use of environmental management systems (EMS). In the preamble for the proposal (at 66 FR 3027), EPA described an option under which a processor would not be required to be co-permitted with its producer(s) if the processor developed an EMS that met certain conditions. Reactions to this specific option and to EMSs in general were mixed. In light of discussions with stakeholders and further information on the use of EMSs in other industries, EPA is continuing to consider how best to incorporate EMS-based alternatives into the final rulemaking. Today's notice outlines additional ways in which EPA is considering incorporating EMS-based alternatives into the final regulations as a way of providing States with flexibility in managing their CAFO programs.

EPA is also setting forth an EMS protocol, or framework for an acceptable EMS, that it is considering incorporating into the regulations. EPA might require States to adopt such a protocol if they want to offer these EMS-based options. EPA is soliciting comments on this protocol.

The four potential EMS options that EPA is now considering, as discussed below, are: (1) EMS Option 1: Modified Permit Requirements for Facilities > 1,000 AU; (2) EMS Option 2: EMS as a Basis for Excluding Operations from the CAFO Definition for facilities with 300 AU to 1,000 AU; (3) EMS Option 3: EMS as a Basis for State Flexibility in Defining Who is a CAFO for 300 AU—1,000 AU; and (4) EMS Option 4: Co-permitting.

EPA recognizes that developing an EMS, including successful completion of third-party audits, would cause a facility to incur certain costs. Therefore, in addition to soliciting overall comments on these EMS-based alternatives, EPA would like to get any information on the existing costs of EMS implementation for animal feeding operations, both on a per-facility and organization-wide basis. Types of costs that could be relevant include staff and consultant costs, costs of upgrading operations to make them conform to the EMS elements contained in this notice, and costs of completing third-party audits. EPA will consider this information carefully as it determines whether EMS-based alternatives should be included in the final rule. EPA is also requesting any available information on the performance of EMSs in addressing regulated and unregulated environmental impacts.

A simple definition of an EMS is a continual cycle of planning, implementing, reviewing, and improving the actions an organization takes to meet its environmental obligations. These obligations include, but need not be limited to, regulated activities. First adopted by manufacturing industries, EMSs are now being increasingly used in the U.S. and throughout the world by various industry sectors, including animal agriculture, and by a growing number of public agencies. EMSs provide organizations with powerful tools to assess environmental impacts systematically from a wide variety of activities, many of which are not regulated, and to reduce these impacts over time. Common examples of activities typically not subject to federal regulation that can be addressed through an EMS include odor, noise, and energy consumption. Benefits may include cost savings, increased operational efficiency, risk reduction, improved internal communication, and improved relations with external parties. EMSs typically incorporate a feedback mechanism that supports measurement of performance against a set of measurable objectives and provides a mechanism for correction or preventive action. Implementing an EMS provides an organization with a broad-based yet flexible way of managing a full range of environmental issues. Best management practices (BMPs) can, and often do, provide the substantive underpinning of an effective EMS, but BMPs alone cannot substitute for a dynamic management *system* that reduces current risks and provides a way of anticipating future risks, and addressing these risks, before they cause a significant environmental impact.

The EMS, by its nature, is designed to address multiple pollutants and pathways. While potentially less prescriptive and more flexible than regulatory requirements for a particular pollutant or pathway, an EMS would offer compensating, and potentially offsetting, environmental gains from other measures such as air pollution control, dust control, and having an emergency response plan in place. An EMS provides the operator of the animal feeding operation with an efficient and effective means of analyzing the sources and pathways of pollution at the facility, identifying appropriate controls, and assessing progress against identified goals. An EMS alternative in the regulations would need to take into account all forms and sources of pollution and would describe a facility's commitment to implement strategies, identify needed investments in structures and changes in practices, and develop emergency response plans to minimize all forms of pollution that could reach the waters of the U.S.

The basic elements of an EMS, whether they are based on the ISO 14001 International Standard or a more industry-specific model, are not new and have proven they have the potential to be effective in a variety of settings. To make effective use of EMSs in the CAFO regulations, EPA believes it is important that relevant stakeholders be given an opportunity to provide input to the facility as the EMS is developed, that information on the performance of the EMS be readily available to regulators and the public, and that some form of independent third party verification be included as means of ensuring public confidence. A May 2001 National Academy of Public Administrators (NAPA) report on third party auditing of EMSs under ISO 14001 noted that given the public policy implications, it is important to ensure credible and consistent results so that all who rely on an EMS, including the public, have appropriate expectations of what it represents. The options described below contain these important features.

EPA has been involved in strategically promoting the voluntary adoption of EMS for several years, and described its policy in its 1999 report ''Aiming for Excellence—Actions to Encourage Stewardship and Accelerate Environmental Progress.'' This report states that ''we will encourage organizations to use EMSs that improve compliance, pollution prevention, and other measures of environmental performance.'' Copies of this report are available at www.epa.gov/reinvent/taskforce/report99. EPA has also developed an action plan that identifies a wide range of activities the Agency will undertake to follow up on the recommendations of the Report.

Some of the key EMS-based programs EPA is supporting, in partnership with industry and others, are the National Environmental Performance Track, the United Egg Producers XL Project, and the National Biosolids Partnership EMS program. More recently, the Agency has begun to work with selected meat

processing facilities in the Midwest to help them adopt EMSs, using an EMS guide tailored to these types of facilities. In addition, certain companies in the animal feeding operations industry, such as Smithfield and Premium Standard Farms, have adopted formal EMSs under the ISO 14001 International Standard for their operations to help improve their compliance records. While EPA does not specifically endorse the efforts of these companies, we note the existence of their EMS programs simply to point out that the EMS concept is not new in the AFO industry.

1. EMS-Based Regulatory Options

Today, as a result of information received since the proposed rule was published, EPA is soliciting comment on three additional potential approaches for incorporating EMS-based options in the CAFO regulations. In the proposed rule, EPA solicited comment on EMS as an option for co-permitting. The three additional options that EPA is now considering would make the EMS-based flexibility more generally available to both large and medium size CAFOs.

In general, these EMS-based approaches would be based on a recognition that a comprehensive EMS program made available by the State and implemented by the facility would have the effect of reducing the facility's point source-like attributes—more specifically, reducing its potential for a discharge to the waters from a discrete, identifiable and controllable source. Accordingly, because these facilities would have fewer attributes of a point source, and given EPA's discretion to define who is a CAFO point source under the Clean Water Act, EPA would conclude that it is appropriate to scale back or eliminate certain middle-tier operations that employ the EMS approach from being defined as CAFOs. In the case of Option 1 below, EPA would not exclude large operations from the CAFO definition where they implement EMSs but would simply find it appropriate to curtail some of the technology-based requirements that would otherwise apply, recognizing that the EMS activities would make those requirements unnecessary.

a. EMS Option 1: Modified Permit Requirements for Facilities > 1,000 AU

Under the original CAFO proposal, all facilities over 1,000 AU would be required to obtain an NPDES permit, with limited exceptions. In Option 1, the permit authority could develop an EMS program consistent with EPA's framework that would grant certain flexibility to permittees such as coverage under a general permit, modification of selected requirements in the effluent guideline, or reduced reporting requirements. EPA could define certain elements of the effluent guideline that could be modified for facilities that adopt an EMS. EPA is soliciting comment on which types of permit requirements it may be appropriate to amend if a facility of this size implements an EMS program.

b. EMS Option 2: EMS as a Basis for Excluding Operations From the CAFO Definition for Facilities With 300 AU–1,000 AU

Under the second potential approach, EMSs could also be used by those animal feeding operations in the middle tier of the three-tier structure (those between 300 AU and 1,000 AU). Under the proposed regulation, owners or operators of middle tier facilities would be defined as CAFOs unless they certify that they do not meet certain criteria (that are adopted in the final regulation) that indicate a risk of discharge to the waters. Specifically, in the proposed rulemaking, the facilities in the middle tier would be required to demonstrate the following to not be defined as a CAFO: (1) Waters of the United States do not come into direct contact with the animals confined in the operation; (2) there is sufficient storage and containment to prevent all pollutants from the production area from entering the waters of the United States; (3) there has not been a discharge from the production area within the last five years; (4) no part of the production area is located within 100 feet of waters of the United States; (5) in cases where manure or process-generated wastewater are land applied, they will be land applied in accordance with a Permit Nutrient Plan.

Under this EMS option, a State could adopt an alternative condition that would exclude a middle-tier facility from being defined as a CAFO if the facility demonstrates that it is carrying out an appropriate EMS. The operation would need to show that it has successfully completed an independent third party audit of its EMS. Among other things, the EMS would need to ensure that the operation achieves zero discharge from the production area, and that it has a CNMP in place that ensures that manure is land applied in accordance with proper agricultural practices.

A determination of the adequacy of the EMS would be made during the initial third-party EMS audit, described in more detail later in this notice. Any facility that failed to properly implement its approved EMS would become a CAFO and be required to obtain a permit. More discussion of potential implementation issues follows later in this section.

c. EMS Option 3: State Flexibility for 300 AU–1,000 AU

Under the third approach, an NPDES authorized State could seek to rely on its EMS program as a basis for requesting flexibility in how it defines which AFOs in the middle-tier become CAFOs. Once it found that the State had an adequate EMS program, EPA could approve State CAFO regulations that contain a modified set of conditions for defining who is a CAFO, or could approve State regulations that define CAFOs under a two-tier rather than a three-tier structure. Please see the above section on State Flexibility for a complete discussion.

d. EMS Option 4: Co-Permitting

Please see the discussion in the proposed rule (66 FR 3027) of the use of EMS to waive the requirement for co-permitting. In this option, the permit authority could waive the requirement for co-permitting entities that exercise substantial operational control over a CAFO if the entity adopts and implements an EMS for its contract producers. The EMS could include elements to effectively manage excess manure.

2. Potential Evaluation Process and Standards

Under each of the four EMS options, a State would first need to develop an EMS program under one of the alternatives listed below, and would need to obtain EPA's approval. As described earlier in the discussion of State Flexibility, the State EMS program would need to be evaluated and approved by EPA as part of the NPDES program modification process. EPA is considering providing in the regulations that a State EMS program would be acceptable where it meets one of the following:

Alternative 1: State program requires the operation to adopt an EMS that meets the ISO 14001 International EMS standard and certain other EMS requirements specified below;

Alternative 2: An authorized State could develop its own EMS program standards, and require the operation to adopt an EMS that meets these standards. To be approved by EPA, the State EMS program would need to be consistent with the EMS elements described below. EPA would develop guidelines for an acceptable EMS program for use by States.

EPA would find that a State had an adequate EMS program only if the

program required an operation to certify that it meets the standards of ISO 14001. Alternatively, the program could allow operations to certify to a different set of standards as long as EPA found that they were no less stringent than ISO 14001. As further criteria that EPA is considering for an adequate EMS program, the program would need to require each operation to demonstrate that it had (1) provided interested community members with a reasonable opportunity to provide input to the facility as its EMS was developed; (2) demonstrated how it had responded to this input; (3) maintained ongoing communications with community members and other stakeholders as the EMS was implemented and addressed relevant issues raised by these stakeholders; (4) made the results of successful third party audits publicly available, either at the facility or through the regulatory agency; and (5) developed and was implementing a CNMP in accordance with NRCS 590 guidelines. EPA specifically requests comment on these criteria.

EPA believes that all operations that seek to be excluded from being defined as a CAFO on the basis of implementing an EMS would need to meet the State program criteria, as determined by passing a third party audit. EPA believes that independent third party audits provide a high degree of confidence that the EMS is in place and is being implemented in a consistent and credible manner, including helping to assure compliance. However, EPA realizes that these audits may pose a significant cost burden to certain small facilities. Therefore, EPA is also seeking comment on alternatives to requiring each facility to complete the audit, including approaches like self-certification of the EMS, risk-based auditing, and random auditing, and the way in which these alternatives would provide the appropriate level of confidence for regulatory agencies and the public, as EPA believes requiring third party audits for all facilities would provide.

A facility deciding to make use of the EMS option would have until the effective date of the new NPDES CAFO regulation (approximately January 2006) to get an approved EMS in place. At that time, consistent with the proposed rule, all facilities that meet the definition of a CAFO would be required to either obtain an NPDES permit or have an approved EMS in place which would entitle them to be excluded from the definition. The State program could also allow facilities that had already applied for or obtained permits as CAFOs and that later developed an EMS to be excluded from the definition at that time.

EPA is requesting comment on the standards the State EMS program must meet, and on how States would obtain approval from EPA for implementing such a program.

3. Potential Elements of an AFO EMS

EPA believes that an EMS has the ability to enhance environmental protection, especially if it includes the evaluation and abatement of all forms of pollution. This includes pollutants that may not currently be regulated in some areas, such as air deposition of nitrogen from hog lagoons, which has been found to be a major contributor to nitrogen loadings in streams and rivers. The ability to control multiple pollutants and pathways in a holistic manner could foster greater control of agriculture's negative impact on the environment, potentially at lower cost to producers.

Accordingly, EPA is considering that, in order to deem the AFO EMS sufficient, the State program would require a facility to develop and carry out a plan to evaluate and effectively address the environmental impacts of the facility across multiple media and pathways. The pathways that the facility would need to address, for example, could include air deposition of contaminants to the waters and odor and pest control. It is within EPA's discretion to define which operations are CAFOs. EPA believes that under this regulatory alternative, multiple pathways of contamination should be addressed by an EMS in order for a middle-tier operation not to be considered a ''concentrated'' animal feeding operation under the regulations. EMSs, by their very nature, allow organizations to decide the relative degree of emphasis and attention that needs to be given to a particular environmental issue. For example, if the facility's own assessment and input from community members and other stakeholders indicated that odor was not a significant issue, the facility could continue to manage odor issues as it had been doing. However, the facility would need to maintain ongoing communications with the community and be in a position to take additional steps to deal with odor issues, as part of its EMS, if odor were to become a significant issue in the future.

Additionally, EPA is considering specifying in the regulations that, in order for an AFO EMS to be deemed sufficient, it would need to ensure, among other things, zero discharge from the production area. Also, an acceptable AFO EMS would need to require the facility to have a CNMP. The CNMP, to be sufficient, would need to assure land application of manure at proper agricultural rates and require employment of BMPs to minimize discharges to waters of the U.S. from the production area and the land application area. These requirements would need to be established as specific objectives in the EMSs against which the facility's performance would be evaluated and its EMS conformance audited.

A critical element for EPA to approve of an EMS would be the third party audit process and local public participation. Local participation is essential as it is local residents that will be impacted most directly by discharges from the operation.

As described earlier, a State would be required to submit a description of its overall EMS program to EPA for approval. The program description would need to contain a description of how the adequacy and effectiveness of each element would be determined through independent third party EMS audits conducted at each facility seeking the regulatory relief under one of the options described above. The program description would also need to include other program elements that would be determined in the final rule. EPA is considering the set of program elements outlined below and solicits comment on them.

When EPA evaluates a State's EMS program under Alternative 1, it would assess whether the program adequately addresses the following elements. It would also be EPA's intention to address these items in national AFO EMS guidance discussed in Alternative 2 above:

Environmental Policy—A written statement of policy committing to ensure compliance with all applicable regulatory requirements, pollution prevention, ongoing improvement of environmental performance, including areas not subject to regulation, in order to reduce negative impacts on the environment over time, and sharing information with stakeholders on environmental performance against EMS objectives and targets;

Environmental Planning—A process to: (1) Identify all environmental impacts of the facility, assess significant impacts, and prioritize them by significance across all media and all pathways; (2) document all applicable federal, State, and local environmental legal requirements (e.g., pesticide storage and handling, odor control, air emissions, oil and grease) and the facility's compliance with those requirements; (3) set objectives and

measurable targets consistent with the impact assessment and commitments described in the policy statement which, at a minimum, should include the following: (a) zero discharge from production area; (b) development and implementation of a CNMP; and (c) under the CNMP, provisions to ensure land application will be performed in accordance with proper agricultural practices.

Implementation of Policy and Plan—Adoption of appropriate USDA-or State-endorsed conservation practice standards to help meet the EMS objectives and targets (using USDA handbook or other relevant guidance), including: (1) Implementation of a CNMP; (2) adoption of necessary operational controls and procedures to ensure that the EMS is effectively implemented; (3) proper employee training and clear employee roles and responsibilities that address implementation of the EMS at the facility; (4) CNMP certification; (5) implementation of conservation practice standards (including documentation that necessary practices have been installed, their operation has been verified periodically, and any performance deficiencies have been identified and that the facility has outlined and implemented steps to correct the deficiencies); (6) documentation of procedures for an emergency action plan; and (7) appropriate conservation practice standards required for pest control, odor management, dead animal disposal, and preventative maintenance.

Community Involvement/External Communications—A process to allow interested community members and other stakeholders to provide input to the facility as its EMS is developed. The State should show that its program calls for facilities to demonstrate how they responded to this input as part of the third-party audit. Under this element, each facility should be required to maintain regular communications with these stakeholders on the performance of the EMS as it implemented and address relevant issues raised by these stakeholders. In addition, information on the results of third party audits must be publicly available. EPA seeks comment on the most appropriate method of sharing this information, and the appropriate level of detail that should be included for any information that is shared. EPA seeks comment on the most appropriate method of sharing the audit results, including web site publication. EPA is also seeking comment on the content, frequency and level of detail of audit results and whether there are confidential business information concerns that need to be addressed.

Checking Progress and Success of EMS—The State should have a process that causes facilities to: monitor conformance with the EMS and compliance with applicable laws; maintain records that document EMS implementation and compliance; and conduct internal EMS audits and internal reviews by facility management of the overall performance of the EMS on an ongoing basis.

Independent Third Party Audits—As described earlier, EPA is soliciting comment on an approach that would require all facilities to successfully complete an independent audit of the EMS by a qualified third party organization before becoming eligible for the EMS alternative, but is seeking comments on other approaches such as random auditing, risk-based auditing, and/or self-certification of the EMS. The Agency is requesting comment on the appropriate frequency for independent follow-up audits (e.g., annual or less frequent basis). Such follow-up audits would not have to be full audits but rather could be targeted to audit certain components of the environmental management system such as record keeping, communication, or others. The independent third-party auditing program, including qualifications of auditors, would need to follow auditing guidelines developed by the State and approved by EPA as part of the State's EMS program. Results of all third party audits would need to be submitted to the regulatory authority in a timely manner and available to the public upon request.

Examples of third party auditors that EPA is considering finding to be qualified under the regulations include certified CNMP specialists, OFAER-trained assessors/auditors (On-Farm Assessment and Review), and ISO 14001 certified auditors with appropriate animal agriculture background.

EPA seeks comment on the appropriate elements of a State EMS program.

4. Further Criteria for an Adequate EMS-Based Program

This potential EMS framework raises implementation issues that EPA would need to address in the final rule should we go forward with the approach. EPA solicits comments on the six EMS elements discussed above as well as each issue area described below and the options for addressing the issues.

Facility operator qualifications/eligibility criteria. EPA seeks comment on eligibility criteria for determining whether AFOs should be allowed to implement EMSs in lieu of applying for permits. The purpose of the criteria would be to screen the AFOs to ensure they can demonstrate an appropriate compliance history and commitment. For example, EPA could specify in the final rule that if the AFO has had a violation (i.e., a discharge to a water of the U.S.) within a certain number of years, e.g., five, the owner/operator would have to demonstrate that the violation was corrected and steps taken to prevent recurrence. EPA may also wish to specify that persons whose compliance history includes certain types of serious violations, e.g., criminal violations, must always apply for permits. The permitting authority may be in the best position to determine at the outset whether an AFO's compliance history should exclude it from participation. Other screening factors may come into play only during the initial third-party EMS audit, described in more detail later in this notice. EPA also seeks comment on the timing of the screening.

Frequency of self and third-party auditing. Once a facility has an approved EMS in place, to ensure it is being implemented appropriately, periodic follow-up through self and third-party auditing and certification will be needed. EPA solicits comment on how frequently the follow-up auditing should be specified in the regulations. For example, EPA is considering requiring facilities with EMSs to conduct follow up self-audits every six months, and third party audits every one to five years.

Correction of EMS nonconformances/return to CAFO status. Despite best efforts, some facilities will experience EMS nonconformances, potentially including noncompliance with key EMS conditions such as the requirement for zero discharges. Such EMS nonconformances can range from minor problems with no significant environmental impacts that can be easily corrected and are unlikely to be repeated, to serious or even criminal problems which lead to imminent and substantial endangerments, significant environmental impacts, or continuing discharges.

EPA solicits comment on the best approach, or combination of approaches, for reacting to and addressing EMS nonconformance under an EMS program. EPA's intent is to balance the need to provide AFOs with incentives to participate in the EMS program, including certainty as to their NPDES status and how their nonconformances will be handled, with the need to ensure that permitting

authorities can react promptly and effectively to serious problems, including, if warranted, issuing CWA administrative orders with compliance schedules or injunctive provisions.

There are a range of options that EPA is considering to address this issue. They are not mutually exclusive. For example, EPA could distinguish between facilities with significant and insignificant problems. The final rule could provide for the former to return to the NPDES permitting program, while allowing the latter to correct their nonconformance problems under their EMSs with no change in AFO status.

Some approaches EPA could employ in this regard include the following: (1) The final rule could provide for AFOs with significant discharges to revert automatically to CAFO/ NPDES status upon discharge and be required to apply for NPDES permits; (2) Rather than operate automatically, the rule could authorize the permitting authorities to designate AFOs with significant discharges as CAFOs, if determined to be appropriate; (3) AFOs which revert to CAFO status could be required to apply for NPDES permits immediately, or CAFO status could be deferred, allowing the permitting authorities the discretion to require permit applications when deemed necessary; (4) AFOs could correct noncompliance problems which are not significant under the EMS program, without any effect on their status as non-CAFOs (unless they do not correct the problem), pursuant to established guidelines and time lines.

Time line for obtaining EMS or permit. EPA believes it would be appropriate to implement the EMS option in the same time frame as the proposed regulation, i.e., States and facilities would have three years following promulgation of the final rulemaking to develop and implement EMS programs and plans. EPA solicits comment on an appropriate time line for implementing the EMS-in-lieu-of-permitting requirements for participating facilities. For example, a facility deciding to opt out of a permit under this option could be given until 2006 to get an approved EMS in place. At that time, all facilities that meet the CAFO criteria would have either obtained a NPDES permit or developed and implemented an approved EMS.

EPA seeks comment on any further criteria that it may be appropriate to specify as necessary for an adequate State EMS program.

5. Potential Components of Third-Party Auditing Program

An effective third-party auditing program is essential to the credibility of any EMS, including the EMS options described in today's notice. The auditing program would need to provide States, EPA, participating facilities, and the public the essential information to determine if the EMS is being implemented in a manner consistent with the guidelines outlined above. At the time a State submits its overall EMS program to EPA for approval, it would be required to also describe how the third-party auditing system will work by describing the following features of the program: (1) The process by which a facility may apply to the State for participation in the EMS program; (2) The written EMS guidance or other guidelines that will be used by auditors when auditing each facility, consistent with the EMS elements described above; (3) The specific EMS auditing qualifications for auditors, and other relevant qualifications, including minimum educational, training and/or hands-on experience requirements, such as expertise in agricultural engineering, nutrient management and field management; (4) The content, frequency and level of detail of audit reports and the mechanism for making this information available to the public (audit reports must include all the elements listed above); (5) The frequency and scope of follow up audits that will take place to confirm that the facility is continuing to adequately implement its EMS; (6) The oversight mechanism that will be used to ensure overall program integrity as well as auditor objectivity and consistency; (7) The criteria in addition to the program elements that will be used to determine when a facility is failing to adequately implement its EMS, and the timing of corrective actions that must be taken (see Further Criteria for an Adequate EMS-Based Program above); and (8) The process by which a facility that has failed to take necessary corrective action will then be subject to applicable regulatory requirements and the time frame for accomplishing this based on the requirements listed above. States that choose to use ISO 14001 certification as the basis for evaluating a facility's EMS could use relevant ISO guidelines to address certain of these features.

EPA requests comments on the auditing program components described herein, as well as on the use of EMS in general in the CAFO program.

E. Three-Tier Alternative

In the proposed rulemaking, EPA proposed and discussed several alternative scenarios for structuring the NPDES regulation (66 FR 2996–3004). USDA has suggested that EPA consider an additional alternative that is a variant of the three-tier structure in which the middle-tier would include operations with 500 AU to 1,000 AU (rather than 300 AU to 1,000 AU). Thus, all facilities over 1,000 AU would be CAFOs based on size alone, those with 500 AU to 1,000 AU would be CAFOs if they met certain conditions, and those with fewer than 500 AU would be CAFOs only if so designated by the permit authority.

Table 5–4 from Section 5 of today's NODA compares the percent of CAFOs to the percent of recoverable nutrients under various thresholds. USDA data indicate that approximately 85 percent of excess recoverable nutrients are located at CAFOs with 500 AU or greater, representing almost 13 percent of AFOs. An additional 8 percent of excess recoverable manure nutrients are located at facilities with 300 AU to 500 AU, representing an additional 8 percent of facilities. USDA suggests that adopting a middle-tier category of 500 AU to 1,000 AU would focus regulatory efforts in areas where excess manure is more prevalent while avoiding imposing regulatory burden on large numbers of smaller facilities. EPA believes that economic analyses for this alternative are subsumed in the array of analyses that were conducted for the various thresholds, scenarios, and options in the proposed rulemaking.

EPA is requesting comment on whether to adopt this alternative three-tier structure.

F. Technical Correction

EPA is correcting a typographic error at 66 FR 2999, second column, first full paragraph. At the end of this paragraph, in the clause that reads ''unless the recipient has complied with the requirements for off-site shipment of manure,'' the term ''recipient'' is incorrect and should be replaced with the term ''CAFO owner or operator.'' The corrected paragraph reads as follows:

The revised conditions for the middle tier would require the owner or operator to apply for an NPDES permit if the operation meets any of the following conditions and is therefore a CAFO: (1) There is direct contact of animals with waters of the U.S. at the facility; (2) there is insufficient storage and containment at the production area to prevent discharges from reaching waters of the U.S.; (3) there is evidence of a discharge from the production area in the last five years; (4) the production area is located within 100 feet of waters of the U.S.; (5) the operator does not have, or is not implementing, a Permit Nutrient Plan that meets EPA's minimum requirements; or (6) more

than twelve tons of manure is transported off-site to a single recipient annually, unless the CAFO owner or operator has complied with the requirements for off-site shipment of manure.

VIII. Request for Comments

A. Specific Solicitation of New Information and Clarification on the Proposed ELG Requirements

1. EPA solicits comment on the extent to which EPA needs to establish additional performance or design criteria in the effluent guidelines to address chronic events, as described in section IV.A of this notice.

2. EPA solicits comment on the alternative ground water assessments, performance standards for liners, and new cost data for the ground water option described in sections IV.B.1 and V.B.2.a of this notice.

3. EPA solicits comment on reasonable amounts of phosphorus banking that could be considered an acceptable nutrient management practice. EPA also solicits comment on whether banking practices should be limited to solids and slurries, or whether banking should be considered for all manure applications.

4. EPA further solicits additional data and information on the technical feasibility, costs, and benefits of its proposed zero discharge standards for the swine and poultry sectors.

B. Specific Solicitation of New Data and Information EPA Is Considering for Its Cost and Economics Model

1. EPA is soliciting comment on its intention to use USDA's revised estimates of the number of potential CAFOs and the total number of AFOs, as described in section V.A.1 of this notice. EPA is also requesting information on suggested approaches to evaluate recent industry trends and changes in the number of larger-sized operations since 1997.

2. EPA is soliciting comment on revised estimates by USDA on the amount of manure nutrient coverage by the different regulatory scenarios in the proposed CAFO regulation, as described in section V.A.2 of this notice.

3. EPA is soliciting comment on revised estimates of the number of small businesses that are CAFOs that would be subject to the proposed regulations, as described in section V.A.3 of this notice. These revised estimates reflect changes in the small business definitions for these sectors, as established by the Small Business Administration (SBA).

4. EPA solicits comment on an approach to conduct a supplemental analysis that would assess the combined additional cost to comply with the existing regulations in addition to the incremental costs of the proposed regulations. EPA also requests data and information in order to conduct this supplemental analysis, as described in section V.B.1(a) of this notice. This analysis would serve as a separate ancillary analysis to the Agency's rulemaking package.

5. EPA solicits comment on suggested data and an alternative approach to refine EPA's engineering cost models to estimate compliance costs to regulated CAFOs, as described in section V.A.1(b) of this notice. This approach is based on additional data and information received by USDA and an approach that is currently under development by USDA to estimate the costs to animal feeding operations to implement Comprehensive Nutrient Management Plans (CNMP). EPA's alternative approach would be based on the alternative approach to frequency factors that evaluates three different performance group scenarios: below average performers, average performers, and above average performers.

6. EPA solicits comment on alternative approaches that EPA is considering to refine its economic models to estimate financial impacts to regulated CAFOs, as described in section V.C.1 of this notice. The changes EPA is considering include: addition of assessment criteria to measure changes in profitability; evaluation of financial impacts using data specified at multiple businesses levels within a representative facility (both the farm and the enterprise level, where data are available); revision to the debt-to-asset test threshold value; inclusion of a debt feasibility test; and addition of supplemental analyses that take into consideration various cost-offsets, such as tax savings, income from manure sales, and cost share assistance.

7. EPA solicits comment on alternate data that the Agency received and/or obtained during the comment period for use in its analysis for the final rulemaking package, as described in section V.C.2 of this notice. These data include alternative financial data to depict conditions at cattle feeding and hog operations that were provided to EPA through public comment, as well as other available alternative financial data for some other sectors that EPA has obtained since proposal. Other data that EPA is considering include available market and financial data in order to extrapolate available financial data for a single year and obtain longer-term average representation of financial conditions, as well as available projections by FAPRI for use in depicting financial conditions over the 10-year analysis period.

C. Specific Solicitation of New Data and Information EPA Is Considering for Its Nutrient Loading and Benefits Model

1. EPA solicits comment on a proposal to utilize the BASINS case study method for the swine, dairy, beef, broiler, turkey, and layer sectors in addition to the GLEAMS analysis to provide additional information on modeling of pathogen loads, production area, and manure storage lagoon effects.

2. EPA solicits comment on approaches it is considering for the quantification and monetization of changes in air emissions resulting from the regulation, the appropriateness of these steps for the pollutants it is considering, and requests information on data and studies not included in the record that could be used for these analyses.

D. Specific Solicitation of New Information and Clarification for the Proposed NPDES Requirements

1. EPA requests comment on alternative size thresholds for ''dry lot'' duck operations. EPA is also soliciting more complete data concerning the number and size of wet lot and dry lot duck operations nationwide.

2. EPA requests comment on two new options for determining whether a horse operation is a CAFO and subject to NPDES permitting. To support evaluation of these options, the Agency requests that commenters supply data comparing the nutrient content of race horse manure with that of non-race horses. EPA also seeks complete data on the number of confined horse operations—including the number of horses confined—differentiating racetrack operations from non-racetrack operations.

3. EPA requests comment on whether to count cow/calf pairs in the beef sector as one animal, and if so, for what period of time offspring should be considered part of the cow/calf pair.

4. EPA seeks comment on alternatives—either those discussed in this notice or others—that could more explicitly allow states to implement well-developed non-NPDES state programs for middle-tier facilities. In particular, EPA seeks comment on: the appropriate level of federal oversight for such programs to provide assurance of protection of water quality; how a State could provide assurance that its program would continue to meet the criteria used to obtain program approval; the need for public comment prior to granting such flexibilities; the

validity of the criteria discussed in this notice for assessing whether a State non-NPDES program is sufficient for allowing flexibility; and what kind of performance measures, if any, EPA should consider requiring.

5. EPA solicits comment on the use of environmental management systems (EMS) in the CAFO regulations as a way to enhance state flexibility. In particular, EPA seeks comment on the following issues: comments on the three additional potential approaches discussed in this notice for incorporating EMS-based options in the CAFO regulations; for the first potential approach (modified permit requirements for facilities with more than 1,000 AU), which types of permit requirements it may be appropriate to amend; which standards a state EMS program would be required to meet to obtain EPA approval, and the process for obtaining EPA approval; the appropriate elements of a state EMS program, including the six elements discussed in this notice; screening criteria for determining an AFO's eligibility to implement an EMS in lieu of applying for a permit, as well as the timing of the screening; the frequency of follow-up self-auditing and third-party auditing of a facility's EMS; requiring independent third party audits for all facilities or alternative approaches such as random auditing, risk-based auditing, and/or self-certification of the EMS; the most appropriate method of sharing third-party audit results (including web site publication), the content of results shared, and the frequency with which results should be shared; the best approach, or combination of approaches, for reacting to and addressing EMS nonconformance; an appropriate time line for implementing the EMS-in-lieu-of-permitting requirements for participating facilities; and the existing costs of EMS implementation for AFOs, both per-facility and organization-wide; and requests any available information on the performance of EMSs in addressing regulated and unregulated environmental impacts.

6. EPA is requesting comment on an alternative three-tier structure, setting the middle-tier at 500 AU to 1,000 AU.

Dated: November 9, 2001.

G. Tracy Mehan III,

Assistant Administrator for Water.

[FR Doc. 01–28738 Filed 11–20–01; 8:45 am]

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Federal Register

Wednesday,
November 21, 2001

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7101–7]

RIN 2060–AG66

National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for existing and new asphalt processing and asphalt roofing manufacturing facilities. The EPA has identified asphalt processing and asphalt roofing manufacturing facilities as major sources of hazardous air pollutants (HAP) such as formaldehyde, hexane, hydrogen chloride (HCl), phenol, polycyclic organic matter (POM), and toluene. These proposed standards would implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The total HAP reduction is expected to be 8.87 megagrams per year (Mg/yr) (9.78 tons per year (tpy)).

DATES: *Comments.* Submit comments on or before January 22, 2002.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by December 11, 2001, a public hearing will be held on December 21, 2001.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–32, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–32, U.S. EPA, 401 M Street, SW, Washington DC 20460. The EPA requests a separate copy also be sent to the contact person listed below.

Public Hearing. If a public hearing is held, it will be held at the EPA Office of Administration Auditorium, Research Triangle Park, North Carolina, beginning at 10 a.m., or at an alternate site nearby.

Docket. Docket No. A–95–32 contains supporting information used in developing the proposed standards. The docket is located at the U.S. EPA, 401 M Street, SW, Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 7:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Rick Colyer, Policy, Planning, and Standards Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5262, e-mail address: *colyer.rick@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by e-mail to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect'' version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket number: A–95–32. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal depository libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Rick Colyer, U.S. EPA, c/o OAQPS Document Control Officer, 411 W. Chapel Hill Street, Room 740B, Durham NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Dorothy Apple, Policy, Planning, and Standards Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–4487, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Dorothy Apple to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket. The docket reflects the full administrative record for this action and includes all the information relied upon by EPA in development of this proposed rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Regulated Entities. Categories and entities potentially regulated by this action are shown in Table 1. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in §§ 63.8681 and 63.8682 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

Category	NAICS [a]		SIC [b]	
	Code	Description	Code	Description
Manufacturing	324122	Asphalt shingle and coating materials manufacturing.	2952	Asphalt felts and coatings.
Manufacturing	32411	Petroleum refineries	2911	Petroleum refining.
Federal Government	Not affected		Not affected	
State/Local/Tribal Government	Not affected		Not affected	

[a] Standard Industrial Classification Code.
[b] North American Information Classification System.

Organization of this Document. The information in this preamble is organized as follows:

I. Background
A. What is the statutory authority for the proposed NESHAP?
B. What criteria are used in the development of NESHAP?
C. What operations constitute asphalt processing and asphalt roofing manufacture?
D. What are the emissions and emission sources?
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F. How did we select the emission limits?
G. How did we select the testing and initial compliance requirements?
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J. What is the relationship of this subpart to other standards?
V. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act

I. Background

A. What Is the Statutory Authority for the Proposed NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. A major source of HAP is any stationary source or group of stationary sources within a contiguous area under common control that emits or has the potential to emit, considering controls, in the aggregate, 9.1 Mg/yr (10 tpy) or more of any single HAP, or 22.7 Mg/yr (25 tpy) or more of any combination of HAP. Based on the emissions data collected for this rulemaking, asphalt processing and asphalt roofing manufacturing facilities have the potential to be major sources of HAP.

The asphalt processing and asphalt roofing manufacturing categories of major sources were listed as separate source categories on July 16, 1992 (57 FR 31576). However, because these processes are closely related and are often collocated, we are proposing to regulate emissions from both source categories under a single NESHAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112(c)(2) of the CAA requires that we establish NESHAP for control of HAP from both existing and new major sources, based upon the criteria set out in section 112(d). The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable, taking into consideration the cost of achieving the emission reduction, any non-air quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as the MACT.

The minimum control level allowed for NESHAP (the minimum level of stringency for MACT) is the so-called ''MACT floor,'' as defined under section 112(d)(3) of the CAA. The MACT floor for existing sources is the emission limitation achieved by the average of the best performing 12 percent of existing sources for categories and subcategories with 30 or more sources, or the average of the best performing 5 sources for categories or subcategories with fewer than 30 sources. For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best controlled similar source.

In developing the NESHAP, we also consider control options that are more stringent than the MACT floor (so-called beyond-the-floor control options), taking into consideration (as noted previously) the cost of achieving the emission reductions, and any non-air quality environmental impacts, and energy requirements. In this rule, EPA is proposing standards for both existing and new sources based on the MACT.

C. What Operations Constitute Asphalt Processing and Asphalt Roofing Manufacture?

The proposed NESHAP would regulate both asphalt processing and asphalt roofing manufacturing operations. Asphalt processing and asphalt roofing manufacturing operations can be stand-alone or integrated with each other or related operations such as wet-formed fiberglass mat manufacturing. Additionally, some asphalt processing is performed at petroleum refineries.

Processed asphalt is produced using asphalt flux as the raw material. Asphalt flux is a product that is obtained in the last stages of fractional distillation of crude oil. Asphalt is processed to change its physical properties for use primarily in the roofing industry. In asphalt processing, heated asphalt flux is taken from storage and charged to a heated blowing still where air is bubbled up through the flux. This process raises the softening temperature of the asphalt. The blowing process also decreases the penetration rate of the asphalt when applied to the roofing substrate. Some processing operations use a catalyst (e.g., ferric chloride, phosphoric acid) in the blowing still. A catalyst is used to promote the oxidation of asphalt in the blowing still. The need to use catalyst is primarily driven by the type of feedstock used. Certain feedstocks require catalyst to be used to attain desired product specifications.

In asphalt roofing manufacturing, processed or modified asphalt (also called modified bitumen) is applied to a fibrous substrate (typically made of fiberglass or organic felt) to produce the following types of roofing products: shingles, laminated shingles, smooth-surfaced roll roofing, mineral-surfaced roll roofing, and saturated felt roll roofing. Modified asphalt is asphalt that is mixed with plastic modifiers (which add strength and durability to the asphalt) and is typically used to produce roll roofing products. A roofing manufacturing line is a largely continuous operation, with line stoppages occurring primarily due to breaks in the substrate.

In asphalt roofing manufacturing, asphalt is typically mixed with filler materials before application to the substrate. If a fiberglass substrate is used, coating asphalt is applied by a coater. If an organic substrate is used, a saturator and wet looper are typically used prior to the coater to provide additional time for the asphalt to impregnate the substrate. The type of final product being manufactured determines the process steps that follow the coating or impregnation steps.

For shingles and mineral-surfaced roll roofing, granules are applied to the hot surface of the coated substrate. This step is omitted in manufacture of smooth-surfaced and saturated felt roll roofing. In shingle manufacture, a strip of sealant (typically oxidized or modified asphalt) is applied to the back of the product after it has cooled. This sealant strip, which is heated by the sun after the roofing product is installed, provides some adhesion and sealing between layers of roofing product. In shingle manufacture, the coated substrate is cut into the desired size. Multiple single-ply shingles can be glued together (typically using oxidized or modified asphalt as an adhesive) to produce laminated or dimensional shingles. When asphalt roofing manufacturing lines are collocated with asphalt processing operations, the two operations typically share storage and process tanks.

D. What Are the Emissions and Emission Sources?

Asphalt is essentially the material that remains after fractional distillation of crude oil. Consequently, asphalt consists primarily of heavy organic compounds with low boiling points. Hazardous air pollutants are volatilized from asphalt as it is heated and agitated during processing and roofing manufacturing operations. Hazardous air pollutants are also volatilized during asphalt processing as a result of the oxidation reactions that occur in the blowing still.

Because the HAP volatilized from asphalt generally have low boiling points, they can be present in both condensed particulate matter (PM) and gaseous forms, depending on the temperature of the vent or exhaust gas. When the temperature of the vent gas is below the boiling point of a HAP, the HAP will condense into particulate form (i.e., a cooler vent gas will have more HAP in the form of condensed PM, whereas a hotter vent stream will contain mostly gaseous HAP).

The following types of equipment are sources of PM and gaseous HAP emissions: asphalt storage and process tanks, asphalt blowing stills, oxidized asphalt loading racks, saturators, wet loopers, coating mixers, coaters, sealant applicators, and adhesive applicators. Most blowing stills are controlled by a thermal oxidizer to comply with the Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture (40 CFR part 60, subpart UU, hereafter referred to as the asphalt NSPS) or State regulations. If a chlorinated catalyst is used in the blowing still, HCl is emitted from the blowing still thermal oxidizer outlet.

E. What Are the Health Effects Associated With the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories?

A variety of HAP are emitted from asphalt processing and asphalt roofing manufacturing source categories. The following HAP account for the majority (approximately 98 percent) of the total HAP emissions: formaldehyde, hexane, HCl (at asphalt processing facilities that use chlorinated catalysts), phenol, POM, and toluene. The remaining 2 percent of the total HAP emissions is a combination of several different organic HAP, each contributing less than 0.5 percent to the total HAP emissions.

The HAP emitted from these source categories (controlled under this proposed rule) are associated with a variety of adverse health effects. These adverse health effects include both chronic health disorders (e.g., irritation of the lung, skin, and mucous membranes; effects on the central nervous system; and damage to the blood and liver) and acute health disorders (e.g., respiratory irritation and central nervous system effects such as drowsiness, headache, and nausea). The EPA has classified two of the HAP (formaldehyde and POM) as probable human carcinogens.

The adverse health effects associated with the exposure to specific HAP are further described below. In general, these findings have only been shown with concentrations higher than those typically in the ambient air.

Formaldehyde. Both acute (short-term) and chronic (long-term) exposure to formaldehyde irritates the eyes, nose, and throat, and may cause coughing, chest pains, and bronchitis. Reproductive effects such as menstrual disorders and pregnancy problems have been reported in female workers exposed to formaldehyde. Limited human studies have reported an association between formaldehyde exposure and lung and nasopharyngeal cancer. Animal inhalation studies have reported an increased incidence of nasal squamous cell cancer. The EPA considers formaldehyde a probable human carcinogen (Group B2).

Hexane. Acute inhalation exposure of humans to high levels of hexane causes mild central nervous system effects, including dizziness, giddiness, slight nausea, and headache. Chronic exposure to hexane in air causes numbness in the extremities, muscular weakness, blurred vision, headache, and fatigue. One study reported testicular damage in rats exposed to hexane through inhalation. No information is available on the carcinogenic effects of hexane in humans or animals. The EPA has classified hexane in Group D, not classifiable as to human carcinogenicity.

Hydrogen Chloride. Hydrogen chloride, also called hydrochloric acid, is corrosive to the eyes, skin, and mucous membranes. Acute inhalation exposure may cause eye, nose, and respiratory tract irritation and inflammation and pulmonary edema in humans. Chronic occupational exposure to hydrochloric acid has been reported to cause gastritis, bronchitis, and

dermatitis in workers. Prolonged exposure to low concentrations may also cause dental discoloration and erosion. No information is available on the reproductive or developmental effects of hydrochloric acid in humans. In rats exposed to hydrochloric acid by inhalation, altered estrus cycles have been reported in females and increased fetal mortality and decreased fetal weight have been reported in offspring. The EPA has not classified hydrochloric acid for carcinogenicity.

Phenol. Acute inhalation and dermal exposure to phenol is highly irritating to the skin, eyes, and mucous membranes in humans. Oral exposure to small amounts of phenol may cause irregular breathing, muscular weakness and tremors, coma, and respiratory arrest at lethal concentrations. Anorexia, progressive weight loss, diarrhea, vertigo, salivation, and a dark coloration of the urine have been reported in chronically exposed humans. Gastrointestinal irritation and blood and liver effects have also been reported. No studies of developmental or reproductive effects of phenol in humans are available, but animal studies have reported reduced fetal body weights, growth retardation, and abnormal development in the offspring of animals exposed to phenol by the oral route. The EPA has classified phenol in Group D, not classifiable as to human carcinogenicity.

POM. The term polycyclic organic matter defines a broad class of compounds that includes the polycyclic aromatic hydrocarbon (PAH) compounds, of which benzo[a]pyrene is a member. Dermal exposures to mixtures of PAH cause skin disorders in humans and animals. No information is available on the reproductive or developmental effects of POM in humans. Human studies have reported an increase in lung cancer in humans exposed to POM-bearing mixtures including coke oven emissions, roofing tar emissions, and cigarette smoke. The EPA has classified seven PAH compounds (benzo[a]pyrene, benz[a]anthracene, chrysene, benzo[b]fluoranthene, benzo[k]fluoranthene, dibenz[a,h]anthracene, and indeno[1,2,3-cd]pyrene) as Group B2, probable human carcinogens.

Toluene. Acute inhalation of toluene by humans may cause effects to the central nervous system, such as fatigue, sleepiness, headache, and nausea, as well as irregular heartbeat. Adverse central nervous system effects have been reported in chronic abusers (those that inhale toluene or other toluene-containing substances) exposed to high levels of toluene. Symptoms include tremors, decreased brain size, involuntary eye movements, and impaired speech, hearing, and vision. Chronic (long-term) inhalation exposure of humans to lower levels of toluene also causes irritation of the upper respiratory tract, eye irritation, sore throat, nausea, dizziness, headaches, and difficulty with sleep. Studies of children whose mothers were exposed to toluene by inhalation or mixed solvents during pregnancy have reported central nervous system problems, facial and limb abnormalities, and delayed development. However, these effects may not be attributable to toluene alone. The EPA has classified toluene in Group D, not classifiable as to human carcinogenicity.

This proposed rule would also protect air quality and the public health by reducing emissions of volatile organic compounds (VOC) and PM from asphalt processing and asphalt roofing manufacturing.

Volatile Organic Compounds. Emissions of VOC have been associated with a variety of health and welfare impacts. Volatile organic compound emissions, together with nitrogen oxides, are precursors to the formation of tropospheric ozone. Exposure to ambient ozone is responsible for a number of public health impacts, such as alterations in lung capacity; eye, nose, and throat irritation; nausea; and aggravation of existing respiratory disease. Ozone exposure can also damage forests and crops.

Particulate Matter. Particulate matter can accumulate in the respiratory system and is associated with numerous adverse health effects. Exposure to coarse particles is primarily associated with the aggravation of respiratory conditions, such as asthma. Fine particles are most closely associated with such health effects as increased hospital admissions and emergency room visits for heart and lung disease, increased respiratory symptoms and disease, decreased lung function, and even premature death.

II. Summary of the Proposed Standards

A. Do These Proposed NESHAP Apply to Me?

This proposed rule would apply to you if you process asphalt or manufacture asphalt roofing products at a facility that is a major source of HAP emissions. Major sources of HAP are those that emit or have the potential to emit at least 10 tpy of any one HAP or 25 tpy of any combination of HAP. All emission sources at a facility, not just those related to asphalt processing or roofing manufacture, must be considered in determining major source status. If your facility is determined to be an area source (*i.e.,* not a major source), you would not be subject to these proposed NESHAP.

This proposed rule would not regulate emissions from the wet-formed fiberglass mat production industry, even though a wet-formed fiberglass mat is produced at both stand-alone facilities and those collocated with asphalt processing and roofing facilities. Emissions from wet-formed fiberglass mat manufacturing processes are being regulated by the Wet-Formed Fiberglass Mat NESHAP (40 CFR part 63, subpart HHHH).

B. What Are the Affected Sources?

An affected source is the process equipment that is regulated by the NESHAP. For these proposed NESHAP, there would be two affected sources: each asphalt processing facility and each asphalt roofing manufacturing line. An asphalt processing facility is any facility that prepares asphalt at asphalt processing plants, petroleum refineries, and asphalt roofing plants. An asphalt roofing manufacturing line is the collection of equipment used to manufacture asphalt roofing products through a series of sequential process steps.

C. What Pollutants Are Regulated by the Proposed NESHAP?

These proposed NESHAP would establish emission limits for PM and total hydrocarbons (THC) as surrogates for total organic HAP which includes the following compounds: formaldehyde, hexane, phenol, POM, and toluene.

Although HCl is emitted from some asphalt processing facilities (those that use chlorinated catalysts in the blowing still), we are proposing not to regulate HCl emissions since we can identify no duplicable or otherwise available means of controlling HCl as a floor standard, and beyond the floor controls are not warranted after considering the factors set out in section 112(d)(2) of the Act. A more detailed discussion of the basis for this decision is provided in section IV.C of this preamble.

D. What Emission Limits Must I Meet?

We are proposing that you meet the emission limits that are summarized in Table 2. The emission limits are expressed in appropriate formats for the various process equipment being regulated. Depending on the piece of process equipment, you have the option of complying with any of several formats. These formats include a PM

emission limit, expressed in terms of kilograms of PM per megagram (kg/Mg) of product manufactured, a THC percent reduction standard, or a combustion efficiency standard.

The combustion efficiency standard is provided as an alternative to the THC percent reduction standard. This option is provided in the proposed rule because there are some emission sources (*e.g.,* blowing stills) for which testing of the control device inlet is impractical.

Additionally, saturators (including wet loopers and coaters) at existing asphalt roofing manufacturing lines would have to meet an opacity limit, and the emission capture system for the saturator (including the wet looper and coater) would have to meet a visible emission standard. The proposed rule also provides the option for coating mixers, saturators (including wet loopers and coaters), sealant applicators, and adhesive applicators at existing asphalt roofing manufacturing lines to comply with either the THC or the combustion efficiency standards instead of the PM and opacity standards.

TABLE 2.—SUMMARY OF PROPOSED EMISSION LIMITS FOR EXISTING AND NEW ASPHALT PROCESSING AND ASPHALT ROOFING MANUFACTURING FACILITIES

For * * *	You must * * *
Each asphalt storage tank with a capacity of 1.93 Mg (2.13 tons) or greater of asphalt, blowing still, and loading rack at existing new, and reconstructed asphalt processing facilities.	Reduce THC mass emissions by 95 percent; or Route the emissions to a thermal oxidizer achieving a combustion efficiency of 99.6 percent.
Each coating mixer, saturator (including wet looper and coater), sealant applicator, and adhesive applicator at new and reconstructed asphalt roofing manufacturing lines.	Reduce THC mass emissions by 95 percent; or Route the emissions to a thermal oxidizer achieving a combustion efficiency of 99.6 percent.
The total emissions from the coating mixer, saturator (including wet looper and coater), sealant applicator, and adhesive applicator at each existing asphalt roofing manufacturing line..	Limit PM emissions to 0.04 kg/Mg (0.08 pounds per ton) of asphalt shingle or mineral-surfaced roll roofing produced, or 0.4 kg/Mg (0.8 pounds per ton) of saturated felt or smooth-surfaced roll roofing produced.
Each saturator (including wet looper and coater) at an existing or new asphalt roofing manufacturing line.	Limit exhaust gases to 20 percent opacity; and Limit visible emissions from the emission capture system to 20 percent of any period of consecutive valid observations totaling 60 minutes.

E. When Must I Comply?

We are proposing that existing sources would have to comply with the NESHAP no later than [DATE 3 YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**]. The 3-year period is necessary to allow owners and operators sufficient time to design, purchase, and install emission capture systems and air pollution control equipment. New or reconstructed sources would have to comply with the NESHAP at startup or [DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**], whichever is later.

If your asphalt processing facility or asphalt roofing manufacturing line is located at a facility that is an area source which increases its emissions or its potential to emit such that it becomes a major source of HAP after [DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**], then any portion of the existing facility that is a new affected source or a reconstructed affected source would have to either be in compliance with this subpart upon startup after becoming a major source or by [DATE 3 YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**], whichever is later. All other parts of any facility to which this proposed rule would apply would have to be in compliance with this subpart by 3 years after becoming a major source.

F. What Are the Testing and Initial Compliance Requirements?

You would have to conduct a performance test to demonstrate initial compliance with the NESHAP emission limits. As specified in § 63.7(e) of the NESHAP general provisions (40 CFR part 63, subpart A), performance tests would have to be conducted under normal operating conditions. To ensure that compliance can be achieved over the entire range of operating conditions, the performance tests should be conducted under the operating conditions that reflect the highest rate of asphalt processing or roofing production reasonably expected to be achieved by the facility. For example, performance tests of roofing manufacturing line equipment should be conducted while manufacturing the roofing product with the greatest asphalt content.

The proposed NESHAP contain PM emission limits, a THC percent reduction standard, and a combustion efficiency standard. For these standards, you would have to conduct a minimum of three 1-hour test runs to measure emissions. Compliance is determined based on the average of the three test runs. To measure PM, use EPA test method 5A; for THC emissions, use EPA test method 25A. The EPA reference methods are contained in appendix A of 40 CFR part 60. For the combustion efficiency standard, you would measure emissions of THC, carbon monoxide (CO), and carbon dioxide (CO_2) to demonstrate compliance. You would use EPA method 10 to measure CO emissions and EPA method 3A to measure CO_2 emissions. You would demonstrate compliance with the PM emission limit, THC percent reduction standard, and the combustion efficiency standard using the instructions and equations in the performance test requirement section of these proposed NESHAP.

The proposed NESHAP also contain opacity and visible emission standards for saturators at an existing asphalt roofing manufacturing line. Opacity and visible emission compliance determinations would be made using EPA methods 9 and 22, respectively, in appendix A of 40 CFR part 60.

You would have to install, calibrate, maintain, and operate a continuous monitoring system (CMS) to monitor the control device parameters. During the performance test, you would continuously monitor and record control device parameters and establish the monitoring parameter value(s) that constitute compliance with the emission limits. If you use a thermal oxidizer to comply with the standards, you would record the average operating temperature. The temperature monitoring device would be installed at the exit of the combustion zone or in the ductwork immediately downstream of the combustion zone, before any substantial heat loss occurs. If you use a PM control device, you would record

the device inlet gas temperature and pressure drop across the device.

For thermal oxidizers and PM control devices, the parameters would have to be monitored and values recorded in 15-minute blocks during each of three 1-hour test runs from which you would compute the 3-hour average parameter values. If you use a control device other than a thermal oxidizer or PM control device to comply with the NESHAP, you would propose to the Administrator the appropriate monitoring parameters, monitoring frequencies, and averaging periods. All monitoring parameters for control devices not specified in the proposed rule would have to be approved by the Administrator as specified in § 63.8(f) of the NESHAP general provisions.

During the performance test, you would also monitor and record the average hourly roofing line production rate or the asphalt processing rate, as applicable. If you are complying with the PM emission limit, you would also determine the asphalt content of the product manufactured during the performance test.

G. What Are the Continuous Compliance Provisions?

After the performance test, you would have to demonstrate continuous compliance with the emission limits by monitoring either control device or process operating parameters. The parameters would have to remain within the limits established during the initial performance test.

If you use a thermal oxidizer or PM control device to achieve compliance with the emission limits, you would have to monitor the following operating parameters, determining and recording the parameter values in 15-minute and 3-hour block averages:

- The operating temperature for thermal oxidizers,
- The inlet gas temperature and pressure drop across the device for PM control devices.

If you use a control device other than a thermal oxidizer or PM control device to achieve compliance with the emission limits, you would have to monitor the parameters that were established during the initial performance test and approved by the Administrator. To change the value of any monitored parameter, you would have to conduct a performance test and submit a request to the Administrator for approval using the procedures specified in § 63.8(f) of the NESHAP general provisions.

H. What Are the Notification, Recordkeeping and Reporting Requirements?

You would have to comply with the notification, recordkeeping, and reporting requirements in 40 CFR part 63, subpart A general provisions, as specified in Table 7 of the proposed rule. The notification, recordkeeping, and reporting requirements include, but are not limited to: (1) Initial notification of applicability of the rule, notification of the dates for conducting the performance test, and notification of compliance status; (2) reports of any startup, shutdown, and malfunction events that occur; and (3) semiannual reports of excess emissions (*i.e.,* deviations from monitoring parameter limits). When no deviations occur, you would submit semiannual reports indicating that no deviations have occurred during the period. For a thermal oxidizer, a deviation would be any time (excluding periods of startup, shutdown and malfunction) that the operating temperature falls below the limit established during the initial performance test. For a PM control device, a deviation would be any time (excluding periods of startup, shutdown and malfunction) that the temperature of the gas at the inlet to the control device or the pressure drop across the control device are above their respective limits established during the initial performance test.

You would have to maintain records of the following, as applicable: (1) Thermal oxidizer operating temperature; (2) PM control device inlet gas temperature and pressure drop; (3) approved parameters for sources that comply with the emission limits using a control device other than a thermal oxidizer or PM control device; and (4) the date and time a deviation commenced if a monitoring parameter deviation occurs, the date and time corrective actions were initiated and completed, a description of the cause of the deviation, and a description of the corrective actions taken. You would also prepare a startup, shutdown, and malfunction plan and maintain records of actions taken during these events, as required by § 63.6(e)(3) of the NESHAP general provisions. The proposed rule also includes a requirement to develop and make available for inspection by the permitting authority, upon request, a site-specific monitoring plan that specifies how the continuous parameter monitoring system will be installed, operated, and maintained, as well as the data quality assurance procedures and ongoing recordkeeping and reporting procedures.

The NESHAP general provisions (§ 63.10(b)) require that records be maintained for at least 5 years from the date of each record. You would have to retain the records onsite for at least 2 years. You may retain records for the remaining 3 years at an offsite location. The records must be readily available and in a form suitable for efficient inspection and review. The files may be retained on paper, microfilm, microfiche, a computer, computer disks, or magnetic tape. Reports may be made on paper or on a labeled computer disk using commonly available and compatible computer software.

III. Summary of Environmental, Energy and Economic Impacts

Although MACT floors must be based exclusively on the emission limitation achieved by the best performing sources (or, for new sources, the best performing source), EPA has compiled information on air quality impacts, costs, non-air quality impacts, and energy impacts in compliance with Executive Orders. We estimate the proposed NESHAP would affect a total of 18 existing facilities (ten asphalt processing and asphalt roofing facilities and eight petroleum refineries). We estimated the number of major sources by estimating emissions using emission factors and available production data and extrapolating potential emissions from actual emissions. We identified major facilities for the purposes of estimating emissions, emission reductions, control costs, and monitoring, recordkeeping, and reporting costs only. It should be noted that facilities may not necessarily be major sources for the purposes of determining applicability of these proposed NESHAP because they were identified as major by our estimates. Likewise, facilities would not be relieved from complying with these proposed NESHAP because they were not identified as major sources in our estimates.

A. What Are the Air Quality Impacts?

Baseline HAP emissions from the asphalt processing and asphalt roofing manufacturing facilities that would be subject to the proposed NESHAP are estimated to be 192 Mg/yr (212 tpy). Baseline THC emissions are estimated to be 173 Mg/yr (191 tpy). The baseline emission estimates were developed using equipment, control device, and production rate data reported in a 1995 industry survey. The proposed NESHAP would reduce HAP emissions by 8.87 Mg/yr (9.78 tpy) and THC by 135 Mg/yr (149 tpy). The proposed NESHAP would also reduce PM emissions from asphalt processing and asphalt roofing

manufacturing facilities. However, we do not have sufficient data to estimate baseline emissions or emission reductions for PM. The HAP reductions that would be achieved by these proposed NESHAP are limited because most of the emission sources in the asphalt processing and asphalt roofing manufacturing industry are currently controlled, and because these proposed NESHAP would not require control of HCl emissions.

The baseline emissions and emission reductions do not include contributions from area sources because they would not be subject to the proposed NESHAP. The estimates also do not include contributions from petroleum refineries because we did not have sufficient data (production rates for blowing stills or population sizes or control devices for storage tanks and loading racks) to estimate baseline emissions or emission reductions from those sources. We believe, based on limited information, most if not all asphalt processing facilities at petroleum refineries are well controlled using thermal oxidizers. Therefore, little additional emission reduction would occur. However, we are specifically requesting comment on the current level of control of asphalt processing facilities located at petroleum refineries.

The proposed NESHAP would also likely cause an increase in emissions of nitrogen oxides (NO_X), CO, and sulfur dioxide (SO_2) due to increased use of thermal oxidizers as control devices. The estimated secondary impacts of NO_X, CO, and SO_2 are approximately 32.0, 53.8, and 0.385 Mg/yr (35.3, 59.3, and 0.424 tpy), respectively. These estimates are based on the amount of exhaust and auxiliary fuel that will be burned at the ten asphalt processing and asphalt roofing manufacturing facilities that are estimated to be major sources.

B. What Are the Cost Impacts?

The cost impacts for the proposed NESHAP for asphalt processing and asphalt roofing manufacturing were developed using site-specific information, obtained by an industry information survey distributed by the Asphalt Roofing Manufacturers Association (ARMA), and the procedures contained in the Office of Air Quality Planning and Standards (OAQPS) Control Cost Manual. For some facilities where site-specific data necessary for estimating costs (*e.g.,* a vent flow rate) were not available, average factors developed from the industry data were used.

The total capital cost for the industry to achieve compliance with the proposed NESHAP for existing facilities is estimated to be $2.16 million. The capital costs arise from the purchase of emission capture systems and control devices. The total annualized cost is estimated to be $758,000. The annualized costs for the industry include the annualized capital cost of emission capture systems and control devices and operation, maintenance, supervisory labor, maintenance materials, utilities, administrative charges, taxes, and insurance. It is estimated that the industry will spend an additional industrywide average of $250,000 per year for monitoring, recordkeeping, and reporting to comply with the proposed NESHAP. This results in a total annualized cost of $1.01 million.

The total capital and annualized costs cited above do not include the control costs for asphalt processing facilities that would be subject to the proposed NESHAP that are located at petroleum refineries. For petroleum refineries, we did not have data on actual production rates for blowing stills or the populations, capacities, and types of control devices used for storage tanks and loading racks. The capital and annualized costs are anticipated to be significantly less for petroleum refineries than asphalt processing and asphalt roofing manufacturing facilities because most of the blowing stills at these sources are already controlled. Additionally, refineries typically have existing combustion sources (flares, process heaters, and boilers) that can be used as control devices. The only cost anticipated for petroleum refineries will be for emission capture systems.

C. What Are the Economic Impacts?

The Agency conducted a detailed economic impact analysis to determine the market- and industry-level impacts associated with the proposed rule. The compliance costs of today's proposed rule are expected to increase the prices of asphalt roofing and processing products by less than 0.1 percent across the directly affected product markets, and domestic production and consumption of the affected products are expected to decrease by less than 0.1 percent also.

In terms of industry impacts, the asphalt roofing and processing manufacturers are projected to experience a decrease in operating profits of about 0.1 percent, which reflects the compliance costs associated with the production of asphalt roofing and processing products and the resulting reductions in revenues due to the increase in the prices of the directly affected product markets and reduced quantities purchased. Through the market impacts described above, the proposed rule created both gainers and losers within the asphalt roofing and processing industry. The majority of facilities, almost 76 percent, are expected to experience profit increases with the proposed rule; however, there are some facilities projected to lose profits (about 8 percent). Furthermore, the economic impact analysis indicates that of the 123 existing asphalt roofing and processing facilities, none are at risk of closure because of the proposed standards. Therefore, none of the companies that own asphalt roofing and processing facilities are projected to close due to this proposed rule.

Based on the market analysis, the annual social costs of the proposed rule is projected to be about $1.01 million. The estimated social costs differ from the projected engineering costs by less than 0.01 percent for this proposed rule. These two costs differ because social costs account for producer and consumer behavior. These social costs are distributed across the many consumers and producers of asphalt roofing and processing products. For this proposed rule, the producers of asphalt roofing and processing products, in aggregate, are expected to incur about $0.46 million annually in costs, while the consumers of asphalt roofing and processing products are expected to incur $0.55 million annually across the product markets.

The economic analysis also addressed potential changes in new asphalt roofing and processing facility construction for the year following promulgation of this rule. This was done by estimating the total annualized costs for new facilities and projecting changes in equilibrium output due to the proposed rule. The economic impact analysis estimated a very small reduction in the growth of the asphalt industry represented by a small reduction in equilibrium output of asphalt products in the year following promulgation. However, the reduction in equilibrium output was only a small fraction of estimated new plant capacity. Thus, the control costs are not expected to influence the decision to enter the market for asphalt products. For more information, consult the Economic Impact Analysis report supporting this proposed rule.

D. What Are the Non-Air Health, Environmental and Energy Impacts?

Spent filter media from certain types of PM control devices (e.g., high-efficiency air filters) is periodically replaced and disposed of as solid waste. Although many of the emission sources subject to the proposed NESHAP are already controlled by PM devices, an

increase in the generation of spent filter media is expected as a result of the proposed NESHAP. However, we do not have sufficient data to quantify this anticipated increase in solid waste generation.

No water impacts are anticipated due to the proposed NESHAP since none of the control devices expected to be used to comply with the proposed NESHAP require the use of water or generate wastewater streams.

Increased energy usage is expected due to the proposed NESHAP. Electricity is required to power fans for emission capture systems, and new thermal oxidizers will require supplemental fuel (e.g., natural gas) to efficiently combust the HAP vent streams. The estimated annual increase in electricity consumption is 0.787 million kilowatt hours. The approximate increase in natural gas consumption is 12.0 million standard cubic feet per year. These estimates are for the ten facilities considered to be major sources.

IV. Rationale for Selecting the Proposed Standards

A. How Did We Select the Source Categories To Regulate?

In section 112(c)(2), the CAA requires that we regulate each category of major sources of HAP. An initial list of source categories was published on July 16, 1992 (57 FR 31576) and, pursuant to section 112(c)(1) of the CAA, we have revised the list on four occasions in response to public comment or new information. Asphalt processing and asphalt roofing manufacture are on the list of source categories because these processes can be major sources of HAP or located at major sources of HAP. Hazardous air pollutants are any of the 188 chemicals listed under section 112(b) of the CAA. The proposed NESHAP do not apply to processes that are located at area sources.

B. How Did We Select the Affected Sources?

The affected sources are the pieces of process equipment that are subject to the NESHAP emission limits. The two affected sources in this proposal are defined as each asphalt processing facility and each asphalt roofing manufacturing line. An asphalt processing facility includes the following process equipment: Blowing stills, asphalt flux storage tanks, oxidized asphalt storage tanks, and oxidized asphalt loading racks. An asphalt roofing manufacturing line includes the following process equipment: A saturator, a wet looper, a coater, coating mixers, sealant applicators, adhesive applicators, and associated storage tanks.

Asphalt storage tanks at asphalt processing and asphalt roofing manufacturing facilities that are collocated may be shared by the two operations. If the asphalt roofing manufacturing line is collocated with an asphalt processing facility, the storage tanks that receive asphalt directly from the on-site blowing stills would be defined as part of the asphalt processing affected source.

A facility that manufactures asphalt roofing may have more than one manufacturing line. At these facilities, asphalt storage tanks and sealant and adhesive applicators may be shared by roofing manufacturing lines. A shared storage tank would be considered part of the asphalt roofing manufacturing line to which the tank supplies the greatest amount of asphalt, on an annual basis. A sealant or adhesive applicator that is shared by two or more asphalt roofing manufacturing lines would be considered part of the line that provides the greatest throughput to the applicator, on an annual basis.

This definition of affected source would also be used to determine if new source standards apply when subject equipment is ''constructed'' or ''reconstructed,'' as defined in the NESHAP general provisions (§ 63.2). We defined the affected source as the asphalt processing facility or asphalt roofing manufacturing line rather than on a narrow equipment-piece basis because we believe that it is inappropriate for small changes (*e.g.,* the addition of a sealant applicator to a manufacturing line) to trigger the new source emission limits for only part of the manufacturing line. For asphalt processing facilities, this is not a concern since the existing and new source standards are the same. However, the existing and new source standards are substantially different for asphalt roofing manufacturing lines.

For asphalt roofing manufacturing lines, the new source emission limits would be triggered only when an entire new line is added or when an existing line is reconstructed. This is appropriate because the manufacture of roofing products is a continuous process, with the equipment for the different process steps arranged in sequence. Consequently, an increase in production cannot be achieved simply by adding a single piece of process equipment (e.g., a coater). To increase production capacity, the entire line would have to be modified or a new line would need to be constructed.

C. How Did We Select the Pollutants To Regulate?

The available emission data show that HAP are emitted from asphalt processing and asphalt roofing manufacturing facilities. As discussed previously in section I.D of this preamble, HAP emitted from the sources that would be regulated by these proposed NESHAP can be present in both gaseous and condensed PM forms, depending on the temperature of the vent or exhaust gas.

For the purposes of this proposed rule, the HAP emitted from asphalt processing and asphalt roofing manufacturing facilities have been divided into three categories: Total gaseous organic HAP, total particulate organic HAP, and HCl.

Total Gaseous Organic HAP. We are proposing to regulate gaseous HAP emissions using THC as a surrogate. Total hydrocarbons are an appropriate surrogate for total HAP, since organic HAP constitute a significant portion of the THC. Controlling THC would result in a proportionate amount of organic HAP control.

Total Particulate Organic HAP. Particulate matter emitted from blowing stills consists of condensed organic hydrocarbons. For organic HAP that are present in condensed PM form, we are proposing to use PM as a surrogate. Similarly to the THC surrogate for gaseous HAP, PM is an appropriate surrogate because it would include the HAP that would be emitted as condensed PM. Controlling PM would result in a proportionate amount of condensed particulate organic HAP control.

Hydrogen Chloride. We are proposing not to regulate HCl emissions associated with blowing stills that use chlorinated catalysts. The reasons are discussed in section IV.D of this preamble.

D. How Did We Determine the Basis and Level of the Proposed Standards for Existing and New Sources?

How did we determine the MACT floor? The majority of data used for the MACT floor analysis were obtained from responses to a survey distributed by ARMA in 1995. We reviewed the survey information and obtained clarifications and additional information in subsequent meetings with representatives of the asphalt processing and asphalt roofing manufacturing industry.

Approximately half of the asphalt processing and roofing manufacturing facilities in the industry responded to the survey. Because the survey was not targeted at a specific subset of the

industry (for example, large facilities or well-controlled facilities), we believe the collected data provide a generally representative sample of the industry, but may in fact be slightly biased to larger, well-controlled facilities that had the resources to respond to the survey.

The survey requested information on the types of products manufactured, process equipment, and control devices used in asphalt processing and roofing manufacturing operations. Data were provided on the following types of equipment which have been identified as sources of HAP emissions: blowing stills, loading racks, storage tanks, coaters, saturators, wet loopers, coating mixers, sealant applicators and adhesive applicators. Data characterizing the performance of control devices were not collected by the survey. Data for blowing stills at petroleum refineries (which were gathered to support development of the petroleum refineries NESHAP but were not covered by those NESHAP) were included in the MACT floor analysis for blowing stills.

To establish the MACT floor, we considered two approaches: determine the MACT floor across the affected source as a whole, and determine the MACT floor for each type of process equipment. To determine the MACT floor using the first approach, a mass emission limit or a mass emission reduction percentage across the affected source as a whole must be established. For the definition of affected source in this proposal, this approach would require determination of the best performing 12 percent of the asphalt processing facilities and asphalt roofing manufacturing lines. However, the data currently available are not sufficient to establish either a mass emission limit or a percent reduction for entire affected sources. The variety of equipment configurations used in the asphalt processing and asphalt roofing manufacturing industries makes it difficult to compare mass emissions or overall levels of control from various affected sources. For example, not all processing facilities, especially those collocated with roofing manufacturing facilities, have loading racks. Additionally, adequate test data for estimating uncontrolled emissions and the emission reductions associated with the variety of control devices used are not available.

Consequently, we have decided to establish the existing and new source MACT floors for each type of process equipment used in asphalt processing facilities and in asphalt roofing manufacturing lines. We believe that this approach is the most appropriate use of the available data. Additionally, this approach provides assurance that the resulting MACT floors for each piece of equipment, when combined, would not be less stringent than the MACT floor for the affected source as a whole.

Section 112(d)(3)(A) of the CAA requires that standards be no less stringent than ''the average emission limitation achieved by the best performing 12 percent of existing sources * * * for categories and subcategories with 30 or more sources.'' We have interpreted this language to mean that EPA first determines the emission limitations achieved by sources within the best performing 12 percent and then averages those limitations. In this proposal, we interpret the term ''average'' to mean the mean, median, or mode, or some other measure of central tendency. In most cases, ''average'' is interpreted to be the arithmetic mean or the median. The choice between using the median value or mean value depends on which value best represents the central tendency of the data. For asphalt processing and roofing sources, we have determined that the median best represents the central tendency. For most pieces of equipment, the control devices used by the best performing 12 percent are limited to two types (thermal oxidizers and PM control devices). A mean destruction efficiency would result in a floor that does not correspond to any actual control device in use. The median of the best performing 12 percent of sources was identified to determine the MACT floor for blowing stills, loading racks, storage tanks, coaters, coating mixers, and sealant and adhesive applicators.

For saturators and wet loopers, we have data for less than 30 pieces of equipment. Section 112(d)(3)(B) of the CAA requires that standards be no less stringent than ''the average emission limitation achieved by the best performing five sources * * * for categories or subcategories with fewer than 30 sources.'' Therefore, the MACT floor for saturators and wet loopers is based on the average emission limitation achieved by the best performing five sources, rather than the best performing 12 percent of sources. As with other equipment, the median of the five best performing sources was determined to best represent the central tendency of the data.

To identify the best performing sources and the median level of emission reduction, we determined the level of control for each piece of process equipment based on the type of control device installed and the operating characteristics of the control device. For each equipment type, the equipment pieces were ranked in order of level of control. The categories of control, in descending order of HAP emission reduction, are as follows: thermal oxidizers operating at or above 1200 degrees Fahrenheit (°F); thermal oxidizers operating below 1200°F; PM control devices (e.g., high-velocity air filters (HVAF), electrostatic precipitators (ESP); fiberbed filters) used to comply with the asphalt new source performance standard (NSPS) (40 CFR 60, subpart UU); PM control devices not used to comply with the asphalt NSPS; and no control device.

We ranked thermal oxidizers over PM control devices because thermal oxidizers reduce both gaseous HAP and condensed HAP. Particulate matter control devices control only the HAP that have condensed into PM at the operating temperature of the control device.

Thermal oxidizers operating at or above 1200°F were considered to achieve a greater emission reduction than those operating below 1200°F. This conclusion was based on a study of thermal oxidizers that found that most hydrocarbons are destroyed at a temperature of 1200°F or above. Although operating temperatures for thermal oxidizers reported in the survey range up to 1600°F, thermal oxidizers operating at or above 1200°F were not further subdivided. The EPA/ARMA test program showed no consistent increase in emission reduction with increased temperatures above 1200°F. For example, the THC destruction efficiencies for some test runs of a thermal oxidizer operating at 1400°F were less than the destruction efficiencies achieved at 1250°F, while other runs were greater than the efficiencies achieved at 1600°F.

Particulate matter control devices used to comply with the emission limits of the asphalt NSPS were assumed to be better performing than those that were not. This assumption was based on the fact that a performance test is required to demonstrate compliance with the asphalt NSPS PM emission limits. After the performance test, continuous compliance with the emission limits is demonstrated by monitoring the inlet gas temperature. We ranked the PM control devices above no control because PM emissions contain condensed HAP and, in controlling PM, some HAP control is achieved.

Blowing Stills. All blowing stills emit organic HAP. However, blowing stills in which a chlorinated catalyst is used to promote the oxidation reaction also produce emissions of chlorinated compounds. When these compounds are combusted in the thermal oxidizer

typically used to control blowing still emissions, HCl emissions are produced. Because different methods are used to control organic HAP and HCl, separate analyses were conducted to identify the MACT floor for organic HAP and HCl from blowing stills.

We have control device information for 91 blowing stills. Organic HAP emissions from all of these blowing stills are controlled using a thermal oxidizer. All of the best performing 12 percent of blowing stills are controlled with a thermal oxidizer operating at or above 1200°F. Therefore, a thermal oxidizer operating at or above 1200°F is the basis for the floor for control of organic HAP from blowing stills at existing, new, and reconstructed affected sources.

Of the 91 blowing stills for which we have data, 37 use a chloride-based catalyst. In considering a potential floor for HCl emissions from these sources, we considered both at-the-stack controls and prohibiting chlorinated catalyst use as a potential basis for a standard. None of these facilities use a control device to reduce HCl emissions generated by the thermal oxidizer. Therefore, an add-on control device (i.e., a further control in addition to the thermal oxidizer, which is itself an add-on control device) cannot be the basis for a floor standard for HCl emissions.

The only other potential MACT floor for HCl emissions that we considered (and the only potential means available) was the pollution prevention option of not allowing use of a chlorinated catalyst. This would eliminate HCl emissions from the thermal oxidizer. Well over 12 percent of blowing stills do not use a catalyst. However, the need to use catalyst is driven by the type of asphalt feedstocks used.

The asphalt flux used in the production of asphalt roofing materials is a by-product of the petroleum refining process. Because the characteristics of crude oil are highly variable, the quality of the asphalt flux that remains after the refinery distillation processes also varies. Also, the degree of refining has an effect on the suitability of the asphalt flux for use in manufacturing asphalt roofing products. Because the demand for high-quality asphalt flux can sometimes be greater than the supply and because high-quality feedstocks might not be available in a particular region, some roofing manufacturers must accept lower quality feedstock. Catalysts must be used to attain the desired roofing product specifications if certain low-quality asphalt flux feedstocks (e.g., the flux derived from crude oils that have been extensively refined) are used. These sources must use a catalyst in the asphalt flux blowing operation or an acceptable asphalt product for roofing materials cannot be produced. Thus, for these sources, use of a catalyst (with consequent HCl emissions when other organic emissions are controlled with a thermal oxidizer control device) is a necessity unless asphalt production is discontinued. This, of course, is not an intended result from application of MACT. See H. Rep. No. 490, 101st Cong. 2d sess. 328 (''However, MACT is not intended * * * to drive sources to the brink of shutdown'').

Consequently, control of HCl emissions through substitution of higher quality asphalt flux is not an achievable means of control, because such higher quality flux is not consistently or reliably available, i.e., there is generally not enough higher quality flux available at any one time for the demand. Since this potential means of control is not duplicable (i.e., not consistently or reliably available to all sources), standards based on this means of control would not be achievable, as required by section 112(d)(2) of the Act. EPA consequently is not proposing a floor standard based on the unavailable means of process substitution.[1]

Because there are no control devices in use to control HCl from blowing still thermal oxidizers and disallowing the use of catalyst is not a technically achievable option for all sources, the MACT floor for HCl emissions at existing, new, and reconstructed affected sources is based on no emission reduction.

We do not believe this proposal is inconsistent with the holding in *National Lime* v. *EPA*, 233 F. 3d 625 (D.C. Cir. 2000). That case remanded MACT standards of no control for consideration of whether various types of process substitution could establish a MACT floor. 233 F. 3d at 634. There was no showing, however, that such means of control were unavailable (so that plant closure was the only alternative should standards based on process substitution be adopted). Nor was *National Lime* a situation where emission of one HAP resulted from application of control technology for other HAPs.

Loading Racks. We have control device information for 52 loading racks. All of the best performing 12 percent of loading racks are controlled with a thermal oxidizer operating at or above 1200°F. Therefore, a thermal oxidizer operating at or above 1200°F is the basis for the MACT floor for loading racks at existing, new, and reconstructed affected sources.

Coaters. We have control device information for 73 coaters. Of the nine best performing coaters (the best performing 12 percent of sources), four are controlled with a thermal oxidizer operating at or above 1200°F, and five with a PM control device that is subject to the asphalt NSPS limits. The median, or fifth, source is controlled with a PM control device that is subject to the asphalt NSPS limits. Therefore, the floor level of control for coaters at existing affected sources is based on a PM control device that achieves the asphalt NSPS limits. The floor for coaters at new and reconstructed affected sources is based on a thermal oxidizer operating at or above 1200°F.

Coating Mixers. We have data for 60 coating mixers. Of the eight coating mixers that represent the best performing 12 percent, three are controlled with a thermal oxidizer operating at or above 1200°F, three are controlled with a PM control device that is subject to the asphalt NSPS limits, and two are controlled with a PM control device that is not used to comply with the asphalt NSPS. The fourth and fifth coating mixers, representing the median, are controlled with a PM control device that is subject to the asphalt NSPS limits. Therefore, the MACT floor for coating mixers at existing affected sources is based on a PM control device that achieves the asphalt NSPS limits. The floor for coating mixers at new and reconstructed affected sources is based on a thermal oxidizer operating at or above 1200°F.

Saturators and Wet Loopers. We have data for less than 30 saturators and less than 30 wet loopers, therefore the floor for these types of equipment is based on the ''average'' emission limit achieved by the five best performing sources. Of the five best performing saturators, one is controlled with a thermal oxidizer operating at or above 1200°F, one is controlled by a thermal oxidizer operating below 1200°F, and the remaining saturators, including the median source, are controlled with a PM control device that is subject to the asphalt NSPS limits. A PM control device that achieves the asphalt NSPS limits is therefore the basis for the floor for saturators at existing affected sources. A thermal oxidizer operating at or above 1200°F is the basis for the floor

[1] The situation might also be conceptualized in terms of subcategories: plants that produce asphalt using higher quality flux, and those without access to higher quality flux producing asphalt using catalysts. The higher quality flux process subcategory controls HCl emissions through its process (in essence, there are no such emissions); the catalyst subcategory does not control HCl emissions at the floor level.

for saturators at new and reconstructed affected sources.

All of the five best performing wet loopers are controlled with a PM control device that is subject to the asphalt NSPS limits. Therefore, the floor for wet loopers at existing, new, and reconstructed affected sources is based on a PM control device that achieves the asphalt NSPS limits.

Asphalt Storage Tanks. As discussed previously, storage tanks may be associated with either asphalt processing or asphalt roofing manufacturing or shared between the two source categories at collocated facilities. To address the possibility that the floor for asphalt storage tanks would be different for asphalt processing and asphalt roofing manufacturing facilities, we performed the floor analysis for five different groupings of facilities: facilities that only process asphalt, facilities that only manufacture roofing products, facilities that both process asphalt and manufacture roofing products, facilities that process asphalt (including stand-alone and collocated asphalt processing facilities), and all facilities.

In addition, storage tanks can vary in function based on the material stored. Large bulk storage tanks are used to store asphalt flux and oxidized asphalt; modified bitumen tanks are used to mix asphalt flux and plastic modifiers; and relatively small process tanks, such as sealant and adhesive tanks, supply asphalt directly to the roofing line. To address the possibility that the level of emission reduction is related to the function of a tank, we grouped the tanks by the type of material stored, as an indication of the tank's function. The material groupings included: asphalt flux, oxidized asphalt, modified bitumen, and sealant and adhesive.

We found that, regardless of the facility or material grouping, a thermal oxidizer operating at or above 1200°F is the basis for the MACT floor for storage tanks at existing, new, and reconstructed affected sources.

Through the MACT floor analysis, we determined, based on available data, that no sources are using a thermal oxidizer to control emissions from storage tanks with a capacity less than 1.93 megagrams (2.13 tons) of asphalt. Therefore, the MACT floor level of control does not include controlling tanks with capacities less than 1.93 megagrams.

Sealant and Adhesive Applicators. There are 60 applicators for which we have data. Therefore, the eight best performing applicators represent the top 12 percent of sources. Of these, four applicators are controlled with a thermal oxidizer operating at or above 1200°F and four applicators are controlled with a PM control device subject to the asphalt NSPS limits. Because there are an even number of control devices in the top 12 percent, there is no clear median control. However, as stated previously, the database of applicators includes only those of companies that responded to the survey, which may be biased toward the better-controlled facilities (those with more available resources to respond). In light of this uncertainty, and the fact that there is no clear median source, we have assumed that some bias may exist toward reporting of better-controlled facilities. The lesser-controlled nonrespondents, if included in the floor determination, would then produce an identifiable median of PM control at the NSPS level. This would thus cause us to identify a more stringent MACT floor than if we have information on all applicators. Consequently, to allow for any bias that may exist in the database due to this marginal uncertainty, we have determined that the average emission limitation achieved by the best performing 12 percent is more appropriately represented by the emission reduction achieved for the fifth-ranked applicator, which is controlled with a PM control device subject to the asphalt NSPS limits. The MACT floor of applicators at existing affected sources is based on a PM control device achieving the asphalt NSPS limits, and the MACT floor for applicators at new and reconstructed sources is based on a thermal oxidizer operating at or above 1200°F.

In summary, the MACT floor for the equipment at existing, new, and reconstructed asphalt processing facilities (blowing stills, loading racks, and storage tanks with capacity of 1.93 megagrams or greater) is based on a thermal oxidizer operating at or above 1200°F for control of organic HAP. With the exception of asphalt storage tanks, the MACT floor for equipment at existing asphalt roofing manufacturing lines (coaters, saturators, wet loopers, coating mixers and sealant and adhesive applicators) is based on a PM control device complying with the asphalt NSPS. Compliance with the asphalt NSPS includes limiting PM emissions to a process weight-based limit and complying with opacity and visible emission limits. For the coaters, saturators, wet loopers, coating mixers, and sealant and adhesive applicators at new and reconstructed affected sources, the MACT floor is based on a thermal oxidizer operating at or above 1200°F. For wet loopers at new and reconstructed affected sources, the MACT floor is based on a PM control device complying with the asphalt NSPS. For storage vessels with a capacity of 1.93 megagrams or greater at existing, new, and reconstructed asphalt roofing manufacturing lines, the MACT floor is based on a thermal oxidizer operating at or above 1200°F.

How did we consider beyond-the-floor options? There are three groups of equipment for which we identified potential options for achieving emission reductions more stringent than the floor (beyond-the-floor options): saturators, wet loopers, coaters, coating mixers, and sealant and adhesive applicators at existing sources; blowing stills that use a chlorinated catalyst at existing, new, and reconstructed sources; and wet loopers at new and reconstructed sources.

For all other equipment (blowing stills, loading racks, and storage tanks at existing, new, and reconstructed sources; and for saturators, coaters, coating mixers, and sealant and adhesive applicators at new and reconstructed sources), the MACT floor is based on a thermal oxidizer operating with a minimum operating temperature of 1200°F. There are no known technologies in use at asphalt processing or roofing manufacturing facilities or similar sources that would be capable of achieving a greater emission reduction than these thermal oxidizers and, thus, no beyond-the-floor options were considered.

We also considered whether facilities could use ''cleaner'' or lower-emitting asphalt feedstocks when processing asphalt or manufacturing roofing products as a beyond-the-floor option for all equipment at existing, new, and reconstructed affected sources. We do not have data to determine the relationship between HAP emissions and various types of feedstocks. Additionally, we do not have sufficient data to determine definitively whether this is a viable option, although we believe that it is not feasible because a facility's choice of feedstocks is dictated primarily by its location. For example, it would be impractical for an asphalt processing facility on the East coast to obtain asphalt feedstock from a petroleum refinery on the West coast. Consequently, we have determined that restricting the type of feedstock used is not technically achievable for all sources, and, therefore, cannot be considered as a beyond-the-floor option.

Saturators, Wet Loopers, Coaters, Coating Mixers, and Sealant and Adhesive Applicators at Existing Sources. For saturators, wet loopers, coating mixers, coaters, and sealant and

adhesive applicators at existing affected sources, the floor is based on a PM control device used to comply with the asphalt NSPS limits. The level of control achieved by a thermal oxidizer with a minimum operating temperature of 1200°F was identified as the only beyond-the-floor option. It is estimated that requiring a thermal oxidizer for these pieces of equipment would result in an total annualized cost (capital amortization plus operating costs) to industry of $3.3 million. The additional emission reduction associated with this option is estimated to be 5.36 megagrams of HAP per year, resulting in a cost per megagram of HAP reduced of $616,000 per megagram ($559,000 per ton of HAP.) Additionally, the option would result in significant increases in emissions of criteria pollutants due to the combustion of the exhaust gas and supplemental fuel.

Due to the cost per megagram of HAP reduction and the increase in criteria pollutant emissions, requiring the level of control achieved by a thermal oxidizer for saturators, wet loopers, coaters, coating mixers, and sealant and adhesive applicators at existing sources is not a justifiable option at this time without further evaluation of the associated risks. Therefore, the MACT for saturators, wet loopers, coating mixers, coaters, and sealant and adhesive applicators at existing sources is determined to be the floor level of control, which is based a PM control device meeting the asphalt NSPS limits.

Blowing stills that use a chlorinated catalyst. Blowing stills that use a chlorinated catalyst produce a vent stream that contains chlorinated organic compounds. When this vent stream is sent to a thermal oxidizer, the chlorinated organic compounds are oxidized to HCl which is a HAP. Typical HCl emission from a blowing still using catalyst are 0.117 kilograms per megagram of asphalt processed.

As discussed earlier, we considered prohibiting catalyst as a potential MACT floor option for existing, new, and reconstructed blowing stills but this option was rejected because it was determined not to be available because the substitute, high quality flux, is not consistently or reliably available to all sources. This option was also considered as a beyond-the-floor option but was rejected for the same reasons. Also, we considered the option of requiring the addition of a scrubber to control HCl emissions.

Emissions of HCl can be reduced by a gas scrubber using caustic scrubbing media. Gas scrubbers typically achieve 95 percent reduction of HCl emissions in other applications in other industries. However, there are currently no asphalt processing facilities using gas scrubbers to control HCl emissions. Additionally, catalyst is not added continuously to the blowing still, but at the beginning of the blowing cycle, resulting in variable HCl emissions over the cycle. This variability makes it difficult to assess the expected reduction efficiency of a given scrubber.

Based on the information collected by the ARMA survey, ten asphalt processing facilities in the roofing industry that are major sources use a chlorinated catalyst. The total capital cost for gas scrubbers for the six facilities is estimated to be $1,220,000; the total annualized cost (capital amortization plus operating costs) of the ten gas scrubbers is estimated to be $4,020,000. These costs are based on typical scrubbers used in other industries for similar flow rates and do not take into consideration the variable HCl emissions in asphalt processing, and thus may be understated. Using these costs and estimated HCl emission reductions of 168.1 Mg/yr (185.4 tpy) (this reduction is based on 95 percent reduction, but the actual overall reduction could be less due to the variability of HCl emissions over the blowing cycle) yields a cost per megagram of HAP removal value of $23,900 per megagram ($21,700 per ton) of HCl removed. The use of gas scrubbers would also result in increases in electricity usage (needed to run scrubber pumps) and generation of solid and liquid waste streams due to disposal of spent scrubber media.

Because it is not available to sources using catalyst, prohibiting the use of catalyst is not considered a feasible beyond-the-floor option. Because scrubbing has not been demonstrated as an effective technology for controlling HCl emissions from asphalt processing and due to the potentially high cost per megagram of HCl reduced, we do not believe the additional cost of going beyond-the-floor is warranted at this time without a further evaluation of risk. Therefore, because there are no feasible pollution prevention practices or demonstrated add-on control devices options for controlling HCl from blowing stills, MACT for blowing stills using catalyst is based on no emission reduction.

Wet Loopers at New and Reconstructed Sources. The floor for wet loopers at new and reconstructed affected sources is based on a PM control device that is achieving the asphalt NSPS limits. Therefore, controlling a wet looper to achieve the level of control of a thermal oxidizer operating at a minimum of 1200°F was considered as a beyond-the-floor option.

Because new affected sources will be required to control all blowing stills, storage tanks with a capacity of 1.93 megagrams (2.13 tons) or greater, loading racks, saturators, coating mixers, coaters, and sealant and adhesive applicators to the level of control achieved by a thermal oxidizer, we expect a source to tie its wet looper exhaust stream into the other exhaust streams going to the thermal oxidizer. We anticipate that the addition of wet looper exhaust to the other exhaust streams that would have to be controlled will add little, if any, cost to the cost of a new thermal oxidizer. Additionally, because wet loopers are adjacent to or are part of an associated saturator, controlling the wet looper along with the saturator would not require additional costs for the emission capture system. Because of this, the cost of adding a separate thermal oxidizer to control a wet looper at a new source was not estimated.

This option would result in negligible increases in emissions of criteria pollutants due to the combustion of the exhaust gas and supplemental fuel. Because controlling wet loopers at new affected sources is expected to add minimal if any cost to the total control cost, MACT for wet loopers at new or reconstructed affected sources is based on a thermal oxidizer operating at a minimum of 1200°F.

The MACT floor for blowing stills, loading racks, and storage tanks at existing, new, and reconstructed sources, and for saturators, wet loopers, coating mixers, coaters, and sealant and adhesive applicators at new and reconstructed sources is based on a thermal oxidizer operating with a minimum operating temperature of 1200°F. There are no known technologies in use at asphalt processing or asphalt roofing manufacturing facilities or similar sources that would be capable of achieving a greater emission reduction, therefore, the MACT for these types of equipment is the same as the MACT floor.

E. How Did We Select the Format of the Standards?

The EPA and ARMA conducted a joint test program to characterize the HAP emissions from the facilities using the MACT. Six facilities using the MACT were tested under the test program (four collocated processing and roofing facilities, one stand-alone roofing facility, and one modified bitumen facility). In general, the data collected from the test program were not

sufficient to develop performance standards based on HAP emissions per unit of production. First, different products were manufactured during the tests at the various facilities. Therefore, the emissions from the different facilities cannot be related on a common basis. Second, technical problems with the HAP data collected, due to calibration errors of the instrument, introduced a degree of uncertainty into the test results. However, based in part on the test program and on other information, we were able to select the format of the standard for process equipment using thermal oxidizers and PM control devices.

Total Hydrocarbon Emissions. The basis for MACT for HAP emissions from blowing stills, loading racks and asphalt storage tanks (with a capacity of 1.93 megagrams (2.13 tons) or greater) at existing and new asphalt processing facilities and for equipment at new asphalt roofing manufacturing lines is use of a thermal oxidizer. Unfortunately, the majority of the speciated HAP data collected from the test program were not valid due to calibration errors during testing. However, emissions data for THC did not contain the calibration errors. Therefore, we were able to evaluate the performance of thermal oxidizers using THC data as a surrogate for total HAP. Total hydrocarbons are an appropriate surrogate for total HAP since all of the HAP that are present as gaseous and condensible PM are organic compounds.

Because of the lack of a common product manufactured during the emission tests, we could not evaluate the performance of the thermal oxidizers based on emissions per unit of production. Therefore, we evaluated the thermal oxidizer performance on a THC percent reduction basis.

Most facilities that would be subject to the proposed THC emission limit are expected to comply using a thermal oxidizer; in fact, we are not aware of any other type of control device used at asphalt processing facilities to control both gaseous and particulate THC. However, testing of the thermal oxidizer inlet, which is necessary to demonstrate compliance with a percent reduction standard, may not be feasible when the thermal oxidizer is used to control emissions from certain emission sources, such as blowing stills. Due to the nature of the organic compounds in the exhaust gas and the high concentrations at the thermal oxidizer inlet, fouling of the testing equipment can occur. To address this problem, we also evaluated the performance of thermal oxidizers on a combustion efficiency basis which only requires outlet testing. The combustion efficiency standard defines how well the organic compounds in the process vent streams and the supplemental fuel are converted to CO_2 by the thermal oxidizer.

Particulate Matter Emissions. The MACT for equipment at existing asphalt roofing manufacturing lines (except for asphalt storage tanks) is based on a PM control device installed to comply with the asphalt NSPS. However, we did not have sufficient data to evaluate the performance of PM control devices based on HAP or THC emissions per unit of production or based on percent reduction. Therefore, the format of the standard for PM control devices is expressed as the asphalt NSPS limits for PM, opacity, and visible emissions. The use of PM, opacity, and visible emissions as surrogates for HAP in this case is appropriate since a portion of the HAP is in the form of condensed PM.

F. How Did We Select the Emission Limits?

As discussed in the previous section, the HAP data collected from the test program were not sufficient to develop emission limits based on HAP emissions per unit of production. However, for gaseous matter control devices, we were able to establish a THC percent reduction standard and a combustion efficiency based on thermal oxidizer test data. Particulate matter standards were established for PM control devices based on the limits specified in the asphalt NSPS.

Total Hydrocarbon Limits. The thermal oxidizers tested represent the basis of MACT for blowing stills, loading racks, and storage tanks at existing, new, and reconstructed sources, and for saturators, wet loopers, coating mixers, coaters, and sealant and adhesive applicators at new and reconstructed sources. The inlet and outlet THC concentration data collected from the test program were used to calculate the THC percent reduction achieved by each of the thermal oxidizers tested. Although there were variations in the calculated THC percent reductions, there was not a consistent trend of increasing THC reduction with increasing operating temperature, as long as the operating temperature was 1200°F or greater. We believe that this variability reflects normal operation of the control devices. Therefore, we averaged together the THC destruction efficiencies of the tested thermal oxidizers to determine the emission limits for gaseous matter control devices.

Specifically, we calculated the average THC reduction efficiency achieved by each thermal oxidizer tested by averaging the THC destruction efficiency of the individual test runs performed. We then calculated an overall average THC destruction efficiency of 95.9 percent reduction for all five of the thermal oxidizers tested. To account for variability in the performance of thermal oxidizers and ensure achievability, the standard deviation (0.99) of the individual thermal oxidizer averages was subtracted from the overall average. This resulted in an emission limit for reduction of THC emissions of 95 percent.

An alternative expression of the standard for thermal oxidizers is the combustion efficiency standard. To establish the combustion efficiency that represents MACT, we used the outlet THC, CO, and CO_2 concentration data from the same thermal oxidizers that were used to develop the percent reduction emission limit and the same statistical approach (i.e., determined overall combustion efficiency average and added one standard deviation). Using this approach, we established an average combustion efficiency of 99.6 percent.

Particulate Matter Limits. Since MACT for equipment at existing asphalt roofing manufacturing lines (with the exception of asphalt storage tanks) is based on a PM control device installed to comply with the asphalt NSPS, we selected the following current PM, opacity, and visible emission standards of the asphalt NSPS as the emission limits that represent MACT:

- Limit PM emissions to 0.04 kg/Mg of asphalt shingle or mineral-surfaced roll roofing produced, or 0.4 kg/Mg of saturated felt or smooth-surfaced roll roofing;
- Limit opacity emissions from the control device exhaust to less than 20 percent; and
- Limit visible emissions from the emission capture system to 20 percent. (It should be noted that this limit also applies when the saturator is controlled with a thermal oxidizer.)

No additional data were available to provide a basis for selecting more stringent limits.

G. How Did We Select the Testing and Initial Compliance Requirements?

Under these proposed NESHAP, a performance test would be required to demonstrate initial compliance with the emission limits. With the exception of PM, opacity, and visible emissions, we selected the EPA reference test methods that were used in the EPA/ARMA test program to collect the original data. For PM, opacity, and visible emissions, we

selected the EPA reference test methods that are specified in the asphalt NSPS. However, you may use any alternative method that has been approved by the Administrator under § 63.7(f) of the NESHAP general provisions.

To demonstrate compliance with the THC percent reduction standard, you would measure the THC emissions at the inlet and outlet of the control device using EPA method 25A in appendix A of 40 CFR part 60. For the combustion efficiency compliance option, you would measure the CO, CO_2, and THC concentrations at the thermal oxidizer outlet using EPA reference methods 10, 3A, and 25A in appendix A of 40 CFR part 60, respectively. To determine compliance with the PM emission limit, you would measure the PM emissions at the control device outlet using EPA method 5A in appendix A of 40 CFR part 60. The production rate would also be determined during the performance test for PM. The EPA methods 9 and 22 in appendix A of 40 CFR part 60 would be used to determine the opacity and visible emissions, respectively.

H. How Did We Select the Continuous Compliance Requirements?

We considered two options for monitoring compliance with the emission limits of this proposed rule: (1) The use of continuous emission monitoring systems (CEMS), and (2) continuous monitoring of control device operating parameters. Continuous emission monitoring systems provide a direct measurement of pollutant emissions. Parameter monitoring provides a measure of the control device's operation.

If CEMS were used to demonstrate continuous compliance with the THC percent reduction standard, a CEMS and flow monitors would be needed at both the inlet and outlet of each control device to determine percent reduction. For the combustion efficiency option, a CEMS would be needed to monitor the concentrations of THC, CO and CO_2 at the thermal oxidizer outlet. For the PM emission limits, a CEMS would be needed at the control device outlet, as well as a system for continuously monitoring production rates. A continuous opacity monitor system (COMS) at the control device outlet would be needed to demonstrate continuous compliance with the opacity limit.

The capital cost of installing and calibrating a CEMS ranges from $29,000 to $118,000 with annualized costs of operating and maintaining the CEMS ranging from $11,000 to $42,000. The total capital and annualized costs for COMS are approximately $29,000 and $11,000, respectively. The capital cost estimates include the purchased equipment cost and other ancillary capital costs, such as planning, providing support facilities, installation, calibrating the CEMS, certification tests, and preparing a quality assurance/quality control (QA/QC) plan. The annualized cost estimates include operation and maintenance, indirect costs, and ancillary costs, such as annual relative accuracy test audits, quarterly cylinder gas audits, recordkeeping, reporting, and annual reviews and updates.

Although we considered requiring the use of CEMS, we believe that compliance with the proposed THC, PM and combustion efficiency standards can be achieved by monitoring of control device parameters to determine continuous compliance with the operating limits. Consequently, CEMS are not justified and the additional costs of requiring the use of a CEMS would be unreasonable. Additionally, the test methods for determining opacity and visible emissions are based on visual observations and compliance can be determined at any time. Based on this, and the fact that the proposed rule contains an opacity limit for only one type of process equipment, we determined COMS to be unreasonable in this situation. However, we are specifically requesting comment on including a provision in the NESHAP to allow facilities to use CEMS and COMS as options to parametric monitoring.

To demonstrate continuous compliance, the proposed NESHAP requires continuous monitoring of control device operating parameters. The monitoring parameter values would have to be established during the initial performance test. Additionally, you would have to be able to demonstrate compliance with the opacity and visible emission standards at any time. We believe that the monitoring requirements will provide sufficient information needed to determine continuous compliance with the operating limits. At the same time, the provisions are not labor intensive, do not require expensive or complex equipment, and do not require burdensome recordkeeping.

For PM devices (*e.g.,* HVAF, ESP) used to demonstrate compliance with the PM standard for existing asphalt roofing manufacturing line equipment, we selected inlet gas temperature and pressure drop across the device as the monitoring parameters. For ESP, no additional monitoring parameters (e.g., ESP voltage) were required since the ESP used in the asphalt processing and roofing industries are typically low-voltage, modular designs. The PM removal performance of these devices is adequately characterized by inlet gas temperature and pressure drop. For all PM control devices, the inlet gas temperature would have to be at or below the temperature at which the performance test was conducted to ensure that a sufficient amount of PM has condensed from the vent gas prior to entering the PM control device. The control device pressure drop would have to be at or below the value established during the performance test to ensure that the control device is providing sufficient removal of PM and that the removal mechanism (e.g., filter media) does not become plugged or fouled. Although monitoring of pressure drop is not required by the asphalt NSPS, monitoring of inlet gas temperature for PM control devices is the same as the monitoring requirements of the asphalt NSPS. This minimizes the monitoring, recordkeeping, and reporting burden on facilities.

For thermal oxidizers used to achieve compliance with the THC or combustion efficiency standards, we selected combustion zone temperature for monitoring. The performance of thermal oxidizers is dictated by the turbulence and residence time of the gases in the combustion zone and by the combustion zone temperature. For a given flow rate, the turbulence and residence time are fixed properties. Therefore, the remaining parameter necessary for determining the operation of the thermal oxidizer is combustion zone temperature. Additionally, most thermal oxidizers are already equipped with systems for monitoring and recording operating temperature. The combustion zone temperature would have to be at or above the temperature at which the performance test was conducted. Monitoring of combustion zone temperature is also the same as the monitoring requirements of the asphalt NSPS. For each monitoring parameter, you would determine 3-hour average values. We selected this averaging period to reflect operating conditions during the performance test used to demonstrate initial compliance.

I. How Did We Select the Notification, Recordkeeping and Reporting Requirements?

We evaluated the notification, recordkeeping, and reporting requirements of the NESHAP general provisions and selected those requirements determined to be the minimum necessary to determine continuous compliance with the proposed NESHAP. The requirements

for notification, recordkeeping and reporting that were selected have been used by previous NESHAP with similar emission limit formats.

The NESHAP general provisions notification requirements (§ 63.9) include: Initial notifications, notification of performance test, notification of compliance status, and additional notifications required for affected sources with continuous monitoring systems. Semiannual compliance reports and reports of startup, shutdown, and malfunction events that occur are also required.

We also determined that the proposed requirement to prepare a written, site-specific monitoring plan is necessary to ensure that the continuous parameter monitoring systems are installed, operated, and maintained properly. Because the monitoring plan does not require Administrator approval, we do not believe that it imposes an undue burden on the industry.

J. What Is the Relationship of This Subpart to Other Standards?

Existing standards may apply to facilities subject to these proposed NESHAP because they apply to facilities at which asphalt roofing manufacturing or asphalt processing facilities are located. In most cases, although other standards may apply at the same facility, the specific requirements of the standards are not likely to apply to the same pieces of equipment as these proposed NESHAP. The petroleum refineries NESHAP (40 CFR part 63, subpart CC); the petroleum liquids and volatile organic liquid (VOL) storage vessel NSPS (40 CFR part 60, subparts K, Ka, and Kb); and the petroleum refineries NSPS (40 CFR part 60, subpart J) apply to petroleum refineries, which may also have asphalt blowing stills, storage tanks, and loading racks. However, those standards apply to different pieces of equipment than these proposed NESHAP. Similarly, the wet-formed fiberglass mat manufacturing NESHAP (40 CFR part 63, subpart HHHH) apply to fiberglass manufacturing facilities, some of which are collocated with asphalt roofing manufacturing facilities (fiberglass mat is used as a substrate in roofing manufacturing.) The wet-formed fiberglass mat manufacturing NESHAP do not apply to the same pieces of equipment as these proposed NESHAP. The asphalt NSPS (40 CFR part 60, subpart UU) apply to both the same facilities and some of the same equipment as these proposed NESHAP.

Standards That Apply to Petroleum Refineries. These proposed NESHAP would apply to asphalt blowing stills, asphalt storage tanks, and asphalt loading racks. These pieces of equipment can also be located at petroleum refineries which are subject to the petroleum refineries NESHAP, the petroleum liquids and VOL storage vessel NSPS, and the petroleum refinery NSPS.

The petroleum refineries NESHAP include requirements for process units, storage tanks, and loading racks. However, limited definitions and applicability cut-offs make it unlikely that the petroleum refineries NESHAP would apply to the same pieces of equipment subject to these proposed NESHAP. For the petroleum refineries NESHAP, ''asphalt'' was intentionally not added to the list of products produced by petroleum refining process units because asphalt processing was listed as a separate source category. The asphalt storage tanks found at petroleum refineries store oxidized asphalt and asphalt flux. The petroleum refineries NESHAP control requirements do not apply to storage vessels storing liquids with a maximum true vapor pressure less than 10.4 kilopascals (kPa) at existing sources and 3.4 kPa at new sources. Based on limited vapor pressure data and average operating temperatures for asphalt tanks, it is unlikely that the vapor pressure of asphalt would trigger the petroleum refinery NESHAP control requirements. It is estimated that the vapor pressure of asphalt at typical storage temperatures is an order of magnitude (in the range of 0.4 kPa) less than the lower applicability cutoff. Loading rack provisions of the petroleum refineries NESHAP are limited to gasoline loading racks. There are no requirements in the petroleum refineries NESHAP for asphalt loading racks.

Similarly to the petroleum refineries NESHAP, the petroleum storage vessel NSPS (40 CFR part 60, subparts K, Ka, and Kb) apply to storage vessels at petroleum refineries, but control requirement applicability is limited based on the vapor pressure of the stored liquid. In the three NSPS, the lowest vapor pressure cutoff for recordkeeping requirement applicability is 3.5 kPa (subpart Kb), and the lowest vapor pressure cutoff for control applicability is 5.2 kPa (subpart Kb). As discussed previously, the vapor pressure of asphalt flux and oxidized asphalt would not be high enough to trigger control requirements.

The petroleum refineries NSPS apply to fluid catalytic cracking unit catalyst regenerators, fuel gas combustion devices, and Claus sulfur recovery plants with a capacity greater than 20 long tons per day. None of these sources would be subject to requirements of these proposed NESHAP.

Wet-formed Fiberglass Mat Manufacturing NESHAP. Wet-formed fiberglass mat is used as a substrate for roofing products. A small number of asphalt processing and roofing facilities also manufacture fiberglass mat. These proposed NESHAP and the wet-formed fiberglass mat manufacturing NESHAP would cover different pieces of equipment. Therefore, while some facilities may be subject to both rules, individual pieces of equipment will be subject to one or the other rule, but not both.

Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture. Both the asphalt NSPS and these proposed NESHAP regulate emissions from the following process equipment: Asphalt storage and process tanks, blowing stills, saturators, coaters, and wet loopers. Mineral handling and storage facilities are covered by the asphalt NSPS but are not covered by these proposed NESHAP because these facilities are not sources of HAP emissions. Asphalt loading racks, coating mixers, sealant applicators, and adhesive applicators are covered by these proposed NESHAP but not by the asphalt NSPS.

With one exception, these proposed NESHAP have different emission limits than the asphalt NSPS. For most equipment, these proposed NESHAP specify THC emission limits while the asphalt NSPS specify PM and opacity or visible emission limits. Therefore, the testing, monitoring, recordkeeping, and reporting requirements of the two rules are different. The exception is for saturators, wet loopers, and coaters constructed after November 18, 1980 (the asphalt NSPS applicability date) but on or before November 21, 2001. These pieces of equipment would be considered a ''new'' source with respect to the asphalt NSPS but would be considered an ''existing'' source for these proposed NESHAP. The emission limits and, consequently, the procedures for testing and demonstrating continuous compliance are the same for the most part.

Saturators, wet loopers, and coaters that are part of an affected source that was constructed or reconstructed after November 21, 2001 would be subject to both the asphalt NSPS PM emission limits and the proposed NESHAP emission limits for THC. For these pieces of equipment, we are proposing that compliance with the NESHAP would constitute compliance with the asphalt NSPS. Support for this finding is provided by data collected for the Background Information Document

(BID) for the asphalt NSPS and information collected by the ARMA industry survey. The BID presents test data for PM emissions from saturators controlled by an ESP, thermal oxidizer (operating at 1200° F), and a HVAF. The data show that a thermal oxidizer can achieve a PM emission limit of 0.02 kg/Mg or less, which is below the asphalt NSPS emission limits. Further support for equating NESHAP compliance with asphalt NSPS compliance is provided by the fact that, according to the ARMA survey data, four facilities are complying with the asphalt NSPS emission limits for saturators using a thermal oxidizer.

For blowing stills and asphalt storage and process tanks, compliance with these proposed NESHAP would also constitute compliance with the asphalt NSPS. This finding is based on the fact that the thermal oxidizers which provide the basis for the MACT floor are also controlling emissions from blowing stills and asphalt storage tanks that are subject to the asphalt NSPS.

Both these proposed NESHAP and the asphalt NSPS require inlet gas and operating temperature monitoring for PM control devices and thermal oxidizers, respectively, and specify the same data reduction procedures. This proposed rule includes the additional requirement to monitor the PM control device pressure drop in addition to the inlet gas temperature.

The notification, recordkeeping, and reporting requirements of the proposed NESHAP are more stringent than those required by the asphalt NSPS. For example, the asphalt NSPS does not require subject facilities to develop site-specific performance test plans or startup, shutdown, and malfunction plans. The notifications, recordkeeping, and reporting required by the proposed NESHAP can be used to satisfy the asphalt NSPS requirements, except for the requirements associated with mineral handling and storage.

As discussed previously, mineral handling and storage facilities are covered by the asphalt NSPS but are not covered by these proposed NESHAP. Compliance with these proposed NESHAP would not constitute compliance with the asphalt NSPS provisions for mineral handling and storage facilities.

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant,'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this proposed rule is not a ''significant regulatory action.''

B. 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.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities under this proposed rule are owned or operated by State or local governments. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

C. 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. No affected facilities are owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to this proposed rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health and safety risks.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, or tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. In the Economic Impact Assessment (EIA) for this proposed rule, EPA estimates that the total nationwide capital cost for the proposed standard is $2.16 million. The total nationwide annual cost for the proposed standards is $1.01 million. In addition, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, this proposed rule is not subject to the requirements of sections 202 or 205 of the UMRA.

G. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small business, small organizations, and small government jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, a small entity is defined as: (1) A small business according to Small Business Administration (SBA) size standards by NAICS code (in this case, ranging from 100 to 500 employees or $5 million in annual sales); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In accordance with the RFA, EPA conducted an assessment of the proposed standards on small businesses within the asphalt roofing and processing industry. Based on SBA NAICS-based size definitions and reported sales and employment data, EPA identified 26 of the 40 companies that own potentially affected asphalt roofing and processing facilities as small. For four of the small companies, sales and employment data were not available; therefore, they were assumed to be small businesses. Although small businesses represent 65 percent of the companies within the source category, they are expected to incur less than 40 percent of the total industry compliance costs of about $1.01 million. There are no companies with compliance costs equal to or greater than 1 percent of their sales. No firms are expected to close rather than incur the costs of compliance with the proposed rule. Furthermore, firms are not projected to shut down their facilities due to these proposed NESHAP. For further information, consult the ''Economic Impact Analysis for the Proposed Asphalt Roofing and Processing NESHAP,'' in docket A–95–32.

After considering the economic impacts of today's proposed rule on small entities, I hereby certify that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities.

Although this proposed rule will not have any significant economic impacts on a substantial number of small entities, we continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

H. Paperwork Reduction Act

The information collection requirements of this proposed rule have been submitted for approval to 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. 2029.01) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division, U.S. EPA (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001, by e-mail at *farmer.sandy@epa.gov* or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

The information would be used by the EPA to ensure that the asphalt processing and roofing NESHAP requirements are implemented properly and are complied with on a continuous basis. Records and reports are necessary to identify asphalt processing and asphalt roofing facilities that might not be in compliance with the NESHAP. Based on reported information, the implementing agency will decide which asphalt processing and asphalt roofing facilities should be inspected and what records or processes should be inspected. Records that owners and operators of asphalt processing and asphalt roofing facilities maintain indicate whether personnel are operating and maintaining control equipment properly.

These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the

EPA for which a claim of confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

We estimate the proposed NESHAP would affect a total of 18 existing facilities (10 asphalt processing and asphalt roofing facilities and 8 petroleum refineries). We estimated the number of major sources by estimating emissions using emission factors and available production data and extrapolating potential emission from actual emissions. We identified major facilities for the purposes of estimating emissions, emission reductions, control costs, and monitoring, recordkeeping, and reporting costs only. Facilities would not necessarily be major sources for the purposes of determining applicability of these proposed NESHAP because they were identified as major by our estimates. Likewise, facilities would not be relieved from complying with these proposed NESHAP because they were not identified as major sources in our estimates. We expect that existing facilities will begin complying 3 years after promulgation of this proposed rule but will perform related activities (*e.g.*, reading and understanding the rule, conducting performance tests) before they are in compliance. We project that one new asphalt processing and asphalt roofing facility will become subject to the proposed NESHAP during each of the first 3 years.

The estimated average annual burden for industry for the first 3 years after implementation of the final rule would be 1,894 person-hours annually. There will be no capital costs for monitoring or recordkeeping during the first 3 years. The total average annual reporting and recordkeeping burden (including industry and EPA) for this collection is estimated at 2,678 labor hours per year at an average annual cost of $341,000.

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001; 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 November 21, 2001, a comment to OMB is best assured of having its full effect if OMB receives it by December 21, 2001. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law No. 104–113, § 12(d), (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. The EPA proposes in this rule to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 5A, 9, 10, 22, and 25A. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 5A, 9, and 22.

The search for emissions measurement procedures identified 16 voluntary consensus standards potentially applicable to this proposed rule. Three of the voluntary consensus standards were not available at the time this review was conducted. For the remaining 13 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in this proposed rule, we determined that they were impractical alternatives to EPA test methods for the purposes of this proposed rule. Therefore, the EPA does not intend to adopt these standards. The search and review results of the voluntary methods can be found in docket A–95–32 (see **ADDRESSES** section of this preamble).

The EPA takes comment on the compliance demonstration requirements in this proposed rulemaking and specifically invites the public to identify potentially applicable voluntary consensus standards. Commenters should also explain why this regulation should adopt these voluntary consensus standards in lieu of or in addition to EPA's standards. Emission test methods submitted for evaluation should be accompanied by a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, appendix A was used).

Section 63.8687 of the proposed standards lists the EPA testing methods included in the proposed rule. Under § 63.7(f) of subpart A of the General Provisions, a source may apply to EPA for approval to use an alternative test method in place of any of the EPA testing methods.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Asphalt processing, Asphalt roofing manufacturing, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 1, 2001.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

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

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

2. Part 63 is amended by adding subpart LLLLL to read as follows:

Sec.

Subpart LLLLL—National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing

What This Subpart Covers

63.8680 What is the purpose of this subpart?
63.8681 Am I subject to this subpart?
63.8682 What parts of my plant does this subpart cover?
63.8683 When do I have to comply with this subpart?

Emission Limitations

63.8684 What emission limitations must I meet?

General Compliance Requirements

63.8685 What are my general requirements for complying with this subpart?

Testing and Initial Compliance Requirements

63.8686 By what date must I conduct performance tests or other initial compliance demonstrations?
63.8687 What performance tests, design evaluations, and other procedures must I use?
63.8688 What are my monitoring installation, operation, and maintenance requirements?
63.8689 How do I demonstrate initial compliance with the emission limitations?

Continuous Compliance Requirements

63.8690 How do I monitor and collect data to demonstrate continuous compliance?
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Notifications, Reports, and Records

63.8692 What notifications must I submit and when?
63.8693 What reports must I submit and when?
63.8694 What records must I keep?
63.8695 In what form and how long must I keep my records?

Other Requirements and Information

63.8696 What parts of the General Provisions apply to me?
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63.8698 What definitions apply to this subpart?

Tables

Table 1 to Subpart LLLLL—Emission Limitations
Table 2 to Subpart LLLLL—Operating Limits
Table 3 to Subpart LLLLL—Requirements for Performance Tests
Table 4 to Subpart LLLLL—Initial Compliance With Emission Limitations
Table 5 to Subpart LLLLL—Continuous Compliance with Operating Limits
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Subpart LLLLL—National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing

What This Subpart Covers

§ 63.8680 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants for existing and new asphalt processing and asphalt roofing manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.8681 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate an asphalt processing facility or an asphalt roofing manufacturing facility that is, is located at, or is part of a major source of hazardous air pollutant (HAP) emissions.

(1) An asphalt processing facility includes any facility engaged in preparing asphalt at asphalt processing plants, petroleum refineries, or asphalt roofing plants. Asphalt preparation, called ''blowing,'' is the oxidation of asphalt flux by bubbling air through the heated asphalt. An asphalt processing facility includes the following processes: asphalt heating, blowing stills, asphalt flux storage tanks, oxidized asphalt storage tanks, and oxidized asphalt loading racks.

(2) An asphalt roofing manufacturing facility includes any facility engaged in manufacturing asphalt roofing products such as asphalt-saturated felt roll roofing, roll roofing with mineral granules on the surface, smooth roll roofing and fiberglass shingles. An asphalt roofing manufacturing facility includes the following processes: asphalt storage, felt saturation, coating, and sealant and adhesive application.

(b) After [DATE 3 YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], blowing stills, storage tanks, and saturators that are also subject to 40 CFR part 60, subpart UU, are required to comply only with provisions of this subpart.

(c) A major source of HAP emissions is any stationary source or group of stationary sources within a contiguous area under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

§ 63.8682 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source at asphalt processing and asphalt roofing manufacturing facilities.

(b) The affected source is:

(1) Each asphalt processing facility as defined in § 63.8698; and

(2) Each asphalt roofing manufacturing line as defined in § 63.8698.

(i) If the asphalt roofing manufacturing line is collocated with an asphalt processing facility, the storage tanks that receive asphalt directly from the on-site blowing stills are part of the asphalt processing facility.

(ii) If an asphalt storage tank is shared by two or more lines at an asphalt roofing manufacturing facility, the shared storage tank is considered part of the line to which the tank supplies the greatest amount of asphalt, on an annual basis.

(iii) If a sealant or adhesive applicator is shared by two or more asphalt roofing manufacturing lines, the shared applicator is considered part of the line that provides the greatest throughput to the applicator, on an annual basis.

(c) An affected source is a new affected source if you commenced construction of the affected source after November 21, 2001 and you met the applicability criteria at the time you commenced construction.

(d) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.8683 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with the following:

(1) If you startup your new or reconstructed affected source on or before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], then you must comply with the requirements for new and reconstructed sources in this subpart no later than [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

(2) If you startup your new or reconstructed affected source after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], then you must comply with the requirements for new and reconstructed sources in this subpart upon startup.

(b) If you have an existing affected source, you must comply with the requirements for existing sources no

later than [DATE 3 YEARS AFTER DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**].

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a (or part of a) major source of HAP, then the following requirements apply:

(1) Any portion of the existing facility that becomes a new or reconstructed affected source must be in compliance with this subpart upon startup or no later than [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], whichever is later.

(2) All other parts of the source to which this subpart applies must be in compliance with this subpart by 3 years after the date the source becomes a major source.

(d) You must meet the notification requirements in § 63.8692 according to the schedule in § 63.8692 and in § 63.9. Some of the notifications must be submitted before you are required to comply with the emission limitations in this subpart.

Emission Limitations

§ 63.8684 What emission limitations must I meet?

(a) You must meet each emission limitation in Table 1 of this subpart that applies to you.

(b) You must meet each operating limit in Table 2 of this subpart that applies to you.

General Compliance Requirements

§ 63.8685 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations (including operating limits) in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(d) You must develop and implement a written site-specific monitoring plan according to the provisions in § 63.8688.

Testing and Initial Compliance Requirements

§ 63.8686 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) For existing affected sources, you must conduct performance tests no later than 60 days prior to the compliance date that is specified for your source in § 63.8683 and according to the provisions in § 63.7(a)(2).

(b) If you commenced construction or reconstruction between November 20, 2001 and [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must demonstrate initial compliance with either the proposed requirements or the promulgated requirements no later than 180 calendar days after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] or within 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(c) If you commenced construction or reconstruction between November 21, 2001 and [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], and you chose to comply with the proposed requirements when demonstrating initial compliance, you must conduct a second compliance demonstration for the promulgated requirements within 3 years and 180 calendar days after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

§ 63.8687 What performance tests, design evaluations, and other procedures must I use?

(a) You must conduct each performance test in Table 3 of this subpart that applies to you.

(b) Each performance test must be conducted according to the requirements in § 63.7(e)(1) and under the conditions specified in Table 3 of this subpart.

(c) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(d) Except for opacity and visible emission observations, you must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(e) You must use the following equations to determine compliance with the emission limitations.

(1) To determine compliance with the particulate matter mass emission rate, you must use equations 1 and 2 of this section as follows:

$$E = M_{PM}/P \qquad \text{(Eq. 1)}$$

Where:

E = Particulate matter emission rate, kilograms (pounds) of particulate matter per megagram (ton) of roofing product manufactured.

M_{PM} = Particulate matter mass emission rate, kilograms (pounds) per hour, determined using Equation 2.

P = The asphalt roofing product manufacturing rate during the emissions sampling period, including any material trimmed from the final product, megagram (tons) per hour.

$$M_{PM} = C\ Q\ K \qquad \text{(Eq. 2)}$$

Where:

M_{PM} = Particulate matter mass emission rate, kilograms (pounds) per hour.

C = Concentration of particulate matter on a dry basis, grams per dry standard cubic meter (g/dscm), as measured by the test method specified in Table 3 of this subpart.

Q = Vent gas stream flow rate (dry standard cubic meters per minute) at a temperature of 20 °C as measured by the test method specified in Table 3 of this subpart.

K = Unit conversion constant (0.06 minute-kilogram/hour-gram.

(2) To determine compliance with the total hydrocarbon percent reduction standard, you must use equations 3 and 4 of this section as follows:

$$RE = \left[\left(M_{THCi} - M_{THCo}\right)/\left(M_{THCi}\right)\right] * (100) \qquad \text{(Eq. 3)}$$

Where:

RE = Emission reduction efficiency, percent.

M_{THCi} = Mass flow rate of total hydrocarbons entering the control device, kilograms (pounds) per hour, determined using Equation 4.

M_{THCo} = Mass flow rate of total hydrocarbons exiting the control device, kilograms (pounds) per hour, determined using Equation 4.

$$M_{THC} = C\ Q\ K \qquad \text{(Eq. 4)}$$

Where:

M_{THC} = Total hydrocarbon emission rate, kilograms (pounds) per hour.

C = Concentration of total hydrocarbons on a dry basis, parts per million by volume (ppmv), as measured by the test method specified in Table 3 of this subpart.

Q = Vent gas stream flow rate (dscmm) at a temperature of 20 °C as measured by the test method specified in Table 3 of this subpart.
K = Unit conversion constant (3.00E–05) $(ppmv)^{-1}$ (gram-mole/standard cubic meter) (kilogram/gram) (minutes/hour)), where standard temperature for gram-mole/standard cubic meter is 20 °C.

(3) To determine compliance with the combustion efficiency standard, you must use equation 5 of this section as follows:

$$CE = \left[1 - \left(CO/CO_2\right) - \left(THC/CO_2\right)\right] \qquad \text{(Eq. 5)}$$

Where:

CE = Combustion efficiency, percent.
CO = Carbon monoxide concentration at the thermal oxidizer outlet, parts per million by volume (dry), as measured by the test method specified in Table 3 of this subpart.
CO_2 = Carbon dioxide concentration at the thermal oxidizer outlet, parts per million by volume (dry), as measured by the test method specified in Table 3 of this subpart.
THC = Total hydrocarbon concentration at the thermal oxidizer outlet, parts per million by volume (dry), as measured by the test method specified in Table 3 of this subpart.

§ 63.8688 What are my monitoring installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain each continuous parameter monitoring system (CPMS) according to the following:

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four successive cycles of operation to have a valid hour of data.

(2) Have valid data from at least three of four equally spaced data values for that hour from a CPMS that is not out-of-control according to your site-specific monitoring plan.

(3) Determine the 3-hour average of all recorded readings for each operating day, except as stated in § 63.8690(c). You must have at least two of the three hourly averages for that period using only hourly average values that are based on valid data (i.e., not from out-of-control periods).

(4) Record the results of each inspection, calibration, and validation check.

(b) For each temperature monitoring device, you must meet the requirements in paragraph (a) of this section and the following:

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) For a noncryogenic temperature range, use a temperature sensor with a minimum measurement sensitivity of 2.2° C or 0.75 percent of the temperature value, whichever is larger.

(3) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(4) If a chart recorder is used, it must have a sensitivity in the minor division of at least 20° F.

(5) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's documentation. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 16.7° C of the process temperature sensor's reading.

(6) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(7) At least monthly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

(c) For each pressure measurement device, you must meet the requirements in paragraph (a) of this section and the following:

(1) Locate the pressure sensor(s) in, or as close as possible to, a position that provides a representative measurement of the pressure.

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(3) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 1 percent of the pressure range.

(4) Check pressure tap pluggage daily.

(5) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(6) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(7) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(d) For monitoring parameters other than temperature and pressure drop, you must install and operate a CPMS to provide representative measurements of the monitored parameters.

(e) For each monitoring system required in this section, you must develop and make available for inspection by the permitting authority, upon request, a site-specific monitoring plan that addresses the following:

(1) Installation of the CPMS sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (e.g., on or downstream of the last control device);

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system; and

(3) Performance evaluation procedures and acceptance criteria (e.g., calibrations).

(f) In your site-specific monitoring plan, you must also address the following:

(1) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (c)(3), (c)(4)(ii), (c)(7), and (c)(8);

(2) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(3) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c) and § 63.10(e)(1) and (e)(2)(i).

(g) You must conduct a performance evaluation of each CPMS in accordance with your site-specific monitoring plan.

(h) You must operate and maintain the CPMS in continuous operation according to the site-specific monitoring plan.

§ 63.8689 How do I demonstrate initial compliance with the emission limitations?

(a) You must demonstrate initial compliance with each emission limitation that applies to you according to Table 4 of this subpart.

(b) You must establish each site-specific operating limit in Table 2 of

this subpart that applies to you according to the requirements in § 63.8687 and Table 3 of this subpart.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.8692(e).

Continuous Compliance Requirements

§ 63.8690 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) Except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating. This includes periods of startup, shutdown, and malfunction when the affected source is operating.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels, nor may such data be used in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

§ 63.8691 How do I demonstrate continuous compliance with the operating limits?

(a) You must demonstrate continuous compliance with each operating limit in Table 2 of this subpart that applies to you according to methods specified in Table 5 of this subpart.

(b) You must report each instance in which you did not meet each operating limit in Table 5 of this subpart that applies to you. This includes periods of startup, shutdown, and malfunction. These instances are deviations from the emission limitations in this subpart. These deviations must be reported according to the requirements in § 63.8693.

(c) During periods of startup, shutdown, and malfunction, you must operate in accordance with the SSMP.

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

Notifications, Reports, and Records

§ 63.8692 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.6(h)(4) and (5), 63.7(b) and (c), 63.8(f), and 63.9(b) through (f) and (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you start up your affected source before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit an Initial Notification not later than 120 calendar days after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin, as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test, design evaluation, opacity observation, visible emission observation, or other initial compliance demonstration as specified in Table 3 or 4 of this subpart, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii). You must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

§ 63.8693 What reports must I submit and when?

(a) You must submit each report in Table 6 of this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 6 of this subpart and according to the following dates:

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.8683 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.8683.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.8683.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the following information:

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your SSMP, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there are no deviations from any emission limitations (emission limit, operating limit, opacity limit, and visible emission limit) that apply to you, a statement that there were no deviations from the emission limitations during the reporting period.

(6) If there were no periods during which the CPMS was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during the which the CPMS was out-of-control during the reporting period.

(d) For each deviation from an emission limitation (emission limit, operating limit, opacity limit, and visible emission limit), you must include the information in paragraphs (c)(1) through (6) of this section, and the

information in paragraphs (d)(1) through (12) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The date and time that each malfunction started and stopped.

(2) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time and duration that each CPMS was out-of-control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(5) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CPMS downtime during the reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that reporting period.

(8) An identification of each air pollutant that was monitored at the affected source.

(9) A brief description of the process units.

(10) A brief description of the CPMS.

(11) The date of the latest CPMS certification or audit.

(12) A description of any changes in CPMS, processes, or controls since the last reporting period.

(e) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a compliance report pursuant to Table 6 of this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limitation (including any operating limit), submission of the compliance report shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permit authority.

(f) If acceptable to both the Administrator and you, you may submit reports and notifications electronically.

§ 63.8694 What records must I keep?

(a) You must keep the following records:

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests, performance evaluations, and opacity and visible emission observations as required in § 63.10(b)(2)(viii).

(b) You must keep the records in § 63.6(h)(6) for visible emission observations.

(c) You must keep the records required in Table 5 of this subpart to show continuous compliance with each operating limit that applies to you.

§ 63.8695 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.8696 What parts of the General Provisions apply to me?

Table 7 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.8697 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the following authorities are retained by the Administrator of U.S. EPA:

(1) Approval of alternatives to the requirements in §§ 63.8681, 63.8682, 63.8683, 63.8684(a) through (c), 63.8686, 63.8687, 63.8688, 63.8689, 63.8690, and 63.8691.

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.8698 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in 40 CFR 63.2, the General Provisions of this part, and in this section as follows:

Adhesive applicator means the equipment used to apply adhesive to single-ply roofing shingles for producing laminated or dimensional roofing shingles.

Asphalt flux means the residual material from distillation of crude oil used to manufacture asphalt roofing products.

Asphalt loading rack means the equipment used to transfer asphalt from a storage tank into a tank truck, rail car, or barge.

Asphalt processing facility means any facility engaged in the preparation of asphalt at asphalt processing plants, petroleum refineries, and asphalt roofing plants. Asphalt preparation, called ''blowing,'' is the oxidation of asphalt flux by bubbling air through the heated asphalt. An asphalt processing facility includes the following processes: asphalt heating, blowing stills, asphalt flux storage tanks, oxidized asphalt storage tanks, and oxidized asphalt loading racks.

Asphalt roofing manufacturing line means the collection of equipment used to manufacture asphalt roofing products through a series of sequential process steps. An asphalt roofing manufacturing line includes the following equipment: a saturator (including wet looper and coater), a coating mixer, a sealant applicator, an adhesive applicator, and associated storage and process tanks. The number of asphalt roofing

manufacturing lines at a particular facility is determined by the number of saturators (or coaters) used. For example, an asphalt roofing manufacturing facility with two saturators would be considered to have two separate roofing manufacturing lines.

Asphalt storage tank means any tank used to store asphalt, including asphalt flux, oxidized asphalt, and modified asphalt, at asphalt roofing manufacturing plants, petroleum refineries, and asphalt processing plants. Storage tanks containing cutback asphalts (asphalts diluted with solvents to reduce viscosity for low temperature applications) and emulsified asphalts (asphalts dispersed in water with an emulsifying agent are not subject to this subpart.

Blowing still means the equipment in which air is blown through asphalt flux to change the softening point and penetration rate.

Coating mixer means the equipment used to mix coating asphalt and a mineral stabilizer, prior to applying the stabilized coating asphalt to the substrate.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation (including any operating limit), or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit, opacity limit, operating limit, or visible emission limit.

Modified asphalt means asphalt that has been mixed with plastic modifiers.

Oxidized asphalt means asphalt that has been prepared by passing air through liquid asphalt flux in a blowing still.

Responsible official means responsible official as defined in 40 CFR 70.2.

Saturator means the equipment in which asphalt is applied to a substrate to make asphalt roofing products. The term saturator includes the saturator, wet looper, and coater.

Sealant applicator means the equipment used to apply a sealant strip to a roofing product. The sealant strip is used to seal overlapping pieces of roofing product after they have been applied.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

As stated in § 63.8684(a), you must meet each emission limitation in the following table that applies to you:

TABLE 1 TO SUBPART LLLLL—EMISSION LIMITATIONS

For . . .	You must meet the following emission limitation . . .
1. Each blowing still, loading rack, and asphalt storage tank with a capacity of 1.93 megagrams (2.13 tons) of asphalt or greater at existing, new, and reconstructed asphalt processing facilities	a. Reduce total hydrocarbon mass emissions by 95 percent; or b. Route the emissions to a thermal oxidizer achieving a combustion efficiency of 99.6 percent.
2. Each coating mixer, saturator (including wet looper and coater), sealant applicator, and adhesive applicator at new and reconstructed asphalt roofing manufacturing lines	a. Reduce total hydrocarbon mass emissions by 95 percent or b. Route the emissions to a thermal oxidizer achieving, a combustion efficiency of 99.6 percent.
3. The total emmissions from the coating mixer, saturator (including wet looper and coater), sealant applicator, and adhesive applicator at each existing asphalt roofing manufacturing line [a]	a. Limit particulate matter emissions to 0.04 kilograms per megagram (0.08 pounds per ton) of asphalt shingle or mineral-surfaced roll roofing produced; or b. Limit particulate matter emmissions to 0.4 kilgrams per megagram (0.8. pounds per ton) of saturated felt or smooth-surfaced roll roofing produced.
4. Each saturator (including wet looper and coater) at an existing or new asphalt roofing manufacturing line [a]	a. Limit exhaust gases to 20 percent opacity; and saturator (including wet looper and coater) at an existing or new asphalt roofing manufacturing line.[a] b. Limit visible emissions from the emission capture system to 20 percent of any period of consecutive valid observations totaling 60 minutes.

[a] As an option to meeting the particulate matter and opacity limits, these emission sources may comply with the total hydrocarbon (THC) percent reduction or combustion efficiency standards.

As stated in § 63.8684(b), you must meet each operating limit in the following table that applies to you:

TABLE 2 TO SUBPART LLLLL—OPERATING LIMITS

For . . .	You must . . .
1. Thermal oxidizers	Maintain the 3-hour average combustion zone temperature at or above the operating limit established during the performance test.
2. Particulate matter control device	a. Maintain the 3-hour average inlet gas temperature at or below the operating limit established during the matter perforance test; and b. Maintain the 3-hour average pressure drop across device at or below the operating limit established during the performance test.
3. Control devices other than thermal oxidizers or particulate matter control devices.	Maintain the approved monitoring parameters within the operating limits established during the performance test.

As stated in § 63.8687(a), you must conduct each performance test in the following table that applies to you:

TABLE 3 TO SUBPART LLLLL—REQUIREMENTS FOR PERFORMANCE TESTS

For . . .	You must . . .	Using . . .	According to the following requirements . . .
1. All particulate matter, total hydrocarbon, carbon monoxide, and carbon dioxide emission tests.	a. Select sampling port's location and the number of traverse points.	i. Method 1 or 1A in appendix A to part 60 of this chapter.	A. For demonstrating compliance with the total hydrocarbon percent reduction standard, the sampling sites must be located at the inlet and outlet of the control device and prior to any releases to the atmosphere. B. For demonstrating compliance with the particulate matter mass emission rate or combustion efficiency standards, the sampling sites must be located at the outlet of the control device and prior to any releases to the atmosphere.
2. All particulate matter and total hydrocarbon tests.	Determine velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, OR 2G, as appropriate, in appendix A to part 60 of this chapter.	
3. All particulate matter and total hydrocarbon tests.	Determine the gas molecular weight used for flow rate determination.	Method 3, 3A, 3B, as appropriate, in appendix A to part 60 of this chapter.	
4. All particulate matter, total hydrocarbon, carbon monoxide, and carbon dioxide emission tests.	Measure moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.	
5. All particulate matter, total hydrocarbon, carbon monoxide, and carbon dioxide emission tests.	Measure the asphalt processing rate or the asphalt roofing manufacturing rate and the asphalt content of the product manufactured, as appropriate		
6. Each control device used to comply with the particulate matter mass emission rate standard.	a. Measure the concentration of particulate matter.	i. Method 5A in appendix A to part 60 of this chapter.	A. If the final product is shingle or mineral-surfaced roll roofing, tests must be conducted while a nominal 106.6 kg (235 lb) shingle is being produced; or B. If the final product is saturated felt or smooth-surfaced roll roofing, the tests must be conducted while a nominal 6.8 kg (15 lb) felt is being produced; or C. If the final product is fiberglass shingle, the test must be conducted while a nominal 100 kg (220 lb) shingle is being produced.
7. Each saturated outlet at each existing asphalt roofing manufacturing line.	a. Conduct opacity observations of the saturator outlet.	Method 9 in appendix A to part 60 of this chapter.	For at least 3 hours and obtain 30, 6-minute averages.
	b. Conduct visible emission observations of the saturator emissions capture system.	Method 22 in appendix A to part 60 of this chapter.	Modify Method 22 such that readings are recorded every 15 seconds for a period of consecutive observations totaling 60 minutes.

TABLE 3 TO SUBPART LLLLL—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
8. Each thermal oxidizer used to comply with the combustion efficiency standard.	a. Measure the concentration of carbon dioxide.	Method 3A in appendix A to part 60 of this chapter.	
	b. Measure the concentration of carbon monoxide.	Method 10 in appendix A to part 60 of this chapter.	
	c. Measure the concentration of total hydrocarbons.	Method 25A in appendix A to part 60 of this chapter.	
9. Each control device used to comply with the THC reduction efficiency standard.	Measure the concentration of total hydrocarbons.	Method 25A in appendix A to part 60 of this chapter.	
10. Each thermal oxidizer	Establish a site-specific combustion zone temperature limit.	Data from the CPMS and the applicable performance test method(s).	You must collect combustion zone temperature data every 15 minutes during the entire period of the initial 3-hour performance test, and determine the average combustion zone temperature over the 3-hour performance test by computing the average of all of the 15-minute readings.
11. Each particulate matter control device.	a. Establish a site-specific inlet gas temperature limit; and. b. Establish a site-specific limit for the pressure drop across the device.	Data from the CPMS and the applicable performance test method(s).	You must collect the inlet gas temperature and pressure drop data every 15 minutes during the entire period of the initial 3-hour performance test, and determine the average inlet gas temperature and pressure drop over the 3-hour performance test by computing the average of all of the 15-minute readings.
12. Each control device other than a thermal oxidizer or particulate matter control device used to comply with the THC percent reduction or PM emission limits.	Establish site-specific monitoring parameters.	Process data and data from the CPMS and the applicable performance test method(s).	You must collect monitoring parameter data every 15 minutes during the entire period of the initial 3-hour performance test, and determine the average monitoring parameter values over the 3-hour performance test by computing the average of all of the 15-minute readings.

As stated in § 63.8689(a), you must demonstrate initial compliance with each emission limitation in the following table that applies to you:

TABLE 4 TO SUBPART LLLLL—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS

For . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
1. Each asphalt storage tank with a capacity of 1.93 megagrams (2.13 tons) of asphalt or greater, blowing still, and loading rack at existing, new, and reconstructed asphalt processing facilities; and.	a. Reduce total hydrocarbon mass emissions by 95 percent.	i. The total hydrocarbon emissions, determined using the equations in § 63.8687 and the test methods and procedures in Table 3 of this subpart, over the period of the performance test are reduced by at least 95 percent by weight; and
2. Each coating mixer, saturator (including wet looper and coater), sealant applicator, and adhesive applicator at new and reconstructed asphalt roofing manufacturing lines.	a. Reduce total hydrocarbon mass emissions by 95 percent.	ii. You have a record of the average control device operating parameters over the performance test during which emissions were reduced by at least 95 percent.
3. Each asphalt storage tank with a capacity of 1.93 megagrams (2.13 tons) of asphalt or greater, blowing still, and loading rack at existing, new, and reconstructed asphalt processing facilities; and.	a. Route the emissions to a thermal oxidizer achieving a combustion efficiency of 99.6 percent.	See 1.a.i. and ii. of this table.

TABLE 4 TO SUBPART LLLLL—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS—Continued

For . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
4. Each coating mixer, saturator (including wet looper and coater), sealant applicator, and adhesive applicator at new and reconstructed asphalt roofing manufacturing lines.	a. Route the emissions to a thermal oxidizer achieving a combustion efficiency of 99.6 percent.	i. The combustion efficiency of the thermal oxidizer, determined using the equations in § 63.8687 and the test methods and procedures in Table 3 of this subpart, over the period of the performance test is at least 99.6 percent; and ii. You have a record of the average combustion zone temperature and carbon monoxide, carbon dioxide, and total hydrocarbon outlet concentrations over the performance test during which the combustion efficiency was at least 99.6 percent. See 3.a.i. and ii. of this table.
5. The total emissions from the coating mixer, saturator (including wet looper and coater), sealant applicator, and adhesive applicator at each existing asphalt roofing manufacturing line..	a. Limit particulate matter emissions to 0.04 kilograms per megagram (0.08 pounds per ton) of asphalt shingle or mineral-surfaced roll roofing produced.	i. The particulate matter emissions, determined using the equations in § 63.8687 and the test methods and procedures in Table 3 of this subpart, over the period of the performance test are no greater than the applicable emission limitation; and ii. You have a record of the average control device or process parameters over the performance test during which the particulate matter emissions were no greater than the applicable emission limitation.
	b. Limit particulate matter emissions to 0.4 kilograms per megagram (0.8 pounds per ton) of saturated felt or smooth-surfaced roll roofing produced11.	See 5.a.i. and ii. of this table.
6. Each saturator (including wet looper and coater) at an existing or new asphalt roofing manufacturing line.	Limit opacity emissions to 20 percent	The opacity, measured using Method 9, for each of the first 30 6-minute averages during the initial compliance period described in § 63.8686(b) does not exceed 20 percent.
7. Each saturator (including wet looper and center) at an existing or new asphalt roofing manufacturing line.	Limit visible emissions from the emission capture system to 20 percent of any period of consecutive valid observations totaling 60 minutes.	The visible emissions, measured using Method 22, for any period of consecutive valid observations totaling 60 minutes during the initial compliance period described in § 63.8686(b) do not exceed 20 percent.

As stated in § 63.8691(a), you must demonstrate continuous compliance with each operating limit in the following table that applies to you:

TABLE 5 TO SUBPART LLLLL—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS

For * * *	For the following operating limit * * *	You must demonstrate continuous compliance by * * *
1. Each thermal oxidizer	a. Maintain the 3-hour average combustion zone temperature at or above the operating limit established during the performance test.	i. Passing the emissions through the control device; and ii. Collecting the combustion zone temperature data according to § 63.8688(b); and iii. Reducing combustion zone temperature data to 3-hour averages according to calculations in Table 3 of this subpart; and iv. Maintaining the 3-hour average combustion zone temperature within the level established during the performance test.
2. Particulate matter control devices	a. Maintain the 3-hour average inlet gas temperature and pressure drop across device at or below the operating limits established during the performance test.	i. Passing the emissions through the control device; and ii. collecting the inlet gas temperature and pressure drop data according to § 63.8688(b) and (c); and iii. reducing inlet gas temperature and pressure drop data to 3-hour averages according to calculations in Table 3 of this subpart; and iv. Maintaining the 3-hour average inlet gas temperature and pressure drop within the level established during the performance test.

TABLE 5 TO SUBPART LLLLL—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

For * * *	For the following operating limit * * *	You must demonstrate continuous compliance by * * *
3. Control device other than a thermal oxidizer or particulate matter control device.	a. Maintain the monitoring parameters within the operating limits established during the performance test.	i. Passing the emissions through the control device; and ii. Collecting the monitoring parameter data according to § 63,8688(dd); and iii. Reducing the monitoring parameter data to 3-hour averages according to calculations in Table 3 of this subpart; and iv. Maintaining the monitoring parameters within the level established during the performance test.

As stated in § 63.8693(a), you must submit each report that applies to you according to the following table:

TABLE 6 TO SUBPART LLLLL—REQUIREMENTS FOR REPORTS

You must submit a(n)	The report must contain . . .	You must submit the report . . .
1. A compliance report	a. A statement that there were no deviations from the emission limitations during the reporting period, if there are no deviations from any emission limitations (emission limit, operating limit, opacity limit, and visible emission limit) that apply to you.	Semiannually according to the requirements in § 63.8693(b).
	b. If there were no periods during which the CPMS was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CPMS was out-of-control during the reporting period.	Semiannually according to the requirements in § 63.8693(b).
	c. If you have a deviation from any emission limitation (emission limit, operating limit, opacity limit, and visible emission limit), the report must contain the information in § 63.8693(c). If there were periods during which the CPMS was out-of-control, as specified in § 63.8(c)(7), the report must contain the information in § 63.8693(d).	Semiannually according to the requirements in § 63.8693(b).
	d. If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).	Semiannually according to the requirements in § 63.8693(b).
2. An immediate startup, shutdown, and malfunction report if you have a startup, shutdown, or malfunction during the reporting period and actions taken were not consistent with your startup, shutdown, and malfunction plan.	The information in § 63.10(d)(5)(ii)	By fax or telephone within 2 working days after starting actions inconsistent with the plan followed by a letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority.

As stated in § 63.8696(a), you must comply with the General Provisions (GP) in §§ 63.1 through 63.13 that apply to you according to the following table:

TABLE 7 TO SUBPART LLLLL—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART LLLLL

Citation	Subject	Brief description	Applies to subpart LLLLL
§ 63.1	Applicability	Initial Applicability Determination; Applicability After Standard Established; Permit Requirements; Extensions, Notifications.	Yes.
§ 63.2	Definitions	Definitions for part 63 standards	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes.
§ 63.4	Prohibited Activities	Prohibited Activities; Compliance date; Circumvention, Severability.	Yes.
§ 63.5	Construction/Reconstruction	Applicability; Applications; Approvals	Yes.
§ 63.6(a)	Applicability	GP apply unless compliance extension GP apply to area sources that become major.	Yes.
§ 63.6(b) (1)–(4)	Compliance Dates for New and Reconstructed sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes.

TABLE 7 TO SUBPART LLLLL—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART LLLLL—Continued

Citation	Subject	Brief description	Applies to subpart LLLLL
§ 63.6(b)(5)	Notification	You must notify if commenced construction or reconstruction after proposal.	Yes.
§ 63.6(b)(6)	[Reserved]		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	Yes.
§ 63.6(c) (1)–(2)	Compliance Dates for Existing Sources.	1. Comply according to date in subpart, which must be no later than 3 years after effective date.	Yes.
		2. For section 112(f) standards, comply within 90 days of effective date unless compliance extension has been granted.	Yes.
§ 63.6(c) (3)–(4)	[Reserved]		
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes.
§ 63.6(d)	[Reserved]		
§ 63.6(e) (1)–(2)	Operation & Maintenance	1. Operate to minimize emissions at all times	Yes.
		2. Correct malfunctions as soon as practicable	Yes.
		3. Operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction (SSM) Plan (SSMP).	1. Requirement for SSM and startup, shutdown, malfunction plan.	Yes.
		2. Content of SSMP	Yes.
§ 63.6(f)(1)	Compliance Except During SSM.	You must comply with emission standards at all times except during SSM.	Yes.
§ 63.6(f) (2)–(3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g) (1)–(3)	Alternative Nonopacity Standard.	Procedures for getting an alternative nonopacity standard.	Yes.
§ 63.6(h)	Opacity/Visible Emission (VE) Standards.	Requirements for opacity and VE limits	Yes.
§ 63.6(h)(1)	Compliance with Opacity/VE Standards.	You must comply with opacity/VE emission limitations at all times except during SSM.	Yes.
§ 63.6(h)(2)(i)	Determining Compliance with Opacity/VE Standards.	If standard does not state test method, use Method 9 for opacity and Method 22 for VE.	No. The test methods for opacity and visible emissions are specified in § 63.8686.
§ 63.6(h)(2)(ii)	[Reserved]		
§ 63.6(h)(2)(iii)	Using Previous Tests to Demonstrate Compliance with Opacity/VE Standards.	Criteria for when previous opacity/VE testing can be used to show compliance with this rule.	Yes.
§ 63.6(h)(3)	[Reserved]		
§ 63.6(h)(4)	Notification of Opacity/VE Observation Date.	You must notify Administrator of anticipated date of observation.	Yes.
§ 63.6(h)(5)(i), (iii)–(v)	Conducting Opacity/VE Observations.	Dates and schedule for conducting opacity/VE observations.	Yes.
§ 63.6(h)(5)(ii)	Opacity Test Duration and Averaging Times.	You must have at least 3 hours of observation with thirty 6-minute averages.	Yes.
§ 63.6(h)(6)	Records of Conditions During Opacity/VE Observations.	You must keep records available and allow Administrator to inspect.	Yes.
§ 63.6(h)(7)(i)	Report Continuous Opacity Monitoring System (COMS) Data from Performance Test.	You must submit COMS data with other performance test data.	No. Subpart LLLLL does not require COMS.
§ 63.6(h)(7)(ii)	Using COMS instead of Method 9.	Can submit COMS data instead of Method 9 results even if rule requires Method 9, but must notify Administrator before performance test.	No. Subpart LLLLL does not require COMS.
§ 63.6(h)(7)(iii)	Averaging time for COMS during performance test.	To determine compliance, must reduce COMS data to 6-minute averages.	No. Subpart LLLLL does not require COMS.
§ 63.6(h)(7)(iv)	COMS requirements	Owner/operator must demonstrate that COMS performance evaluations are conducted according to § 63.8(e), COMS are properly maintained and operated according to § 63.8(c) and data quality as § 63.8(d)..	No. Subpart LLLLL does not require COMS.

TABLE 7 TO SUBPART LLLLL—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART LLLLL—Continued

Citation	Subject	Brief description	Applies to subpart LLLLL
§ 63.6(h)(7)(v)	Determining Compliance with Opacity/VE Standards.	COMS is probative but not conclusive evidence of compliance with opacity standard, even if Method 9 observation shows otherwise. Requirements for COMS to be probative evidence, proper maintenance, meeting PS 1, and data have not been altered.	No. Subpart LLLLL does not require COMS.
§ 63.6(h)(8)	Determining Compliance with Opacity/VE Standards.	Administrator will use all COMS, Method 9, and Method 22 results, as well as information about operation and maintenance to determine compliance.	Yes.
§ 63.6(h)(9)	Adjusted Opacity Standard	Procedures for Administrator to adjust an opacity standard.	Yes.
§ 63.6(i)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption.	President may exempt source category from requirement to comply with rule.	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates	Dates for conducting initial performance testing and other compliance demonstrations. You must conduct 180 days after first subject to rule.	No. Section 63.8686 specifies the performance test dates.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test.	You must notify Administrator 60 days before the test.	Yes.
§ 63.7(b)(2)	Notification of Rescheduling	If rescheduling a performance test is necessary, must notify Administrator 5 days before scheduled date of rescheduled date.	Yes.
§ 63.7(c)	Quality Assurance/Test Plan.	1. Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with.	Yes.
		2. Test plan approval procedures	Yes.
		3. Performance audit requirements	Yes.
		4. Internal and External QA procedures for testing	Yes.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	1. Performance tests must be conducted under representative conditions. Cannot conduct performance tests during SSM.	Yes.
		2. Not a violation to exceed standard during SSM	Yes.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	You must conduct according to rule and EPA test methods unless Administrator approves alternative.	Yes.
§ 63.7(e)(3)	Test Run Duration	1. You must have three test runs of at least 1 hour each	Yes.
		2. Compliance is based on arithmetic mean of three runs.	Yes.
		3. Conditions when data from an additional test run can be used.	Yes.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes.
§ 63.7(g)	Performance Test Data Analysis.	1. Include raw data in performance test report	Yes.
		2. Submit performance test data 60 days after end of test with the Notification of Compliance Status.	Yes.
		3. Keep data for 5 years	Yes.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of 40 CFR part 60 apply.	No. Subpart LLLLL does not require the use of continuous emission monitoring systems (CEMS).
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Monitoring with Flares	Unless rule says otherwise, the requirements for flares in § 63.11 apply.	Yes.
§ 63.8(b)(1)	Monitoring	You must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	1. Specific requirements for installing monitoring systems.	Yes.
		2. Install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise.	Yes.
		3. If more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance (O&M).	Maintain monitoring system in a manner consistent with good air pollution control practices.	Yes.

TABLE 7 TO SUBPART LLLLL—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART LLLLL—Continued

Citation	Subject	Brief description	Applies to subpart LLLLL
§ 63.8(c)(1)(i)	Routine and Predictable SSM.	1. Follow the SSM plan for routine repairs	Yes.
		2. Keep parts for routine repairs readily available	Yes.
		3. Reporting requirements for SSM when action is described in SSM plan.	Yes.
§ 63.8(c)(1)(ii)	SSM not in SSP plan	Reporting requirements for SSM when action is not described in SSM plan.	Yes.
§ 63.8 (c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	1. How Administrator determines if source complying with operation and Maintenance requirements.	Yes.
		2. Review of source O&M procedures, records, manufacturer's instructions, recommendations, and inspection of monitoring system.	Yes.
§ 63.8(c)(2)–(3)	Monitoring System Installation.	1. You must install to get representative emission and parameter measurements.	Yes.
		2. You must verify operational status before or at performance test.	Yes.
§ 63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.	CMS must be operating except during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts.	No. Section 63.8690 specifies the CMS requirements.
§ 63.8(c)(4)(i)–(ii)	CMS Requirements	1. COMS must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period.	No. Subpart LLLLL does not require the use of COMS.
		2. CEMS must have a minimum of one cycle of operation for each successive 15-minute period.	No. Subpart LLLLL does not require the use of CEMS.
§ 63.8(c)(5)	COMS Minimum Procedures.	COMS minimum procedures	No. Subpart LLLLL does not require the use of COMS.
§ 63.8(c)(6)	CMS Requirements	Zero and High level calibration check requirements	No. Section 63.8690 specifies the CMS requirements.
§ 63.8(c)(7)–(8)	CMS Requirements	Out-of-control periods, including reporting	Yes.
§ 63.8(d)	CMS Quality Control	1. Requirements for CMS quality control, including calibration, etc.	No. Section 63.8690 specifies the CMS requirements.
		2. Must keep quality control plan on record for the life of the affected source.	No. Section 63.8690 specifies the CMS requirements.
		3. Keep old versions for 5 years after revisions	No. Section 63.8690 specifies the CMS requirements.
§ 63.8(e)	CMS Performance Evaluation.	Notification, performance evaluation test plan, reports	No. Section 63.8690 specifies the CMS requirements.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method.	Procedures for Administrator to approve alternative monitoring.	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	No. Subpart LLLLL does not require the use of CEMS.
§ 63.8(g) (1)–(4)	Data Reduction.	1. COMS 6-minute averages calculated over at least 36 evenly spaced data points.	No. Subpart LLLLL does not require the use of COMS
		2. CEMS 1-hour averages computed over at least 4 equally spaced data points.	No. Subpart LLLLL does not require the use of CEMS.
§ 63.8(g)	Data Reduction	Data that cannot be used in computing averages for CEMS and COMS..	No. Section 63.8690 specifies the CMS requirements.
§ 63.9(a)	Notification Requirements	Applicability and State Delegation	Yes.
§ 63.9(b) (1)–(5)	Initial Notifications	1. Submit notification 120 days after effective date	Yes.
		2. Notification of intent to construct/reconstruct; notification of commencement of construct/reconstruct; notification of startup.	Yes.
		3. Contents of each	Yes.
§ 63.9(c)	Request for Compliance Extension.	Can request if cannot comply by date or if installed Best Available Control Technology/Lowest Achievable Emission Rate.	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.

TABLE 7 TO SUBPART LLLLL—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART LLLLL—Continued

Citation	Subject	Brief description	Applies to subpart LLLLL
§ 63.9(e)	Notification of Performance Test.	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test.	Notify Administrator 30 days prior	Yes.
§ 63.9(g)	Additional Notifications When Using CMS.	1. Notification of performance evaluation	No. Section 63.8690 specifies the CMS requirements.
		2. Notification using COMS data	No. Section 63.8690 specifies the CMS requirements.
		3. Notification that the criterion for use of alternative to relative accuracy testing was exceeded.	No. Section 63.8690 specifies the CMS requirements.
§ 63.9(h) (1)–(6)	Notification of Compliance Status.	1. Contents	Yes.
		2. Due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after.	Yes.
		3. When to submit to Federal vs. State authority	Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Procedures for Administrator to approve change in dates when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information.	You must submit within 15 days after the change	Yes.
§ 63.10(a)	Recordkeeping/ Reporting	1. Applies to all, unless compliance extension	Yes.
		2. When to submit to Federal vs. State authority	Yes.
		3. Procedures for owners of more than one source	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	1. General requirements	Yes.
		2. Keep all records readily available	Yes.
		3. Keep for 5 years.	Yes.
§ 63.10(b)(2)(i)-(v)	Records related to Startup, Shutdown, and Malfunction.	1. Occurrence of each malfunction of operation (process equipment).	Yes.
		2. Occurrence of each malfunction of air pollution equipment.	Yes.
		3. Maintenance on air pollution control equipment	Yes.
		4. Actions during startup, shutdown, and malfunction	Yes.
§ 63.10(b)(2)(vi) and (x)-(xi).	CMS Records	1. Malfunctions, inoperative, out-of-control	Yes.
		2. Calibration checks	Yes.
		3. Adjustments, maintenance	Yes.
§ 63.10(b)(2)(vii)-(ix)	Records	1. Measurements to demonstrate compliance with emission limitations.	Yes.
		2. Performance test, performance evaluation, and visible emission observation results.	Yes.
		3. Measurements to determine conditions of performance tests and performance evaluations.	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test	No. Subpart LLLLL does not require the use of CEMS.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting Initial Notification and Notification of Compliance Status.	Yes.
§ 63.10(b)(3)	Records	Applicability Determinations	Yes.
§ 63.10(c) (1)-(6), (9)-(15).	Records	Additional Records for CMS	No. Section 63.8694 specifies the CMS recordkeeping requirements.
§ 63.10(c) (7)-(8)	Records	Records of excess emissions and parameter monitoring exceedances for CMS.	No. Section 63.8694 specifies the CMS recordkeeping requirements
§ 63.10(d)(1)	General Reporting Requirements.	Requirement to report	Yes.
§ 63.10(d)(2)	Report of Performance Test Results.	When to submit to Federal or State authority	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.	What to report and when	Yes.
§ 63.10(d)(4)	Progress Reports	You must submit progress reports on schedule if under compliance extension..	Yes.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Contents and submission	Yes.
§ 63.10(e)(1)(2)	Additional CMS Reports	1. Must report results for each CEM on a unit	No. Subpart LLLLL does not require the use of CEMS or COMS.

TABLE 7 TO SUBPART LLLLL—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART LLLLL—Continued

Citation	Subject	Brief description	Applies to subpart LLLLL
		2. Written copy of performance evaluation	No. Subpart LLLLL does not require the use of CEMS or COMS.
		3. 3 copies of COMS performance evaluation	No. Subpart LLLLL does not require the use of CEMS or COMS.
§ 63.10(e)(3)	Reports	Excess Emission Reports	No. Section 63.8693 specifies the reporting requirements.
§ 63.10(e)(3)(1)–(iii)	Reports	Schedule for reporting excess emissions and parameter monitor exceedances (not defined as deviations).	No. Section 63.8693 specifies the reporting requirements.
§ 63.10(e)(3)(iv)–(v)	Excess Emissions Reports	1. Requirement to revert to quarterly submission if there is an excess emissions and parameter monitor exceedances (now defined as deviations).	No. Section 63.8693 specifies the reporting requirements.
		2. Provision to request semiannual reporting after compliance for 1 year.	No. Section 63.8693 specifies the reporting requirements.
		3. Submit report by 30th day following end of quarter or calendar half.	No. Section 63.8693 specifies the reporting requirements.
		4. If there has not been an exceedance or excess emission (now defined as deviations), report content is a statement that there have been no deviations.	No. Section 63.8693 specifies the reporting requirements.
§ 63.10(e)(3)(iv)–(v)	Excess Emissions Reports	You must submit report containing all of the information in No. Section all of the information in §§ 63.10(c)(5)–(13) and 63.8(c)(7)–(8).	No. Section 63.8693 specifies the reporting requirements.
§ 63.10(e)(3)(vi)–(viii)	Excess Emissions Report and Summary Report.	1. Requirements for reporting excess emissions for CMS (not called deviations).	No. Section 63.8693 specifies the reporting requirements.
		2. Requires all of the information in §§ 63.10(c)(5)–(13) and 63.8(c)(7)–(8).	
§ 63.10(e)(4)	Reporting COMS data	You must submit COMS data with performance test data..	No. Subpart LLLLL does not require that use of COMS.
§ 63.10(f)	Waiver for Recordkeeping/ Reporting.	Procedures for Administrator to waive	Yes.
§ 63.11	Flares	Requirements for flares	Yes.
§ 63.12	Delegation	State authority to enforce standards	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are sent.	Yes.
§ 63.14	Incorporation by Reference	Test methods incorporated by reference	Yes.
§ 63.15	Availability of Information	Public and confidential information	Yes.

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Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 723 and 845
Civil Penalty Adjustments; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 723 and 845

RIN 1029–AC00

Civil Penalty Adjustments

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: This rule adjusts the penalty amount of certain civil monetary penalties authorized by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990 which requires that civil monetary penalties be adjusted for inflation at least once every four years.

EFFECTIVE DATE: November 28, 2001.

FOR FURTHER INFORMATION CONTACT: Andy DeVito, Office of Surface Mining Reclamation and Enforcement, Room 117, South Interior Building, 1951 Constitution Avenue NW, Washington, DC 20240; Telephone (202) 208–2701. E-mail: *adevito@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
- A. The Federal Civil Penalties Inflation Adjustment Act
- B. Method of Calculation
- C. Example of a Calculation
- D. Civil Monetary Penalties Affected by this Adjustment
- E. Effect of the Rule in Federal Program States and on Indian Lands
- F. Effect of the Rule on Approved State Programs.

II. Procedural Matters and Required Determinations

I. Background

A. The Federal Civil Penalties Inflation Adjustment Act

In an effort to maintain the deterrent effect of civil monetary penalties (CMPs) and promote compliance with the law, the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act) (28 U.S.C. 2461 note) was amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) to require Federal agencies to regularly adjust CMPs for inflation. The Inflation Adjustment Act, as amended, requires each agency to make an initial inflationary adjustment for all applicable CMPs, and to make subsequent adjustments at least once every four years thereafter. The Office of Surface Mining Reclamation and Enforcement (we or OSM) last adjusted the CMP's authorized by SMCRA on November 28, 1997 (62 FR 63274). To satisfy the requirement of the Inflation Adjustment Act, we are again adjusting our CMP's according to the formula set forth in the law.

Under the Inflation Adjustment Act, the inflation adjustment for a CMP is determined by increasing the CMP by the amount of the cost-of-living adjustment, which is defined as the percentage of each CMP by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of the CMP was last set or adjusted. The Inflation Adjustment Act defines the Consumer Price Index as the Consumer Price Index for all urban consumers published by the Department of Labor (CPI–U). See 28 U.S.C. 2461 note. In addition, the Inflation Adjustment Act specifies that any resulting increases in a CMP (1) must be rounded according to a stated rounding formula, and (2) should apply only to violations that occur after the date the increase takes effect.

B. Method of Calculation

Since this adjustment will be effective before December 31, 2001, we must use the CPI–U for the month of June 2000. That figure is 172.4. We last adjusted our civil monetary penalties in November 1997. Therefore, we must use the CPI–U for June 1997 which is 160.3. The factor that we have used in calculating the increase is 172.4 divided by 160.3, or 1.0754834, rounded to 1.075 (i.e., a 7.5 percent increase).

Any increase under this adjustment is then subject to the rounding formula set forth in section 5(a) of the Inflation Adjustment Act. Under the formula, any increase must be rounded to the nearest:

(1) Multiple of $10 in the case of penalties less than or equal to $100;

(2) Multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) Multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) Multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) Multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) Multiple of $25,000 in the case of penalties greater than $200,000.

C. Example of a Calculation

To explain the inflation adjustment calculation for the CMP amounts that were last adjusted in 1997, we will use the following example. Our regulations at 30 CFR 845.15(b) presently require the imposition of a civil penalty of not less that $825 for each day during which an operator fails to abate a violation within the specified abatement period contained in a notice of violation or a cessation order. Multiplying the $825 by the inflation factor of 1.075 results in a sum of $886.88. Then we round the raw inflation amount according to the rounding rules in section 5(a) of the Inflation Adjustment Act. Since we round only the increased amount, we calculate the increase amount by subtracting the current penalty amount from the raw inflation adjustment. Accordingly, the increased amount for the penalty in our example is $61.88 (i.e., $886.88 minus $825.00). Under the rounding rules, if the penalty is more than $100 but less than $1,000, we round the increase to the nearest multiple of $100 (i.e., $61.88 is rounded to $100.00). Finally, we add the rounded increase to the existing penalty which results in a new § 845.15(b) penalty amount of $925.00 (i.e., $825.00 plus $100.00) for each day during which the failure to abate continues.

D. Civil Monetary Penalties Affected by This Adjustment

Section 518 of SMCRA, 30 U.S.C. 1268, authorizes the Secretary of the Interior to assess CMPs for violations of SMCRA. OSM's regulations implementing the CMP provisions of section 518 are located in 30 CFR 723.14, 723.15, 724.14, 845.14, 845.15, and 846.14. Because of the rounding formula specified in the Inflation Adjustment Act, a substantial number of the CMP's in those sections will remain unchanged at this review. Those CMP's (the ones for which no adjustment is being made in 2001) will be subject to slightly different treatment when calculating the 2005 adjustment. Under the Inflation Adjustment Act, when we adjust those penalties in 2005, we will be required to use the CPI–U for June of the year when they were last adjusted which will be the CPI–U for June 1997. The 1997 CPI–U will be compared to the June CPI–U for 2004 to arrive at the factor which will be used to calculate the inflation increase.

E. Effect of the Rule in Federal Program States and on Indian Lands

The increase in civil monetary penalties contained in this rule will apply through cross-referencing to the following Federal program states: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal programs for these States appear

at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947, respectively. The increase in civil monetary penalties also applies through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR 750.

F. Effect of the Rule on Approved State Programs

Section 518(i) of SMCRA and 30 CFR 840.13(a) require that the civil penalty provisions of each State program contain penalties which are ''no less stringent than'' those set forth in SMCRA. Following publication of this final rule, we will evaluate the State programs approved under section 503 of SMCRA to determine any changes in those programs that will be necessary. When we determine that a particular State program provision should be amended in order to be made no less stringent than the revised Federal regulations, the particular State will be notified in accordance with the provisions of 30 CFR 732.17.

II. Procedural Matters and Required Determinations

Administrative Procedure Act

This final rule has been issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (APA) (5 U.S.C. 553) provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. This rulemaking is consistent with the statutory authority and requirements set forth in the Inflation Adjustment Act as amended by the Debt Collection Improvement Act of 1996. The Inflation Adjustment Act requires that we adjust our CMPs once every four years and specifies the manner in which the adjustment is to be made. Accordingly, the adjustments made may be seen as ministerial, technical, and non-controversial. For these same reasons, we believe there is good cause under 5 U.S.C. 553(d)(3) of the APA to have the rule become effective on a date that is less than 30 days after the date of publication in the **Federal Register**.

Executive Order 12866—Regulatory Planning and Review

This rule is not considered a significant regulatory action under the provisions of Executive Order 12866. The rule adjusts OSM's CMPs according to the formula contained in the law. OSM has no discretion in making the adjustments. Further, most coal mining operations subject to these regulations do not engage in prohibited activities and practices, and, as a result, we believe that the aggregate economic impact of these revised regulations will be minimal, affecting only those who may engage in prohibited behavior in violation of SMCRA. In calendar years 1999 and 2000 combined, we issued a total of 101 violation notices (24 cessation orders and 77 notices of violations. The total CMP amount assessed by OSM for all of these violations was $664,795.

We do not keep records of the amount of CMPs assessed by State Regulatory Authorities. In a 1980 decision on OSM's regulations governing CMPs, the U.S. District Court for the District of Columbia held that ''because section 518 of SMCRA fails to enumerate a point system for assessing civil penalties, the imposition of this requirement upon the States is inconsistent with [SMCRA].'' Consequently, we cannot require that the CMP provisions contained in a State's regulatory program mirror the point/penalty provisions of 30 CFR 723.14 and 845.14. The State regulatory programs, however, are required to have civil penalty provisions that are no less stringent than those set forth in section 518 of SMCRA. This includes the CMP provisions of section 518(h) which require the assessment of at least the minimum CMP specified there for the failure to abate a violation within the period of time permitted for abatement. During the past two years, the States issued a total of 743 failure-to-abate cessation orders. If you assume that each failure-to-abate cessation order was assessed the minimum CMP authorized, the annual assessment for all CMPs issued by all States for all failure-to-abate cessation orders would be substantially less than the dollar threshold established in Executive Order 12866 for a significant rule. Consequently, the amount of the CMPs that will eventually be assessed under the revised schedule contained in this rule by both OSM and the States is not expected to exceed the threshold contained in Executive Order 12866 for a significant rule.

Regulatory Flexibility Act

The Department of the Interior certifies that this proposed revision will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The aggregate economic impact of this rulemaking on small business entities should be minimal, affecting only those who violate the provisions of SMCRA. As indicated above, the number of civil penalties assessed over a two-year period was not significant when compared to the number of Federal inspections performed (over 2,000 in calendar year 2,000).

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

1. Does not have an annual effect on the economy of $100 million or more for the reasons stated above.

2. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions because the rule does not impose new requirements on the coal mining industry or consumers.

3. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises for the reasons stated above.

Unfunded Mandates Reform Act

For purposes of compliance with the Unfunded Mandates Reform Act of 1995, this rule does not impose any obligations that individually or cumulatively would require an aggregate expenditure of $100 million or more by State, local, and Tribal governments and the private sector in any given year.

Federal Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act

We have reviewed this rule and determined that it is categorically excluded from the requirement to prepare an environmental document under the National Environmental Policy Act of 1969. This determination was made in accordance with the Departmental Manual (516 DM 2, Appendix 1.10).

Executive Order 12988—Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior has determined that this rule (1) does not unduly burden the judicial system

and (2) meets the requirements of sections 3(a) and 3(b)(2) of the Order. Additional remarks follow concerning individual elements of the Executive Order:

1. What is the preemptive effect, if any, to be given to the regulation?

This regulation will have the same preemptive effect as other standards adopted pursuant to SMCRA. To retain primacy, States have to adopt and apply standards for their regulatory programs that are no less effective than those set forth in OSM's regulations. Any State law that is inconsistent with or that would preclude implementation of the proposed regulation would be subject to preemption under SMCRA section 505 and implementing regulations at 30 CFR 730.11. To the extent that the proposed regulation would result in preemption of State law, the provisions of SMCRA are intended to preclude inconsistent State laws and regulations. This approach is established in SMCRA, and has been judicially affirmed. See *Hodel* v. *Virginia Surface Mining and Reclamation Ass'n,* 452 U.S. 264 (1981).

2. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified?

This rule modifies the implementation of SMCRA as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this rule.

3. What is the retroactive effect, if any, to be given to the regulation?

This rule is not intended to have a retroactive effect. The increase in the amount of CMPs will apply only to violations that occur after the date the increase takes effect.

4. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under section 526(a) of SMCRA, 30 U.S.C. 1276(a). Prior to any judicial challenges to the application of the rule, however, administrative proceedings must be exhausted, unless specified otherwise. In situations involving OSM application of the rule, applicable administrative proceedings may be found in 30 CFR 723.19, 845.19 and 43 CFR part 4. In situations involving State regulatory authority application of the provisions equivalent to those contained in this rule, applicable administrative procedures are set forth in the particular State program.

5. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items?

Terms which are important to the understanding of this rule are discussed in the rule.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is not considered significant under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

Executive Order 12630—Takings

In accordance with Executive Order 12630, the rule does not have takings implications. This determination is based on the fact that the rule will not have an impact on the use or value of private property and so, does not result in significant costs to the government.

Executive Order 13132—Federalism

This rule does not have Federalism implications. It will not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

List of Subjects

30 CFR Part 723

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 845

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: November 7, 2001.

J. Steven Griles,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR parts 723 and 845 are amended as follows.

PART 723—CIVIL PENALTIES

1. The authority citation for Part 723 is revised to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, Pub. L. 100–34, Pub. L. 101–410, and Pub. L. 104–134.

2. Section 723.14 is amended by revising the table to read as follows:

§ 723.14 Determination of amount of penalty.

* * * * *

Points	Dollars
1	22
2	44
3	66
4	98
5	110
6	132
7	154
8	176
9	198
10	220
11	242
12	264
13	286
14	308
15	330
16	352
17	374
18	396
19	418
20	440
21	462
22	484
23	506
24	528
25	550
26	660
27	870
28	980
29	1,090
30	1,100
31	1,210
32	1,320
33	1,430
34	1,540
35	1,650
36	1,760
37	1,870
38	1,980
39	2,090
40	2,200
41	2,310
42	2,420
43	2,530
44	2,640
45	2,750
46	2,860
47	2,970
48	3,080
49	3,190
50	3,300
51	3,410
52	3,520
53	3,630
54	3,740
55	3,850
56	3,960
57	4,070
58	4,180
59	4,290
60	4,400
61	4,510
62	4,620
63	4,730

Points	Dollars
64	4,840
65	4,950
66	5,060
67	5,170
68	5,280
69	5,390
70	5,500

3. In § 723.15, paragraph (b) is amended by changing the dollar amount ''$825'' to ''$925.''

PART 845—CIVIL PENALTIES

4. The authority citation for Part 845 is revised to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 et seq., Pub. L. 100–34, Pub. L. 100–202, Pub. L. 100–446, Pub. L. 101–410, and Pub. L. 104–134.

5. Section 845.14 is amended by revising the table to read as follows:

§ 845.14 Determination of amount of penalty.

* * * * *

Points	Dollars
1	22
2	44
3	66
4	98
5	110
6	132
7	154
8	176
9	198
10	220
11	242
12	264
13	286
14	308
15	330
16	352
17	374
18	396
19	418
20	440
21	462
22	484
23	506
24	528
25	550
26	660
27	870
28	980
29	1,090
30	1,100
31	1,210
32	1,320
33	1,430
34	1,540
35	1,650
36	1,760
37	1,870
38	1,980
39	2,090
40	2,200
41	2,310
42	2,420
43	2,530
44	2,640
45	2,750
46	2,860
47	2,970
48	3,080
49	3,190
50	3,300
51	3,410
52	3,520
53	3,630
54	3,740
55	3,850
56	3,960
57	4,070
58	4,180
59	4,290
60	4,400
61	4,510
62	4,620
63	4,730
64	4,840
65	4,950
66	5,060
67	5,170
68	5,280
69	5,390
70	5,500

§ 845.15 [Amended]

6. In § 845.15, paragraph (b) is amended by changing the dollar amount ''$825'' to ''$925.''

[FR Doc. 01–29029 Filed 11–20–01; 8:45 am]
BILLING CODE 4310–05–P

Federal Register

Wednesday,
November 21, 2001

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Flightcrew Compartment Access and Door Designs; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2001–10770; SFAR 92–2]

RIN 2120–AH54

Flightcrew Compartment Access and Door Designs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action supersedes SFAR 92–1, which was published October 17, 2001, allowing air carriers to quickly modify the flightcrew compartment door to delay or deter unauthorized entry to the flightcrew compartment. This action temporarily authorizes variances from existing design standards for the doors and allows for approval for return to service of modified airplanes without prior approved data if the modification constitutes a major alteration. This action prohibits the possession of flightdeck compartment door keys by other than the flightcrew during flight, unless the flightdeck door has an internal flightdeck locking device installed, operative, and in use. This action also clarifies the 90 day and 180 day time frames in earlier versions of this SFAR with specific dates. This action is being taken in the wake of the September 11, 2001, terrorist attacks against four U.S. commercial airplanes.

DATES: This action is effective November 21, 2001 and shall remain in effect until April 9, 2003.

FOR FURTHER INFORMATION CONTACT: Kimberly Smith, Technical Programs Branch, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7242; e-mail address: *9-awa-avr-design@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of This Action

You can get an electronic copy of this document from the Internet by taking the following steps:

Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

On the search page, type in the last four digits to the docket number shown at the beginning of this document. Click on ''search.''

On the next page, which contains the docket summary information, click on the item you want to see.

You can also get an electronic copy using the Internet through the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the Government Printing Office's web page at *http://www.access.gpo.gov/su docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of rulemaking, ARM–1, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or notice number of this rulemaking.

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

The September 11, 2001, hijacking events have demonstrated that some persons are willing to hijack airplanes and use them as weapons against the citizens of the United States. This is a safety and security threat that was not anticipated and, therefore, not considered in the design of transport airplanes. The recent hijackings make it clear that there is a critical need to improve the security of the flightcrew compartment. These improvements should deter terrorist activities and, if they are attempted, delay or deny access to the cockpit.

Flightcrew Compartment Door Designs

Flightcrew compartment doors on transport category airplanes have been designed principally to ensure privacy, so pilots could focus their entire attention to their normal and emergency flight duties. The doors have not been designed to provide an impenetrable barrier between the cabin and the flightcrew compartment. Doors have not been required to meet any significant security threat, such as small arms fire or shrapnel, or the exercise of brute force to enter the flightcrew compartment.

Beside affording an uninterrupted work environment for the flightcrew, flightcrew compartment doors often must meet other important safety standards. Should there be a sudden decompression of the airplane, separate compartments within the airplane, like the cabin and the crew compartment, must be designed so that a the pressure differential that is created does not compromise the basic airplane structure. Certification standards require that airplane designs provide a method to compensate for decompression in a manner that avoids significant damage to the airplane. In many cases, flightcrew compartment doors provide the pressure compensation, by being vented or swinging open to equalize the pressure between the cabin and the flightcrew compartment.

In addition, design standards require that the flightcrew have a path to exit the flightcrew compartment in an emergency, if the cockpit window exists are not usable. Flightcrew compartment doors have been designed to provide this escape path. But this escape feature may also enable easier unauthorized entry into the flightcrew compartment from the cabin.

Operating regulations, in particular § 121.379(b) in the case of a major alteration, require the work to be done in accordance with technical data approved by the Administrator. Operating regulations for airlines also require that each crewmember have a key readily available to open doors between passengers and an emergency exit. Some airlines issue flightcrew compartment door keys to all their crewmembers. This allows flight attendants to enter the flightcrew compartment and assist the flightcrew in an emergency, such as incapacitation of a flight crewmember. But it also offers an opportunity for an individual to overpower or coerce a flight attendant, take away the key, and enter the flightcrew compartment.

Rapid Response Team

To evaluate what could be done to improve flightcrew compartment security, the Secretary of transportation formed a Rapid Response Team for Aircraft Security. The Team included representatives of airplane designers, airline operators, airlines pilots, and flight attendants. There was a clear consensus from this group, and agreement by the FAA, that immediate actions must be taken to strength the flightcrew compartment door. The short-team options, though, in one way or another could conflict with regulatory design requirements such as those discussed above.

The Rapid Response Team addressed the design issues and found the relative safety risks to be small in view of he

emergent security risk of unauthorized flightcrew compartment entry. The FAA agrees with this conclusion. The Rapid Response Team report also concluded, and the FAA agrees, that all existing design requirements should continue to be applied in the long term. Therefore, this SFAR allows a temporary period during which non-compliance with design requirements will be allowed when improvements to flightcrew compartment security are made. This relief is limited to 18 months, at which time the modified airplane must be brought back into full compliance with all design requirements. Airlines will submit reports within 180 days of the publication of the SFAR on how they will achieve this compliance.

This SFAR will provide airlines with maximum flexibility to incorporate door modifications rapidly. In addition to waiving specific airworthiness regulations, the FAA is waiving procedural requirements applicable to major alterations § 121.379(b)). In addition to the information obtained from the Rapid Response Team, the FAA has received technical information from airline operators and manufactures regarding what modifications are possible and how quickly they can be incorporated. The technical data reviewed by the FAA reflect good design practices, and the FAA is confident that installations can be made without unduly compromising safety.

Given the urgency of the need to take action to reinforce the flightcrew compartment doors, the FAA finds that it is in the public interest to forego the requirement that major alterations to accomplish this task have data previously approved by the Administrator. This portion of the SFAR is limited to 6 months. Major alterations performed after that date must be in accordance with approved data, and whatever the airline installs in the short term must ultimately be brought into full regulatory compliance for emergency egress and venting.

The SFAR requires reports to the FAA so the modifications can be monitored and corrective action taken it necessary. Because of the risk posed by having other than flightcrew members onboard the aircraft as allowed in § 121.583, FedEx on October 10, 2001, petitioned the FAA to take actions necessary to allow it to install additional door security measures in accordance with the provisions of SFAR 92 (66 FR 51546, October 9, 2001). The FAA has determined that the modifications requested by FedEx would apply to similarly situated cargo airplane operators and that the threat is similar to that of passenger airplanes.

The SFAR Provisions

The revised SFAR allows all air carriers under part 121 to install flightcrew compartment door improvements and to prohibit possession of flightcrew compartment keys by persons other than flight crewmembers during flight. It is very broad, to allow maximum short-term flexibility in crafting enhanced door security measures. It allows the doors to be modified and airplanes to be operate with modified doors.

The FAA has established an 18-month duration for the portions of the SFAR concerning airworthiness requirements. We expect this will give the industry sufficient time to design and install more permanent changes to door security and establish procedures for flightcrew compartment door access that met regulator requirements for egress and venting.

The SFAR requires operators to submit a report to the FAA by January 15, 2002 that details the specific modifications they have made to the flightcrew compartment door. This will allow the FAA to monitor what has been installed and take action if the installation creates an unacceptable safety risk. Further, to monitor progress toward the goal of full compliance, the SFAR requires a report by April 22, 2002 that describes how the operator will meet regularly compliance for egress and venting.

We also expect that airframe manufacturers and modifiers will produce service information to assist operators in developing modifications to improve intrusion resistance to the flightcew compartment. While service documents would not require separate approval under this SFAR, such modifications may also be installed in production airplanes. The modification authority granted by this SFAR also applies to manufacturers and other persons applying for airworthiness certificates to enable delivery of airplanes to the operators.

In addition, we understand that some operators may rely on suppliers to produce parts to support these modifications to the flightcrew doors. Under normal circumstances, such parts producers would be subject to the requirement to obtain parts manufacturer approvals in accordance with 14 CFR 21.303. However, to facilitate reinforcement of these doors, the SFAR includes a provision overriding the requirement for parts production approval in support of these activities.

Should any of the changes to the door constitute a major alteration, this SFAR temporarily relieves the operator of having to obtain prior approval of the data. This part of the SFAR terminates on April 22, 2002. As soon as the design data is submitted (no later than January 15, 2002), the FAA will work with the operators to identify a mutually acceptable process and time to get the data approved. In the meantime, the airworthiness certificates on airplanes that have been modified will remain valid. In making returns to service of airplanes modified under this SFAR, documents can reflect compliance with regularly requirements by citing the SFAR.

In addition to the above changes to harden the flightcrew compartment doors against intruders, the FAA also believes it is prudent to eliminate the ability of intruders to gain access by obtaining a flight attendant's key. For that reason, this SFAR temporarily changes the requirement in § 121.313(g) by stating that only flight crewmembers, and not cabin crewmembers, will have flight crew compartments key during flight. This should lessen the opportunity for gaining unauthorized access and reduced the likelihood of attacks on cabin crewmembers to obtain keys on airplanes where the flightdeck door does not have an internal locking device.

Since initial issuance of this SFAR, internal locking devices that render the key useless for flightdeck access have been installed on many air carrier airplanes. Since the keys have multiple uses in the airplane beyond the flightdeck door, prohibiting possession of the flightdeck door keys by non-flight crewmembers on these airplanes is only an inconvenience to the crew and not a deterrent to terrorist activity. Allowing non-flight crewmembers access to the keys is acceptable when the internal locking device is in use on the airplane. ''In use'' contemplates that the device is locked from the inside by the flightdeck crew. If a flightdeck crewmember must exist the flightdeck for some reason, either the remaining flightdeck crewmember, or a cabin crewmember that enters the flightdeck, will immediately lock the internal device behind the exiting flightdeck crewmember. This provision may also reduce the opportunity for coercion, since the flight attendant can safely hand over the key.

As a result, this change to the SFAR adds a phrase to the end of § 121.313(a)(ii) to allow possession of the key under certain circumstances. The limitations on keys do not apply to cargo operators because flight attendants are only required on passenger airplanes. Note that this change to

121.313(g) will expire with this SFAR. Further rulemaking will be necessary to address this subject after expiration.

This change also replaces the 90 day and 180 day reporting and termination time frames with specific dates, January 15, 2002, and April 22, 2002 respectively. Since this SFAR has been republished more than once, insertion of specific dates will eliminate confusion in calculating these dates.

Justification for Immediate Adoption

Because the circumstances described herein warrant immediate action by the FAA, 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 good cause exists under 5 U.S.C. 553(d) for making this rule effective immediately upon publication. This action is necessary to prevent a possible imminent hazard to airplanes and to protect persons and property within the United States.

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 extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this SFAR.

Paperwork Reduction Act

This emergency final SFAR contains information collection activities subject to the Paperwork Reduction Act of 1995 (44 USC § 3507(d)). In accordance with section 3507(j)(1)(B) of that statute, the FAA is requesting the Office of Management and Budget to grant an immediate emergency clearance on the paperwork package that it is submitting. As protection provided by 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. Therefore, notification will be made to the public when a clearance is received. Following is a summary of the information collection activity.

Title: Flightcrew Compartment Access and Door Designs.

Summary/Need: The SFAR requires operators to submit a report to the FAA by January 15, 2002 that details the specific modifications. This will allow the FAA to monitor what has been installed and taken action if the installation creates an unwarranted safety risk. Further, to monitor progress toward the goal of full compliance, the SFAR requires a report by April 22, 2002 that describes how the operator will come into full regulatory compliance.

Respondents: The respondents are an estimated 135 airplane operators covered under 14 CFR part 121.

Burden: The burden associated with this SFAR has not been determined prior to this publication, but will be submitted to OMB with the request for clearance.

Regulatory Analyses

This rulemaking action is taken under an emergency situation within the meaning of Section 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and DOT's policies and procedures. No regulatory analysis or evaluation accompanies the rule. At this time, the FAA is not able to assess whether this rule will have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, as amended. However, we will be conducting a regulatory analysis of the cost and benefits of this rulemaking, including any impact on small entities, at a later date.

Executive Order 13132, Federalism

The FAA has analyzed this SFAR under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the State, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act

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 SFAR does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

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 in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

For the reasons set forth above, the Federal Aviation Administration amends 14 CFR part 121 as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

SFAR 92–1 [Removed]

2. Remove Special Federal Aviation Regulation No. 92–1 [SFAR].

SFAR 92–2 [Added]

3. Add Special Federal Aviation Regulation (SFAR) 92–2 to read as follows:

Special Federal Aviation Regulations No. 92–2—Flightcrew Compartment Access and Door Designs

1. *Applicability.* This Special Federal Aviation Regulation (SFAR) applies to all operators that hold an air carrier certificate or operating certificate issued under part 119 and that conduct operations under part 121, except paragraph 4 of this SFAR does not apply to cargo operations. It applies to the operators specified in this SFAR that modify airplanes to improve the flightcrew

compartment door installations to restrict the unwanted entry of persons into the flightcrew compartment. This SFAR also applies to production certificate holders and applicants for airworthiness certificates for airplanes to be operated by operators specified in this SFAR, and producers of parts to be used in such modifications.

2. *Regulatory Relief.* Contrary provisions of part 21, and §§ 121.153(a)(2) and 121.379(b), notwithstanding:

(a) An operator may operate airplanes modified to improve the flightcrew compartment door installations to restrict the unauthorized entry of persons into the flightcrew compartment without regard to the applicable airworthiness requirements and may modify those airplanes for that purpose, using technical data not previously approved by the Administrator, subject to the following conditions:

(i) Not later than January 15, 2002, submit to the Director, Aircraft Certification Service, a detailed description of the changes to the airplane that have been accomplished to enhance the intrusion resistance of the flightcrew compartment including identification of what major alterations have been done without previously approved data.

(ii) Not later than April 22, 2002, submit to the Director, Aircraft Certification Service, a schedule for accomplishment of the changes necessary to restore compliance with all applicable airworthiness requirements, as well as a listing of the regulations not currently complied with. The schedule may not extend beyond the termination date of this SFAR.

(iii) If, upon reviewing the data submitted in paragraph 2(a)(i) of this SFAR, the Administrator determines that a door modification presents an unacceptable safety risk, the FAA may issue an order requiring changes to such modifications.

(b) An applicant for an airworthiness certificate may obtain such a certificate for modified airplanes to be operated by operators described in this SFAR.

(c) A holder of a production certificate may submit for airworthiness certification or approval, modified airplanes to be operated by operators described in this SFAR.

(d) A person may produce parts for installation on airplanes in connection with modifications described in this SFAR, without FAA parts manufacturer approval (PMA).

3. *Return to Service Documentation.* Where operators have modified airplanes as authorized in this SFAR, the affected airplane must be returned to service with a note that it was done under the provisions of this SFAR.

4. *Provision for Flightdeck Door Compartment Key.* Contrary to provisions of § 121.313(g), the following provision applies: A key for each door that separates a passenger compartment from an emergency exit identified to passengers in the briefing required by § 121.571(a)(1)(ii). The key required for access to the emergency exit must be readily available for each crewmember. No key to the flight crewmembers, unless an internal flightdeck locking device such as a deadbolt or bar is installed, operative, and in use.

5. *Termination.* With respect to the ability to approve airplanes for return to service without data previously approved by the Administrator in the case of major alterations, this SFAR terminates on April 22, 2002. All other provisions of this SFAR terminate on April 9, 2003.

Issued in Washington, DC, on November 19, 2001.

Jane F. Garvey,

Administrator.

[FR Doc. 01–29280 Filed 11–19–01; 3:43 pm]

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Bombardier; comments due by 11-29-01; published 10-30-01 [FR 01-27216]

General Electric Co.; comments due by 11-26-01; published 9-27-01 [FR 01-24274]

Israel Aircraft Industries, Ltd.; comments due by 11-28-01; published 10-29-01 [FR 01-27071]

Pilatus Aircraft Ltd.; comments due by 11-30-01; published 10-24-01 [FR 01-26587]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.J. Res. 74/P.L. 107–70

Making further continuing appropriations for the fiscal year 2002, and for other purposes. (Nov. 17, 2001; 115 Stat. 596)

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