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Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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Presidential Documents

Title 3—

The President

Proclamation 7548 of April 30, 2002

Law Day, U.S.A., 2002

By the President of the United States of America

A Proclamation

One of our Nation's greatest strengths is its commitment to a just, fair legal system and the protection it affords to the rights and freedoms we cherish. On May 1, we observe Law Day to draw attention to the principles of justice and the practice of law. The theme of this year's Law Day, ''Celebrate Your Freedom: Assuring Equal Justice for All,'' acknowledges the essential task of protecting the rights of every American.

When disputes or conflicts arise, or when persons are charged with violating the law, resolution often occurs within the legal system. Consultation with an attorney is a common first step in this process. Attorneys advise clients of their rights and obligations, suggest possible courses of action, and help their clients to understand legal procedures. Attorneys are zealous advocates on behalf of their clients, helping to ensure that each one receives full and fair representation before the courts. Bar associations and other attorney groups play an important role in maintaining the integrity of our legal system by overseeing admission to the bar and setting standards of discipline for those who practice law.

Our Founding Fathers believed that a strong and independent judiciary was a cornerstone of democracy. Judges must be men and women of skill, discernment, experience, and character who meet the highest standards of training, temperament, and impartiality. They must understand and honor the powers granted to them under the Constitution, as well as the limits on those powers. In criminal matters, judges help to ensure that the innocent remain free and the guilty are appropriately punished. In civil disputes, judges' decisions help to safeguard the stability of the commercial marketplace and address the grievances of wronged parties. Judges are called upon daily to render decisions that are based upon the law and facts of each case, without regard for popular opinion or political or other extraneous pressures.

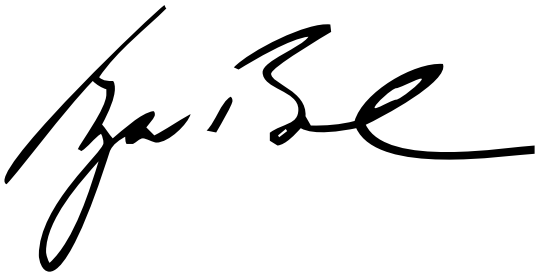
Our forefathers imagined a well-qualified judiciary put in place through a dynamic and constructive interaction between the executive and legislative branches of Government. Under our Constitution, the President selects individuals for nomination to the Federal judiciary and the Senate provides its advice and consent. In all cases, both branches of Government strive to make certain that only men and women of the highest intellect, character, integrity, judgment, and experience are appointed to serve our Nation and its citizens in these critical positions.

This Law Day, I encourage all Americans to reflect on the vital work performed by our Federal judiciary in upholding the rule of law and on the importance of a robust and independent judiciary in our system of Government.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, in accordance with Public Law 870920, as amended, do hereby proclaim May 1, 2002, as Law Day, U.S.A. I call upon all the people of the United States to observe this day with appropriate ceremonies and

activities. I also call upon Government officials to display the flag of the United States in support of this national observance.

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



[FR Doc. 02–11245
Filed 05–02–02; 9:31 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7549 of April 30, 2002

Loyalty Day, 2002

By the President of the United States of America

A Proclamation

Ours is a Nation of people who demonstrate their patriotic loyalty through service to our country. Whether born on American soil or abroad, Americans appreciate patriotism and loyalty to our country. President Woodrow Wilson said, ''Loyalty means nothing unless it has at its heart the absolute principle of self-sacrifice.'' Americans affirmed this sense of loyalty for their homeland during and following the attacks of September 11, 2001. Brave rescuers died while saving others. Passengers on a hijacked airplane gave their lives to prevent the deaths of fellow Americans. Americans pledged to fight terrorism, both here and across the globe.

Since that tragic day, citizens across our country overwhelmingly gave their time and resources to help those in need. These countless expressions of patriotism reflect an inspiring devotion to our fellow citizens and our Nation.

For our military personnel, loyalty and dedication is a way of life. The men and women of our Armed Forces embody loyalty as they work to protect our ideals. Throughout our history, America's military has heroically defended our country and its founding principles of freedom and democracy. Today, our military is again responding to the call of duty with courage and pride. These brave individuals who risk their lives fighting terror honor those who have made the ultimate sacrifice on behalf of the American people.

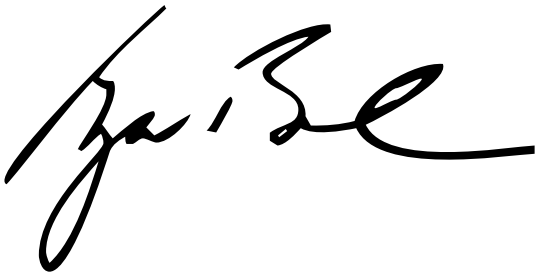
Our Constitution speaks of forming ''a more perfect Union,'' and Americans have always responded to this call with commitment and character. Brave citizens have fought to abolish slavery, to extend voting rights to all our citizens, and to uphold civil rights. The struggle to improve our Nation also takes place on an individual level, one person at a time. Men and women of all ages and from all over the country work every day to help others in need. Through families, community groups, and places of worship, Americans give of themselves to help others realize a brighter future.

Our loyalty to American democracy and freedom is born of pride, appreciation, and understanding of our country. We are loyal to America, our fellow citizens, and these ideals. Loyalty Day provides an opportunity to recognize those who demonstrate their commitment to our country through service and sacrifice. These individuals serve as a model for all Americans.

The Congress, by Public Law 85–529, as amended, has designated May 1 of each year as ''Loyalty Day.'' On this special occasion, I encourage all Americans to join me in reaffirming our allegiance to our blessed Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 1, 2002, as Loyalty Day. I call upon all Americans to take part in celebrating this national observance.

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



[FR Doc. 02–11246
Filed 5–2–02; 9:32 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7550 of May 1, 2002

Asian/Pacific American Heritage Month, 2002

By the President of the United States of America

A Proclamation

Our Nation's rich cultural diversity reflects our Constitution's core vision of freedom and justice for all. Throughout our history, Asian/Pacific Americans have made great contributions to America's heritage and prosperity. During this month, we proudly celebrate Asian/Pacific Americans, one of the fastest growing ethnic groups in the United States, for their remarkable role in our Nation's development.

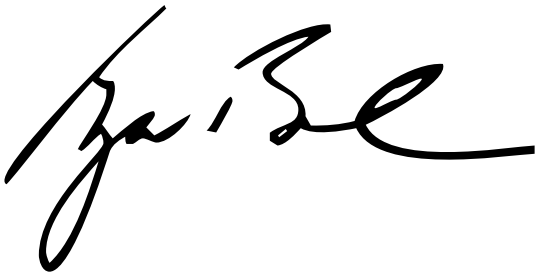
Through the years, Asian immigrants and Pacific Islanders have enriched the American way of life. Nobel Prize winner Dr. Subrahmanyan Chandrasekhar's groundbreaking theories on the evolution of stars helped lay the foundation for modern astrophysics. Actress Anna May Wong was one of the first Asian Americans to achieve great fame in American film. And the men of the 100th Infantry Battalion and the 442nd Regimental Combat Team, composed primarily of Asian/Pacific Americans, valiantly served our Nation during World War II. These units are remembered as some of the most highly decorated in U.S. military history.

During the observance of Asian/Pacific American Heritage Month, we celebrate the cultural traditions, ancestry, native languages, and unique experiences represented among the more than 30 ethnic groups from Asia and the Pacific found here in the United States. We also recognize millions of Asian/Pacific Americans whose love of family, hard work, and community has helped unite us as a people and sustain us as a Nation.

To honor the achievements of Asian/Pacific Americans, the Congress, by Public Law 102-450, as amended, has designated the month of May each year as ''Asian/Pacific American Heritage Month.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 2002 as Asian/Pacific American Heritage Month. I call upon our citizens to learn more about the history of Asian/Pacific Americans and how they have contributed so much to our national heritage and culture.

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



[FR Doc. 02–11293
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Billing code 3195–01–P

Presidential Documents

Proclamation 7551 of May 1, 2002

Older Americans Month, 2002

By the President of the United States of America

A Proclamation

Our Nation's strength and vitality reside in our citizens. Each year in May, we honor and recognize older Americans for their important sacrifices and contributions to our society. Our seniors have cared for their families and communities, enhanced our economic prosperity, defended our Nation, and preserved and protected the Founders' vision. Their commitment to our future sets an inspiring example for all. And their resilience, fortitude, and experience provide us with important perspectives and insights as we face the challenges of a new era.

The theme of this year's observance, ''America: A Community for All Ages,'' reminds us that all citizens, regardless of age, are essential to successful and safe communities. The celebration also recognizes the extended role seniors play in our families, communities, and workplaces, as they live longer, healthier, and more productive lives. Drawing on their considerable knowledge and experience, older Americans mentor at-risk children, deliver meals to homebound seniors, and care for frail or chronically ill family members. Others embark on exciting new careers or engage in challenging themselves in athletic competitions. In addition, many seniors have answered my call to service by becoming involved in the Senior Corps domestic service program, which is administered by the Corporation for National and Community Service.

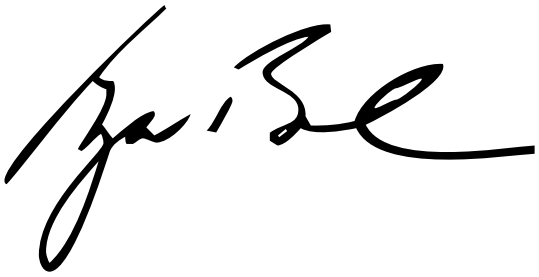
As we celebrate the lives of older Americans, we also renew our dedication to their well-being. My Administration strongly supports measures that protect the promise of retirement and healthcare security for seniors. We must modernize our Medicare and Medicaid programs so that seniors can access the best medicines and treatments. We must secure a good prescription drug benefit program for all our seniors. We must also continue to support medical research that is specifically targeted to the health problems of older Americans. By supporting flexible and innovative forms of long-term care, we can reduce the demands of caring for an elderly or disabled loved one. And we must strengthen financial security by protecting Social Security for today's retirees by encouraging private saving among all Americans, giving individuals more control over their investments.

This year's observance of Older Americans Month also marks the 30th anniversary of the Older Americans Act Nutrition Program, one of our most vital, community-based programs for seniors. Managed by the Administration on Aging and supported by the private sector and countless nonprofit organizations, the program has provided nearly 6 billion meals to senior centers and other group settings and to those who are homebound. It has also provided nutrition counseling and opportunities for health screening. For many elderly, this program has made a tremendous impact on their quality of life.

By maintaining and improving programs that assist older Americans, we help these important citizens enjoy longer, healthier, and more productive lives. During this month, I join all Americans in paying tribute to the achievements and contributions of our greatest generation and reaffirming our commitment to their well-being.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 2002 as Older Americans Month. I commend the national aging network of State, local, and tribal organizations, service and healthcare providers, caregivers, and millions of dedicated volunteers for your daily efforts on behalf of our senior citizens. I encourage all Americans to honor their elders, to seek opportunities to address their needs, and to work together to reinforce the bonds that unite families and communities. I also call upon all our citizens to publicly reaffirm our Nation's commitment to older Americans this month and throughout the year.

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



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Rules and Regulations

Federal Register
Vol. 67, No. 87
Monday, May 6, 2002

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

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 15

RIN 3150–AG80

Debt Collection Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations concerning the procedures used to collect debts that are owed to NRC. These amendments will conform NRC regulations to the legislative changes enacted in the Debt Collection Improvement Act of 1996 (DCIA) and the amended procedures presented in the Federal Claims Collection Standards (FCCS) issued by the Department of the Treasury (Treasury) and the Department of Justice (DOJ). This final action is intended to allow the NRC to improve its collection of debts due the United States.

EFFECTIVE DATE: June 5, 2002.

FOR FURTHER INFORMATION CONTACT: Leah Tremper, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD 20852–2738, Telephone 301–415–7347.

SUPPLEMENTARY INFORMATION:

I. Background
II. Comments on Proposed Rule
III. Section by Section Analysis
IV. Voluntary Consensus Standards
V. Finding of No Significant Environmental Impact
VI. Paperwork Reduction Act
VII. Regulatory Analysis
VIII. Regulatory Flexibility Certification
IX. Backfit Analysis

I. Background

On August 9, 1990 (55 FR 32375), the Nuclear Regulatory Commission (NRC) published a final rule concerning debt collection procedures. Since then, the DCIA Act (DCIA) of 1996 (Pub. L. 104–134), was enacted on April 26, 1996. This Act enhances debt collection Government-wide. The purposes of this Act are—

(1) To maximize collections of delinquent debts owed to the Government by ensuring quick action to enforce recovery of debts and the use of all appropriate collection tools,

(2) To minimize the costs of debt collection by consolidating related functions and activities and utilizing interagency teams,

(3) To reduce losses arising from debt management activities by requiring proper screening of potential borrowers, aggressive monitoring of all accounts, and sharing of information within and among Federal agencies,

(4) To ensure that the public is fully informed of the Federal Government's debt collection policies and that debtors are cognizant of their obligations to repay amounts owed to the Federal Government,

(5) To ensure that debtors have all appropriate due process rights, including the ability to verify, challenge, and compromise claims, and access to administrative appeals procedures which are both reasonable and protect the interests of the United States,

(6) To encourage agencies, when appropriate, to sell delinquent debt particularly debts with underlying collateral, and

(7) To rely on the experience and expertise of private sector professionals to provide debt collection services to Federal agencies.

This Act provides that any nontax debt or claim owed to the United States that has been delinquent for a period of 180 days shall be referred to the Treasury or Treasury-designated collection center for appropriate action to collect or terminate collection action on the debt or claim. The DCIA of 1996 has expanded the collection tools available through administrative offset.

One of the most significant provisions of the DCIA of 1996 is the requirement that most agency debt over 180 days delinquent be referred to the Treasury for collection. The DCIA of 1996 provides Treasury with new collection tools, including the authority to offset any Federal agency's payment to a vendor to satisfy that vendor's debt to a different Federal agency. This capability can improve our collection efforts as follows:

(1) It limits the amount of time spent on trying to collect from delinquent debtors by referring a debt to Treasury when it becomes 180 days delinquent;

(2) It provides a powerful collection tool, offset of Federal payments, that is otherwise unavailable to NRC; and

(3) It puts the debt in the hands of a professional staff that is dedicated to handling collections.

The FCCS (31 CFR Chapter IX and parts 900, 901, 902, 903, and 904) were revised on November 22, 2000 (65 FR 70390). The revised FCCS clarify and simplify Federal debt collection procedures and reflect changes under the DCIA of 1996 and the General Accounting Office Act of 1996. The revised FCCS reflect legislative changes to Federal debt collection procedures enacted under the DCIA of 1996 (DCIA), Public Law 104–134, 110 Stat. 1321–358, as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996. The revised FCCS provide agencies with greater latitude to adopt agency-specific regulations, tailored to the legal and policy requirements applicable to the various types of Federal debt, to maximize the effectiveness of Federal debt collection procedures. The Secretary of the Treasury has been added as a co-promulgator of the FCCS in accordance with section 31001(g)(1)(C) of the DCIA of 1996. The Comptroller General has been removed as a co-promulgator in accordance with section 115(g) of the General Accounting Office Act of 1996, Public Law 104–316, 110 Stat. 3826 (October 19, 1996), (65 FR 70390 (2000)). The Treasury and DOJ have published the revised FCCS as a joint final rule under new Chapter IX, Title 31, Code of Federal Regulations. The revised FCCS supersede the current FCCS codified at 4 CFR parts 101–105.

The revised FCCS prescribe standards for Federal agency use in the administrative collection, offset, compromise, and the suspension or termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b), unless specific Federal agency statutes or regulations apply to such activities, or as provided for by Title 11 of the United States Code when the claims involve bankruptcy. The revised

FCCS also prescribe standards for referring debts to the DOJ for litigation.

II. Comments on Proposed Rule

On October 5, 2001 (68 FR 50860), the NRC published a proposed rule to amend its debt collections procedures to conform NRC regulations to the legislative changes enacted in the DCIA of 1996 and the revised FCCS. The comment period expired on December 19, 2001. No comments were received on the proposed rule.

III. Section by Section Analysis

Section 15.1 Application

The DCIA of 1996 requires all Federal agencies to refer delinquent debt that is over 180 days old to Treasury for offset and collection. This section is amended to reflect that the NRC is not limited to collection remedies contained in the revised FCCS, and eliminate the GAO's role as co-promulgator of the FCCS.

Section 15.2 Definitions

This section is amended to expand the definition of ''claim or debt'' to conform with the DCIA of 1996. Other definitions such as ''administrative wage garnishment,'' ''cross-servicing,'' ''Federal agencies,'' ''recoupment,'' ''tax refund offset,'' ''Treasury,'' and ''withholding order'' have been added to conform to the definitions in the DCIA of 1996.

Section 15.5 Claims That Are Covered

This section is amended to include reference to Executive Order 12146, which references interagency resolution of disputes, to exclude specifically from coverage a claim under the Internal Revenue Code of 1986, and to add claims that involve bankruptcy are covered by Title 11 of the United States Code.

Section 15.7 Monetary Limitation on NRC's Authority

This section is amended to increase NRC's authority to compromise a claim or to terminate or suspend collection action on a claim covered by these procedures to $100,000 to reflect the ceiling change established by 31 U.S.C. 3711(a)(2) and to delete reference to the GAO.

Section 15.8 Information Collection Requirements: OMB approval

This section is added to state that this part contains no information collection requirements and is not subject to the requirements of the Paperwork Reduction Act.

Section 15.9 No Private Rights Created

This section is amended to change the section heading from ''Omission not a defense'' to ''No private rights created'' and delete the reference to 4 CFR part 101–105 and substitute the reference to 31 CFR Chapter IX, parts 900–904.

Section 15.11 Form of Payment

This section is amended to change the section heading from ''Conversion claims'' to ''Form of payment'' and allow claims to be paid in money or property, if contractually authorized.

Section 15.20 Aggressive Agency Collection Action

This section is added to include DCIA debt collection provisions for referral of delinquent debt to Treasury for cross-servicing, and mandate cooperation among Federal agencies as required by the DCIA of 1996.

Section 15.21 Written Demand for Payment

This section is amended to change the number of demand letters to be sent for each debt from three to two. The revised FCCS allows agencies latitude to adopt agency-specific regulations and this change in the number of demand letters reflects the latitude allowed. In addition, the noticing requirements is amended to include the name, address, and phone number of an NRC contact for each demand letter, to delete the reference to 4 CFR 102.13 and 102.5 and to substitute the reference to 31 CFR Chapter IX part 901.9 and 901.4, and to add procedures to follow when a bankruptcy petition is filed by a debtor. The DCIA of 1996 allows agencies greater latitude to adopt agency-specific regulations and the change in the number of demand letters reflects the latitude allowed.

Section 15.23 Telephone or Internet Inquiries and Investigations

This section is amended to include the use of the internet as a means of contacting a debtor.

Section 15.26 Reporting Claims

The section heading is changed from ''Use of consumer reporting agencies'' to ''Reporting claims.'' This section is amended to include the due process notification to the individual debtor with the second demand letter, and delete the requirement for sending at least one demand letter by registered or certified mail.

Section 15.29 Suspension or Revocation of License

This section is revised to:

(1) State that the suspension or revocation of a license, permit, or approval is also applicable to Federal programs or activities that are administered by the states on behalf of the Federal Government; and

(2) Include that NRC will seek legal advice from its Office of the General Counsel for those debts that involve bankruptcy before suspending or revoking a license.

Section 15.32 Contracting for Collection Services

This section is amended to include that NRC may contract for collection services in order to recover delinquent debts if the debts are not subject to the DCIA requirement to transfer debts to Treasury for debt collection services and delete the reference to 4 CFR 102.6 and substitute the reference to 31 CFR Chapter IX, part 901.5.

Section 15.33 Collection by Administrative Offset

This section is revised to include several new debt collection procedures under the DCIA of 1996, including but not limited to—

(1) Transfer or referral of delinquent debt to the Department of the Treasury or Treasury-designated debt collection center for collection, known as ''cross-servicing;''

(2) Centralized administrative offset by disbursing officials;

(3) Credit bureau reporting; and

(4) Prohibition against extending Federal financial assistance in the form of a loan or loan guarantee to delinquent debtors.

Included in this section are NRC administrative offset procedures to be followed prior to initiating centralized and non-centralized offsets.

Section 15.35 Payments

This section is amended to delete confess-judgment notes, delete how payments are to be applied when there are multiple debts, include credit cards as a payment method, and change the address where payments are to be sent.

Section 15.37 Interest, Penalties, and Administrative Charges

This section is amended to delete reference to 4 CFR 102.2 and 102.13 and substitute the reference to 31 CFR Chapter IX, part 901.2 and 901.9 and add that NRC is authorized to impose interest and related charges on debts not subject to 31 U.S.C. 3717, in accordance with common law.

Section 15.39 Bankruptcy Claims

This section is amended to include procedures the NRC would follow when

notified that a debtor has filed for bankruptcy protection.

Section 15.41 When a Claim May Be Compromised

This section is amended to delete reference to the GAO, clarify that the FCCS applies to debt referred to Treasury for collection (cross-servicing), and include procedures for referring claims that exceed $100,000 to the DOJ for acceptance of the compromise offer.

Section 15.43 Reasons for Compromising a Claim

This section is amended to delete reference to 4 CFR 103 and 103.4 and substitute the reference to 31 CFR Chapter IX, part 902 and 902.2.

Section 15.45 Consideration of Tax Consequences to the Government

This section heading is changed from ''Restrictions on the compromise of a claim'' to ''Consideration of tax consequences to the Government.'' This section is amended to allow acceptance of a percentage of a debtor's profits or stock in a debtor corporation in compromise of a claim and reword the remainder of the section.

Section 15.49 Mutual Release of the Debtor and the Government

This section is added to include the requirement that compromises be implemented by means of mutual release, when appropriate.

Section 15.51 When Collection Action May Be Suspended or Terminated

This section is amended to include procedures for suspending or terminating collection action on claims over $100,000 and to eliminate GAO's debt collection role.

Section 15.53 Reasons for Suspending Collection Action

This section is amended to prescribe factors to consider when determining that collection action should be suspended, and when collection activity should be suspended pending waiver or administrative review, and to include consideration of the impact of the Bankruptcy Code in bankruptcy cases.

Section 15.55 Reasons for Terminating Collection Action

This section is amended to combine paragraphs (a) through (c) and add that NRC may terminate collection activity on a debt that has been discharged in bankruptcy.

Section 15.57 Termination of Collection Action

This section is amended to add that termination does not preclude retention of debt records for purposes of selling the debt, pursuing collection at a subsequent date, offsetting against future income or assets, and screening future applicants for prior indebtedness; and add that collection activity may be terminated for debts that have been discharged in bankruptcy.

Section 15.60 Discharge of Indebtedness; Reporting Requirements

This section is added to require the NRC to take all appropriate collection actions and make a determination that further collection action is not warranted before making a determination to discharge a debt, provide that the NRC may not discharge a debt until the requirements of 31 U.S.C. 3711(i) (sale of debt) have been met, and provide that the NRC will report discharge of debt to the IRS on Form 1099–C.

Section 15.61 Prompt Referral

This section is amended to include revised procedures for referring debts that are over $1,000,000 to the DOJ for litigation, include requirements that the NRC refrain from debtor contact after referral to DOJ, and add provisions that DOJ shall notify the NRC of any payments received from the debtor.

Section 15.65 Referral of a Compromise Offer

This section is amended to delete reference to the GAO and include the requirement that a written offer of compromise that is substantial in amount be referred to DOJ using a Claims Collection Litigation Report (CCLR) accompanied by supporting data and particulars concerning the debt.

Section 15.67 Referral to the Department of Justice

This section is amended to add the requirement that certified copies of documents be forwarded to DOJ with litigation referrals, increase the minimum amount of claims to be referred to DOJ to $2,500, and add exception for claims being referred solely to secure a judgment for lien filing purposes.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is amending part 15 to reflect the current requirements of the revised DCIA of 1996 and the revised FCCS. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Finding of No Significant Environmental Impact

The Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. This final rule is necessary to conform the NRC regulations to the amended procedures presented in the revised FCCS. Amending the procedures that the NRC uses to collect debts which are owed to it will not have any radiological environmental impact offsite and no impact on occupational radiation exposure onsite. The rule does not affect nonradiological plant effluents and has no other environmental impact. The environmental assessment and finding of no significant impact, on which this determination is based, are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm except on Federal holidays.

VI. Paperwork Reduction Act

This final rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

The final rule conforms NRC procedures for collecting debts owed it with the amended procedures presented in the FCCS and the DCIA of 1996, and, as such, will not have a significant impact on state and local governments and geographical regions; health, safety, and the environment; nor will it represent substantial costs to licensees, the NRC, or other Federal agencies. This constitutes the regulatory analysis for this final rule.

VIII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis has not been prepared. Interest and late payment

charges imposed on a small entity will ordinarily not exceed $100 per year. This rule affects small entities billed for byproduct materials licensing fees, and materials annual fees established under 10 CFR 170.31, Category 3, and 10 CFR 171.16, Category 3 (physicians in private practice, small hospitals, other entities involved with radiography and research), and for Freedom of Information Act processing costs (small universities, small consulting firms, and public interest groups). The NRC issues approximately 1,100 billings annually to small entities. For example, the maximum annual billing under 10 CFR 171.16, Category 3, to any one small entity is $2,300 per fee category. Past experience shows that 97–98 percent of billings are paid within 90 days after the billing date. The late payment charges imposed for a small entity that pays the debt of $2,300, 90 days after the billing date, will be $84.12 assuming a Treasury annual interest rate of 6 percent, penalty at 6 percent, and administrative charges at $5 per month.

The rule allows a small entity to pay a debt on an installment basis if it is unable to pay a debt in full prior to the due date (ordinarily 30 days after the billing date). This arrangement requires the payment of interest on the unpaid debt and the administrative charge for each month the installment is in effect. The annual interest charges imposed on a small entity will be less than $140 assuming a maximum billing of $2,300 paid in 12 monthly installments at an annual interest rate of 6 percent and $60 in administrative charges.

IX. Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule; therefore, a backfit analysis is not required for this final rule because these amendments are mandated by the DCIA of 1996 (Pub. L. 104–134, 110 Stat. 1321–358 (April 26, 1996)).

List of Subjects in 10 CFR Part 15

Administrative practice and procedures, Debt collection.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 15.

PART 15—DEBT COLLECTION PROCEDURES

1. The authority citation for Part 15 is revised to read as follows:

Authority: Secs. 161, 186, 68 Stat. 948, 955, as amended (42 U.S.C. 2201, 2236); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1, Pub. L. 97–258, 96 Stat. 972 (31 U.S.C. 3713); sec. 5, Pub. L. 89–508, 80 Stat. 308, as amended (31 U.S.C. 3716); Pub. L. 97–365, 96 Stat. 1749 (31 U.S.C. 3719); Federal Claims Collection Standards, 31 CFR Chapter IX, parts 900–904; 31 U.S.C. Secs. 3701, 3716; 31 CFR Sec. 285; 26 U.S.C. Sec. 6402(d); 31 U.S.C. Sec. 3720A; 26 U.S.C. Sec. 6402(c); 42 U.S.C. Sec. 664; Pub. L. 104–134, as amended (31 U.S.C. 3713); 5 U.S.C. 5514; Executive Order 12146 (3 CFR, 1980 Comp. pp. 409–412); Executive Order 12988 (3 CFR, 1996 Comp., pp. 157–163).

2. In § 15.1 paragraphs (a)(1) and (a)(3) are revised and paragraph (c) is added to read as follows:

§ 15.1 Application.

(a) * * *

(1) Collects, compromises, suspends, offsets, and terminates collection action for claims;

* * * * *

(3) Refers unpaid claims over 180 days delinquent to Treasury for offset and collection and to the DOJ for litigation.

* * * * *

(c) The NRC is not limited to collection remedies contained in the revised Federal Claims Collection Standards (FCCS). The FCCS is not intended to impair common law remedies.

3. In § 15.2, the definition of *Claim* and *debt* is revised, and the definitions of *Administrative wage garnishment, Cross-servicing, Federal agencies, Recoupment, Tax refund offset, Treasury,* and *Withholding order,* are added in alphabetical order to read as follows:

§ 15.2 Definitions.

* * * * *

Administrative wage garnishment is the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

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

Cross-servicing means that the Treasury or another debt collection center is taking appropriate debt collection action on behalf of one or more Federal agencies or a unit or subagency thereof.

* * * * *

Federal agencies include agencies of the executive, legislative, and judicial branches of the Government, including Government corporations.

* * * * *

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

* * * * *

Tax refund offset means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed by the payee(s) of a tax refund payment.

Treasury as used in 10 CFR part 15 means the Department of the Treasury.

Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body.

4. In § 15.5, paragraphs (b)(4) and (b)(5) are revised and (b)(7) is added to read as follows:

§ 15.5 Claims that are covered.

* * * * *

(b) * * *

(4) A claim under the Internal Revenue Code of 1986.

(5) A claim between Federal agencies. Federal agencies should attempt to resolve interagency claims as referenced in Executive Order 12146 (3 CFR, 1980 Comp., pp. 409–412).

* * * * *

(7) A claim involving bankruptcy is covered by Title 11 of the United States Code.

5. In § 15.7, paragraphs (a) and (b) are revised to read as follows:

§ 15.7 Monetary limitation on NRC's authority.

* * * * *

(a) Have not been referred to another Federal Agency for further collection actions; and

(b) Do not exceed $100,000 (exclusive of interest, penalties, and administrative

charges) or such higher amount as the Attorney General shall from time to time prescribe for purposes of compromise or suspension or termination of collection activity.

6. Section 15.8 is added to read as follows:

§ 15.8 Information Collection Requirements: OMB approval.

This part contains no information collection requirements, and therefore, is not subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

7. Section 15.9 is amended by revising the section heading and paragraph (a) to read as follows:

§ 15.9 No private rights created.

(a) The failure of NRC to include in this part any provision of the FCCS, 31 CFR Chapter IX, parts 900–904, does not prevent the NRC from applying these provisions.

* * * * *

8. Section 15.11 is amended by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 15.11 Form of payment.

* * * * *

(a) The return of specific property; or

(b) The performance of specific services.

9. Section 15.20 is added under subpart B to read as follows:

§ 15.20 Aggressive agency collection activity.

(a) The NRC shall take aggressive action to collect all debts. These collection activities will be undertaken promptly and follow-up action will be taken as appropriate. These regulations do not require the Department of Justice, Department of the Treasury (Treasury), or any other Treasury-designated collection center to duplicate collection activities previously undertaken by NRC.

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

(c) The NRC shall cooperate with other agencies in their debt collection activities.

(d) The NRC will consider referring debts that are less than 180 days delinquent to Treasury or to a Treasury-designated debt collection center to accomplish efficient, cost-effective debt collection. Referrals to debt collection centers are at the discretion of, and for a time period acceptable to, Treasury.

(e) The NRC shall transfer any debt that has been delinquent for 180 days or more to Treasury so that it may take appropriate action to collect the debt or terminate collection actions. This requirement does not apply to any debt that—

(1) Is in litigation or foreclosure;

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

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

(4) Is at a debt collection center for a period of time acceptable to Treasury;

(5) Will be collected under internal offset procedures within 3 years after the date the debt first became delinquent; or

(6) Is exempt from this requirement based on a determination by Treasury that exemption for a certain class of debt is in the best interest of the United States.

(f) Agencies operating Treasury-designated debt collection centers are authorized to charge a fee for services rendered regarding referred or transferred debts. The fee may be paid out of amounts collected and may be added to the debt as an administrative cost.

10. In § 15.21, paragraphs (a)(5), (a)(6), the introductory text of paragraph (b), paragraphs (b)(3)(ii), (b)(3)(iii), and (b)(3)(vi) are revised and paragraphs (a)(7) and (e) are added to read as follows:

§ 15.21 Written demands for payment.

(a) * * *

(5) The applicable standards for assessing interest, penalties, and administrative costs under 31 CFR 901.9;

(6) The applicable policy for reporting the delinquent debt to consumer reporting agencies; and

(7) The name, address, and phone number of a contact person or office within the NRC will be included with each demand letter.

(b) The NRC shall normally send two demand letters to debtors. The initial demand letter will be followed approximately 30 days later with a second demand letter, unless circumstances indicate that alternative remedies better protect the Government's interest, that the debtor has explicitly refused to pay, or that sending a further demand letter is futile. Depending upon the circumstances, the first and second demand letters may—

* * * * *

(3) * * *

(ii) The NRC may report debts to credit bureaus, refer debts to debt collection centers and collection agencies for cross-servicing (including wage garnishment), tax refund offset, administrative offset, and litigation. Any eligible debt that is delinquent for 180 days or more will be transferred to the Treasury for collection. Credit bureau reporting for transferred debts will be handled by Treasury or a Treasury-designated center.

(iii) Possible reporting of the delinquent debt to consumer reporting agencies in accordance with the guidance and standards contained in 31 CFR 901.4.

* * * * *

(vi) The right to refer the claim to DOJ for litigation.

* * * * *

(e) When the NRC learns that a bankruptcy petition has been filed with respect to a debtor, the NRC will cease collection action immediately unless it has been determined that under 11 U.S.C. 362, the automatic stay has been lifted or is no longer in effect.

11. In § 15.23, the section heading and paragraph (a) are revised to read as follows:

§ 15.23 Telephone or internet inquiries and investigations.

(a) If a debtor has not responded to one or more demands, the NRC shall make reasonable efforts by telephone or internet to determine the debtor's intentions.

* * * * *

12. Section 15.26 is amended by revising the section heading and paragraph (a)(2), removing paragraph (a)(3), and redesignating paragraphs (a)(4) and (a)(5) as (a)(3) and (a)(4) and revising these paragraphs to read as follows:.

§ 15.26 Reporting claims.

(a) * * *

(2) The NRC has included a notification in the second written demand (see § 15.21(b)) to the individual debtor stating—

(i) That the payment of the debt is delinquent;

(ii) That within not less than 60 days after the date of the notification, the NRC intends to disclose to a consumer reporting agency that the individual debtor is responsible for the debt;

(iii) The specific information to be disclosed to the consumer reporting agency; and

(iv) That the debtor has a right to a complete explanation of the debt (if that has not already been given), to dispute information in NRC records about the

debt, and to request reconsideration of the debt by administrative appeal or review of the debt.

(3) The NRC has reconsidered its initial decision on the debt when the debtor has requested a review under paragraph (a)(2)(iv) of this section.

(4) The NRC has taken reasonable action to locate a debtor for whom the NRC does not have a current address to send the notification provided for in paragraph (a)(2) of this section.

* * * * *

13. Section 15.29 is revised to read as follows:

§ 15.29 Suspension or revocation of license.

In non-bankruptcy cases, the NRC may suspend or revoke any license, permit, or approval which the NRC has granted to the debtor for any inexcusable, prolonged, or repeated failure of the debtor to pay a delinquent debt. Before suspending or revoking any license, permit, or approval for failure to pay a debt, the NRC shall issue to the debtor (by certified mail) an order or a demand for information as to why the license, permit, or approval should not be suspended or revoked. The NRC shall allow the debtor no more than 30 days to pay the debt in full, including applicable interest, penalties, and administrative costs of collection of the delinquent debt. The NRC may revoke the license, permit, or approval at the end of this period. If a license is revoked under authority of this part, a new application, with appropriate fees, must be made to the NRC. The NRC may not consider an application unless all previous delinquent debts of the debtor to the NRC have been paid in full. The suspension or revocation of a license, permit, or approval is also applicable to Federal programs or activities that are administered by the states on behalf of the Federal Government to the extent that they affect the Federal Government's ability to collect money or funds owed by debtors. In bankruptcy cases, before advising the debtor of NRC's intention to suspend or revoke licenses, permits, or approvals, the NRC will seek legal advice from its Office of the General Counsel concerning the impact of the Bankruptcy Code which may restrict such action.

14. Section 15.32 is revised to read as follows:

§ 15.32 Contracting for collection services.

The NRC may contract for collection services in order to recover delinquent debts only if the debts are not subject to the DCIA requirement to transfer debts to Treasury for debt collection services, e.g. debts that are less than 180 days delinquent. However, the NRC retains the authority to resolve disputes, compromise claims, suspend or terminate collection action, and initiate enforced collection through litigation. When appropriate, the NRC shall contract for collection services in accordance with the guidance and standards contained in 31 CFR chapter IX, parts 900–904.

15. Section 15.33 is revised to read as follows:

§ 15.33 Collection by administrative offset.

(a) *Application.* (1) The NRC may administratively undertake collection by centralized offset on each claim which is liquidated or certain in amount in accordance with the guidance and standards in 31 CFR Chapter IX, parts 900–904 and 5 U.S.C. 5514.

(2) This section does not apply to:

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

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

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

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

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

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

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

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

(4) Unless otherwise provided by law, the NRC may not initiate administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known to the NRC, or collection of ''approval'' fees has been deferred under 10 CFR part 170. If the collection of ''approval'' fees has been deferred, the ten-year period begins to run at the end of the deferral period.

(5) In bankruptcy cases, the NRC will seek legal advice from its Office of the General Counsel concerning the impact of the Bankruptcy Code on pending or contemplated collections by offset.

(b) *Mandatory centralized offset.* (1) The NRC is required to refer past due, legally enforceable, nontax debts that are over 180 days delinquent to Treasury for collection by centralized administrative offset. A debt is legally enforceable if there has been a final NRC determination that the debt, in the amount stated, is due and there are no legal bars to collection action. Debts that are less than 180 days delinquent also may be referred to Treasury for this purpose.

(2) The names and taxpayer identifying numbers (TINs) of debtors who owe debts referred to Treasury as described in paragraph (b)(1) of this section must be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of Treasury, the Department of Defense, the United States Postal Service, other Government corporations, and disbursing officials of the United States designated by Treasury. When the name and TIN of a debtor match the name and TIN of a payee and all other requirements for offset have been met, the payment will be offset to satisfy the debt.

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

(c) *NRC administrative offset.* (1) Before referring a delinquent debt to Treasury for administrative offset, the NRC adopts the following administrative offset procedures:

(i) Offsets may be initiated only after the debtor has been sent written notice of the type and amount of the debt, the intention of the NRC to use administrative offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(ii) The debtor has been given—

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

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

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

(iii) The procedures set forth in paragraph (c)(1)(i) of this section may be omitted when—

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

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

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

(iv) When an agency previously has given a debtor any of the required notice and review opportunities with respect to a particular debt (31 CFR 901.2), the NRC need not duplicate the notice and review opportunities before administrative offset may be initiated.

(2) When referring delinquent debts to Treasury, the NRC shall certify, in a form acceptable to Treasury, that:

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

(ii) The NRC has complied with all due process requirements under 31 U.S.C. 3716(a) and the NRC's regulations.

(3) Payments that are prohibited by law from being offset are exempt from centralized administrative offset. The Treasury shall exempt payments under means-tested programs from centralized administrative offset when requested in writing by the head of the payment-certifying or authorizing agency. Also, the Treasury may exempt other classes of payments from centralized offset upon the written request of the head of the payment-certifying or authorizing agency.

(4) Benefit payments made under the Social Security Act (42 U.S.C. 301 *et seq.*), part B of the Black Lung Benefits Act (30 U.S.C. 921 *et seq.*), and any law administered by the Railroad Retirement Board (other than tier 2 benefits), may be offset only in accordance with Treasury regulations, issued in consultation with the Social Security Administration, the Railroad Retirement Board, and the Office of Management and Budget (31 CFR 285.4).

(5) In accordance with 31 U.S.C. 3716(f), the Treasury may waive the provisions of the Computer Matching and Privacy Protection Act of 1988 concerning matching agreements and post-match notification and verification (5 U.S.C. 552a(o) and (p)) for centralized administrative offset upon receipt of a certification from the NRC that the due process requirements enumerated in 31 U.S.C. 3716(a) have been met. The certification of a debt in accordance with paragraph (c)(2) of this section will satisfy this requirement. If a waiver is granted, only the Data Integrity Board of the Department of the Treasury is required to oversee any matching activities, in accordance with 31 U.S.C. 3716(g). This waiver authority does not apply to offsets conducted under paragraphs (c) and (d) of this section.

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

(2) Before requesting Treasury to conduct a non-centralized administrative offset, the NRC adopts the following procedures, which provide that such offsets may occur only after:

(i) The debtor has been provided due process as set forth in paragraph (c)(1) of this section; and

(ii) The Treasury has received written certification from NRC that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the NRC has fully complied with its regulations concerning administrative offset.

(3) Treasury shall comply with offset requests by NRC to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to the Treasury's program, or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset.

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

(e) *Requests to OPM to offset a debtor's anticipated or future benefit payment under the Civil Service Retirement and Disability Fund.* Upon providing OPM written certification that a debtor has been afforded the procedures provided in paragraph (c)(1) of this section, the NRC will request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801–831.1808. Upon receipt of such a request, OPM will identify and ''flag'' a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in paragraph (a)(4) of this section.

(f) *Review requirements.* (1) For purposes of this section, whenever the NRC is required to afford a debtor a review within the agency, the NRC shall provide the debtor with a reasonable opportunity for an oral hearing in accordance with 10 CFR 16.9, when the debtor requests reconsideration of the debt, and the NRC determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity.

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

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

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

16. In § 15.35, paragraph (b), the introductory text of paragraph (c), and paragraph (c)(1) are revised to read as follows:

§ 15.35 Payments.

* * * * *

(b) Payment by installment. If a debtor furnishes satisfactory evidence of inability to pay a claim in one lump sum, payment in regular installments may be arranged. Evidence may consist of a financial statement or a signed statement that the debtor's application for a loan to enable the debtor to pay the claim in full was rejected. Except for a claim described in 5 U.S.C. 5514 and codified in 10 CFR part 16, all installment payment arrangements must be in writing and require the payment of interest and administrative charges.

(1) Installment note forms may be used. The written installment agreement must contain a provision accelerating the debt payment in the event the debtor defaults. If the debtor's financial statement discloses the ownership of assets which are free and clear of liens or security interests, or assets in which the debtor owns an equity, the debtor may be asked to secure the payment of an installment note by executing a Security Agreement and Financing Statement transferring to the United States a security interest in the asset until the debt is discharged.

(2) If the debtor owes more than one debt, the NRC will apply the payment to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case.

(c) To whom payment is made. Payment of a debt is made by check, electronic transfer, draft, credit card, or money order and should be payable to the United States Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, P.O. Box 954514, St. Louis, MO. 63195–4514, unless payment is—

(1) Made pursuant to arrangements with DOJ;

* * * * *

17. In § 15.37, paragraphs (a) and (b) are revised and paragraph (l) is added to read as follows:

§ 15.37 Interest, penalties, and administrative costs.

(a) The NRC shall assess interest, penalties, and administrative costs on debts owed to the United States Government in accordance with the guidance provided under the FCCS, 31 CFR 901.9.

(b) Before assessing any charges on delinquent debt, the NRC shall mail or hand-deliver a written notice to the debtor explaining its requirements concerning these charges under 31 CFR 901.2 and 901.9, except where these charges are included in a contractual or repayment agreement.

* * * * *

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

18. Section 15.39 is revised to read as follows:

§ 15.39 Bankruptcy claims.

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

(a) After seeking legal advice from its Office of the General Counsel, a proof of claim usually will be filed with the bankruptcy court or the Trustee.

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

(c) Offset is stayed in most cases by the automatic stay. However, the NRC will seek legal advice from its Office of the General Counsel to determine whether its payments to the debtor and payments of other agencies available for offset may be frozen by the agency until relief from the automatic stay can be obtained from the bankruptcy court. The NRC will seek legal advice from its Office of the General Counsel to determine if recoupment is available.

19. Section 15.41 is revised to read as follows:

§ 15.41 When a claim may be compromised.

(a) The NRC may compromise a claim not in excess of the monetary limitation if it has not been referred to DOJ for litigation.

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

20. In § 15.43, paragraphs (c) and (d) are revised to read as follows:

§ 15.43 Reasons for compromising a claim.

* * * * *

(c) The cost of collecting the claim does not justify the enforced collection of the full amount. The NRC shall apply this reason for compromise in accordance with the guidance in 31 CFR 902.2.

(d) The NRC shall determine the debtor's inability to pay, the Government's ability to enforce collection, and the amounts that are acceptable in compromise in accordance with the FCCS, 31 CFR part 902.

* * * * *

21. Section 15.45 is revised to read as follows:

§ 15.45 Consideration of tax consequences to the Government.

(a) The NRC may accept a percentage of a debtor's profits or stock in a debtor corporation in compromise of a claim. In negotiating a compromise with a business concern, the NRC should consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-back rights of the debtor. For information on reporting requirements, see § 15.60.

(b) When two or more debtors are jointly and severally liable, the NRC will pursue collection activity against all debtors, as appropriate. The NRC will not attempt to allocate the burden of payment between the debtors but will proceed to liquidate the indebtedness as quickly as possible. The NRC will ensure that a compromise agreement with one debtor does not release the NRC's claim against the remaining debtors. The amount of a compromise with one debtor shall not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim.

22. Section 15.49 is added to subpart C to read as follows:

§ 15.49 Mutual releases of the debtor and the Government.

(a) In all appropriate instances, a compromise that is accepted by NRC should be implemented by means of a mutual release.

(1) The debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromised amount.

(2) The Government and its officials, past and present, are released and discharged from any and all claims and causes of action arising from the same transaction held by the debtor.

(b) If a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against the Government and its officials related to the transaction giving rise to the compromised debt.

23. Section 15.51 is revised to read as follows:

§ 15.51 When collection action may be suspended or terminated.

The NRC may suspend or terminate collection action on a claim not in excess of the monetary limitation of $100,000 or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any of the debt has not been referred to the DOJ for litigation. If, after deducting the amount of any partial payments or collections, the principal amount of a debt exceeds $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the DOJ. If the NRC believes that suspension or termination of any debt in excess of $100,000 may be appropriate, the NRC shall refer the debt to the Civil Division or other appropriate litigating division in the DOJ, using the CCLR. The referral should specify the reasons for the NRC's recommendation. If, prior to referral to the DOJ, the NRC determines that a debt is plainly erroneous or clearly without legal merit, the NRC may terminate collection activity, regardless of the amount involved, without obtaining DOJ concurrence.

24. Section 15.53 is revised to read as follows:

§ 15.53 Reasons for suspending collection action.

The NRC may suspend collection activity when:

(a) The NRC cannot locate the debtor;

(b) The debtor's financial condition is not expected to improve; or

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

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

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

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

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

(e)(1) The NRC shall suspend collection activity during the time required for consideration of the debtor's request for waiver or administrative review of the debt, if the statute under which the request is sought prohibits the NRC from collecting the debt during that time.

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

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

25. Section 15.55 is revised to read as follows:

§ 15.55 Reasons for terminating collection action.

The NRC may terminate collection activity when:

(a) The NRC is unable to collect any substantial amount through its own efforts or through the efforts of others;

(b) The NRC is unable to locate the debtor;

(c) Costs of collection are anticipated to exceed the amount recoverable,

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

(e) The debt cannot be substantiated; or

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

26. Section 15.57 is revised to read as follows:

§ 15.57 Termination of collection action.

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

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

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

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

(4) Screening future applicants for prior indebtedness.

(b) Generally, the NRC will terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. However, the NRC may continue collection activity, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization.

27. Section 15.59 is revised to read as follows:

§ 15.59 Exception to termination.

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

28. Section 15.60 is added to subpart D to read as follows:

§ 15.60 Discharge of indebtedness; reporting requirements.

(a) Before discharging a delinquent debt (also referred to as a close out of the debt), the NRC shall take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g), including, as applicable, administrative offset; tax refund offset; Federal salary offset; referral to Treasury, Treasury-designated debt collection centers, or private collection contractors; credit bureau reporting; wage garnishment; litigation; and foreclosure. Discharge of indebtedness is distinct from termination or suspension of collection activity under 10 CFR 15.55 and 15.57 and is governed by the Internal Revenue Code. When collection action on a debt is suspended or terminated, the debt remains delinquent, and further collection action may be pursued at a later date. When the NRC discharges a debt in full or in part, further collection action is prohibited. Therefore, the NRC will make the determination that collection action is no longer warranted before discharging a debt. Before discharging a debt, the NRC must terminate debt collection action.

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

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

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

29. Section 15.61 is revised to read as follows:

§ 15.61 Prompt referral.

(a) The NRC shall promptly refer debts that are subject to aggressive collection activity (as described in subpart B of this part) and that cannot be compromised, or debts on which collection activity cannot be suspended or terminated, to DOJ for litigation. Debts for which the principal amount exceeds $1,000,000, or such other amount as the Attorney General may direct, exclusive of interest and penalties, must be referred to the Civil Division or other division responsible for litigating such debts at DOJ, Washington, DC. Debts for which the principal amount is $1,000,000 or less, or such other amount as the Attorney General may direct, exclusive of interest or penalties, must be referred to the DOJ's Nationwide Central Intake Facility, as required by the CCLR instructions. Debts will be referred as early as possible, consistent with the NRC's aggressive collection activity and well within the one year of the NRC's final determination of the fact and the amount of the debt.

(b) DOJ has exclusive jurisdiction over the debts referred to in paragraph (a) of this section. The NRC shall terminate the use of any administrative collection activities to collect a debt when the debt is referred to DOJ. The NRC shall advise the DOJ of the collection activities it used and the results. The NRC shall refrain from having any contact with the debtor and shall direct all inquiries to DOJ. The NRC shall immediately notify DOJ of any payments credited to the debtor's account after the account has been referred to DOJ. DOJ shall notify NRC in a timely manner of any payments it receives from the debtor.

30. Section 15.65 is revised to read as follows:

§ 15.65 Referral of a compromise offer.

The NRC may refer a debtor's firm written offer of compromise, which is substantial in amount, to the Civil Division or other appropriate litigating division in DOJ using a CCLR accompanied by supporting data and particulars concerning the debt.

31. Section 15.67 is revised to read as follows:

§ 15.67 Referral to the Department of Justice.

(a) Unless excepted by DOJ, the NRC shall complete the CCLR accompanied by a Certificate of Indebtedness, to refer all administratively uncollectible claims to the DOJ for litigation.

(b) The NRC shall indicate the actions it wishes DOJ to take regarding the referred claim on the CCLR.

(c) Before referring a debt to DOJ for litigation, the NRC shall notify each person determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification must comply with Executive Order 12988 (3 CFR, 1996 Comp., pp 157–163) and may be given as part of a demand letter or as a separate document.

(d) The NRC shall preserve all files and records that DOJ may need to prove the claim in court.

(e) The NRC may ordinarily not refer for litigation claims of less than $2,500, exclusive of interest, penalties, and administrative charges, or such other amount as the Attorney General shall from time to time prescribe.

(f) The NRC may not refer claims of less than the minimum amount unless:

(1) Litigation to collect a smaller claim is important to ensure compliance with NRC's policies and programs;

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

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

Dated at Rockville, Maryland, this 24th day of April 2002.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

[FR Doc. 02–11022 Filed 5–3–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 300

[Docket No. OST–2002–12200]

RIN 2105–AD10

Reporting Prohibited Communications

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department is amending a provision regarding aviation economic rules in order to eliminate an obsolete provision.

EFFECTIVE DATE: Rule shall become effective on May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Colleen Hanley, Attorney-Advisor, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2509, *colleen.hanley@ost.dot.gov.* Office hours are from 8 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: One of our aviation economic regulations requires minor changes to eliminate an obsolete provision in light of the Department's

transition to an electronic docket system. Specifically, this document amends a rule of conduct in aviation economic adjudicatory proceedings regarding the method of filing prohibited communications or correspondence. The revision recognizes that prohibited communications in docketed cases are made available to the public through the Department's Internet-based Docket Management System (''DMS'').

The substance of § 300.3 deals with reporting of prohibited communications, and does not reflect procedures currently in place. This section was enacted prior to the Department's use of an electronic docket. The web-based Docket Management System, now currently utilized, provides a searchable and downloadable database on which all public communications with the DOT are posted under their current docket number. DMS is searchable by date, docket number, terms, party name(s), or document type, providing a much more efficient means of locating information pertaining to any such communications referred to in §§ 300.3 (b)(1)–(2). Once the corresponding docket number is located, a viewable and downloadable listing of all filings, pleadings, orders, and correspondence will be accessible to the user. Other sections within § 300.3 will be amended to be consistent with these changes.

Under the Administrative Procedure Act (5 U.S.C. 553), the Department determines that notice and an opportunity for public comment are impracticable, unnecessary, and contrary to the public interest. The amendments made in this document are ministerial, removing obsolete and redundant material or making minor technical and terminology changes. These changes will have no substantive impact, and the Department would not anticipate receiving meaningful comments on them. Comment is therefore unnecessary, and it would be contrary to the public interest to delay unnecessarily this effort to eliminate or revise outdated rules.

An electronic copy of this document may be downloaded from the Internet 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.

Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

Executive Order 13132 (Federalism Assessment)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not adopt any regulation that has substantial direct effect on States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 131232 do not apply.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, et seq.) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The Regulatory Flexibility Act applies only to final rules that are preceded by notices of proposed rulemaking. Because this amendment was not preceded by an NPRM, no assessment is required.

Paperwork Reduction Act

This final rule does not impose any new information collection burdens.

Regulation Identifier (RIN)

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

Unfunded Mandates Reform Act

This final rule imposes no mandates and, thus, does not impose unfounded mandates under the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act

The Department has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and had determined that this action will not have any effect on the quality of the environment.

Final Rule

For the reasons set out in the preamble, Title 14, Chapter II of the Code of Federal Regulations is amended to read as follows:

List of Subjects in 14 CFR Part 300

Administrative practice and procedure, Prohibited communications, Conflict of interests, Reporting and recordkeeping requirements.

PART 300—[Amended]

1. The authority for part 300 continues to read as follows:

Authority: 49 U.S.C. subtitle I and chapters 401, 411, 413, 415, 417, 419, 421, 449, 461, 463, 465.

2. In § 300.3, in paragraph (b)(1), remove the words ''put into the correspondence or other appropriate file of the proceeding'' and add, in their place, the words ''placed onto the electronic docket management system (DMS) in the file of the docket number corresponding to the proceeding'' and remove the words ''the Documentary Services Division'' and add, in their place, the words ''Office of Docket Operations and Media Management''; revise paragraph (b)(3) to read as set forth below; and in paragraph (c)(1), remove the words ''the Documentary Services Division'' and add, in their place, the words ''Office of Docket Operations and Media Management''.

The revised text reads as follows:

§ 300.3 Reporting of communications.

* * * * *

(b) * * *

(3) Electronic copies of written communications and oral summaries shall be posted to the DOT's electronic docket. Such docketed materials may be searched, viewed, and downloaded through the Internet at *http://dms.dot.gov.*

* * * * *

Issued in Washington, DC, on April 25, 2002.

Read Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–11049 Filed 5–3–02; 8:45 am]

BILLING CODE 4910–62–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–45848]

Delegation of Authority to the Secretary of the Commission

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is amending its rules to delegate authority to the Secretary of the Commission to enter orders instituting previously authorized administrative proceedings based on the entry of an injunction or a criminal conviction, and to issue findings and orders in such cases where a respondent consents to a bar from association. This delegation is intended to conserve Commission resources as well as expedite the institution of proceedings in which the Commission considers whether to impose remedial measures on certain persons who are subject to injunctions or who have been criminally convicted.

EFFECTIVE DATE: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Levine, Office of the General Counsel, at (202) 942–0890, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0606.

SUPPLEMENTARY INFORMATION: The Commission today is amending its rules governing delegation of authority to the Office of the Secretary.[1]

The Securities Exchange Act of 1934[2] (''Exchange Act'') and the Investment Advisers Act of 1940[3] (''Advisers Act'') authorize the Commission to institute administrative proceedings against certain persons[4] based upon, among other things, a court's entry of an injunction against certain conduct or violations of the federal securities laws, or convictions for certain crimes.[5] Frequently, when the Commission authorizes the filing of an injunctive action in district court against a regulated person, it also authorizes the future institution of an administrative proceeding against that person based on the anticipated entry of an injunction at the conclusion of the district court litigation or based on an anticipated criminal conviction. The Commission is amending its rules to delegate to the Secretary the authority to issue orders instituting such administrative proceedings where the Commission has previously authorized the proceeding based on the anticipated entry of an injunction or on a criminal conviction. The delegation also includes the authority to issue settled orders making findings and imposing sanctions where the respondent consents to a bar from association '' i.e., the maximum relief available in such a case. Nevertheless, the staff may submit matters to the Commission for consideration as it deems appropriate.

Administrative Law Matters

The Commission finds, in accordance with Section 553(b)(A) of the Administrative Procedure Act, 5 U.S.C. 553(b)(A), that this amendment relates solely to agency organization, procedure, or practice. Accordingly, notice and opportunity for public comment, as well as publication 30 days before its effective date, are unnecessary. Because notice and comment are not required for this final rule, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act.[6]

The rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995 as amended.[7] The rule will not impose any costs on the public.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

Text of the Amendment

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows.

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200, Subpart A, continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. The authority citation following § 200.30–7 is removed.

3. Section 200.30–7 is amended by adding paragraph (a)(12) to read as follows:

§ 200.30–7 Delegation of authority to Secretary of the Commission.

* * * * *

(a) * * *

(12) To issue orders instituting previously authorized administrative proceedings pursuant to sections 15(b)(4) or (6), 15B, 15C, or 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(4) or (6), 78o–4, 78o–5, or 78q–1), and section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(e) or (f)), based on the entry of an injunction or a criminal conviction, and to issue findings and orders in such cases where a respondent consents to a bar from association.

* * * * *

Dated: April 30, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11099 Filed 5–3–02; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Nicarbazin, Narasin, and Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug

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[1] 17 CFR 200.30–7.

[2] 15 U.S.C. 78a *et seq.*

[3] U.S.C. 80b–1 *et seq.*

[4] The Commission is authorized to bring administrative proceedings based on the entry of an injunction or a criminal conviction against the following persons: brokers or dealers pursuant to Section 15(b)(4) of the Exchange Act; persons associated with brokers or dealers, or persons participating in an offering of a penny stock pursuant to Section 15(b)(6) of the Exchange Act; municipal securities dealers and persons associated with municipal securities dealers pursuant to Section 15B(c) of the Exchange Act; government securities brokers or dealers and persons associated with government securities brokers or dealers pursuant to Section 15C(c) of the Exchange Act; transfer agents and persons associated with transfer agents pursuant to Section 17A(c) of the Exchange Act; and investment advisers and persons associated with investment advisers pursuant to Section 203(e) or (f) of the Advisers Act.

Other provisions of the securities laws, such as Section 19(h) of the Exchange Act, authorize administrative proceedings against other categories of persons; however, these other provisions do not permit administrative proceedings to be based on the entry of an injunction or a criminal conviction.

[5] In this context, a criminal conviction ''includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of nolo contendere, if such verdict, judgment, plea, or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed.'' Section 202(a)(6) of the Advisers Act.

[6] *See* 5 U.S.C. 603.

[7] 44 U.S.C. 3501 *et seq.*

application (NADA) filed by Alpharma, Inc. The NADA provides for using approved two-way narasin/nicarbazin and single-ingredient bacitracin methylene disalicylate (BMD) Type A medicated articles to make three-way, combination drug Type C medicated feeds for broiler chickens.

DATES: This rule is effective May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7580, e-mail: svaughn@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, has filed NADA 141–124 that provides for the combination use of approved MAXIBAN (36 grams per pound (g/lb) each of narasin and nicarbazin) and BMD (10, 25, 30, 40, 50, 60, or 75 g/lb bacitracin methylene disalicylate) Type A medicated articles in three-way, combination drug Type C medicated feeds for broiler chickens. The Type C feeds containing 27 to 45 g/ton each narasin and nicarbazin and 50 g/ton bacitracin methylene disalicylate are used for the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, and as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin. The Type C broiler feeds containing 27 to 45 g/ton each narasin and nicarbazin and 100 to 200 g/ton BMD are used for the prevention of coccidiosis caused by *E. tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati* as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin. The NADA is approved as of January 14, 2002, and the regulations in 21 CFR 558.76 and 558.366 are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

FDA has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.76 [Amended]

2. Section 558.76 *Bacitracin methylene disalicylate* is amended in paragraph (d)(3)(xii) by adding ''or narasin'' after ''narasin''.

3. Section 558.366 is amended in the table in paragraph (d), in the column for ''Combination in grams per ton'' after the entry for ''Narasin 27 to 45 and bacitracin methylene disalicylate 4 to 50'' by adding entries for ''Narasin 27 to 45 and bacitracin methylene disalicylate 50'' and ''Narasin 27 to 45 and bacitracin methylene disalicylate 100 to 200'' to read as follows:

§ 558.366 Nicarbazin.

* * * * *

(d) * * *

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	* *	*	* *	*
27 to 45	Narasin 27 to 45 and bacitracin methylene disalicylate 50.	Broiler chickens: For prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*; as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin.	Feed continuously as sole ration. Do not feed to laying hens. Withdraw 5 days before slaughter. Do not allow turkeys, horses or other equines access to formulations containing narasin. Ingestion of narasin by these species has been fatal. Narasin and nicarbazin as provided by No. 000986, bacitracin methylene disalicylate by No. 046573 in § 510.600(c) of this chapter.	046573

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
	Narasin 27 to 45 and bacitracin methylene disalicylate 100 to 200.	Broiler chickens: For prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*; as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin.	To control necrotic enteritis, start medication at first clinical signs of disease; vary dosage based on the severity of infection; administer continuously for 5 to 7 days or as long as clinical signs persist, then reduce bacitracin to prevention level (50 g/ton). Do not feed to laying hens. Withdraw 5 days before slaughter. Do not allow turkeys, horses or other equines access to formulations containing narasin. Ingestion of narasin by these species has been fatal. Narasin and nicarbazin as provided by No. 000986, bacitracin methylene disalicylate by No. 046573 in § 510.600(c) of this chapter.	046573
*	* *	*	* *	*

Dated: April 9, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–10964 Filed 5–3–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[WO–850–1820–XZ–24–1A]

RIN 1004–AD34

Application Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the regulation showing the location of the Bureau of Land Management (BLM) State Offices in order to show the new address of the BLM Oregon State Office, which moved in January 2002. Personal, messenger, and express mail delivery of filings and other documents must be to the new office address. You must continue to direct filings and other delivery by U.S. mail to the same post office box address which has not been changed.

EFFECTIVE DATE: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Michael H. Schwartz, (202) 452–5198. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: This final rule reflects the administrative action of changing the address of the Oregon State Office of BLM. It changes the street address for the location of the BLM Oregon State Office, but makes no other changes in filing requirements. Specifically, the rule does not change the mailing address of the Oregon State Office, but only the street address.

Because this final rule is an administrative action to change the address for one BLM State Office, BLM has determined that it has no substantive impact on the public. It imposes no costs, and merely updates a list of addresses included in the Code of Federal Regulations for the convenience of the public. The Department of the Interior, therefore, for good cause finds under 5 U.S.C. 553(b)(B) and 553(d)(3) that notice and public procedure are unnecessary and that this rule may take effect upon publication.

Because this final rule is a purely administrative regulatory action having no effects upon the public or the environment, we have determined that the rule is categorically excluded from review under Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C).

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property. No private property rights are affected by this rule which only reports address changes for BLM State Office. The Department therefore certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights.

The rule 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. The rule reflects the administrative action of changing the address of the Oregon State Office of BLM. Therefore, in accordance with Executive Order 13132, BLM has determined that this rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Under Executive Order 12988, Civil Justice Reform, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and that it meets the requirements of the sections 3(a) and 3(b)(2) of the Order.

Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. Reporting address changes for BLM State Offices will not have any economic impact.

This rule does not contain information collection requirements that require approval by the Office of

Management and Budget under 44 U.S.C. 3501 *et seq.*

BLM has determined that this rule is not significant under the Unfunded Mandates Reform Act of 1995, because it will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Further, this rule will not significantly or uniquely affect small governments.

In accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, we have found this final rule does not included policies that have tribal implications. This administrative final rule reflects the administrative action of changing the address of Oregon State Office of BLM. It changes the street address for the location of the BLM Oregon State Office, but make no other changes in filing requirements.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The BLM has determined that this rule will not have substantial direct effects on the energy supply, distribution or use, including a shortfall in supply or price increase. This rule simply changes an address for the Oregon State Office of BLM.

Dated: April 18, 2002.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

List of Subjects in 43 CFR Part 1820

Administrative practice and procedure, Application procedures, Execution and filing of forms, Bureau offices of record.

For the reasons discussed in the preamble, the Bureau of Land Management, amend 43 CFR part 1820 as follows:

PART 1820—APPLICATION PROCEDURES

1. The authority citation for part 1820 continues to read as follows:

Authority: 5 U.S.C. 552, 43 U.S.C. 2, 1201, 1733, and 1740.

Subpart 1821—General Information

§ 1821.10 Where are BLM offices located?

(a) * * *

State Offices and Areas of Jurisdiction

* * * * *

Oregon State Office, 333 Southwest 1st Avenue, Portland, OR 97204; Mail: P.O. Box 2965, Portland, OR 97208–Oregon and Washington

* * * * *

[FR Doc. 02–11108 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7783]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Program Marketing and Partnership Division, Federal Insurance Administration and Mitigation Directorate, 500 C Street, SW; Room 411, Washington, DC 20472, (202) 646–3098.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No

environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
New Hampshire:				
Strafford, Town of, Strafford County ..	330196	August 6, 1976 Emerg.; April 2, 1986, Reg. May 2, 2002.	5/2/02	5/2/02
Region II				
New Jersey:				
Summit, City of, Union County	340476	November 24, 1972 Emerg.; February 2, 1977, Reg. May 2, 2002.	5/2/02	5/2/02
Region I				
Maine:				
Princeton, Town of, Washington County..	230320	June 11, 1975 Emerg.; August 19, 1985, Reg. May 15, 2002.	5/15/02	5/15/02
Region V				
Illinois:				
Kendall County, Unincorporated Areas..	170341	July 5, 1973 Emerg.; July 19, 1982, Reg. May 15, 2002.	5/15/02	5/15/02
Newark, Village of, Kendall County. ...	170344	April 28, 1975 Emerg.; June 1, 1982, Reg. May 15, 2002.	5/15/02	5/15/02
Sandwich, City of, De Kalb County. ...	170188	May 13, 1975 Emerg.; February 27, 1984, Reg. May 15, 2002.	5/15/02	5/15/02
Indiana				
Fairmount, Town of, Grant County.	180074	July 21, 1975 Emerg.; July 3, 1985, Reg. May 15, 2002.	5/15/02	5/15/02
Gas City, City of, Grant County.	180075	July 21, 1975 Emerg.; July 5, 1983, Reg. May 15, 2002.	5/15/02	5/15/02
Grant County, Unincorporated Areas.	180435	May 6, 1983 Emerg.; June 17, 1986, Reg. May 15, 2002.	5/15/02	5/15/02
Jonesboro, Town of, Grant County. ...	180076	July 25, 1975 Emerg.; August 1, 1983, Reg. May 15, 2002.	5/15/02	5/15/02
Matthews, City of, Grant County.	180329	April 21, 1975 Emerg.; November 15, 1985, Reg. May 15, 2002.	5/15/02	5/15/02
Sweetser, Town of, Grant County.	180503	November 7, 1991, Reg. May 15, 2002 ...	5/15/02	5/15/02
Upland, Town of, Grant County.	180504	November 7, 1991, Reg. May 15, 2002 ...	5/15/02	5/15/02
Van Buren, Town of, Grant County. ...	180469	November 7, 1991, Reg. May 15, 2002 ...	5/15/02	5/15/02
Region IX				
Hawaii:				
Maui County, Unincorporated Areas.	150003	September 18, 1970 Emerg.; June 1, 1981, Reg. May 15, 2002.	5/15/02	5/15/02

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension.

Dated: April 23, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–11120 Filed 5–3–02; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020409080–2100–02; I.D. 032602A]

RIN 0648–AP78

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; change in effective date; correction; request for comments.

SUMMARY: NMFS issues this interim final rule to amend measures that were implemented through an interim final rule published by NMFS on April 29, 2002, in order to protect species managed under the Northeast Multispecies Fishery Management Plan (FMP) from overfishing. This interim final rule imposes additional restrictions ordered by the U.S. District Court for the District of Columbia (Court) in a Remedial Order issued on April 26, 2002: Two new area closures in the eastern Gulf of Maine (GOM), an increase in the minimum size for commercially caught cod, and a new restriction on dehooking devices. This interim final rule also accelerates the date of implementation of the gear restrictions contained in the April 29, 2002, interim final rule. This action is necessary to bring the regulations governing the Northeast multispecies (groundfish) fishery into compliance with the Court's Remedial Order.

DATES: Effective from 0001 hours, local time, May 1, 2002 (i.e., immediately following implementation of the provisions contained in the interim final rule of April 29, 2002, at 67 FR 21140), through 2400 hours, local time, on July 31, 2002. The effectiveness of the provision in § 648.80(j)(3)(i) and (iii) is changed from May 15, 2002, through July 31, 2002, to May 1, 2002, through July 31, 2002. Comments on this interim final rule must be received no later than 5 p.m., local time, on June 5, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the Amended Interim Final Rule for Groundfish.'' Comments also may be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone: 978–281–9347, fax: 978–281–9135; email: thomas.warren@noaa.gov

SUPPLEMENTARY INFORMATION:

Background

On December 28, 2001, a decision was rendered by the Court on a lawsuit brought by the Conservation Law Foundation (CLF), Center for Marine Conservation, National Audubon Society and Natural Resources Defense Council against NMFS (*Conservation Law Foundation, et al.*, v. *Evans*, Case No. 00CVO1134, (D.D.C., December 28, 2001)). The lawsuit alleged that Framework Adjustment 33 to the FMP violated the overfishing, rebuilding and bycatch provisions of the Magnuson-Steven Act (18 U.S.C. 1801, *et seq.*), as amended by the Sustainable Fisheries Act (SFA), and the Court granted plaintiffs' Motion for Summary Judgment on all counts. The Court had not yet imposed a remedy, but it did ask the parties to the lawsuit to propose remedies consistent with the Court's findings. Additional background on the lawsuit is contained in the preamble to the April 29, 2002, interim rule and is not repeated here.

On March 1, 2002, NMFS, at the request of the Court, proposed a measure to bring the FMP into full compliance with the SFA, the Magnuson-Stevens Act, and all other applicable law as quickly as possible. That proposed measure would have resulted in three actions over the next year and a half. Plaintiffs and the intervenors in the case also proposed remedies to the Court. From April 5–9, 2002, plaintiffs, defendants and intervenors engaged in Court-assisted mediation to try to agree upon mutually acceptable short-term and long-term solutions to present to the Court as a possible settlement. Although these discussions ended with no settlement, several of the parties continued mediation and filed with the Court a Settlement Agreement Among Certain Parties (Settlement Agreement) on April 16, 2002. In addition to NMFS, the parties signing the agreement include CLF, which is one of the plaintiff conservation groups, all four state intervenors, and two of three industry intervenors.

In order to ensure the implementation of protective management measures by May 1, 2002, NMFS, notwithstanding that the Court had not yet issued its Remedial Order, proceeded to file an interim final rule with the Office of the **Federal Register** on April 25, 2002, for publication on April 29, 2002. The interim final rule, published on April 29, 2002, implemented measures identical to the short-term measures contained in the Settlement Agreement filed with the Court. The measures contained in the April 29, 2002, interim final rule were to become effective on May 1, 2002, with the exception of §§ 648.80(j)(3)(i) and (iii), and 648.89(i)(1), which were to become effective May 15, 2002.

On April 26, 2002, the Court issued a Remedial Order that ordered the promulgation of two specific sets of management measures (to be effective from May 1, 2002, to July 31, 2002, and from August 1, 2002, until promulgation of Amendment 13, respectively). The Court-ordered measures for the first set of measures were, in the majority, identical with those contained in the Settlement Agreement and the measures contained in NMFS' April 29, 2002, interim final rule. However, the Court-ordered measures included additional provisions and an accelerated schedule of effectiveness for all measures, which were not contained in either the Settlement Agreement or the April 29, 2002, interim final rule. Further, the Court ordered that NMFS publish in the **Federal Register**, as quickly as possible, an ''amended interim rule and an amended second interim rule'' that would ''include the departures from the Settlement Agreement incorporated in the Remedial Order.'' To comply with the Court Order in the meantime, NMFS publishes this interim final rule to modify the measures implemented through the April 29, 2002, interim final rule and to accelerate the effectiveness of the gear restrictions in § 648.80(j)(3)(i) and (iii) to May 1, 2002, consistent with the Remedial Order. The measures in § 648.89(i)(1) are administrative, only, and will still become effective on May 15, 2002.

NMFS intends to publish another interim final rule as soon as possible to implement management measures for the period August 1, 2002, through the implementation of Amendment 13 to the FMP, in accordance with the Remedial Order. Amendment 13 will implement rebuilding plans for several

groundfish stocks and continue to address capacity issues in the fishery. Amendment 13 is under development by NMFS and the Council and will be implemented by August 22, 2003.

Management Measures

The following management measures are implemented through this interim final rule: All measures that were in place prior to the April 29, 2002, interim final rule that were not amended by that rule and all measures implemented by the April 29, 2002, interim final rule that are not specifically amended through this interim final rule and that remain in effect. The measures added or modified through this interim final rule are as follows:

1. The minimum size for cod that may be lawfully sold is increased from 19 inches (48.3 cm) to 22 inches (55.9 cm)(total length).

2. Two new year-round closed areas, Cashes Ledge East and Cashes Ledge West, which correspond to statistical area blocks 128 and 130, respectively, are added. The existing Cashes Ledge Area Closure remains in effect and overlaps Cashes Ledge West.

3. A new restriction is placed on the hook-gear sector of the industry to discourage dehooking strategies that may reduce survival of discarded fish. Specifically, this interim final rule prohibits the use of de-hookers (crucifiers) with less than 6–inch (15.2–cm) spacing between the fairlead rollers.

4. The gear restrictions contained in § 648.80(j)(3)(i) and (iii), which were to become effective May 15, 2002, as a result of the April 29, 2002, interim final rule, are made effective May 1, 2002.

Classification

This rulemaking is required to be made effective on May 1, 2002, by the April 26, 2002 Remedial Order issued by the Court in *Conservation Law Foundation, et al.*, v. *Evans*, Case No. 00CV01134 (D.D.C., Dec. 28, 2001). This Order leaves NMFS with no discretion as to whether or when to promulgate this interim final rule.

This rule has been determined to be significant for purposes of Executive Order 12866. NMFS has not prepared an assessment of the potential costs and benefits of this rule as required by the Executive Order.

Because the Court mandated on April 26, 2002, that this rule must be in effect no later than May 1, 2002, it is impracticable for NMFS to provide prior notice and an opportunity for public comment. Such procedures would prevent NMFS from timely implementation of the Court's order. Accordingly, the Assistant Administrator for Fisheries (AA) finds that there exists good cause to waive the notice and comment requirements of the Administrative Procedure Act pursuant to 5 U.S.C. 553(b)(B). For the same reason, the AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for the implementation of the measures required by this rule.

Since notice and an opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, this rule is not subject to the analytical requirements of the Regulatory Flexibility Act. As such, no regulatory flexibility analysis is required for this rulemaking, and none has been prepared. 5 U.S.C. 603.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 2, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraphs (a)(149) through (151) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(149) Use of de-hookers (''crucifiers'') with less than 6–inch (15.2–cm) spacing between the fairlead rollers.

(150) Fish for, land, or possess NE multispecies harvested with the use of de-hookers (''crucifiers'') with less than 6–inch (15.2–cm) spacing between the fairlead rollers unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(151) Possess de-hookers (''crucifiers'') with less than 6–inch (15.2–cm) spacing between the fairlead rollers while in possession of NE multispecies, unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

* * * * *

3. In § 648.80, paragraph (n)(6) is added to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(n) * * *

(6) The use of de-hookers (''crucifiers'') with less than 6–inch (15.2–cm) spacing between the fairlead rollers is prohibited.

* * * * *

§ 648.81 [Corrected]

4. Section § 648.81 is corrected by revising paragraph (u)(1) (effective May 1, 2002, through July 31, 2002) to read as follows:

§ 648.81 Closed areas.

* * * * *

(u) *Cashes Ledge Closure Areas.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the three areas known as the Cashes Ledge Closure Areas, as defined in this paragraph (u)(1), except as specified in paragraphs (s) and (u)(2) of this section. A chart depicting these areas is available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter). The Cashes Ledge Closure Areas are three areas, two of which are overlapping, defined by straight lines connecting the following points in the order stated:

(i) *Cashes Ledge West.*

Point	N. Lat.	W. Long.
CL7	43°00′	69°30′
CL8	43°00′	69°00′
CL9	42°30′	69°00′
CL10	42°30′	69°30′
CL7	43°00′	69°30′

(ii) *Cashes Ledge.*

Point	N. Lat.	W. Long.
CL1	43°07′	69°02′
CL2	42°49.5′	68°46′
CL3	42°46.5′	68°50.5′
CL4	42°43.5′	68°58.5′
CL5	42°42.5′	69°17.5′
CL6	42°49.5′	69°26′
CL1	43°07′	69°02′

(iii) *Cashes Ledge East.*

Point	N. Lat.	W. Long.
CL11	43°00′	68°30′
CL12	43°00′	68°00′
CL13	42°30′	68°00′
CL14	42°30′	68°30′
CL11	43°00′	68°30′

* * * * *

5. In § 648.83, paragraph (a)(1) is suspended and paragraph (a)(3) is added to read as follows:

§ 648.83 Multispecies minimum fish sizes.

(a) * * *

(3) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS

Species	Sizes (inches)
Cod	22 (55.9 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)

MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS—Continued

Species	Sizes (inches)
Atlantic halibut	36 (91.4 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

* * * * *

[FR Doc. 02–11272 Filed 5–2–02; 3:28 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 87
Monday, May 6, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 187

Fees for FAA Services for Certain Flights

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of inquiry and request for comments.

SUMMARY: Since August 1, 2000, the FAA has been charging fees, required by law, for air traffic control and related services provided to aircraft that fly in U.S.-controlled airspace but neither take off from, nor land in, the United States. These fees, commonly referred to as ''Overflight Fees,'' were authorized by the Federal Aviation Reauthorization Act of 1996, enacted on October 9, 1996.

The Aviation and transportation Security Act, enacted on November 19, 2001, amended the Overflight Fee authorization in several respects: first, changing the wording of the operative standard by substituting ''reasonably'' for ''directly'' (thereby requiring that fees be ''reasonably related'' to costs, rather than ''directly related'') and substituting ''Administration's costs as determined by the Administrator'' for ''Administration's costs;'' and second, providing that ''the determination of such costs by the Administrator are not subject to judicial review.''

The purpose of this notice of inquiry is to solicit public comment on whether and to what extent, if any, these latest statutory changes require the FAA to modify its Final Rule on Overflight Fees.

EFFECTIVE DATE: The due date for receipt of comments is June 5, 2002. This matter is the subject of ongoing litigation before the United States Court of Appeals for the District of Columbia Circuit (the Court), and the Court has provided 60 days for the FAA to consider the effects of recent statutory changes on its Final Rule. The FAA will therefore be unable to consider any comments received after the due date.

ADDRESSES: Comments should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–00–7018, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m., weekdays, except Federal holidays. Comments may also be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov/* at any time. Commenters who wish to file electronically should follow the instructions on the DMS web site.

FOR FURTHER INFORMATION CONTACT: Randall Fiertz, Office of Cost and Performance Management (APF–2), Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC 20591, (202) 267–7140; or Dr. Harold (Woody) Davis, Office of the Chief Counsel (AGC–200), Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC, 20591, (202) 267–3152.

SUPPLEMENTARY INFORMATION:

History

The Federal Aviation Reauthorization Act of 1996 (the Act) directs the FAA to establish by Interim Final Rule (IFR) a fee schedule and collection process for air traffic control (ATC) and related services provided to aircraft, other than military and civilian aircraft of the U.S. Government or of a foreign government, that transit U.S.-controlled airspace but neither take off from, nor land in, the United States (49 U.S.C. 45301, as amended by Pub. L. 104–264). Such flights are commonly referred to as ''Overflights.'' The Act further directs the FAA to seek public comment after issuing the Interim Final Rule and subsequently to issue a Final Rule.

The Act was substantively amended in November 2001 (see below). As originally enacted, it directed the FAA to ensure that the fees authorized by the Act were ''directly related'' to the FAA's costs of providing the services rendered. The Act further states that ''services for which costs may be recovered include the costs of air traffic control, navigation, weather services, training and emergency services which are available to facilitate safe transportation over the United States, and other services provided by the Administrator or by programs financed by the Administrator to flights that neither take off from, nor land in, the United States.''

On March 20, 1997, the FAA published an Interim Final Rule (IFR), ''Fees for Air Traffic Services for Certain Flights through U.S.-Controlled Airspace'' (62 FR 13496), which established the Overflight Fees. The FAA invited public comment on the IFR and held a public meeting on May 1, 1997. The effective date of the rule was May 19, 1997, and the comment period closed on July 18, 1997. The FAA also published two additional amendments to the IFR on May 2, 1997 (62 FR 24286) and October 2, 1997 (62 FR 51736).

That rulemaking was subsequently challenged. The Air Transport Association of Canada (ATAC) and seven foreign air carriers petitioned the Court to review the rule. On January 30, 1998, the Court issued its Opinion on the eight consolidated petitions in the case of *Asiana Airlines* v. *FAA*, 134 F.3d 393 (D.C. Cir. 1998). The Court rejected the petitioners' claims that: (a) the FAA acted improperly in employing an expedited procedure before the effective date of the IFR; and (b) the FAA violated the anti-discrimination provisions of various international aviation agreements. The Court, however, concluded that the FAA's methodology of determining cost violated statutory requirements, vacated the IFR fee schedule, and remanded the IFR to the FAA for further proceedings. The FAA subsequently refunded all fees (nearly $40 million) collected under the IFR. On July 24, 1998, the FAA published a Final Rule (63 FR 40000) removing the 1997 IFR.

Although the 1997 IFR had been removed, the statutory requirement that FAA establish Overflight Fees by IFR remained in effect. Therefore, in 1998 the FAA began developing a new IFR on Overflight Fees using a different methodology. The fees this time were to be derived from cost data produced by the agency's new Cost Accounting System (CAS), then under development. On June 6, 2000, the FAA published a new IFR with a request for comments and notice of another public meeting (65 FR 36002, June 6, 2000). The FAA held the public meeting on June 29, 2000, and 12 individuals representing 10 different organizations made

presentations. A discussion of the comments made at the public meeting can be found in the docket of this rulemaking (Docket No. FAA–00–7018). (This may be found on the Internet by going to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*), typing in the last four digits of the Docket number (7018), and clicking on ''search.'') The FAA began charging fees under the new IFR on August 1, 2000. The FAA twice extended the comment period; first on October 6, 2000 (65 FR 59713), and again on October 27, 2000 (65 FR 64401), closing it finally on December 26, 2000.

On November 1, 2000, the Congress enacted the National Transportation Safety Board Amendments Act of 2000 (Public Law 106–424). Section 16 of that Act deemed the Interim Final Rule, published on June 6, 2000, to have been issued in accordance with the procedural requirements of the Act.

Just before the August 1, 2000, effective date of the fees, the ATAC and seven foreign air carriers again petitioned the Court to review the new IFR. The petitions were again consolidated into a single case. Issues raised by the petitioners included some of the same process and procedure questions raised in the previous litigation, as well as new issues regarding the adequacy of information provided by the FAA to support the fees and whether the fees met the statutory requirement (subsequently amended; see below) of being ''directly related'' to the FAA's costs of providing the services. The Court heard oral arguments on May 14, 2001. On July 13, 2001, the Court issued an Opinion, finding that the FAA had failed to provide an explanation for one assumption in its fee setting methodology (*i.e.,* that the costs, on a per-mile basis, of providing ATC and related services to Overflights are the same as the costs of providing such services to flights that take off and/or land in the United States). Because the FAA had failed to address this assumption, the Opinion directed that the IFR be vacated. At the time the Opinion was issued, the FAA was in the final stages of Executive Branch review of a Final Rule on Overflight Fees, which contained a detailed explanation of the assumption in question. Because the Court faulted only FAA's failure to provide an explanation of an assumption in support of the IFR, and not the substance of the IFR itself, the FAA decided to proceed with issuance of the Final Rule in order to both meet the requirements of the Act and address the concerns of the Court. This was done within the 45-day period between the issuance of the Court's Opinion and the issuance of its Mandate making the Opinion effective.

The Final Rule was published in the **Federal Register** on August 20, 2001. It reduced the fees established under the IFR by approximately 15%, effective immediately, back to the original date of imposition (*i.e.*, August 1, 2000). The same group of eight petitioners who had sought judicial review of the most recent IFR again sought such review of the Final Rule. That litigation is ongoing.

Following the August 20, 2001 publication of the Final Rule, the FAA petitioned the Court on August 24, 2001 to reconsider the remedy (vacating of the IFR) it had imposed in its Opinion of July 13, 2001. On December 28, 2001, the Court granted the FAA's request, modifying its July 13 Opinion and issuing a Mandate that did not vacate the IFR.

Legislative Action

On November 19, 2001, additional legislation was enacted regarding Overflight Fees. The Aviation and Transportation Security Act (ATSA), Public Law 107–71, contained the following amendment (Section 119(d)):

> (d) AMENDMENT OF GENERAL FEE SCHEDULE PROVISION.—Section 45301(b)(1)(B) of title 49, United States Code, is amended—(1) by striking ''directly'' and inserting ''reasonably''; (2) by striking ''Administration's costs'' and inserting ''Administration's costs, as determined by the Administrator,''; and (3) by adding at the end ''The Determination of such costs by the Administrator is not subject to judicial review.''

Thus, the statutory authorization for FAA's Overflight Fees (49 U.S.C. 45301(b)(1)(B)) now provides that ''the Administrator shall ensure that each of the fees * * * is reasonably related to the Administration's costs, as determined by the Administrator, of providing the service rendered'' to overflights.

The accompanying Conference Committee Managers' Report on the ATSA addressed the amendment of the ''Overflight Fee'' language, as follows:

> The Conference substitute amends section 45301(b) of title 49, United States Code, with respect to limitations on overflight fees to (1) to make the language consistent with the new security fee language of this Act, and (2) to clarify Congressional intent with respect to the FAA costs upon which the fees can be based. Specifically, the conference substitute replaces the word ''directly'' with ''reasonably,'' since the word ''directly'' has been a source of much confusion and narrow interpretation, and has been a primary cause of recurring litigation which has frustrated and delayed the FAA's imposition of the overflight fees for a number of years. Additionally, this amendment specifies that the FAA's costs upon which the fees are based are to be determined solely by the Administrator. This is to clarify that the Administrator has full authority to determine costs by appropriate means. This amendment is not intended to require revision of the fees recently promulgated by the FAA (66 FR 43680, Aug. 20, 2001) but rather, to clarify longstanding Congressional intent that the FAA expeditiously and continuously collect the fees authorized under section 45301(a) of title 49.

The enactment of these statutory changes raises the question of what specific further rulemaking action, if any, is required by the FAA.

On January 25, 2002, the FAA sought from the Court a limited remand of the record in the Final Rule case. As stated in the agency motion:

> The purpose of the requested remand would be to permit the FAA, on its own initiative, to conduct a limited reconsideration of the final rule in light of the new legislation. More specifically, the agency would conduct such reconsideration solely to determine the extent, if any, to which the change in the operative statutory standard requires the FAA to modify its final rule. If the agency determines that no such modification is required by the changes in the statute from ''directly related'' to ''reasonably related,'' and the substitution of ''Administration's costs, as determined by the Administrator'' for ''Administration's costs,'' the agency would continue with the final rule that it has already adopted. This is because the FAA seeks to determine only whether Congress has required the agency to make changes in its final rule, and does not contemplate making any discretionary changes at this time.

On April 22, 2002, the Court ordered the Final Rule record returned to FAA ''so that it may conduct proceedings, for no more than 60 days from the date of this order, to determine to what extent, if any, the Aviation and Transportation Security Act, Public Law 107–71, Section 119(d) (November 19, 2001), requires the agency to modify its final rule, ''Fees for [F]AA Services for Certain Flights.'' 66 FR 46380 (Aug. 20, 2001).''

Request for Comments

Given the demonstrated significant interest of a large number of parties in matters relating to FAA's Overflight Fees, and consistent with the Court's order, the FAA seeks public comment regarding the extent, if any, to which the change in the ATSA requires the FAA to modify its Final Rule. Under the terms of the remand granted by the Court, the FAA must complete its reconsideration within 60 days from the

date of the remand. The Court granted the remand on April 22, 2002; therefore, the 60-day deadline for completion of all action on this matter by the FAA is June 21, 2002.

The FAA believes that providing an opportunity for public comment on this matter is very much in the public interest. It should also serve the interest of both judicial economy and efficient agency administration since this proceeding will permit the FAA, in advance of judicial review of its Final Rule, to consider any possible impact of the ATSA amendment, which was enacted after the Final Rule had been issued and the petitions for review of that rule had been filed with the Court.

Accordingly, before making its decision as to whether the statutory change requires modification of the Final Rule, the FAA is allowing 30 days (within the 60 days stipulated by the Court) during which interested parties may address and provide comments on this matter.

Dated: April 30, 2002.

Chris Bertram,

Assistant Administrator for Financial Services and Chief Financial Officer.

[FR Doc. 02–11109 Filed 5–1–02; 3:45 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–094–FOR]

West Virginia Regulatory Program

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

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are reopening the public comment period on the effectiveness of a recently approved amendment to the West Virginia surface mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) to satisfy the Federal requirements regarding an alternative bonding system (ABS).

We are reopening the comment period to provide an opportunity to review and comment on a proposed regulatory change by the State. The proposed amendment concerns water quality enhancement, and deletes regulatory language that limits expenditures from the State's Fund for water quality enhancement projects to 25 percent of the Fund's gross annual revenue. The amendment is intended to satisfy the required program amendment codified in the Federal regulations at 30 CFR 948.16(jjj). The proposed amendment is part of the State's efforts to fully resolve all ABS deficiencies and to satisfy the required program amendment at 30 CFR 948.16(lll).

This document gives the times and locations that the amendment is available for your inspection, and the comment period during which you may submit written comments.

DATES: We will accept written comments until 4:30 p.m. (local time), on May 21, 2002.

ADDRESSES: You may mail or hand-deliver written comments to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

You may review copies of the West Virginia program, this amendment, all written comments received in response to this document at the addresses below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov.*

West Virginia Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0510. The approved amendment is posted at the Division of Mining and Reclamation's Internet web page: *http://www.dep.state.wv.us/mr.*

In addition, you may review copies of the amendment and all written comments received in response to this document during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004. (By Appointment Only)

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 313 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office; Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the West Virginia 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 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 West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description of the Proposed Amendment

By letter dated April 9, 2002 (Administrative Record Number WV–1296A), West Virginia sent us a proposed amendment to its program under SMCRA. The amendment that we are seeking comment on concerns the water quality enhancement provisions at Code of State Regulations (CSR) 38–2–12.5. The amendment to CSR 38–2–12.5. was submitted as part of a larger program amendment authorized by Enrolled Committee Substitute for House Bill 4163 that was passed by the Legislature on March 9, 2002, and signed into law by the Governor on April 3, 2002 (Administrative Record Number WV–1293).

We are seeking your comments on the deletion, at CSR 38–2–12.5.d., of the 25-percent limitation on expenditures from the Fund for water quality enhancement projects. The specific language that the State proposed to delete at subsection 12.5.d. is as follows:

> Expenditures from the special reclamation fund for water quality enhancement projects shall not exceed twenty-five percent (25%) of the funds gross annual revenue as provided in subsection g, section 11 of the [West Virginia] Act.

After the deletion, CSR 38–2–12.5.d. reads as follows:

12.5.d. In selecting such sites for water quality improvement projects, the Secretary shall determine the appropriate treatment techniques to be applied to the site. The selection process shall take into consideration the relative benefits and costs of the projects.

Related Information

This proposed amendment is part of the State's efforts to fully resolve all ABS deficiencies and to satisfy the required program amendment codified at 30 CFR 948.16(lll). On December 28, 2001, we approved an amendment to the West Virginia program concerning the ABS. The amendment was submitted in response to our 30 CFR part 733 notification of June 29, 2001 (Administrative Record Number WV–1218). The amendment consisted of changes to the Code of West Virginia (W. Va. Code) as contained in Enrolled Senate Bill 5003. It established the Special Reclamation Fund Advisory Council to ensure the effective, efficient and financially stable operation of the Fund; provided for a contract with a qualified actuary to determine the Fund's soundness on a four-year basis; increased the special reclamation tax rate to provide additional revenue for the reclamation of bond forfeiture sites; and deleted language in the statute that limited expenditures from the State's ABS for water treatment.

In our December 28, 2001 (66 FR 67446), approval, we deferred our decision on the broader question of whether the amendment fully satisfies the requirement at 30 CFR 948.16(lll), concerning the adequacy of the State's ABS. We also revised the required program amendment codified at 30 CFR 948.16(jjj) to require, in part, the removal of the 25-percent limitation on the expenditure of funds for water treatment at CSR 38–2–12.5.d. The State had previously removed the 25-percent limitation on the expenditure of funds for water treatment from its statute, but had failed to remove the 25-percent limitation in its rules.

On December 28, 2001, we opened a comment period to allow more time to consider and provide additional comment on the question of whether the State has fully satisfied the requirement at 30 CFR 948.16(lll) concerning the adequacy of the State's ABS. That comment period closed on March 28, 2002.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program amendment approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendation(s). In the final rulemaking, we will not necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Charleston Field Office.

Electronic Comments

Please submit Internet comments as ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS No. WV–094–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Charleston Field Office at (304) 347–7158.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during our normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their names or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

IV. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable 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 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. 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 affect 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 OMB 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 regulation.

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, geographic regions or Federal, State, or local government agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

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

Unfunded Mandates

This rule will not impose 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 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 24, 2002.

George J. Rieger,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 02–11247 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Chapter I

Public Meeting of the Negotiated Rulemaking Advisory Committee for Off-Road Driving Regulations at Fire Island National Seashore

AGENCY: National Park Service, Interior.

ACTION: Notice of meetings.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), of meetings of the Negotiated Rulemaking Advisory Committee for Off-Road Driving Regulations at Fire Island National Seashore (36 CFR 7.20).

DATES AND TIMES: The Committee will meet on the following dates—Friday and Saturday, June 28–29, 2002; Friday and Saturday, July 26–27, 2002; and Friday and Saturday, September 13–14, 2002. All meetings will begin at 9 a.m.

ADDRESSES: All meetings will be held at Dowling College, Oakdale, New York.

FOR FURTHER INFORMATION CONTACT: Constantine Dillon, Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, NY 11772, 631–289–4810 (Ext. 225).

SUPPLEMENTARY INFORMATION:

Matters to be Considered: Meetings will be held for the to develop advice for the National Park Service with regard to proposed rulemaking governing off-road vehicle use at Fire Island National Seashore.

Below is the initial agenda for the Committee. There will be public comment periods during each negotiating session. However, the Committee may modify its agenda during the course of its work.

Session I—June 28–29, 2002

Welcoming Remarks by National Park Service
Introductions of Committee Members
Discuss and adopt Organizational Protocols (Committee groundrules)
Discuss and adopt draft agenda
Presentation and discussion on applicable laws, regulations, policies and data
Discussion of Committee Member's Ideas For Improving Management of Off-Road Vehicles
Discussion of Agenda for Next Meeting and Tasks Between Sessions
Adjourn Session I.

Session II—July 26–27, 2002

Review and Adopt Session I Meeting Summary
Discussion of Proposed Agenda for Session
Updates and Reports
Review and Discussion of Proposed Draft Rule
Refine Proposals, Seek Tentative Agreements, Clarify Outstanding Issues
Discussion of Agenda for Session III and Tasks Between Sessions
Adjourn Session II

Session III—September 13–14, 2002

Review and Adopt Session II Meeting Summary
Discussion of Proposed Agenda
Review and Discussion of Outstanding Issues
Review and Discussion of Outstanding Issues—Seek Tentative Agreement on Remaining Issues
Seek Consensus on Complete Draft Rule
Discuss Next Steps
Adjournment

The meetings are open to the public. It is expected that 75 persons will be able to attend the meetings in addition to the Committee members.

The Committee was established pursuant to the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570). The purpose of the Committee is to advise the National Park Service with regard to proposed rulemaking governing off-road vehicle use at Fire Island National Seashore. Notice of intent to establish this committee was published in 65 FR 70674–70675, November 27, 2000.

Interested persons may make brief oral/written presentations to the Committee during the meetings or file written statements. Such presentations may be made to the Committee during the Public Comment Periods of the meeting, or in writing to the Park Superintendent at the above address at least seven days prior to the meeting.

Draft minutes of the meeting will be available for public inspection about 12

weeks after the meeting at Fire Island National Seashore, 120 Laurel Street, Patchogue, NY 11772.

Dated: April 2, 2002.

Constantine J. Dillon,

Superintendent, Fire Island National Seashore.

[FR Doc. 02–11048 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD02

Assateague Island National Seashore, Personal Watercraft Use

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service is proposing to designate areas where personal watercraft (PWC) may be used in Assateague Island National Seashore, Maryland and Virginia. This rule is necessary because regulations requires any park allowing the use of PWC to promulgate a special regulation authorizing the use. Furthermore, the NPS Management Policies 2001 also, require individual parks, in order to promulgate a special regulation, to determine that PWC use is appropriate for a specific park area based on that area's enabling legislation, resources, values, other visitor uses, and overall management objectives.

DATES: Comments must be received by July 5, 2002.

ADDRESSES: Comments on the rule and the Environmental Assessment should be sent to Superintendent, Assateague Island National Seashore, 7206 National Seashore Lane, Berlin, Maryland 21811 Email: *Regina Jones-Brake@nps.gov* Fax: (410) 641–1099.

FOR FURTHER INFORMATION CONTACT: Kym Hall, Regulations Program Manager, National Park Service, 1849 C Street, NW, Room 7413, Washington, DC 20240. Phone: (202) 208–4206. Email: *Kym_Hall@nps.gov.* Fax: (202) 208–6756.

SUPPLEMENTARY INFORMATION:

Purposes of the National Seashore

Assateague Island National Seashore was authorized on September 21, 1965 (Pub. L. 89–195) ''for the purpose of protecting and developing Assateague Island * * * and certain adjacent waters and small marsh islands for public outdoor recreation, use and enjoyment * * *'' The 1965 Act went on to state ''* * * the Secretary shall administer the Assateague Island National Seashore for the general purposes of public outdoor recreation, including conservation of natural features contributing to public enjoyment. In the administration of the seashore * * * the Secretary may utilize such statutory authorities relating to areas administered * * * through the National Park Service * * * for conservation and management of natural resources as he deems appropriate * * *''.

This purpose was amended by the Act of October 21, 1976 (Pub. L. 94–578) that directed the Secretary of the Interior to prepare a ''comprehensive plan'' which would include, among other things, ''Measures for the full protection and management of natural resources and natural ecosystems of the seashore.'' The General Management Plan that evolved from this mandate reflects a systematic approach to park management whereby recreational use and development is balanced with the need to ensure long-term protection of natural resources and values.

Description of the National Seashore

Assateague Island National Seashore is an important national resource visited by more than 1.8 million people annually, showcasing one of the few remaining undeveloped barrier island environments along the Mid-Atlantic Coast. The National Park Service shares responsibility for land management on Assateague Island with the State of Maryland, which operates Assateague State Park, and the U.S. Fish and Wildlife Service, which manages Chincoteague National Wildlife Refuge on the Virginia portion of the island.

Assateague Island is a 37-mile long coastal barrier island located along the Delaware-Maryland-Virginia (Delmarva) peninsula, extending from Ocean City Inlet, Maryland to Chincoteague Inlet, Virginia. The Island varies in width from less than 1000 feet along portions of the northern end to more than 4300 feet adjacent to Toms Cove in Virginia. Elevation is generally very low, averaging approximately 7 feet, but can exceed 35 feet on isolated dunes. The ocean shoreline has a smooth curving configuration while the bay shoreline is a highly irregular mosaic of terrestrial and aquatic habitats created by numerous small landforms lying adjacent to Assateague Island proper.

The boundary of the National Seashore includes approximately 48,700 acres, most of which are adjacent oceanic and estuarine waters. The boundary extends offshore from Assateague Island approximately one-half mile on the ocean side, and a variable distance on the bay side ranging from less than 600 feet to more than 5,000 feet. On the Island itself, approximately 9,000 acres (predominantly in Virginia) and 700 acres (Maryland) fall under the jurisdiction of the U.S. Fish and Wildlife Service and State of Maryland, respectively, with the balance, some 8,100 acres (predominantly in Maryland), managed by the National Park Service.

The resources and values that define the natural environment of Assateague Island National Seashore include a diverse assemblage of wildlife, vegetation communities, water resources, geological features and physical processes reflecting the complexity of the land/sea interface along the Mid-Atlantic coast. Wildlife resources range from a myriad of aquatic and terrestrial species inhabiting estuarine habitats to the free roaming feral horses for which Assateague is famous. The indigenous plant communities reflect the adaptive extremes necessary for survival on a barrier island, where exposure to salt spray, lack of freshwater, and shifting sands create a harsh and dynamic environment. Throughout the Seashore, the relationship of land and water is paramount and change is the only constant.

The aquatic habitats of Assateague Island and the adjacent coastal bays are central to the significance of the National Seashore. The inshore waters are part of a relatively small network of coastal lagoons that parallel the Atlantic coast from Delaware to Virginia. Assateague Island forms the eastern boundary of the Sinepuxent/Chincoteague bays complex, the largest component of the system. Combined, these two bays have a total surface area of approximately 36,000 acres and a watershed of approximately 150 square miles. The bays are uniformly shallow with an average depth of 1.2 meters (4 feet) and are generally characterized as poorly flushing due to the limited freshwater inflow, restricted tidal exchange through two inlets, and a tidal range of less than 1 foot.

From a regional perspective, Assateague Island National Seashore includes the only remaining undeveloped barrier island in the State of Maryland, and a significant portion of the region's highest-quality marine/estuarine habitat. A substantial portion of the submerged aquatic vegetation (SAV) occurring in Maryland's coastal bays is found within park boundaries. Extensive salt marshes, inter-tidal flats, and the broad shallow margins of the

coastal bays adjacent to Assateague are key components of an estuarine system crucial to the maintenance of regional biological diversity and ecosystem health.

Assateague Island National Seashore provides important habitat for a number of federally listed threatened and endangered species, including but not limited to the peregrine falcon, loggerhead, green, and leatherback sea turtles, bald eagle, Delmarva fox squirrel, piping plover, and sea beach amaranth. Of these species, the National Seashore provides critical habitat for piping plover and sea beach amaranth, and is a focal point for mid-Atlantic conservation and restoration efforts. The northern 6 miles of the park provides the most favorable conditions for piping plover breeding activity and supports a majority of the local population. Recently re-discovered after an absence of more than 30 years, sea beach amaranth is the subject of an ongoing restoration effort to develop a sustainable population on Assateague Island.

In addition to the piping plover, the National Seashore provides important habitat for a multitude of bird species throughout the year. The island is renowned for the autumn migration of peregrine falcons and abundance of wintering waterfowl, and because of its importance as wintering, staging, and breeding habitat, has been designated a component of the Western Hemisphere Shorebird Reserve Network and a Globally Important Bird Area. Shorebirds, colonial waterbirds, neotropical migratory songbirds, and a variety of wading birds intensively utilize park habitats, and in general, occur in greater abundance and diversity than on the adjacent mainland.

The coastal waters within Assateague Island National Seashore are regularly utilized by a variety of marine mammals on a seasonal or transitory basis. More than fifteen species have been documented to occur in the National Seashore, all of which are protected under the Marine Mammal Protection Act of 1972. The most commonly observed species are the harbor porpoise and bottlenose dolphin, generally occurring in ocean nearshore waters. Harbor porpoise are most commonly observed during the winter months, while bottlenose dolphins are present largely during the summer.

Oceanic and estuarine waters and their associated biota also play a dominant role in recreational use of the National Seashore. More than 65% of visits to the park involve the use of aquatic habitats. The primary recreational activities include swimming, walking for pleasure, sightseeing, wildlife photography and observation, picnicking, and saltwater fishing.

Authority and Jurisdiction

The National Park Service is granted broad authority under 16 U.S.C. 1 *et seq.*, the NPS ''Organic Act'', to regulate the use of the Federal areas known as national parks. In addition, the Organic Act (16 U.S.C. 3) allows the NPS, through the Secretary of the Interior, to ''make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks * * *''

16 U.S.C. 1a–1 states, ''The authorization of activities shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established * * *''

As with the United States Coast Guard, NPS regulatory authority over waters subject to the jurisdiction of the United States, including navigable waters and areas within their ordinary reach, is based upon the Property and Commerce Clauses of the U.S. Constitution. In regards to the NPS, Congress in 1976 directed the NPS to ''promulgate and enforce regulations concerning boating and other activities on or relating to waters within areas of the National Park System, including waters subject to the jurisdiction of the United States * * '' (16 U.S.C. 1a–2(h)). In 1996 the NPS clarified its authority to regulate activities within the park boundaries occurring on waters subject to the jurisdiction of the United States by publishing a final rule, 36 CFR 1.2(a)(3).

Personal Watercraft Use in the National Seashore

PWC use at Assateague Island National Seashore is a relatively recent phenomenon, paralleling the national trend of increasing popularity and sales during the 1980s and 1990s. During that period, the preponderance of PWC use within the National Seashore occurred in the ocean and bay waters surrounding the northernmost 6 miles of Assateague Island. This area is immediately adjacent to the town of Ocean City which, with its summertime population of 300,000 and numerous marinas and boat launching facilities, generates significant amounts of water-based recreation, including boating and PWC use.

While systematic counts of PWC operating within the National Seashore have not been conducted, regional surveys indicate that general boating activity increased significantly between 1970 and 1990. Informal observations by NPS staff suggest a continuation of this trend through the 1990s, particularly in the use of PWC. In 1999, surveys conducted by the Maryland Department of Natural Resources over consecutive August weekends reported the total number of all vessels using Sinepuxent Bay and Ocean City Inlet ranged from 172–376. PWC use during the same surveys ranged from 63 to 137. Most of this use was in the Ocean City Inlet, going to or returning from the ocean, and close to but outside the park boundaries.

The predominate season of PWC use in the Assateague region is May through September. Operators have tended to be non-residents vacationing in the Ocean City area, although rapid population growth in the coastal counties of Maryland and Virginia is continually increasing the number of resident boaters using local waterways.

On April 20, 2000, the National Park Service adopted a final rule for managing PWC use in areas of the National Park System. The rule was implemented to ensure a prudent approach to PWC management that would potentially allow their use, yet protect park resources, sensitive natural areas, plants and wildlife, and reduce conflicts between park visitors. The final rule prohibited PWC use in all National Park System areas unless the NPS determined that this type of water-based activity was appropriate for a specific park based upon the legislation establishing the area, the park's resources and values, other visitor uses of the area, and overall management objectives.

Prior to 2000, PWC use was allowed throughout Assateague Island National Seashore, although as previously noted, the vast majority occurred adjacent to the northern end of the Island. In May 2000, most of the waters within the National Seashore were closed to PWC use consistent with the National Park Service PWC rule and a local determination that their continued use threatened the resources and values for which the park was established to protect. The authority for this closure was based upon 36 CFR Section 1.5, Closure and Public Use Limits.

Three areas within the boundary of the National Seashore were designated to remain open to PWC use. The first was a small area (approximately 26 acres) located in the Ocean City Inlet adjacent to the north shore of Assateague Island. The second was a larger area (approximately 224 acres) located near the southern end of the

Island between Assateague Point and Horse Marsh. The third was located in Sinepuxent Bay, just north of Verrazano Bridge, and included waters lying between the Park's authorized boundary and a roughly parallel line of State of Maryland buoys marking submerged aquatic vegetation (SAV) beds adjacent to Assateague Island.

Development of the Proposed Rule

As established by the April 2000 National Park Service rule, PWC use is prohibited in all National Park System areas unless determined appropriate. The process used to identify appropriate PWC use at Assateague Island National Seashore considered the known and potential effects of PWC on park natural resources, traditional uses, public health and safety. The proposed rule is designed to manage PWC use within the National Seashore in a manner that achieves the legislated purposes for which the park was established while providing reasonable access to the park by PWC.

The use of motor vessels is a traditional method of accessing Assateague Island for land-based recreational activities. As such, providing PWC owners with this opportunity was considered both desirable and compatible with park purposes, assuming that such use would not result in unacceptable impacts. To identify areas of potential use, the effects of PWC were evaluated against a number of resource and public use issues. Given the high value and significance of National Seashore resources, a precautionary approach was employed. Only those areas with minimal, if any, potential for resource and visitor use impacts were selected. A summary of the issues considered and evaluation results are presented in the next section.

Under this proposed rule, two of the three areas where PWC use now exists, the Ocean City Inlet and Horse Marsh areas, will remain open for PWC use, primarily to provide transportation corridors. Both areas have physical and biological characteristics that minimize the potential for adverse impacts to park resources and values, and both are located immediately adjacent to population centers and currently experience high levels of general boat traffic. The intended effect is to provide island access for persons wanting to use a PWC to travel to the National Seashore or for persons for whom a PWC is the only form of water access to Assateague Island.

The third area where PWC use now exists (Sinepuxent Bay) was re-evaluated against the resource protection and public use issues described below. The area was found to be comparable to the majority of park waters, and did not possess the physical and biological characteristics that would minimize the potential for adverse impacts. As such, the use of PWC in this area is incompatible with the resource protection objectives of the National Seashore. However, the closure will have minimal impact on PWC use in the majority of Sinepuxent Bay because the largest portion of the Bay is outside NPS jurisdiction and will remain open to PWC use, subject to the state of Maryland laws and regulations.

The closure of most National Seashore waters to PWC use does not adversely effect the public's ability to operate PWC in the region as a whole. More than two-thirds of Chincoteague Bay, Sinepuxent Bay and the Ocean City Inlet, and all of Isle of Wright and Assawoman Bays are outside National Park Service jurisdiction. These areas are currently available to PWC and constitute alternative use areas for operators who had previously utilized waters within the National Seashore that are now closed.

Resource Protection and Public Use Issues

The following summarizes the predominant resource protection and public use issues associated with PWC use at Assateague Island National Seashore. Each of these issues is analyzed in the companion environmental assessment.

Water Quality

The main issues associated with PWC use and water resources at Assateague Island are those related to water quality. Chemical impacts to water quality draw from PWC emissions of hydrocarbons including benzene, toluene, ethylbenze, xylene (BTEX), polycyclic aromatic hydrocarbon (PAH) and of methyl tertiary butyl ether (MTBE) directly into the water. Yet, the impacts to water quality from pollutants vary according to the PWC use areas. Areas of high tidal flushing dispel pollutants faster than areas of low tidal flushing. Assateague Island's inlets experience very high flushing while its bays experience low flushing. Thus, toxic pollutants remain in the bays for longer periods of time than they do in the inlets.

The two locations proposed for continued use by PWC are both located adjacent to ocean inlets with high tidal flushing and contain less than 1% of the water surface area of the National Seashore. As such, allowing PWC use in these areas will have negligible to minor adverse impacts on water quality. When analyzed with relation to all vessels in these areas, the cumulative impacts of all vessels will be negligible to moderate adverse.

Air Quality

PWC emit various compounds that pollute the air even though the exhaust is usually routed below the waterline. As much as one third of the fuel delivered to current two-stroke PWC remains unburned and is discharged as gaseous hydrocarbons (HC); the lubricating oil is used and expelled as part of the exhaust; the combustion process results in emissions of air pollutants such as volatile organic compounds (VOC), nitrogen oxides (NO_X), particulate matter (PM), and carbon monoxide (CO) (US EPA).

NPS analyzed two categories of airborne pollution impacts: Impacts on human health and impacts on air quality related values in Assateague Island. Pollutants emitted from PWC that affect human health includes VOC and NO_X, which in sunlight form ozone. Ozone can cause or contribute to respiratory illness (Wark and Warner 1981). Carbon monoxide (CO) also affects humans by interfering with the oxygen carrying capacity of blood.

With regard to impacts on human health, continuation of PWC use in the two locations proposed at Assateague Island would result in minor adverse impacts for CO and negligible adverse impacts for other pollutants of concerns including PM, HC, and VOC. When considering cumulative impacts of all boating activities, emissions would result in moderate adverse for CO and negligible to minor adverse for all other pollutants of concern.

PWC emissions also impact air quality related values. For example, ozone, which is toxic to sensitive vegetative species, causes visible injury to foliage, decreases plant growth, and increases plant susceptibility to insects and disease. NO_X and PM emissions associated with PWC use can degrade visibility. NO_X also contributes to acid deposition effects on plants, water, and soil. With respect to air quality related values in the areas at Assateague Island proposed for continued use under this rule, annual PWC emissions would result in negligible adverse impacts with no perceptible qualitative visibility impacts or injury to plants. Impacts on visibility, wildlife, and plants from airborne pollutants are negligible. When considering all boating activity, emissions result in negligible to minor adverse impacts.

Soundscapes Values

Studies by many organizations on different types of PWC have found noise levels associated with PWC to vary and range from about 71 to 105 dB. However, unlike motorboats, PWC are highly maneuverable and are used for stunts, which often result in quickly varying noise levels due to changes in acceleration and exposure of the jet exhaust when crossing waves. The frequent change in pitch and noise levels, especially if operated closer to land, make the noise from PWC more noticeable to human ears (Asplund 2001).

One of the Seashore's natural resources is the natural soundscape, also referred to as ''natural ambient sounds'' or ''natural quiet.'' The natural soundscape includes all of the naturally occurring sounds of the National Seashore. Conversely, ''noise'' is defined as unwanted sound. Sounds are described as noise if they interfere with an activity or disturb the person hearing them. The level of sound generated by watercraft using the national seashore area is expected to affect recreation users differently. For example, visitors participating in less sound-intrusive activities such as bird watching and/or hiking would likely be more adversely affected by PWC noise than another PWC or motorboat user.

Noise levels vary from the north and south ends of the island. Noise levels at the north end of the island are affected by PWC use in the transportation corridor and outside the national seashore boundary. Noise sources at the Ocean City Inlet area include powerboats, PWC, commercial vessels, background noise from the town of Ocean City, and small aircraft. In general, the use of PWC would result in minor adverse impacts where other users are concentrated in the northern inlet landing area. At the Ocean City Inlet landing area, PWC noise would be heard throughout the day but ambient sounds are predominant.

Little Beach (southern end of Assateague Island) is quieter with fewer PWC and/or watercraft generating noise in the area. It is assumed to have lower ambient noise levels due to its location away from urban environments. Little Beach is sensitive to noise disturbances due to the abundant bird population in the area. PWC noise levels would be expected to have moderate adverse impacts in the area of Little Beach potentially disturbing wildlife. Overall, noise levels from PWC would be expected to have negligible to moderate adverse impacts at certain locations within the Assateague Island National Seashore boundary.

The cumulative impacts of boating noise, ambient noise levels, and PWC would continue to range from negligible to moderate dependant on location within the park boundary. The northern landing area in the Ocean City Inlet experiences elevated noise levels due to the presence of Ocean City and the level of boat traffic within the inlet. Impacts to noise levels would be minor with the continuation of noise from PWC in the inlet.

Submerged Aquatic and Shoreline Vegetation

PWC have the potential to impact submerged aquatic vegetation and shoreline vegetation as a result of operating in shallow waters or adjacent to wetland habitats. Submerged aquatic vegetation (SAV) benefit the aquatic ecosystems because they provide a protective habitat for fish and shellfish; food for waterfowl, fish, and mammals; and aid in oxygen production; absorb wave energy and nutrients; and improve the clarity of the water. In addition, SAV beds stabilize bottom sediments and reduce suspended sediments present in the water column. However, SAV beds do not exist in the areas proposed for continued PWC use at Assateague Island; therefore in these areas, PWC use will have no impact.

Short-term, minor adverse direct and indirect impacts to shoreline vegetation are expected under the proposed rule in the northern landing area. While direct impacts from PWC use to shoreline vegetation at the northern PWC landing area are not expected because the shoreline is characterized by an unvegetated beach, an access trail to the beach may allow some trampling of vegetation as a result of foot travel off trail. This however, would only occur if PWC operators disembark at the landing area and travel by foot along the island, as do other visitors.

Under the proposed rule, PWC are only allowed shore access to the area designated as Little Beach in the southern landing area. Areas of sparse shrubland habitat, naturally occurring unvegetated beaches, maritime/coastal loblolly pine wetland forest, grass shrubland, and a few small areas of dune grassland characterize Little Beach. Impacts to shoreline vegetation are expected to result primarily from foot traffic. Adverse effects are expected to be minor due to limited use of the southern landing area. Cumulative impacts to shoreline vegetation are not expected if PWC and other watercraft are restricted to designated use areas.

Wildlife and Habitats

Some research suggests that PWC impact wildlife by interrupting normal activities, causing alarm or flight, causing animals to avoid habitat, displacing habitat, and affecting reproductive success. PWC may have a greater impact on waterfowl and nesting birds because of their noise, speed, and ability to access shallow-water areas more readily than other types of watercraft. Literature suggests that PWC can access sensitive shorelines, disrupting riparian habitat areas critical to wildlife.

The northern landing area is located in an area that experiences a high level of use by PWC. Yet, PWC use in the vicinity of the northern landing area would have minor adverse effects on terrestrial wildlife, such as shorebirds using the landing area and adjacent areas and other species such as fish that use nearshore habitats to forage for food. However, effects would be minor because species sensitive to a high level of noise and human activity are not expected to regularly use the landing area or immediately adjacent habitats during high PWC use periods.

The intensity of PWC use in the vicinity of the southern landing area is much less than at the northern landing area. Wildlife species using marsh and shoreline areas on and in the vicinity of the southern landing area would be less accustomed to high levels of human activity and noise. Occasional nearshore PWC use in the vicinity of the southern landing area would have minor adverse effects to wading and shorebirds, waterfowl, and other wildlife by disrupting normal nesting, foraging, or resting activities.

Threatened and Endangered Species and Species of Concern

Numerous Federal and state listed threatened and endangered species and protected species utilize habitats within Assateague Island National Seashore on either a permanent, seasonal, or transitory basis. Federally listed species documented on Assateague Island include the piping plover, bald eagle, loggerhead sea turtle, the Delmarva fox squirrel, and the seabeach amaranth. The Maryland listed threatened black skimmer, peregrine falcon, gull-billed tern, royal tern, white tiger beetle, little white tiger beetle, and least tern also occurs on the Island.

The federally listed piping plover's nesting areas are located several hundred feet from the northern landing area. However, access to shore areas adjacent to the landing area with the potential to provide nesting areas for the

piping plover is prohibited during the nesting season. Piping plover are not likely to be adversely affected by PWC use at the northern or southern landing areas due to the distance of the landing areas from nesting areas and access restrictions around piping plover nesting areas during the nesting season.

Several Federal and state endangered and threatened turtles including Kemp's Ridley sea turtle, green sea turtle, leatherback sea turtle and the loggerhead sea turtle have been documented by the NMFS to occur in the waters off of Assateague Island during the warmer summer months. Sea turtles are not likely to be adversely affected by PWC use in the northern and southern landing areas because the proposed use areas represent a very small portion of the overall habitat available in both the park and region.

The Federal and Virginia threatened bald eagle is documented to have two active nests in the Chincoteague National Wildlife Refuge. Foraging activities of bald eagles could potentially be affected by PWC use in the area of the southern landing area; however, because PWC use in this area is limited, adverse effects on the species are not likely.

No effects to the Delmarva fox squirrel or seabeach amaranth are expected as a result of PWC use because these species do not occur in areas affected by PWC use. Cumulative impacts are not likely to adversely affect federally listed threatened or endangered species on Assateague Island National Seashore.

Visitor Experience

A survey of recreational boaters operating in the waters within and adjacent to Assateague Island National Seashore reports a high frequency of conflicts between the boating public and PWC users. Problems reported include the presence of PWC in fishing areas, noise, PWC operation too close to anchored boats, and excessive speed (University of Delaware 2000).

Of visitors who access Assateague Island by vehicle, swimmers, hikers and other visitors to the north end of the island and the hiking trails to the south would have slightly more contact with PWC operators than visitors to the oceanside of the park. Noise generated by PWC would reach visitors to the marshes and hiking trails at the southern end of the island. Impacts to visitor experience, specifically bird watching, would be moderate adverse towards the end of the season when the first waves of migratory birds begin to show their presence on the island and PWC users are still present.

PWC users would have little or no noticeable change in their visitor experience or visitor satisfaction, since restrictions would allow for access to portions of the park and not affect PWC activity outside the park boundary. Visitors who use PWC at Assateague Island National Seashore would experience negligible adverse impacts. Elimination of PWC in Sinepuxent Bay portion of the park would affect those who would be precluded from using PWC there, but because the use is relatively low and other opportunities exist for PWC use, these impacts would be minor. Cumulative impacts related to PWC, other boats, and visitors on the visitor experience would be negligible adverse, since there would be little noticeable change in the visitor experience overall.

Visitor Conflicts and Safety

PWC comprise 9% of all registered ''vessels'' in the United States, but are involved in 36% of all boating accidents (NTSB 1998). In part, this is believed to be a boater education issue (i.e., inexperienced riders lose control of the craft), but it also is a function of the PWC operation (i.e., no brakes or clutch; when drivers let up on the throttle to avoid a collision, steering becomes difficult). Newer models will reportedly have improved safety devices such as better steering and braking systems, however it will take time to infuse the market with these types of newer machines.

Although the study conducted by National Transportation Safety Board indicates PWC related fatalities increasing in the United States, PWC related fatalities in the Assateague Island National Seashore area have been few in recent years. There were 46 PWC-related accidents including one fatality in Maryland in 2000. The primary causes of these accidents were excessive speed, operator inexperience, operator inattention, and machinery failure. There were 37 PWC-related accidents resulting in one fatality in Virginia in 2000.

The potential for accidents with other boaters (canoes, kayaks, sailboats and motorboats) in the Ocean City Inlet is considered to be of a moderate to major level due to the level of activity. The nature of PWC use poses threats to the safety of the PWC operator and occupants of vessels with slow reaction times such as sailboats, canoes, and kayaks. However, the areas proposed to be open to PWC use are intended to be used primarily as transportation corridors which may mitigate these potential hazards. Potential accidents involving PWC and swimmers may occur in nearshore waters at the extreme northeast and northwest sections of the island adjacent to the PWC landing area (most swimmers do not venture farther than 200 feet from shore). However, due to the small number of visitors utilizing these shores, adverse impacts are predicted to continue at a minor to moderate level. At the southern end of the island at Little Beach, potential accidents may occur involving PWC and swimmers. The number of PWC in this area is much more limited than at the northern end of the island. Consequently, the potential adverse impacts to swimmers at Little Beach are considered to be negligible to minor adverse.

Cumulative impacts under the proposed rule would continue at minor to potentially major levels over the next 10 years as congestion increases. As the number of motorized watercraft in the water continues to increase, the potential for accidents would escalate as well. This is particularly visible in the Ocean City Inlet where the potential for accidents between PWC and other motorboats exists.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

The National Park Service has completed the report ''Economic Analysis of Personal Watercraft Regulations in Assateague Island National Seashore'' (Law Engineering and Environmental Sciences, Inc) dated March 2002. The report found that this proposed rule will not have a negative economic impact. In fact this rule, which will not impact local PWC dealerships and rental shops, may have an overall positive impact on the local economy. This positive impact to the local economy is a result of an increase of other users, most notably canoeists, swimmers, anglers and traditional boaters seeking solitude and quiet, and improved water quality.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

Actions taken under this rule will not interfere with other agencies or local

government plans, policies, or controls. This is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule raises novel policy issues.

This regulation is the first of thirteen special regulations for managing PWC use in National Park Units. The National Park Service published the general regulations (36 CFR 3.24) in March 2000, requiring individual park areas to adopt special regulations to authorize PWC use. The implementation of the requirements of the general regulation continues to generate interest and discussion from the public concerning the overall effect of authorizing PWC use and National Park Service policy and park management.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based upon the finding in a report prepared by the National Park Service entitled, ''Economic Analysis of Personal Watercraft Regulations in Assateague Island National Seashore'' (Law Engineering and Environmental Sciences, Inc., March 2002). The focus of this study was to document the impact of this rule on two types of small entities, PWC dealerships and PWC rental outlets. This report found that the potential loss for these types of businesses as a result of this rule would be minimal to none.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The National Park Service has completed an economic analysis to make this determination. This rule:

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

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. Do 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.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and imposes no other requirements on other agencies, governments, or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant taking implications. A taking implication assessment is not required. No takings of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule only effect use of NPS administered lands and waters. It has no outside effects on other areas and only allows use within a small portion of the park.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

National Environmental Policy Act

The National Park Service has analyzed this rule in accordance with the criteria of the National Environmental Policy Act and has prepared a Draft Environmental Assessment (EA). The EA is available for public review and comment in conjunction with this proposed rule. A copy of the Draft EA is available by contacting the Superintendent, Assateague Island National Seashore, 7206 National Seashore Lane, Berlin, Maryland 21811, Email: *Regina—Jones-Brake@nps.gov,* Fax: (410) 641–1099, or by downloading it from the internet at *www.nps.gov/asis.*

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government to Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2:

We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example § 7.65 Assateague Island National Seashore. (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

Drafting Information: The primary authors of this regulation are:

John C. Burns, Chief Ranger, Carl S. Zimmerman, Chief of Resource Management, Assateague Island National Seashore, Sarah Bransom, Environmental Quality Division, and Kym Hall, Regulations Program Manager.

Public Participation: If you wish to comment, you may submit your comments by any one of several methods. You may mail written comments to: Superintendent, Assateague Island National Seashore, 7206 National Seashore Lane, Berlin, Maryland 21811, comment by electronic mail to: *Regina_Jones-Brake@nps.gov,* or comment by Fax at: (410) 641–1099. Please also include ''PWCrule'' in the subject line and your name and return address in the body of your Internet message. Finally, you may hand deliver

comments to Superintendent, Assateague Island National Seashore, 7206 National Seashore Lane, Berlin, Maryland. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent 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 or organizations or businesses, available for public inspection in their entirety.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the National Park Service proposes to amend 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721 (1981).

2. Section 7.65 is amended by adding paragraph (c) to read as follows:

§ 7.65 Assateague Island National Seashore

* * * * *

(c) *Personal Watercraft.* (1) Personal Watercraft (PWC) are allowed in Assateague Island National Seashore within the following locations and under the following conditions:

(i) *Ocean City Inlet.* PWC may operate, transit, launch in water or beach on land between the north shore of Assateague Island and the south margin of the established Ocean City Inlet channel, between Lighted Buoy #10 at approximate latitude 38.19.30N, longitude 75.05.30W and Lighted Buoy #11 at approximate latitude 38.19.16N, longitude 75.09.0W

(ii) *Chincoteague Bay.* PWC may operate, transit or launch in waters between the established Park boundary and the western shore of Assateague Island, from Assateague Point north to that portion of Horse Marsh located due east of the Memorial Park boat ramp on Chincoteague Island.

(iii) *Oceanside.* PWC are allowed to beach along the ocean side of the island only in the case of personal injury or mechanical failure.

(2) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: March 26, 2002.

Craig Manson,

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 02–11046 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–70–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Docket No. FEMA–B–7424

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Correction of proposed rule.

SUMMARY: This document contains corrections to the proposed rule (Docket No. FEMA–B–7424), which was published on February 5, 2002. The correction more accurately represents the Flood Insurance Study and Flood Insurance Rate Map for the unincorporated areas of Greene County, Missouri, than previously published.

DATES: The comment period is ninety (90) days following the second publication of this correction to the proposed rule in a newspaper of local circulation in the community.

ADDRESSES: The proposed base flood elevations for the community are available for inspection at the Planning and Zoning Section, 833 Boonville Road, Springfield, Missouri 65802.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of base (1-percent-annual-chance) flood elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a). These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Correction:

In proposed rule FR Doc. 02–2660, published February 5, 2002 (67 FR 5246), make the following correction to the addresses published under the authority of § 67.4. On page 5248, revise the text following the table for Greene County, Missouri, to read as follows:

Maps are available for inspection at the County Environmental Office, County Courthouse, 940 Boonville Avenue, Springfield, Missouri.

Send comments to the Honorable David L. Coonrod, Presiding Commissioner, Greene County Commissioners, County Courthouse, 940 Boonville Avenue, Springfield, Missouri 65802.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: April 5, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–10220 Filed 5–3–02; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020412086–2086–01; I.D. 010202C]

RIN 0648–AJ08

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagics Fisheries; Pacific Remote Island Areas; Permit and Reporting Requirements for the Pelagic Troll and Handline Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues a proposed rule that would establish Federal permit and reporting requirements for any U.S. fishing vessel that uses troll or handline fishing gear to harvest pelagic management unit species in waters of the U.S. exclusive economic zone (U.S. EEZ) around Howland Island, Baker Island, Jarvis Island, Johnston Atoll, Kingman Reef, Palmyra Atoll, Wake Island and Midway Atoll. These islands are referred to as the Pacific remote island areas (PRIA). The purpose of this proposed rule is to monitor participation in the fishery and to obtain fish catch and fishing effort data (including bycatch data), including interactions with protected species, so that fishery management decisions are based on complete information.

DATES: Comments on this proposed rule will be accepted through June 20, 2002.

ADDRESSES: Send comments to Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814. Copies of background material pertaining to this action may be obtained from Kitty Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop St. Suite 1400, Honolulu, HI 96813. Comments will not be accepted if submitted via e-mail or the internet. Send comments on the reporting burden estimate or other aspect of the collection-of-information requirements in this proposed rule to NMFS, PIAO and to the Office of Management and Budget (OMB) at the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, PIAO, at 808–973–2937.

SUPPLEMENTARY INFORMATION: The collection and analysis of reliable data are needed to assess the status and health of fishery stocks, evaluate the effectiveness of management measures, determine the need for changes in the management regime, prevent overfishing, determine and minimize bycatch, document protected species interactions with fishing gear, and assess the potential impact of fishery interactions. Other than for vessels registered for use with Federal Hawaii longline limited access permits, or Federal Western Pacific longline general permits, there are no specific regulations under the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region applicable to vessels targeting pelagic species in the U.S. EEZ waters around the PRIA. The PRIA or ''U.S. island possessions in the Pacific'' are the distant and mostly uninhabited U.S. islands in the central and western Pacific Ocean consisting of Howland Island, Baker Island, Jarvis Island, Wake Island, Kingman Reef, Johnston Atoll, Palmyra Atoll, and Midway Atoll. Midway Atoll, located in the Northwestern Hawaiian Islands, is not part of the State of Hawaii and is treated as one of the PRIA.

In recent years, several troll and handline fishing vessels from Hawaii have targeted pelagic fish stocks off Palmyra Atoll and Kingman Reef. This expansion of troll and handline fishing activity beyond the Hawaiian Archipelago to the U.S. EEZ around certain PRIA and the lack of any reporting requirements for these fisheries demonstrates the need to put in place reporting procedures in order to collect catch and bycatch data for these fisheries. The proposed establishment of a permit requirement for the PRIA pelagic troll/handline fishery would serve to identify actual or potential participants in the fishery. This would be an ''open access'' fishery, meaning any U.S. vessel would be eligible to receive a permit.

The Council has recommended the establishment of a reporting requirement for all vessel operators who participate in the PRIA pelagic troll/handline fishery, except at Midway Atoll. They would be required to use a new NMFS fish catch and effort reporting form created especially for the PRIA. At Midway Atoll, troll/handline vessel operators (i.e., charter boat captains), who operate under the Midway Atoll National Wildlife Refuge program, administered by the U.S. Fish and Wildlife Service (FWS), would continue to report their catch and effort data on existing fish catch reporting forms provided by the FWS. NMFS and FWS will coordinate their efforts to obtain the necessary data from fishermen at Midway Atoll and avoid duplication of reporting regimes.

Under this proposed rule NMFS would require vessel operators, except operators of vessels operating in the U.S. EEZ around Midway Atoll, to submit their catch reports to NMFS within 10 days after the completion of each fishing trip to the U.S. EEZ around the PRIA. The 10–day requirement is to allow vessels to make fish landings at Palmyra Atoll and to potentially conduct another fishing trip enroute to the vessel's homeport. By landing at Palmyra Atoll there would be no need for these vessels to return to their home ports between trips and, in that case, the prompt transmittal of catch reports to NMFS would be infeasible. For this reason NMFS proposes to allow the operators whose vessels are registered for use with PRIA troll/handline pelagic permits an extended reporting window.

The regulatory text for this proposed rule would correct a typographical error in the prohibition on longline fishing within longline fishing areas at § 660.22(i) to reference § 660.27 instead of a redundant reference to § 660.17. Also, a cross reference in § 660.21(l)(1) is revised to comport with the proposed redesignation of paragraphs in § 660.21.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

Based on historical records, it is estimated that two to three vessels from Hawaii, and three Midway Atoll-based vessels have fished in the U.S. EEZ around the PRIA in recent years. Future increases in effort are difficult to predict; however, it appears unlikely that significant expansion in this fishery will occur in the future due to long travel distances to reach the PRIA fishing grounds. It is estimated that there are approximately 5,000 fishing vessels that participate in the pelagic troll and handline fisheries in Hawaii, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands; however, it is expected that this rule would impact less than 10 of the vessel operators. Further, due to its purely administrative and record keeping nature, this proposed rule would not affect fishing operations directly and would require only relatively minor tasks related to permit application and reporting requirements. The new reporting requirement would be largely similar to the existing requirements for other

areas, which are familiar to the majority of likely fishery participants. Eligibility criteria and application forms for the permit would be the same as those for other Federal western Pacific fishing permits. No fee is associated with the PRIA pelagic troll and handline permit. Estimated total annual cost to respondents for completing permit applications and required reports is $600 per year. The proposed permitting and reporting demands are considered to be minimal, and, when combined with the small number of individuals likely to be impacted, provide a basis for certification of this action as one not likely to have a significant economic impact on a substantial number of small entities.

As a result, no regulatory flexibility analysis is required for this proposed rule and none has been prepared.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden for these collections of information is estimated at 30 minutes for a permit application and 5 minutes for a daily troll/handline log sheet. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on the reporting burden estimate or any other aspect of the collection-of-information requirements in this proposed rule to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Fishing Gear, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: April 29, 2002.

Rebecca Lent,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended to read as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.12, the definitions for ''Pelagic handline fishing,'' ''Pelagic troll fishing,'' and ''Pacific remote island areas (PRIA, or U.S. island possessions in the Pacific Ocean),'' are added in alphabetical order to read as follows:

§ 660.12 Definitions.

* * * * *

Pacific remote island areas (PRIA, or U.S. island possessions in the Pacific Ocean) means Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, Wake Island, and Midway Atoll.

Pelagic handline fishing means fishing for pelagic management unit species from a stationary or drifting vessel using hook and line gear other than longline gear.

Pelagic troll fishing (trolling) means fishing for pelagic management unit species from a moving vessel using hook and line gear.

* * * * *

3. In § 660.14, paragraph (a) is revised to read as follows:

§ 660.14 Reporting and recordkeeping.

(a) *Fishing record forms.* The operator of any fishing vessel subject to the requirements of §§ 660.21, 660.41, or 660.81 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on report forms provided by the Regional Administrator. All information specified on the forms must be recorded on the forms within 24 hours after the completion of each fishing day. The original logbook form for each day of the fishing trip must be submitted to the Regional Administrator as required by this paragraph (a). Each form must be signed and dated by the fishing vessel operator.

(1) The operator of any vessel subject to the requirements of §§ 660.21(a) through (c), 660.41, or 660.81 must submit the original logbook form for each day of the fishing trip to the Regional Administrator within 72 hours of each landing of management unit species.

(2) Except for a vessel that is fishing in the U.S. EEZ around Midway Atoll as specified in paragraph (a)(3) of this section, any operator whose vessel is registered for use with a PRIA pelagic troll and handline fishing permit under § 660.21(d) must submit the original logbook form for each day of fishing within the U.S. EEZ around the PRIA to the Regional Administrator within 10 days of each landing of management unit species.

(3) The operator of a vessel fishing in the U.S. EEZ around Midway Atoll and registered for use with a PRIA pelagic troll and handline fishing permit under § 660.21(d), must submit an appropriate reporting form as required and in a manner specified by the U.S. Fish and Wildlife Service for each day of fishing within the U.S. EEZ around Midway Atoll, which is defined as an area of the Pacific Ocean bounded on the east by 177°10′ W. long., on the west by 177°30′ W. long., on the north by 28°25′ N. lat., and on the south by 28°05′ N. lat.

* * * * *

4. In § 660.21, paragraphs (d) through (l) are redesignated as (e) through (m), newly redesignated paragraph (l)(1) is revised, and new paragraph (d) is added to read as follows:

§ 660.21 Permits.

* * * * *

(d) A fishing vessel of the United States must be registered for use with a PRIA pelagic troll and handline fishing permit if that vessel is used to fish for Pacific pelagic management unit species using pelagic handline or trolling fishing methods in the U.S. EEZ around the PRIA.

* * * * *

(l)(1) Upon receipt of an appeal authorized by this section, the Regional Administrator may request additional information. Upon receipt of sufficient information, the Regional Administrator will decide the appeal in accordance with the criteria set out in this part and in the fishery management plans prepared by the Council, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information available; the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (l)(3) of this section; and such other considerations as deemed appropriate. The Regional Administrator will notify the appellant of the decision and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information,

unless additional time is needed for a hearing.

* * * * *

5. In § 660.22, the phrase ''U.S. possessions in the Pacific Ocean area'' is revised to read ''U.S. island possessions in the Pacific Ocean'' each place that it appears, paragraph (i) is revised, and new paragraph (uu) is added to read as follows:

§ 660.22 Prohibitions.

* * * * *

(i) Fish with longline gear within a longline fishing prohibited area, except as allowed pursuant to an exemption issued under § 660.17 or § 660.27.

* * * * *

(uu) Use a U.S. vessel employing pelagic handline or trolling methods to fish in the U.S. EEZ around the PRIA without a valid PRIA pelagic troll and handline fishing permit registered for use with that vessel.

[FR Doc. 02–11026 Filed 5–3–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 87

Monday, May 6, 2002

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

Submission for OMB Review; Comment Request

May 1, 2002.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (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 agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 and the Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Foreign Agricultural Agency

Title: Request for Vessel Approval.

OMB Control Number: 0551–0008.

Summary of Collection: Title I of the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480, 83rd Congress, as amended) provides for U.S. government financing of sales of U.S. agricultural commodities to recipients (foreign countries or private entities). In accordance with the law, an agreement providing for long-term credit financing is first negotiated with the recipients through diplomatic channels. Within the U.S. government, the Foreign Agricultural Service (FAS) of the Department of Agriculture is the agency responsible for administering Public Law 480, Title I (''Title I'') agreements. After an agreement has been signed, the recipient applies to FAS for authorization to purchase each commodity provided in the agreement. A purchase authorization is issued which provides for financing of commodity sales by the Commodity Credit Corporation (CCC). The recipient then purchases the commodity for delivery at U.S. ports and arranges for ocean transportation. The recipient must send the pertinent terms of all proposed ocean freight contracts, regardless of whether any portion of the ocean freight is financed by CCC, to FAS for review and approval before the vessel is ''fixed'' (i.e. contracted).

Need and Use of the Information: FAS will collect information on the ocean freight contract. The information is needed to ensure: that Title I recipient comply with the requirement that U.S. flag vessels carry 75 percent of the tonnage shipped under this program, that program recipients comply with Public Law 664 (Cargo Preference Act) and the Merchant Marine Act of 1936, as amended. FAS also uses the information to prepare form CCC–105, ''Advice of Vessel Approval,'' which specifies what part of the ocean freight rate will be financed by the CCC.

Description of Respondents: Business or other for-profit.

Number of Respondents: 5.

Frequency of Responses: Reporting; on occasion.

Total Burden Hours: 9.

Farm Service Agency

Title: Verification of Debts and Assets.

OMB Control Number: 0560–0166.

Summary of Collection: The Consolidated Farm and Rural Development Act (CONACT) Sections 311 (7 U.S.C. 1941), 302 (7 U.S.C. 1922 and 321 (7 U.S.C. 1961), authorize the Farm Service Agency to determine an applicant's eligibility for Operating, Farm Ownership or Emergency loans. Additionally, Section 353 (7 U.S.C. 2001) requires FSA to collect financial data to verify debts and assets of borrowers that requested primary and preservation loan servicing or debt settlement. FSA will collect information using FSA form 440–32, Verification of Debts and Assets.

Need and Use of the Information: FSA will collect information to determine whether an applicant is eligible for a loan or the appropriateness of a servicing or debt settlement action. The data collected is then used to determine feasibility of the loan request. If the data were not collected, FSA would be forced to use outdated financial information, which would result in much higher losses to the Government.

Description of Respondents: Business or other for-profit; individuals or households; farms; Federal Government.

Number of Respondents: 23,656.

Frequency of Responses: Reporting; on occasion.

Total Burden Hours: 11,828.

Rural Business Cooperative Service

Title: 7 CFR Part 1980–E, Business and Industry Loan Program.

OMB Control Number: 0570–0014.

Summary of Collection: The Business and Industry (B&I) program was legislated in 1972 under Section 310B of the Consolidated Farm and Rural Development Act. The purpose of the program is to improve, employ, develop, or finance businesses, industries, and improve the economic and environmental climate in rural communities, including pollution abatement and control. This is achieved through bolstering the existing private credit structure by making direct loans, thereby providing lasting community benefits. The B&I program is administered by the agency through Rural Development State and sub-State Offices serving the State. All the reporting and recordkeeping burden estimates for making and servicing B&I Guaranteed Loans have been moved to the B&I Guaranteed Loan Program regulations (7 CFR 4279–A and B and

4287–B). 7 CFR 1980–E, in conjunction with 7 CFR 1942–A and other regulations, is currently used only for making B&I Direct Loans. 7 CFR 1951–E is used for servicing B&I Direct and Community Facility loans.

Need and Use of the Information: RD will collect the minimum information needed from applicant to determine program eligibility, or the current financial condition of a business or a credit proposal; is requested. The majority of the information is collected only once and the agency monitors the progress of the business through the analysis of annual borrower financial statements and visits to the borrower.

Description of Respondents: Individuals or households; State, Local or Tribal Government.

Number of Respondents: 200.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 4,550.

Rural Business Service

Title: 7 CFR 1951–R, Rural Development Loan Servicing.

OMB Control Number: 0570–0015.

Summary of Collection: The Rural Development (RD) Loan Servicing was legislated in 1985 under Section 1323 of the Food and Security Act of 1985. This action is needed to implement the provision of Section 407 of the Health and Human Services Act of 1986, which amended Section 1323 of the Food Security Act of 1985. Subpart R of part 1951 contains regulations for servicing and liquidating existing loans previously approved and administered by the U.S. Department of Health and Human Services under 45 CFR Part 1076 and transferred from HHS to the Department of Agriculture. This subpart contains regulation for servicing and liquidating loans made by RD, successor to the Farmers Home Administration, under the Intermediary Relending Program to eligible intermediaries and applies to ultimate recipients and other involved parties.

Need and Use of the Information: RD will collect information from the Intermediary, i.e. assets and liabilities, income statement and a summary of the Intermediary's lending and guarantee program. The information is vital to RD for the Agency to make credit and financial analysis decisions based on financial information provided by the Intermediary.

Description of Respondents: Not-for-profit institutions; business or other for-profit.

Number of Respondents: 420.

Frequency of Responses: Reporting: On occasion; quarterly; semi-annually; annually.

Rural Housing Service

Title: Application Certification, Federal Collections Policies for Consumer or Commercial Debts.

OMB Control Number: 0575–0127.

Summary of Collection: OMB Circular A–129, ''Policies for Federal Credit Programs and Non-Tax Receivables,'' states ''further information on the implementation of credit management and debt collection policies may be found in the credit supplement to the Treasury Financial Manual''—According to Managing Government Credit: A Supplement to the Treasury Financial Manual. The agency will inform its loan applicants of the Federal Government's debt collection policies and procedures prior to extending credit. Applicants are required to sign a debt collection certification statement to certify knowledge of the Government's policies in which the statement details the consequences of delinquency.

Need and Use of the Information: RD will collect the information using Form RD 1910–11 to advise applicants of the debt collection methods that will and can be used in recovering delinquent or defaulted loans. The information will be obtained from loan applicants for consumer and commercial debt at the time of loan application. If the application results in a loan, the information will be maintained in the borrower's case file or loan docket and used as documentation should the borrower become delinquent or default.

Description of Respondents: State, Local or Tribal Government; not for profit institutions; Individuals, Households; business or other for-profit; Federal Government.

Number of Respondents: 1,625.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 406.

Rural Housing Service

Title: RD 3550–28, ''Authorization Agreement for Preauthorization Payments''; RD 1951–65; ''Customer Initiated Payments (CIP)'' and RD 1951–66, ''Fedwire Worksheet''.

OMB Control Number: 0575–New.

Summary of Collection: Rural Development has expanded its use of electronic methods for receiving and processing loan payments and collections. These electronic collection methods include Preauthorized Debits (PAD), Customer Initiated Payments (CIP), and FedWire; and they can provide the borrower the ability to submit their loan payments the day prior to, or the day of their installment due date. To administer these electronic payment methods, Rural Development (RD) will use approved agency forms for collecting financial institution routing information. Form RD 3550–28, Authorization Agreement for Preauthorized Payments, is prepared by the borrower to authorized RD to electronically collect regular loan payments from a borrower's account at a financial institution (FI) as preauthorized debits. Form RD 1951–65, is prepared by the borrower to enroll in CIP. CIP is an electronic collection method that enables borrowers to input payment data to a contract bank via telephone (touch tone and voice) or computer terminal. Form RD 1951–66, FedWire Worksheet, is completed by the borrower to establish an electronic FedWire format with their FI.

Need and Use of the Information: Rural Development (RD) will request that borrowers make payments electronically via PAD, CIP, or FedWire. The information is collected only once unless the FI routing information changes. If the information were not collected, RD would be unable to collect loan payments electronically, resulting in increased costs to borrowers and the government to process hard copy checks, money orders, etc.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 600.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 300.

Animal Plant and Health Inspection Service

Title: Brucellosis Program Cooperative Agreements—Title 9, CFR Parts 50, 51, 53, 54, 71, 76, and 78.

OMB Control Number: 0527–0047.

Summary of Collection: Brucellosis is a contagious animal disease that causes loss of young through spontaneous abortion or birth of weak offspring, reduced milk production, and infertility. It is mainly a disease of cattle, bison and swine. There is no economically feasible treatment for brucellosis in livestock. Veterinary Services, a division with USDA's Animal and Plant Health Inspection Service (APHIS), is responsible for administering regulations intended to prevent the dissemination of animal diseases, such as brucellosis, within the United States. These regulations are found in Part 78 of Title 9, Code of Federal Regulations. The continued presence of brucellosis in a herd seriously threatens the health of other animals.

Need and Use of the Information: APHIS will use the information

collected from the various forms to continue to search for other infected herds, maintain identification of livestock, monitor deficiencies in identification of animals for movement, and monitor program deficiencies in suspicious and infected herds. This information will be used to determine brucellosis area status and aids herd owners by speeding up the detection and elimination of serious disease conditions in their herds. Without the data, APHIS' Brucellosis Eradication Program would be severely crippled.

Description of Respondents: Farms; State, Local or Tribal Government.

Number of Respondents: 7,382.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 4,036.

Animal Plant and Health Inspection Service

Title: 7 CFR 319.76 Exotic Bee Diseases and Parasites, 7 CFR 322 Honeybees and Honeybee Semen.

OMB Control Number: 0579–0072.

Summary of Collection: The Honeybee Act of 1922 (Title 7, Chapter 11) was created to prevent the introduction and spread of diseases and parasites harmful to honeybees, and the introduction of genetically undesirable plasm of honeybees. The introduction and establishment of new honeybee diseases, parasites, and undesirable honeybee strains in the United States could cause multimillion-dollar losses to American agriculture. Diseases and parasites can weaken or kill honeybees, thereby causing substantial reductions in the production of honey and other honeybee products, as well as reduction in pollination activity. Section 281c of the Honeybee Act provides that honeybees and honeybee semen can only be imported into the United States under rules and regulations prescribed by the Secretary of Agriculture and the Animal and Plant Health Inspection Service (APHIS). Anyone who seeks to import honeybees, honeybee semen, or articles that could harbor diseases or parasites of honeybees must apply to APHIS for an import permit. APHIS will collect various pieces of information concerning the nature and point of origin of the items to be imported using a number of forms and documents.

Need and Use of the Information: APHIS collects information from importers such as name, address, telephone number, the quantity and kinds of articles intended for import, the amount of semen to be imported; the species or subspecies of honeybee from which the semen was collected; the country or locality or origin; the intended port of entry in the United States; the means of transportation; and the expected date of arrival. The information is needed to determine if the honeybee semen or restricted articles are eligible for importation into the United States, and under what conditions (i.e., necessary treatment, appropriate shipping containers, proper port of entry, etc.

Description of Respondents: Business or other for profit; individuals or households; farms; State, Local or Tribal Government; Federal Government.

Number of Respondents: 13.

Frequency of responses: Reporting: On occasion.

Total Burden Hours: 9.

Animal Plant and Health Inspection Service

Title: 7 CFR 340–Intro of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe are Plant Pests.

OMB Control Number: 0579–0085.

Summary of Collection: The Animal and Plant Health Inspection Service (APHIS) is charged with preventing the introduction into, and dissemination and establishment of plant pests in the United States. The statutory requirements for the information collection activity are found in the Federal Plant Pest Act (FPPA) and the Plant Quarantine Act (PQA). The regulations in 7 CFR part 340 implement the provisions of the FPPA and PQA by providing the information necessary to establish conditions for proposed introductions of certain genetically engineered organisms and products which present a risk of plant pest introduction.

Need and Use of the Information: APHIS will collect the information through a notification procedure or a permit requirement to ensure that certain genetically engineered organisms, when imported, moved interstate, or released into the environment, will not present risk of plant pest introduction. The information collected through the petition process is used to determine whether a genetically engineered organism will pose a risk to agriculture or the environment, if grown in the absence of regulation by APHIS. The information is also provided to State departments of agriculture for review, and made available to the public and private sectors on the Internet to ensure that all sectors are kept informed concerning any potential risks posed through the use of genetic engineering technology.

Description of Respondents: Business or other for profit; not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 105.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,984.

Animal & Plant Health Inspection Service

Description of Respondents: State, Local or Tribal Government; Federal Government;

Number of Respondents: 120.

Frequency of Responses: Recordkeeping; reporting; on occasion.

Total Burden Hours: 240.

Animal Plant and Health Inspection Service

Title: 7 CFR Parts 319—Importation of Fruits and Vegetables.

OMB Control Number: 0579–0136.

Summary of Collection: The Department of Agriculture is responsible for preventing plant diseases or insect pests from entering the United States. The Plant Protect Quarantine Act and the Federal Pest Act authorizes the Department and the Animal and Plant Health Inspection Service (APHIS) to carry out this mission. Implementing the laws is necessary to prevent injurious insect pest and plant diseases from entering the United States, a situation that could produce serious consequences for U.S. agriculture. Providing for the safe importation of these fruits and vegetables will necessitate the use of several information collection activities and forms, including an application for permit, phytosanitary certificate, certain marking requirements, trapping and survey procedures.

Need and Use of the Information: APHIS will collect information from permit applications to determine if the fruits meets the requirements for importation and also this enables APHIS to evaluate potential risks associated with the proposed movement of these fruits and vegetables into the United States. The information is used to determine whether a permit can be issued, and also to develop risk-mitigating conditions for the proposed movement.

Description of Respondents: Business or other for profit; individuals or households; not-for-profit institutions; farms; State, Local or Tribal Government.

Number of Respondents: 822.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,343.

Agricultural Marketing Service

Title: National Research, Promotion, and Consumer Information Programs—Honey Revision—Final Rule.

OMB Control Number: 0581–0093.

Summary of Collection: The Department of Agriculture has the responsibility of implementing and overseeing national commodity research and promotion programs for beef, cotton, dairy, eggs, honey, kiwifruit, mushrooms, peanuts, popcorn, pork, potatoes, soybeans, and watermelons. These programs are established under freestanding legislation, which means that each program is authorized under an act of Congress.

In the Federal Agriculture Improvement and Reform Act of 1996. (Pub. L. 104–127, signed April 4, 1996), Congress amended the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4613), hereinafter referred to as the Act. This Act requires honey producers to maintain, retain, and make available to the National Honey Board and the Secretary of Agriculture such books and records as are necessary for the administration and enforcement of the Act. The Act also requires producers to file reports with the Board or the Secretary to facilitate the administration and enforcement of the Act. Before these changes, only handlers, importers, and producer-packers were subject to recordkeeping and reporting requirements.

Need and Use of the Information: The Secretary of the Board uses form, AD–755, to conduct applicant background clearances and determine qualifications and suitability for appointment. The Transaction Report form authorizes the collection of assessments, provides information on importers, honey purchased from other producers and countries, and domestic honey. The timing and frequency of information collected is intended to meet the needs of the industry while staying in compliance with the Act and Order. If the information were not collected, the Board would be incapable of carrying out the provisions of the Act and Order.

Description of Respondents: Business or other for-profit; farm; Federal Government.

Number of Respondents: 320,139.

Frequency of Responses: Recordkeeping; reporting: Weekly, monthly, semi-Annually, annually.

Total Burden Hours: 343,487.

Agricultural Marketing Service

Title: Lamb Promotion, Research and Information Program.

OMB Control Number: 0581–0198.

Summary of Collection: The authority for Lamb Promotion, Research, and Information Order is established under the Commodity Promotion, Research, and Information Act of 1996. These programs carry out projects relating to research, consumer information, advertising, producer information, market development, and product research with the goal of maintaining and expanding their existing markets and uses and strengthening their position in the marketplace.

Need and Use of the Information: Various forms will be used to collect information for reporting, background, certification, remittance and nomination. The information requested on the forms is the minimum information necessary to effectively carry out the requirements of the program. The information is not available from other sources because it relates specifically to individual lamb producers, feeders, seedstock producers exporters and first handlers.

Description of Respondents: Farms: individuals or households; business or other for-profit.

Number of Respondents: 70,804.

Frequency of Response: Recordkeeping; reporting: Monthly.

Total Burden House: 66,406.

Food and Nutrition Service

Title: 14 State Summer Food Service Program Pilot Project.

OMB Control Number: 0584–NEW.

Summary of Collection: Children in low-income communities are eligible to receive free or reduced-price meals during the school year through the National School Lunch Program and the School Breakfast Program. The Summer Food Service Program (SFSP) was created to ensure that children in low-income areas could continue to receive nutritious meals during long school vacations, when they do not have access to school lunch or breakfast. Subsection 18 (f) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1769 (f)) added by section 1 (a)(4) of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554, December 21, 2000), authorized the Secretary of Agriculture, through the Administrator of the Food and Nutrition Service (FNS), to conduct a pilot in each eligible State to increase the number of children participating in the Summer Food Service Program in that State. Definition of ''eligible State'' that is a State which has low (SFSP) participation, was provided in the authorizing legislation. Fourteen States met the eligibility criteria and are participating in the pilot.

Need and Use of the Information: FNS will collect information to describe (a) any effect on participation by children and service institutions in the SFSP in the pilot States; (b) any effect of the pilot on the quality of meals and supplements served in the pilot States; and (c) any effect of the pilot on program integrity. The information collected will provide Congress and FNS with much needed information on the impact of implementing this pilot on program participation.

Description of Respondents: Business or other for profit; State, Local or Tribal Government.

Number of Respondents: 630.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 274.

Animal Plant and Health Inspection Service

Title: Self-Certification Medical Statement (SCMS).

OMB Control Number: 0579–NEW.

Summary of Collection: The Secretary of Agriculture is responsible for ensuring consumers that food and farm products are moved from producer to consumer in the most efficient, dependable, economical, and equitable system possible. 5 CFR Part 339 authorizes an agency to obtain medical information about the applicant's health status to assist management in making employment decisions concerning positions that have specific medical standards or physical requirements. The Animal Plant and Health Inspection Service (APHIS) of the U.S. Department of Agriculture hires individuals each year in commodity grading and inspection positions. These positions involve arduous duties and work under conditions, around moving machinery, slippery surfaces, and high noise level noise. APHIS will collect information using the MRP–5 form (Self-Certification Medical Statement).

Need and Use of the Information: The data is needed to obtain information from the applicant about his/her health and fitness. Denial of the information would greatly hamper APHIS recruiting capability and adversely affect management's ability to facilitate hiring, placement, and utilization of qualified individuals into positions that have specific medical standards and physical requirements.

Description of Respondents: Individuals or households; farms; State, Local or Tribal Government; Federal Government.

Number of Respondents: 300.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 50.

Rural Housing Service

Title: 7 CFR 1901–K, ''Certificates of Beneficial Ownership and Insured Notes''.

OMB Control Number: 0575–0064.

Summary of Collection: The Rural Housing Service (RHS), Farm Service Agency (FSA), and the Rural Business Service (RBS) and the Rural Utilities Service (RUS) currently shared this regulation. FSA's Farm Loan Program (FLP) provides supervised credit in the form of loans to family farmers and ranchers to purchase land and finance agricultural production. RHS provides supervised credit in the form of Multi-Family Housing (MFH) loans and Community Facility (CF) loans. The MFH loan program provides eligible persons with rental or cooperative housing pursuant to the Housing Act of 1949. RBS provides supervised credit in the form of direct loans to businesses in rural areas. In the past, these agencies financed the lending activity of their respective insurance funds through the sale of insured notes, insurance contracts, and Certificates of Beneficial Ownership (CBO) to the Federal Financing Bank and the public.

Need and Use of the Information: The owners, holders or assignees of notes, contracts and CBO's will submitted the information collected to the agency offices. The agency will use the information to redeem or replace or pay interest on these documents and monitor CBO sales and transfer consistent with sound financial management practices. A private holder of RD insured note or CBO is required to document any of the following (1) notice and acknowledgement of sale of insured or guaranteed loans; (2) assignment of CBO's; (3) loss, theft, destruction, mutilation, or defacement of insured CBO's or (4) death of a note holder or certificate holder. Failure by RD to monitor Certificates of Beneficial Ownership (CBO) sales and transfers could possibly lead to non-compliance with statutory intent.

Description of Respondents: Individuals or households.

Number of Respondents: 4.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2.5.

Sondra A. Blakely,

Departmental Information Clearance Officer.

[FR Doc. 02–11157 Filed 5–3–02; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Counties Payments Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting and extension of comment period.

SUMMARY: The Forest Counties Payments Committee will meet in Rapid City, South Dakota, on April 20, 2002. The purpose of the meeting is to receive comments from both elected officials and the general public on the recommendations the Committee must make to Congress as specified in Section 320 of the Fiscal Year 2001 Interior and Related Agencies Appropriations Act. The meeting will consist of a public input session from 1 p.m. until 5 p.m. This notice also provides an extension of the comment period associated with the Forest Counties Payments Committee meeting held in Reno, Nevada, on April 20, 2002 (67 FR 5087, February 4, 2002).

DATES: The Rapid City, South Dakota, meeting will be held on May 17, 2002. Persons who attended or spoke at the Reno, Nevada, meeting, who will attend the Rapid City, South Dakota, meeting, or who are otherwise interested in providing comments to the Committee on payments to counties in South Dakota and Nevada have until June 30 to submit their written comments. Comments received after that date will be considered to the extent possible.

ADDRESSES: The May 17 meeting will be held at the Holiday Inn Rushmore Plaza, 505 North Fifth Street, Rapid City, South Dakota. Those who cannot be present may submit written responses to the questions listed in **SUPPLEMENTARY INFORMATION** in this notice to Randle G. Phillips, Executive Director, Forest Counties Payments Committee, P.O. Box 34718, Washington, D.C. 20043–4713, or electronically at the Committee's website at *http://countypayments.gov/comments.html.*

FOR FURTHER INFORMATION CONTACT: Randle G. Phillips, Executive Director, Forest Counties Payments Committee, (202) 208–6574 or via e-mail at *rphillips01@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Section 320 of the 2001 Interior and Related Agencies Appropriations Act (Pub. L. 106–291) created the Forest Counties Payments Committee to make recommendations to Congress on a long-term solution for making Federal payments to eligible States and counties in which Federal lands are situated. To formulate its recommendations to Congress, the Committee will consider the impact on eligible States and counties of revenues from the historic multiple use of Federal lands; evaluate the economic, environmental, and social benefits which accrue to counties containing Federal lands; evaluate the expenditures by counties on activities occurring on Federal lands which are Federal responsibilities; and monitor payments and implementation of the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393).

At the May 17 meeting in Rapid City, South Dakota, the Committee asks that elected officials and others who wish to comment provide information in response to the following questions:

1. Do counties receive their fair share of federal revenue-sharing payments made to eligible States?
2. What difficulties exist in complying with, and managing all of the federal revenue-sharing payments programs? Are some more difficult than others?
3. What economic, social, and environmental costs do counties incur as a result of the presence of public lands within their boundaries?
4. What economic, social, and environmental benefits do counties realize as a result of public lands within their boundaries?
5. What are the economic and social effects from changes in revenues generated from public lands over the past 15 years, as a result of changes in management on public lands in your State or county?
6. What actions has your State or county taken to mitigate any impacts associated with declining economic conditions, or revenue-sharing payments?
7. What effects, both positive and negative, have taken place with education and highway programs that are attributable to the management of public lands within your State or county?
8. What relationship, if any, should exist between federal revenue-sharing programs, and management activities on public lands?
9. What alternatives exist to provide equitable revenue-sharing to States and counties and to promote ''sustainable forestry?'
10. What has been your experience regarding implementation of Public Law 106–393, The Secure Rural Schools and Community Self-Determination Act?
11. What changes in law, policies and procedures, and the management of public land have contributed to changes in revenue derived from the multiple-use management of these lands?
12. What changes in law, policies and procedures, and the management of public land are needed in order to restore the revenues derived from the multiple-use management of these lands?

Persons interested in the payments to Nevada counties also are requested to

address these same questions and also have until June 30 to submit their views in writing to the Committee.

Dated: April 29, 2002.

Elizabeth Estill,

Deputy Chief for Programs and Legislation.

[FR Doc. 02–11111 Filed 5–3–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Idaho Panhandle Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Idaho Panhandle National Forests' Idaho Panhandle Resource Advisory Committee will meet Friday, May 17, 2002 in Coeur d'Alene, Idaho for a business meeting. The meeting is open to the public.

DATES: May 17, 2002.

ADDRESSES: The meeting location is the Idaho Panhandle National Forests' Supervisor's Office, located at 3815 Schreiber Way, Coeur d'Alene, Idaho 83815.

FOR FURTHER INFORMATION CONTACT: Ranotta K. McNair, Forest Supervisor and Designated Federal Officer, at (208) 765–7369.

SUPPLEMENTARY INFORMATION: Agenda topics include reviewing project proposals and receiving public comment.

Dated: April 29, 2002.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. 02–11113 Filed 5–3–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

United States Standards for Lentils

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice with opportunity to comment.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to revise the United States Standards for Lentils to modify the definitions for ''good'' and ''fair'' color lentils; establish an additional color factor and definition, ''poor color lentils;'' establish a new grading factor, ''contrasting lentils;'' and expand the definition of damaged lentils to include ''immature lentils.'' These changes are being made at the request of the lentil industry in order to improve the usability of the United States Standards for Lentils.

DATES: Comments must be received by June 30, 2002.

ADDRESSES: Written comments must be submitted to Tess Butler, USDA, GIPSA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604; faxed to (202) 690–2755, or e-mail: *H.Tess.Butler@usda.gov.*

All comments received will be made available for public inspection at the above address during regular business hours (8 a.m.–3:30 p.m.).

The current United States Standards for Lentils, along with the proposed changes, are available either through the above addresses or by accessing GIPSA's Home Page on the Internet at: *www.usda.gov/gipsa/reference-library/standards/stds.htm.*

FOR FURTHER INFORMATION CONTACT: John Giler, Chief, Policies and Procedures Branch, USDA, GIPSA, Stop 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3632; telephone (202) 720–0252; or e-mail to: *John.C.Giler@usda.gov*

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. * * *'' GIPSA is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities. The United States Standards for Lentils do not appear in the Code of Federal Regulations but are maintained by the U.S. Department of Agriculture.

GIPSA is proposing to change the United States Standards for Lentils using the procedures it published in the **Federal Register** on February 13, 1997 (62 FR 6705). Specifically, GIPSA is proposing to better define current color requirements; establish a new color requirement; expand the definition of damaged lentils; and include a new factor, ''contrasting lentils.''

GIPSA representatives work closely with the U.S.A. Dry Pea and Lentil Council (USADPLC) and others in the lentil industry to examine the effectiveness of the U.S. Standards for Lentils in today's marketing environment. Through discussions, it appears that most of the current standards continue to meet consumer/processor needs. However, changing market trends demand that certain changes be made pertaining to the acceptable appearance of the lentils.

At the request of the lentil industry, GIPSA is proposing these changes be implemented by July 1, 2002, in order to be in place before harvest of the lentil crop year.

Lentil Color

The U.S. Standards for Lentils characterize lentil color as being ''good lentil color'' which is the minimum color requirement for U.S. No. 1 and ''fair lentil color'' which is the minimum color requirement for U.S. Nos. 2 and 3. However, the current written descriptions for these characterizations and the absence of any visual reference aids may cause confusion concerning the applications of color. Due to the economic significance general appearance (color) has for processors and end-users, GIPSA and the USADPLC worked together to more clearly define the terms used to describe lentil color and to create visual references that aid in the consistent applications of color.

The current definition of good lentil color is ''Lentil that in mass are practically free from discoloration and have the natural color appearance characteristics of the predominating class.'' The proposed definition is ''Lentils that are practically free from discoloration and have the uniform natural color and appearance characteristics of the predominating lentil type.'' The current definition of fair color lentils is ''Lentils that are not of good color.'' The proposed definition is ''Lentils that are lightly to moderately discolored from storage or other causes to the extent they cannot be considered of good color.''

Also, the existing lentil color characterizations, ''good'' and ''fair,'' do not sufficiently address the color degradation process and all possible degrees of color. Samples that are marginally discolored and those which are significantly discolored are both considered to be of ''fair lentil color.'' Accordingly, GIPSA and the USADPLC established visual reference standards to distinguish between three-color categories: good, fair, and poor. The proposed definition for poor lentil color is: ''Lentil that are severely discolored from storage or other causes to the extent they cannot be considered of fair color.''

The addition of ''poor lentil color'' to the Standards, the clarification of the definitions for ''good color lentils'' and ''fair color lentils,'' and the establishment of visual aids for these colors will result in a more uniform and consistent application of the Standards. While ''good'' and ''fair'' will continue to serve as the minimum color standard for U.S. Nos. 1 and 2, respectively, samples considered to be of ''poor lentil color'' will receive no better than a U.S. No. 3 grade designation. This will assist in moving the U.S. lentil market towards fewer quality complaints.

Also, the establishment of visual aid standards will provide the platform for the development of computer imaging technology for determining color classifications. Imaging technology eliminates certain variables in the inspection process and can provide the most uniform color classifications on a national level. This type of technology is crucial for the U.S. lentil market in becoming more competitive in the world market.

Immature Lentils

Lentils, like many other field crops, are occasionally harvested before all lentils have reached full maturity. These under-filled, often disfigured, lentils have less market value than fully matured lentils. To address this marketing concern, GIPSA decided to revise the lentil standards to expand the definition of ''Damaged Lentils'' to include ''Immature Lentils.''

The current definition of damaged lentils is: ''Whole and pieces of lentils which are distinctly damaged by frost, weather, disease, heat (other that to a material extent), or other causes, except weevil or material heat damage, or are distinctly soiled or stained by nightshade, dirt, or toxic material.'' The proposed definition is: ''Whole and pieces of lentils which are distinctly damaged by frost, weather, disease, heat (other that to a material extent), immaturity, or other causes, except weevil or material heat damage, or are distinctly soiled or stained by nightshade, dirt, or toxic material.''

The proposed definition for immature lentils is: ''Immature Lentils. Lentils that do not have a traditional lens-shaped profile due to immaturity. Immature lentils are characterized as having a thin or flat (wafer-like), wrinkled, and misshapen appearance. Lentils may also be discolored.''

GIPSA conducted a crop survey in 2001 which revealed that over 70 percent of the samples reviewed showed no measurable amount of immature lentils and all samples had less than 1 percent (the limit for U.S. No. 1 is 2.0 percent) defective lentils. Based on these results, the proposed definition would have no impact on grade. Further, the following statement will appear in the Pea and Lentil Handbook as an interpretive aid for determining when a lentil is considered immature. ''All three conditions (thin, wrinkled, and misshapen) must be present for an inspector to consider a lentil an immature lentil.''

Contrasting Lentils

The terms good, fair, and poor lentil color are not intended to address the different sizes and colors associated with the lentil types and varieties produced in the U.S. The possible introduction of distinctively different lentils is a concern to those marketing lentils. Accordingly, a new factor, ''contrasting lentils,'' is being introduced into the standards.

Introducing contrasting lentils as a new factor discourages the blending of different lentil types by focusing on inherently and noticeably different sizes and color. Additionally, it provides the processor a standard for the lentils that are consistent in size and color.

The proposed definition for contrasting lentils is: ''Lentils that differ substantially in size or color from the predominating lentil type.'' In addition, the following statement will appear in the Pea and Lentil Handbook as an interpretive aid: ''Color, as used in this definition, is limited to the lentil's natural seed coat color and excludes the mottling that may be present on some seed coats.''

The proposed maximum limit for contrasting lentils for U.S. No. 1 is 2.0 percent, and the proposed maximum limit for U.S. No. 2 is 4.0 percent. Lentils containing more than 4.0 percent contrasting lentils will be graded U.S. No. 3.

These proposed standard changes were recommended to us and reviewed by the affected trade. Therefore, GIPSA is publishing these proposed standard changes with a 30 day comment period which will provide a sufficient amount of time for interested persons to comment on changes to the standards.

Authority: 7 U.S.C. 1621 *et.seq.*

Dated: April 30, 2002.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 02–11156 Filed 5–3–02; 8:45 am]

BILLING CODE 3410–EN–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

In connection with its investigation into the cause of the vessel failure and fire at the BP Amoco Polymers Plant in Augusta, Georgia on March 13, 2001, the United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 10:00 a.m. local time on May 14, 2002, at 2175 K Street, Suite 400 Conference Room. The Board will also consider adopting final rule implementing Government and Sunshine Act.

The incident left three plant personnel dead. The expulsion of material from the failed vessel initiated a secondary chemical fire that took five hours to bring under control. The incident occurred during maintenance operations on equipment used to produce Amodel, a high-temperature plastic used in automobile parts. Workers were unbolting a one-ton cover plate from a process vessel when the failure occurred. Two workers were killed instantly, and a third was pronounced dead later.

At the meeting CSB staff will present to the Board the results of their investigation into this incident including an analysis of the incident together with a discussion of the key findings and root and contributing causes. The Board will consider carefully the presentations by the staff as it continues its review of the formal staff report.

This period of review will also allow the Board to carefully review all proposed recommendations that may result from this investigation. Recommendations are issued by a vote of the Board and address an identified safety deficiency uncovered during the investigation, and specify how to correct the situation. Safety recommendations are the primary tool used by the Board to motivate implementation of safety improvements and prevent future incidents. The CSB uses its unique independent accident ivestigation perspective to identify trends or issues that might otherwise be overlooked. CSB recommendations may be directed to corporations, trade associations, government entities, safety organizations, labor unions and others. With the issuance of a final report and recommendations, the Board begins the process that promotes saving lives and property.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the

issues and factors involved in this case. No factual analyses, conclusions or findings should be considered final. Only after the Board has considered the staff presentation and thoroughly analyzed, reviewed and approved the staff report will there be an approved final record of this incident.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, 10 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board's Office of Prevention Outreach and Policy, (202)–261–7600, or visit our website at: *www.csb.gov.*

Christopher W. Warner,

General Counsel.

[FR Doc. 02–11287 Filed 5–6–02; 2:06 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Statement of Ultimate Consignee and Purchaser

ACTION: Proposed Collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 5, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Marna Hayes, BIS ICB Liaison, (202) 482–5211, Department of Commerce, Room 6622, 14th & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The form is required in support of an export license application where the country of ultimate destination is in Country Group Q, S, V, W, Y or Z. It is used by licensing officers in determining the validity of the end-use.

II. Method of Collection

Submitted to BIS on form BXA–711P or company letterhead.

III. Data

OMB Number: 0694–0021.

Form Number: Form BXA–711. Although the name of the agency has changed to the Bureau of Industry and Security (BIS), we will continue to use previous forms until the stock is depleted.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 4,535.

Estimated Time Per Response: 16 minutes per response.

Estimated Total Annual Burden Hours: 1,210.

Estimated Total Annual Cost: No capital expenditures are required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: April 30, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–11079 Filed 5–3–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with section 351.213 (2000) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of May 2002, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

	Period
Antidumping Duty Proceeding	
Argentina: Light-walled Rectangular Carbon Steel Pipe and Tubing, A–357–802	5/1/01–4/30/02
Belgium: Stainless Steel Plate in Coils, A–423–808	5/1/01–4/30/02
Brazil:	
Iron Construction Castings, A–351–503	5/1/01–4/30/02
Frozen Concentrated Orange Juice, A–351–605	5/1/01–4/30/02
Canada: Stainless Steel Plate in Coils, A–122–830	5/1/01–4/30/02
France: Antifriction Bearings, Ball and Spherical Plain, A–427–801	5/1/01–4/30/02
Germany: Antifriction Bearings, Ball, A–428–801	5/1/01–4/30/02

	Period
India: Welded Carbon Steel Pipes and Tubes, A–533–502	5/1/01–4/30/02
Indonesia: Extruded Rubber Thread, A–560–803	5/1/01–4/30/02
Italy:	
Antifriction Bearings, Ball, A–475–801	5/1/01–4/30/02
Stainless Steel Plate in Coils, A–475–822	5/1/01–4/30/02
Japan:	
Antifriction Bearings, Ball, A–588–804	5/1/01–4/30/02
Gray Portland Cement and Clinker, A–588–815	5/1/01–4/30/02
Stainless Steel Angle, A–588–856	1/12/01–4/30/02
Republic of Korea:	
Malleable Cast Iron Pipe Fittings, Other than Grooved, A–580–507	5/1/01–4/30/02
Polyester Staple Fiber, A–580–812	5/1/01–4/30/02
Stainless Steel Angle, A–580–846	1/12/01–4/30/02
Stainless Steel Plate in Coils, A–580–831	5/1/01–4/30/02
Singapore: Antifriction Bearings, Ball, A–559–801	5/1/01–4/30/02
Spain: Stainless Steel Angle, A–469–810	1/12/01–4/30/02
South Africa: Stainless Steel Plate in Coils, A–791–805	5/1/01–4/30/02
Taiwan:	
Certain Circular Welded Carbon Steel Pipe & Tubes, A–583–008	5/1/01–4/30/02
Polyester Staple Fiber, A–583–833	5/1/01–4/30/02
Polyvinyl Alcohol, A–583–824	5/1/01–4/30/02
Stainless Steel Plate in Coils, A–583–830	5/1/01–4/30/02
The People's Republic of China:	
Iron Construction Castings, A–570–502	5/1/01–4/30/02
Polyvinyl Alcohol, A–570–842	5/1/01–4/30/02
Pure Magnesium, A–570–832	5/1/01–4/30/02
The United Kingdom: Antifriction Bearings, Ball, A–412–801	5/1/01–4/30/02
Turkey: Welded Carbon Steel Pipe and Tube, A–489–501	5/1/01–4/30/02
Countervailing Duty Proceedings	
Belgium: Stainless Steel Plate in Coils, C–423–809	1/1/01–12/31/01
Brazil: Iron Construction Castings, C–351–504	1/1/01–12/31/01
Italy: Stainless Steel Plate in Coils, C–475–823	1/1/01–12/31/01
South Africa: Stainless Steel Plate in Coils, C–791–806	1/1/01–12/31/01

Suspension Agreements

None.

In accordance with section 351.213(b) the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of May 2002. If the Department does not receive, by the last day of May 2002, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 1, 2002.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 02–11202 Filed 5–3–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–825]

Oil Country Tubular Goods From Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of administrative review.

EFFECTIVE DATE: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Tom Gilgunn or Scott Lindsay, AD/CVD Enforcement, Import Administration, International Trade Administration,

U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–4236 or (202) 482–0780, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Departments's regulations are to the current regulations, codified at 19 CFR part 351 (2001).

Background

On August 31, 2001, the Department of Commerce (the Department) received timely requests to conduct an administrative review of the antidumping duty order on oil country tubular goods from Korea. On October 1, 2001, the Department published a notice of initiation of this administrative review, covering the period of August 1, 2000 through July 31, 2001 (66 FR 49924).

Extension of Time Limits for Preliminary Results

Because of the complexity and timing of certain issues in this case, specifically the use of third country sales and the appropriate basis for determining normal value, it is not practicable to complete this review within the usual time limits mandated by section 751(a)(3)(A) of the Act. Therefore, we are extending the due date for the preliminary results of the administrative review of SeAH until August 26, 2002, pursuant to section 751(a)(3)(A). The final results continue to be due 120 days after the publication of the preliminary results. We note that on February 6, 2002, the Department aligned the new shipper review of Shinho Steel Co., Ltd. (Shinho) with this administrative review of oil country tubular goods from Korea (67 FR 5563). Therefore, the due date for the preliminary determination of the new shipper review of Shinho is also extended to August 26, 2002.

Dated: April 23, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–11077 Filed 5–3–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–437–804]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid From Hungary

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that sulfanilic acid from Hungary is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination (*see* the ''Public Comment'' section of this notice).

EFFECTIVE DATE: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0189.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to 19 CFR Part 351 (April 2001).

Background

Since the initiation of this investigation (*Notice of Initiation of Antidumping Investigations: Sulfanilic Acid from Hungary and Portugal,* 66 FR 54214, 54218 (October 26, 2001) (''*Initiation Notice*'')), the following events have occurred:

On October 25, 2001, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes. We received comments from the petitioner on October 30, 2001.

On November 20, 2001, the United States International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that imports of sulfanilic acid from Hungary are materially injuring the United States industry (*see* ITC Investigation No. 731–TA–984–985 (Publication No. 3472)).

We issued an antidumping questionnaire to Nitrokemia 2000 Rt. (''Nitrokemia''), a pro se respondent, on November 19, 2001. We received responses to the questionnaire from Nitrokemia on December 8, 2001, and January 14, 2002. We issued supplemental questionnaires to Nitrokemia on January 25, February 12, March 11, and April 8, 2002, to which we received responses on February 6, February 28, March 27, and April 17, 2002, respectively. On January 29 and February 1, 2002, we received comments from the petitioner on the respondent's questionnaire responses. Subsequently, on February 10, 2002, we received comments from Nitrokemia on the petitioner's comments concerning the respondent's questionnaire responses.

On February 14, 2002, the petitioner made a timely request to postpone the preliminary determination pursuant to 19 CFR 351.205(e). On February 15, 2002, we postponed the preliminary determination until no later than April 8, 2002. *See Notice of Postponement of Preliminary Determinations of Antidumping Investigations: Sulfanilic Acid from Hungary and Portugal,* 67 FR 8525 (February 25, 2002).

On April 4, 2002, the Department again postponed the preliminary determination until no later than April 26, 2002. For the reasons for the postponement, *see Notice of Postponement of Preliminary Antidumping Duty Determinations of Antidumping Duty Investigations: Sulfanilic Acid from Hungary and Portugal,* 67 FR 17968 (April 12, 2002).

On April 19, 2002, the petitioner submitted comments with respect to the upcoming preliminary determination.

Scope of Investigation

Imports covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline and sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free-flowing powders.

Technical sulfanilic acid, currently classifiable under subheading

2921.42.22 of the *Harmonized Tariff Schedule* (''HTS''), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also currently classifiable under 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), currently classifiable under HTS subheading 2921.42.90, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

In accordance with the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice.* We did not receive any such comments.

Period of Investigation

The period of investigation (''POI'') is July 1, 2000, through June 30, 2001.

Fair Value Comparisons

To determine whether sales of sulfanilic acid from Hungary to the United States were made at less than fair value, we compared the export price (''EP'') to the normal value (''NV''), as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs to POI weighted-average NVs. Any company-specific changes to the EP and NV calculations are discussed in Nitrokemia's calculation memorandum, which is on file in the Import Administration's Central Records Unit, Room B–099 of the main Department of Commerce building.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by Nitrokemia in the foreign market during the POI that fit the description in the ''Scope of Investigation'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales of identical products in the third market (*see* ''Normal Value'' section, below), where appropriate. Where there were no sales of identical merchandise in the foreign market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent in the following order of importance: form; product type; aniline impurity content; alkali insoluble impurity content; and sulfanilic content.

Export Price

We calculated EP, in accordance with section 772(a) of the Act, for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States, or to an unaffiliated purchaser for exportation to the United States, based on the facts of record. We based EP on the packed CIF price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight, inland insurance, and ocean freight. We increased EP, where appropriate, for duty drawback in accordance with section 772(c)(1)(B) of the Act. We relied on the U.S. sales data submitted by Nitrokemia, with the following exceptions.

Based on our review of Nitrokemia's questionnaire responses, we find that Nitrokemia did not answer many of the Department's numerous and repeated questions relating to the completeness and accuracy of its reporting of U.S. sales and related charges and adjustments. Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.[1] Section 776(b) of the Act further provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

In this case, we find that Nitrokemia has withheld information requested by the Department concerning the completeness and accuracy of Nitrokemia's U.S. sales response. Specifically, we noted in Nitrokemia's original questionnaire response that it reported credit expenses, inventory carrying costs, direct selling expenses, and packing costs on some, but not all, U.S. sales. In several supplemental questionnaires, we requested that Nitrokemia report these expenses for all U.S. sales, or explain why it was not appropriate to do so. Despite our repeated notifications to Nitrokemia of these deficiencies in its data and the several opportunities we provided the company to remedy its reporting of these fields (pursuant to section 782(d) of the Act), Nitrokemia continued to provide incomplete responses. Since Nitrokemia did not provide the information requested or provided information that was so incomplete that it could not be used (within the meaning of section 782(e) of the Act), we are resorting to facts otherwise available pursuant to section 776(a)(2)(A) of the Act. Further, the data that Nitrokemia did not provide on some U.S. transactions was provided for other U.S. transactions. Nitrokemia did not sufficiently explain why it was not possible to provide this information for all U.S. transactions. Therefore, we conclude that Nitrokemia could have provided the necessary data but chose not to, thereby failing to cooperate to the best of its ability within the meaning of section 776(b) of the Act. Accordingly,

[1] Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority'' if the information is timely, can be verified, and is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information, if it can do so without undue difficulties.

we find that the use of an adverse inference is warranted.

As explained in the Memorandum from Team to the File, ''Preliminary Determination Calculation Memorandum for Nitrokemia 2000 Rt.,'' dated April 26, 2002 (''*Calculation Memorandum*''), as adverse facts available, we adjusted EP or NV, as appropriate, by the highest adjustment amount that Nitrokemia actually reported in its U.S. sales response for direct selling expenses and packing costs. Furthermore, we recalculated Nitrokemia's credit expenses and inventory carrying costs using information contained in Nitrokemia's questionnaire responses and a published dollar-denominated short-term interest rate. No other adjustments were made to Nitrokemia's submitted U.S. sales response. We intend to review Nitrokemia's questionnaire responses extensively at verification in order to ascertain whether this application of facts available is adequately adverse.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* whether the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), the Department compares the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. We determined that Nitrokemia's volume of home market sales was less than five percent of its volume of U.S. sales. Therefore, we have based NV for Nitrokemia on third country sales in the usual commercial quantities and in the ordinary course of trade. For the reasons described in the Memorandum to Richard Moreland, ''*Selection of Third Country Comparison Market,*'' dated April 26, 2002, we used sales to Germany as third-country comparison sales. Germany was Nitrokemia's largest third-country market for sulfanilic acid in terms of both value and quantity.

B. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that sales of sulfanilic acid in the third market were made at prices below their cost of production (''COP''). Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the comparison market in question are at below-cost prices. *See Antidumping Duty Petition,* September 26, 2001. Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether sales were made at prices below their respective COP (*see Initiation Notice,* 66 FR at 54215).

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for selling, general, and administrative expenses (''SG&A''), interest expenses, and foreign market packing costs (*see* ''Test of Foreign Market Sales Prices'' section below for treatment of foreign market selling expenses). We relied on the COP data submitted by Nitrokemia, with the following exceptions. Despite our repeated requests in the original and supplemental questionnaires, Nitrokemia did not report overhead, SG&A, and financial expense in accordance with the Department's instructions. Moreover, the actual cost data supplied by Nitrokemia are not sufficient for purposes of deriving SG&A and financial expense ratios. Because Nitrokemia failed to provide this cost information in the form and manner requested by the Department, pursuant to section 776(a)(2)(B) of the Act we find that facts available is warranted. As facts available, we derived SG&A and interest expense ratios based on Nitrokemia's 2000 financial statements, as included in the petition and submitted by Nitrokemia in its questionnaire responses. Furthermore, we derived an overhead ratio based on total overhead costs reported by Nitrokemia and information from Nitrokemia's 2000 financial statements. As we noted above, we intend to review Nitrokemia's questionnaire responses extensively at verification in order to ascertain whether this application of facts available is adequately adverse.

2. Test of Foreign Market Sales Prices

We compared COP to foreign market sale prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard foreign market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to foreign market prices, less any applicable movement charges, discounts and rebates, and selling expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP over a period of at least six months, we determine that the below-cost sales represent ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act and, if so, we disregard the below-cost sales.

We found that, for certain products, more than 20 percent of Nitrokemia's foreign market sales were at prices less than the COP and did not provide for the recovery of costs. Therefore, we excluded these sales and used the remaining above-cost sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (''LOT'') as the EP or constructed export price. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent) according to 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.,* the ''chain of distribution''),[2] including selling

[2] The marketing process in the United States and comparison markets begins with the producer and

functions,[3] class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.,* NV based on either home market or third country prices), we consider the starting prices before any adjustments.

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP LOT, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined, we make a level of trade adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

We obtained information from Nitrokemia regarding the marketing stages involved in making the reported third market and U.S. sales, including a description of the selling activities performed by the respondent for each channel of distribution. In the comparison market, all sales reported by Nitrokemia were direct sales to end users. Sales through this single channel of distribution to the sole customer category were similar with respect to all selling activities and, therefore, Nitrokemia's foreign market sales constituted a single level of trade.

In the U.S. market, Nitrokemia had only EP sales. Nitrokemia reported direct EP sales to end users through only one channel of distribution and one customer category, and therefore had only one level of trade for its EP sales. This EP level of trade was similar to the foreign market level of trade with respect to selling activities, except for marginal differences in sales process and marketing support. Consequently, we matched the EP level of trade to sales at the same level of trade in the foreign market.

D. Calculation of Normal Value Based on Foreign Market Prices

We calculated NV based on free carrier, carriage paid, or delivered duties unpaid prices to unaffiliated customers. We made adjustments for inland freight, international freight, and duty drawback, in accordance with section 773(a)(6)(B)(iii) of the Act. We made adjustments, where appropriate, for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, where appropriate, we made adjustments under section 773(a)(6)(C)(iii) of the Act for differences in circumstances of sale for commissions, imputed credit expenses, and other direct selling expenses. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the foreign market on U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset). We deducted foreign market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act. We adjusted Nitrokemia's reported inventory carrying costs and packing costs, where appropriate, as explained in the *Calculation Memorandum.*

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales, either as certified by the Federal Reserve Bank or, in the case of Hungarian forints, as reported by the Dow Jones. [4]

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Nitrokemia	7.40
All Others	7.40

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department not later than June 4, 2002. Rebuttal briefs must be filed by June 10, 2002. *See* 19 CFR 309(c)(1)(i). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held on June 13, 2002, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is

extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale occurs.

[3] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the common sulfanilic acid selling functions into four major categories: Sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

[4] We normally make currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. In this case, where foreign market prices, costs and expenses were reported in Hungarian forints, we made currency conversions based on the exchange rates in effect on the dates of the U.S. sales as reported by the Dow Jones because the Federal Reserve Bank does not track the forint-to-dollar exchange rate.

requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination by not later than 75 days after the date of the Department's preliminary determination.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11075 Filed 5–3–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–471–806]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Sulfanilic Acid from Portugal

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Determination of Sales at Less Than Fair Value

SUMMARY: We preliminarily determine that sulfanilic acid from Portugal is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended. Interested parties are invited to comment on this preliminary determination (*see* the ''Public Comment'' section of this notice).

EFFECTIVE DATE: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: S. Anthony Grasso, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3853.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to 19 CFR Part 351 (April 2001).

Background

Since the initiation of this investigation (*Notice of Initiation of Antidumping Duty Investigations: Sulfanilic Acid from Hungary and Portugal*, 66 FR 54214, 54218 (October 26, 2001) (''Initiation Notice'')), the following events have occurred:

On October 25, 2001, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes. We received these comments on October 30, 2001.

On November 20, 2001, the United States International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that imports of sulfanilic acid from Portugal are materially injuring the United States industry (*see* ITC Investigation No. 731–TA–984–985 (Publication No. 3472)).

We issued an antidumping questionnaire to Quimigal - Quimica de Portugal S.A. (''Quimigal'') on November 19, 2001. We received responses to the questionnaire from Quimigal on December 10, 2001, and on January 14, 2002. We issued supplemental questionnaires to Quimigal on January 31, 2002, and March 5, 2002, to which we received responses on February 25, 2002, and March 19, 2002, respectively.

On February 14, 2002, the petitioner made a request to postpone the preliminary determination pursuant to 19 CFR 351.205(e). On February 15, 2002, we postponed the preliminary determination until no later than April 8, 2002. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Sulfanilic Acid from Hungary and Portugal,* 67 FR 8525 (February 25, 2002).

On April 4, 2002, the Department again postponed the preliminary determination until not later than April 26, 2002. For the reasons for the postponement,*see Notice of Postponement of Preliminary Antidumping Duty Determinations of Antidumping Duty Investigations: Sulfanilic Acid from Hungary and Portugal*, 67 FR 17968 (April 12, 2002).

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on April 3, 2002, Quimigal requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the Federal Register, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) Quimigal accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until not later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

Imports covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline and sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free-flowing powders.

Technical sulfanilic acid, currently classifiable under subheading 2921.42.22 of the *Harmonized Tariff Schedule* (''HTS''), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also currently classifiable under 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), currently classifiable under HTS subheading 2921.42.90, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

In accordance with the preamble to the Department regulations (*see* Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. We did not receive any such comments.

Period of Investigation

The period of investigation (''POI'') is July 1, 2000, through June 30, 2001.

Date of Sale

We used the sale invoice date as the date of sale. Although Quimigal negotiated a contract with its buyer that established a fixed price and quantity prior to the POI, the terms of the contract fluctuated throughout the POI according to documented and undocumented agreements. Because record evidence indicates that the material terms of the sale contract were subject to change up until invoicing, we preliminarily determine that the invoice date more accurately represents the date of sale than the contract date.

Fair Value Comparisons

To determine whether sales of sulfanilic acid from Portugal to the United States were made at less than fair value, we compared the export price (''EP'') to the normal value (''NV''), as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs to POI weighted-average NVs. Any company-specific changes to the EP and NV calculations made by the Department are discussed in the company's calculation memorandum, which is on file at the Department's Central Records Unit in Room B–099 of the main Department building. *See* Memorandum from team to the file, ''Preliminary Determination Calculation Memorandum for Quimigal - Quimica de Portugal, S.A.,'' (''Calculation Memo'') dated April 8, 2002.

Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered all products produced and sold by the respondent in the third-country market during the POI that fit the description in the ''Scope of Investigation'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the third-country market. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent in the following order of importance: form; product type; aniline impurity content; alkali insoluble impurity content; and sulfanilic content.

Export Price

We calculated EP, in accordance with section 772(a) of the Act, for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States, or to an unaffiliated purchaser for exportation to the United States, based on the facts of record. We based EP on the ex-works price to an unaffiliated purchaser/reseller. We made no adjustments to this price.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a basis for calculating NV (*i.e.*, whether the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), the Department compares the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. We determined that Quimigal has no home market sales. Therefore, we have based NV for Quimigal on third-country sales in the usual commercial quantities and in the ordinary course of trade. For the reasons described in the *Memorandum to Richard Moreland, ''Selection of Third Country Comparison Market*,'' dated April 26, 2002, we used sales to the United Kingdom (''UK'') as third-country comparison sales. The UK was Quimigal's largest third-country market for sulfanilic acid in terms of both value and quantity.

B. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that sales of sulfanilic acid in the third-country market were made at prices below their cost of production (''COP''). Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the comparison market in question are at below-cost prices. Accordingly, based on the allegation in the petition and pursuant to section 773(b)(1) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether sales were made at prices below their respective COP (*see Initiation Notice*, 66 FR at 54214, 54215–17).

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for selling, general and administrative expenses (''SG&A''), interest expenses, and home market packing costs (*see* ''Test of Foreign Market Sales Prices'' section below for treatment of third-market selling expenses). We relied on the COP data submitted by Quimigal, except in the following instance. To calculate the fixed overhead, we used Quimigal's depreciation as it is recorded in its financial accounts according to Portuguese GAAP (*i.e.*, accelerated depreciation), rather than relying upon Quimigal's reported unit which was calculated using straight line depreciation. See Calculation Memo.

2. Test of Foreign Market Sales Prices

We compared COP to the sales prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard foreign market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to foreign market prices, less any applicable movement charges, discounts, and rebates.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP over a period of at least six months, we determine that the below-cost sales represent ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which

would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act and, if so, we disregard the below-cost sales.

We found that, for certain products, more than 20 percent of Quimigal's third-country market sales were at prices less than the COP and did not provide for the recovery of costs. Therefore we excluded these sales and used the remaining above-cost sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

C. Calculation of Constructed Value

Section 773(a)(4) of the Act provides that where normal value cannot be based on comparison market sales, normal value may be based on constructed value (''CV''). Accordingly, for Quimigal, when sales of comparison products could not be found, either because there were no sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on CV.

In accordance with sections 773(e)(1), (e)(2)(A), and (e)(3) of the Act, we calculated CV based on the sum of the cost of materials and fabrication for the subject merchandise, plus amounts for selling expenses, G&A (including interest), profit and U.S. packing costs. We calculated the cost of materials and fabrication based on the methodology described in the ''Calculation of COP'' section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based selling expenses, G&A, and profit on the amounts incurred and realized by Quimigal in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country.

D. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (''LOT'') as the EP or the constructed export price. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent) according to 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''), including selling functions, class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (i.e., NV based on either home market or third-country prices[1]), we consider the starting prices before any adjustments.

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP LOT, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined, we make a level of trade adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732 (November 19, 1997).

We obtained information from Quimigal regarding the marketing stages involved in making the reported third-country market and U.S. sales, including a description of the selling activities performed by the respondent for each channel of distribution. In the comparison market, all sales reported by Quimigal were direct sales to a trading company. Sales through this single channel of distribution to the sole customer category were similar with respect to all selling activities and, therefore, Quimigal's foreign market sales constituted a single level of trade.

In the U.S. market, Quimigal had only EP sales. Quimigal reported direct EP sales to a trading company through only one channel of distribution and one customer category, and therefore had only one level of trade for its EP sales. This EP level of trade was similar to the foreign market level of trade with respect to selling activities. Consequently, we matched the EP level of trade to sales at the same level of trade in the foreign market.

E. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex-works/ex-warehouse prices to unaffiliated customers that we determined to be at arm's-length. In addition, where appropriate, we made adjustments under section 773(a)(6)(C)(iii) of the Act for differences in circumstances of sale for imputed credit expenses. We deducted foreign market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

F. Calculation of Normal Value Based on Constructed Value

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. Where we compared CV to EP, we made circumstance-of-sale adjustments.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as reported by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or constructed export price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted Average Margin Percentage
Quimigal	75.52
All Others	75.52

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our preliminary determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

[1] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A, and profit for CV, where possible.

Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department not later than August 6, 2002. Rebuttal briefs must be filed by August 12, 2002. *See*19 CFR 309(c)(1)(i). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be scheduled for two days after the submission of rebuttal briefs, *i.e.*, on August 14, 2002, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination not later than 135 days after the date of publication of the Department's preliminary determination. See 19 CFR 351.210(b).

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

DATED: April 26, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11076 Filed 5–3–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-054]

Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Court Decisions and Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Court Decisions and Amended Final Results of Antidumping Duty Administrative Review.

SUMMARY: On March 13, 1997, the Department of Commerce (the Department) published the final results of its administrative reviews of the antidumping duty order on tapered roller bearings (TRBs) and parts thereof, finished and unfinished, from Japan (A-588-604), and the antidumping finding on TRBs, four inches or less in outside diameter, and components thereof, from Japan (A-588-054) for the period October 1, 1994 through September 30, 1995. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997) (1994-95 TRBs from Japan). Subsequent to our publication of these final results, one party to the proceedings challenged certain aspects of our final results before the United States Court of International Trade (CIT).The CIT has affirmed the final remand results with respect to the 1994-95 final results. As there are now final and conclusive court decisions with respect to the litigation pertaining to this proceeding, we are hereby amending our final results of review and will subsequently instruct Customs to liquidate entries subject to these reviews.

DATES: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2657 or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

Below is a summary of the litigation for the 1994-95 final results for which the CIT has now issued a final and conclusive decision.

On March 13, 1997, we published in the **Federal Register** our notice of the final results of administrative reviews for the 1994-95 period of review (POR) (*see 1994-95 TRBs from Japan*). Subsequent to the publication of these final results, the petitioner, The Timken Co. (Timken), challenged various aspects of our final results before the CIT (Court No. 97-04-00562). The CIT remanded the case with respect to TRBs manufactured by Koyo Seiko Co., Ltd. (Koyo) and ordered the Department to: 1) determine the extent to which Koyo reported any positive values for inside diameters for cups and outside diameters for cones in its sales of U.S. cups and cones and to correct the computer program by setting the value of any positive inside cup diameters or outside cone diameters to zero in Koyo's U.S. summary sales database; and 2) ensure that no models were matched to constructed value (CV) when a comparison to similar home-market products was appropriate in accordance with *Cemex, S.A. v. United States*, 113 F.3d 897 (Fed. Cir. 1998). *See Timken v. U.S.*, Slip Op. 98-92 (July 2, 1998). No party appealed the CIT's decision.

As there is now a final and conclusive court decision with respect to this litigation (*see Timken v. U.S.*, Slip Op. 99-9 (January 22, 1999)), we are amending our final results of review for Koyo based on our recalculation of Koyo's rates pursuant to the remand. The amended final results margin for Koyo is 21.49 percent for the 1994-95 administrative review of the antidumping finding on TRBs from Japan. We will issue instructions to Customs to liquidate entries of subject merchandise made by Koyo during this period pursuant to these amended final results.

Amendment To Final Determinations

Pursuant to 19 U.S.C. 1516(f), we are now amending the final results of the 1994-95 administrative review of the antidumping finding on TRBs from Japan manufactured by Koyo. The amended weighted-average margin for Koyo in the antidumping finding on TRBs from Japan (A-588-054) for the period October 1, 1994 through September 30, 1995 is 21.49 percent.

Accordingly, the Department will determine and Customs will assess appropriate antidumping duties on entries of the subject merchandise made by firms covered by the review of the

period listed above. The Department will issue appraisement instructions directly to Customs.

Dated: April 29, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11181 Filed 5–3–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

District Export Council Nomination Opportunity

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of opportunity to serve as a member of one of the fifty-six District Export Councils.

SUMMARY: The U.S. Department of Commerce is currently seeking expressions of interest from individuals in serving as a member of one of the fifty-six District Export Councils (DECs) nationwide. The DECs are closely affiliated with the U.S. Export Assistance Centers of the U.S. Commercial Service. DECs combine the energies of more than 1,500 exporters and export service providers who promote U.S. exports. DEC members volunteer at their own expense.

DATES: Applications for nomination to a DEC must be received by the designated local USEAC representative by May 17, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer Stone Marshall, National DEC Program Manager, the U.S. Commercial Service, tel. 202–482–6298.

SUPPLEMENTARY INFORMATION: DECs sponsor and participate in numerous trade promotion activities, as well as supply specialized expertise to small and medium-sized businesses that are interested in exporting.

Selection Process: About half of the approximately 30 positions on each of the 56 DECs are open for nominations for the term that ends December 31, 2005. Nominees are recommended by the local U.S. Export Assistance Center Director, in consultation with the DEC and other local export promotion partners. After a review process, nominees are selected and appointed to a DEC by the Secretary of Commerce.

Membership Criteria: Each DEC is interested in nominating highly-motivated people. Appointment is based upon an individual's energetic leadership, position in the local business community, knowledge of day-to-day international operations, interest in export development, and willingness and ability to devote time to council activities. Members include exporters, export service providers and others whose profession supports U.S. export promotion efforts.

Authority: 15 U.S.C. 1501 *et seq.*, 15 U.S.C. 4721.

Dated: April 30, 2002.

Bruce W. Blakeman,

Deputy Assistant Secretary for Domestic Operations, U.S. and Foreign Commercial Service.

[FR Doc. 02–11172 Filed 5–3–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 043002D]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Ad Hoc Red Snapper Advisory Panel (AP) from May 20 through May 21, 2002.

DATES: The Council's Ad Hoc Red Snapper AP will convene at 8:30 a.m. (CST) on Monday, May 20, 2002 and conclude by 5 p.m. on Tuesday, May 21, 2002.

ADDRESSES: The meeting will be held at the Tampa Airport Hilton Hotel, 2225 Lois Avenue, Tampa, FL; telephone: 813–877–6688.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The AP will convene to discuss the issues related to and continue the development of an individual fishing quota (IFQ) profile for the commercial red snapper fishery. The profile will examine the benefits and consequences of using IFQs to manage the commercial red snapper fishery. When the profile is completed by the AP and Council, it will be submitted to the current participants in the fishery for a referendum to determine if the majority of the participants favor management by IFQs.

The AP members consist of commercial fishermen holding Class 1 or Class 2 commercial red snapper licenses, and licensed commercial reef fish dealers. They are assisted by 4 non-voting members with expertise in fishery economics, fishery biology, environmental science, and law enforcement. The completion of the profile will require several subsequent meetings of this AP.

Although other non-emergency issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP will be restricted to those issues specifically identified in the agendas 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 action to address the emergency. Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is 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 May 13, 2002.

Dated: May 1, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–11169 Filed 5–3–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 043002E]

New England 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 New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific and Statistical Committee in May, 2002. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Monday, May 20, 2002, at 10 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will review and provide the Council guidance on the Final Report of the Working Group on the Re-evaluation of Biological Reference Points for New England Groundfish. They will also provide guidance to the Monkfish Plan Development Team and the Council on monkfish management reference points. Also on the agenda will be to provide guidance to the Scallop Plan Development Team and the Council on scallop management reference points if it has not been done prior to the May 14-15, 2002 Scallop Committee meeting.

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

This meeting is 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: May 1, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–11170 Filed 5–3–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050102A]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Allocation Committee will hold a telephone conference and meeting, which are open to the public.

DATES: The telephone conference will be held Tuesday, May 21, 2002 from 8 a.m. until business is completed. A follow-up meeting of the Allocation Committee will be held on Monday, June 3, 2002, from 8 a.m. until business is completed.

ADDRESSES: Four listening stations will be available for the May 21st telephone conference. See **SUPPLEMENTARY INFORMATION** for the locations. The June 3 meeting will be held at the Pacific Fishery Management Council, West Conference Room, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384; Contact: Mr. John DeVore (503) 326–6352, ext. 210.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, telephone: (503) 326–6352, ext. 210.

SUPPLEMENTARY INFORMATION: The listening stations will be located at the following addresses:

1. National Marine Fisheries Service, Northwest Region, Director's Conference Room, 7600 Sand Point Way NE, Building 1, Seattle, WA 98115; Contact: Mr. Bill Robinson (206) 526–6142;
2. Washington Department of Fish and Wildlife, Natural Resource Building, Room 677, 1111 Washington Street SE, Olympia, WA 98501; Contact: Mr. Phil Anderson (360) 902–2720;
3. Pacific Fishery Management Council, West Conference Room, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384; Contact: Mr. John DeVore (503) 326–6352, ext. 210;
4. California Department of Fish and Game, Conference Room, Room 1320, 1416 Ninth Street, Sacramento, CA 95814; Contact: Mr. LB Boydstun (916) 653–6281.

The purpose of the May 21 telephone conference and June 3 meeting is to develop preliminary options for allocations and other management measures for the 2003 Pacific Coast groundfish fishery. In addition, the committee will evaluate current catch levels of overfished groundfish species and may propose inseason adjustments. The committee will discuss the types of provisions that may be necessary to prevent further overfishing, to reduce bycatch of overfished species in the various groundfish fisheries, and to reduce bycatch in non-groundfish fisheries. The committee will prepare recommendations and contribute to draft rebuilding plans for overfished groundfish species that will be presented to the Council at future meetings. If available, the committee may also review new rebuilding analyses for canary rockfish, bocaccio, and yelloweye rockfish. No management actions will be decided by the Ad Hoc Allocation Committee. The committee's role will be development of recommendations for consideration by the Pacific Fishery Management Council at its June meeting in Foster City, California.

Although nonemergency issues not contained in the teleconference call or meeting agendas may come before the Ad Hoc Allocation Committee for discussion, those issues may not be the subject of formal Ad Hoc Allocation Committee action during this meeting. Ad Hoc Allocation Committee 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 Ad Hoc Allocation Committee's intent to take final action to address the emergency.

Special Accommodations

This teleconference call and meeting are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the teleconference date.

Dated: May 1, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–11171 Filed 5–3–02; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 16 May 2002 at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 441 F Street NW., Washington, DC, 20001–2728. Items of discussion affecting the appearance of Washington, DC may include buildings, parks and memorials.

Draft agendas are available to the public one week prior to the meeting. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary,

Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, April 30, 2002.

Charles H. Atherton,

Secretary.

[FR Doc. 02–11114 Filed 5–3–02; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Fort Sam Houston and Camp Bullis Master Plan Programmatic Environmental Impact Statement

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the availability of the Fort Sam Houston and Camp Bullis Master Plan Programmatic Environmental Impact Statement (PEIS), which assesses the potential environmental impacts of implementing three master planning alternatives. Alternative 1 (No Action) includes the continuation of the currently identified stationed Population reductions, as reflected in the Army Stationing and Installation Plan; the projected reductions in the Real Property Maintenance Activity budget program for facility maintenance and repair; the zero investment maintenance expenditures for vacant historical facilities; and the projected reductions in the Base Operations budget program for utilities and other engineering services. Alternative 2 (Reuse of Facilities and Property by Federal Users) would result in an adaptive reuse of currently vacant historical facilities using the existing appropriated funds process. This may be accomplished by bringing additional military missions to Fort Sam Houston through individual stationing decisions that take advantage of the capabilities of Fort Sam Houston, and/or additional federal missions through individual stationing decisions that take advantage of the capabilities of Fort Sam Houston.

Alternative 3 (Reduction of Underutilized/Unutilized Property through Lease, Sale, or Removal (preferred alternative)) would result in the reduction of underutilized/unutilized facilities and property on Fort Sam Houston and Camp Bullis, in addition to changes in the Land Use Plan. The reduction in underutilized/unutilized property may be accomplished through: outgrant leases to the city, county, state, private citizens, businesses, or investors; sale to the city, county, state, private citizens, businesses, or investors; removal from the site; or demolition. The Army may select any one alternative or a combination of alternatives for future activities and planning at Fort Sam Houston.

DATES: The review period for the Final PEIS will end 30 days after publication of the Notice of Availability in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: To obtain copies of the Final PEIS, contact Ms. Jackie Schlatter, PEIS Project Manager, ATTN: MCCS–BFE–N, 2202 15th Street (Bldg. 4196), Fort Sam Houston, Texas 78234–5007.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Schlatter at (210) 221–5093, by email at *jackie.schlatter@cen.amedd.army.mil*, or by fax at (210) 221–5419.

SUPPLEMENTARY INFORMATION: This document includes analyses of the potential environmental consequences that the alternative actions may have on land use and visual resources, transportation, utilities, earth resources, air quality, water resources, biological resources, cultural resources, socio-economics, noise, and hazardous materials and items of special concern. The findings indicate that potential environmental impacts from the alternatives may result in some impacts to cultural resources.

Copies of the PEIS have been provided to the following libraries for public access to the document: Fort Sam Houston Library, Building 1222, 2601 Harney, Fort Sam Houston, TX 78234 and the San Antonio Public Library, 600 Soledad Plaza, San Antonio, TX 78205.

Dated: April 29, 2002.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA(I&E).

[FR Doc. 02–11115 Filed 5–3–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by May 7, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before July 5, 2002.

ADDRESSES: Written comments regarding the emergency review 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 10235, 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 Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance

the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: May 1, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Early Reading First Program **Federal Register** Notice Inviting Applications, and Application Packet.

Abstract: The Early Reading First program will provide grants to eligible local educational agencies (LEAs) and public and private organizations located in those LEAs to transform early childhood education programs into centers of excellence to help young at-risk children achieve the language, cognitive, and early reading skills they need to succeed when they enter kindergarten.

Additional Information: The Department expects to receive a large number of applications, and wishes to ensure that the funded applications are of the highest quality, and plans to use a two-phase application process (with a Pre-Application and Full Application). This two-phase application process will put less burden on the majority of applicants by requiring only a short concept paper from them, and will also have the benefit of providing helpful comments from peer reviewers to strengthen proposals from applicants invited to submit Full Applications. It would be difficult, without emergency paperwork clearance, for the Department to award these grants by December, 2002. Based upon the unexpected delay and the public harm that might otherwise occur with delaying grant awards, the Department is requesting approval by May 7, 2002.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 900.
Burden Hours: 12,000.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2020. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* 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, contact Kathy Axt at 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. 02–11133 Filed 5–3–02; 8:45 am]

BILLING CODE 4000–01–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 June 5, 2002.

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 10235, 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: April 30, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: State Library Agencies Survey, 2000–2002.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 51.
Burden Hours: 561.

Abstract: State library agencies (StLAs) are the official agencies of each state charged by state law with the extension and development of public library services throughout the state. The purpose of this survey is to provide state and federal policymakers with information about StLAs, including their governance, allied operations, developmental services to libraries and library systems, support of electronic information networks and resources, number and types of outlets, direct services to the public, public service hours, type and size of collections, service and development transactions, staffing patterns, and income and expenditures.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 1945. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail *address vivan.reese@ed.gov.* 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 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. 02–11082 Filed 5–3–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Voluntary Reporting of Greenhouse Gas Emissions, Reductions, and Carbon Sequestration

AGENCY: Department of Energy.

ACTION: Notice of inquiry and request for comment.

SUMMARY: The Department of Energy (DOE) is seeking comments on possible modifications to the guidelines governing the Voluntary Reporting of Greenhouse Gases Program (VRGGP) that allows for the voluntary reporting of greenhouse gas emissions and reductions, and carbon sequestration under section 1605(b) of the Energy Policy Act of 1992. On February 14, 2002, the President directed the Secretary of Energy to propose improvements to the current registry to ''enhance measurement accuracy, reliability and verifiability, working with and taking into account emerging domestic and international approaches.'' This notice of inquiry is an initial step in a process to propose improvements to the current VRGGP Greenhouse Gas Registry (GHG Registry), for which guidelines were published in 1994. DOE is seeking comment on the issues posed below, and welcomes any other comments pertinent to future changes in the GHG Registry.

Because of the broad public interest in the issues involved, DOE believes that the public should have an opportunity to provide input on the issues raised in advance of the Secretary's recommendations to the President. DOE is requesting written comments as one means to bring a broad range of views into the process of developing recommendations for proposed improvement to the GHG Registry. After analyzing submissions made in response to this notice, DOE contemplates scheduling at least one public workshop for obtaining additional public input prior to finalizing the recommendations for proposed improvements to the GHG Registry. Notice of workshop(s) and other opportunities for input during development of proposed improvements to the GHG Registry will be published in the **Federal Register**.

DATES: Commenters should submit a signed original, a computer diskette (WordPerfect or Microsoft Word) and three copies of the written comments. Written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time June 5, 2002. Alternately, comments can be filed electronically by e-mail to: *ghgregistry.comments@hq.doe.gov,* noting ''Voluntary Reporting Comments'' in the subject line.

ADDRESSES: Written comments should be submitted to: Office of Policy and International Affairs, Office of Electricity and Natural Gas Analysis, PI–23, Attention: Voluntary Reporting Comments, U.S. Department of Energy, Forrestal Building, Room 7H–034, 1000 Independence Ave., SW., Washington, DC 20585. Alternately, comments can be filed electronically by e-mail to: *ghgregistry.comments@hq.doe.gov,* noting ''Voluntary Reporting Comments'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Jean Vernet, U.S. Department of Energy, Office of Policy and International Affairs, Office of Electricity and Natural Gas Analysis, Forrestal Building, PI–23, Room 7H–034, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–4755, e-mail: *jean.vernet@hq.doe.gov;* or Mr. Peter Karpoff, PI–23, (202) 586–5639, e-mail: *peter.karpoff@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 1605(b) of EPAct and the Current Guidelines

Section 1605(b) of the Energy Policy Act of 1992 (EPAct), Public Law 102–486, required the Secretary of Energy, with the Energy Information Administration (EIA), to establish a voluntary reporting program and database on emissions of greenhouse gases, reductions of these gases, and carbon sequestration (42 U.S.C. 13385(b)). More specifically, section 1605(b) required that DOE's guidelines provide for the ''accurate'' and ''voluntary'' reporting of information on: (1) Greenhouse gas emission levels for a baseline period (1987–1990) and, thereafter, annually; (2) annual reductions of greenhouse gas emissions and carbon sequestration regardless of the specific method used to achieve them; (3) greenhouse gas emission reductions achieved because of voluntary efforts, plant closings, or mandatory state or federal requirements; and (4) the aggregate calculation of greenhouse gas emissions by each reporting entity (42 U.S.C. 13385(b)(1)(A)–(D)). Section 1605(b) contemplates a program whereby voluntary efforts to reduce greenhouse gas emissions could be recorded, with the specific purpose that this record could be used ''by the reporting entity to demonstrate achieved reductions of greenhouse gases'' (42 U.S.C. 13385(b)(4)).

To carry out this statutory mandate, DOE established the GHG Registry, a program for the voluntary reporting of greenhouse gas emissions, emission reductions and carbon sequestration that has been in operation since 1995. The GHG Registry currently is governed by the General Guidelines for the Voluntary Reporting of Greenhouse Gases under Section 1605(b) of the Energy Policy Act of 1992 (''General Guidelines''), which were issued in 1994 after notice and public comment (59 FR 52769). The current General Guidelines are supported by two additional documents: Sector-Specific Issues and Reporting Methodologies, volumes one and two, which include supporting Appendices A–E. Volume one of the Sector-Specific Issues and Reporting Methodologies addresses the Electricity Supply Sector, Residential and Commercial Buildings Sector, and Industrial Sector. Volume two covers the Transportation Sector, Forestry Sector, and Agricultural Sector. Together, the General Guidelines and supporting documents establish a broad-based program for the reporting of greenhouse gas reductions and carbon sequestration that result from voluntary and other activities. The General Guidelines and supporting documents may be accessed at *http://www.eia.doe.gov/oiaf/1605/guidelns.html.*

The current General Guidelines encourage participants to report all types of greenhouse gas emission reduction and carbon sequestration activities, and participants are given flexibility in determining whether and how actual reductions are accomplished and reported. Any person or entity (''reporter'') who wishes to participate in the current GHG Registry must, however, comply with the following minimum information requirements:

(1) Reporters must clearly identify the facilities involved, the greenhouse gases reduced, the amount of reduction, and the year of the emissions;

(2) Reporters must describe the emissions reduction or carbon sequestration project and

provide sufficient data to permit database users to have ''a clear understanding of the nature and scope'' of the project, ''including the cause of the change in emissions or carbon sequestration'';

(3) Reporters must be able to identify the source of the data presented, the level of change in emissions or sequestration per year, and the year in which the change took place; and

(4) Reporters who submit a project report of their own design must identify the techniques used to gather the data and to make estimates.

As required by section 1605(b)(2), EIA developed forms for reporting to the GHG Registry. As long as participants use EIA forms and meet the minimum reporting requirements, they are allowed to define the activities they report and to determine how to estimate the effects of those activities on greenhouse gas emissions and carbon sequestration. The General Guidelines require reporters to self-certify the accuracy of their reports, but does not specify verification measures. As part of the report review process, EIA evaluates each report received for consistency with the General Guidelines, comprehensiveness, and arithmetic accuracy, and makes suggestions for improving the accuracy and clarity of reports. EIA also provides reporters with suggested and default greenhouse gas emissions factors for optional use.

Additional information, including the program's annual reports and reporting forms, can be accessed at *http://www.eia.doe.gov/oiaf/1605/frntvrgg.html.*

B. The President's Directive To Improve the GHG Registry

On February 14, 2002, President Bush, in announcing a new approach for meeting the long-term challenge of climate change, directed the Secretary of Energy, in consultation with the Secretaries of Commerce and Agriculture, the Administrator of the Environmental Protection Agency (EPA), and other Departments and agencies, to propose improvements to the current program to ''enhance measurement accuracy, reliability and verifiability, working with and taking into account emerging domestic and international approaches.'' [1] The President directed that DOE recommend proposed improvements to the GHG Registry within 120 days. Also on February 14, 2002, the President directed the Secretary of Energy to recommend reforms ''to ensure that businesses and individuals that register reductions are not penalized under a future climate policy, and to give transferable credits to companies that can show real emissions reductions.'' [2] The President also directed the Secretary of Agriculture, in consultation with EPA and DOE, to develop accounting rules and guidelines for crediting carbon sequestration projects.

Pursuit of the related Presidential directives poses significant policy, technical, and legal questions. In light of the short time available, DOE began consultations with the Departments of Commerce and Agriculture, and the EPA immediately after the President's announcement. This notice is directed to obtaining information from interested parties that will be useful in developing proposed improvements to the GHG Registry consistent with the President's announcement. If, as a result, modifications to the guidelines for reporting are pursued, the public will be given an opportunity to comment on the proposed revised guidelines, as provided in section 1605(b)(1) (42 U.S.C. 13385(b)(1)).

II. Request for Public Comment

DOE requests written comments from interested persons on all aspects of possible revisions to the guidelines governing the GHG Registry. DOE is especially interested in receiving written comments from persons with particular knowledge of the institutional, legal, and technical issues related to measuring and reporting GHG emissions, emissions reductions, and carbon sequestration. All information provided by commenters will be available for public inspection at the Department of Energy, Freedom of Information Reading Room, room 1E–190, 1000 Independence Ave., SW, Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday though Friday, except Federal holidays.

DOE also intends to enter all written comments on a website specially established for this proceeding. The Internet website is *http://www.pi.energy.gov/enhancingGHGregistry.* To assist DOE in making public comments available on a website, interested persons are encouraged to submit an electronic version of their written comments in accordance with the instructions in the **DATES** section of this notice.

Because DOE intends to make all submissions publicly available on a website, it requests that commenters not submit information believed to be confidential and exempt from public disclosure. However, if any person chooses to submit information that he or she considers to be privileged or confidential and exempt from public disclosure, that person must clearly identify the information that is considered to be privileged or confidential and explain why the submitter thinks the information is exempt from disclosure, addressing as appropriate the criteria for nondisclosure in DOE's Freedom of Information Act regulations at 10 CFR 1004.11(f). DOE also requests such submitters to provide one copy of their comments from which the information believed to be exempt from disclosure has been redacted, with the areas where information has been redacted clearly marked. DOE will determine if the information or data sought to be protected from disclosure is exempt from disclosure in accordance with the procedures set forth in its Freedom of Information Act regulations at 10 CFR 1004.11.

Commenters may find it helpful to review the notices that preceded the issuance of the current guidelines in 1994. These notices provide additional detail on issues considered during the development of the current guidelines: Notice of Inquiry (58 FR 40116; July 27, 1993); Notice of Availability requesting comment on the draft guidelines (59 FR 28345; June 1, 1994); and the Notice of Availability of the Guidelines (59 FR 52769; October 19, 1994). DOE has included these notices on the website established for this proceeding for the convenience of interested persons.

III. Issues for Comment

This section of the notice identifies specific areas for comment; however, these areas are not intended to limit the content of submissions.

A. Issues Related to Comment Scope

- Identify and discuss whether and how any improvement you suggest is necessary and appropriate in light of the President's directives and the purposes of the reporting program, including reporting of emission reductions and carbon sequestration activities for transferable credits or protection against penalty under future climate policy.

B. Issues in the Relationship of the GHG Registry to Other Approaches in GHG Reporting

- Identify and discuss whether and how your suggested improvements are consistent with existing and emerging domestic and international approaches to reporting GHG emissions, emission reductions and carbon sequestration. DOE is aware that efforts in the public and private sectors, domestic and international, have been undertaken to

[1] Global Climate Change Policy Book 2 (White House, February 14, 2002).

[2] Id.

develop GHG reporting approaches. Included in these are efforts by U.S. state governments, foreign governments, and multinational stakeholder groups. Reporting protocols have also been developed under voluntary emissions reduction programs initiated by the federal government and others.

C. Institutional Issues

• Time frame of data reported. Identify and discuss how any suggested improvements to the GHG Registry could accommodate the time period of reported emissions and emissions reductions, and carbon sequestration. The current GHG Registry accepts information on emissions and reductions back to 1991 and on emissions back to 1987, and provides for revision and supplementation of submitted reports. If your suggested improvements to the GHG Registry entail submission of additional accompanying information or new protocols for some types of reports, discuss how the guidelines could address the time frame of past and future reported data, and whether and how previously submitted data may be resubmitted under the revised purposes of the Registry.

• Reporting entity definition. Discuss whether the GHG Registry's broad definition of ''reporting entity'' continues to be appropriate in any improved reporting program. The current guidelines define a reporting entity as ''a legal U.S. entity,'' meaning ''any U.S. citizen or resident alien; any company, organization, or group incorporated under or recognized by U.S. law; or any U.S. Federal, state, or local government entity.''

• Level of reporting. Discuss whether it is appropriate for reports to cover: (1) All emitting activities of the entire reporting entity; (2) emissions by facility/site, affiliate, or subsidiary; or (3) an emissions reduction, emissions avoidance or carbon sequestration project. Identify how different levels of reporting may be appropriate for various reporting purposes, including for transferable credits and protection against penalty under future climate policy.

• Reportable GHGs. Discuss whether and how it may be appropriate, in light of your suggested improvements to the GHG Registry, to modify the current GHG Registry approach which allows reports on various greenhouse gases and other pollutants, and their reduction. These gases include carbon dioxide, methane, nitrous oxides, perfluorocarbons (PFCs), hydrofluorocarbons (HFCs) and sulfur hexafluoride (SF_6).

• Indirect emissions. Identify and discuss how a reporter could treat indirect emissions, such as those resulting from electricity use, and indirect emissions reductions, such as those from decreased electricity use, in the context of an improved reporting program. Discuss whether and how life cycle and fuel cycle emissions, and wholesale electric or natural gas transactions should be treated. Indirect emissions are emissions from sources outside the reporting entity that are affected by the reporter's activities, for example, emissions of an electric utility resulting from the reporter's consumption of electricity.

• Avoided emissions. Identify and discuss how a reporter could treat actions that avoid, at least in part, the production of GHG emissions. The GHG Registry currently includes these as reported reductions. Examples of activities that avoid emissions include, but are not limited to, electricity generation from renewable energy sources or nuclear power, the use of natural gas-fueled motor vehicles, and energy efficiency improvements in industrial or other applications.

• Baselines (or reference case) definition. Identify and discuss appropriate changes to the GHG Registry's approaches to determining an emissions baseline(s) or reference case. Identify how different baseline determinations may be appropriate for reporting purposes, transferable credits, or protection against penalty under future climate policy. Discuss how the reporting program could be used by reporters who may wish to report their GHG emissions measured as emissions per unit of output or emissions intensity. Discuss how ''units of output'' or emissions intensity could be calculated for varying industries. The current guidelines permit the reporter several options for identifying the baseline (referred to as the reference case) for emissions reductions or carbon sequestration, including use of historical emissions or sequestration (historical reference case), or an estimate of what emissions or sequestration would have been in the absence of a project or a group of projects (modified reference case).

• Thresholds for reporting emissions and for reporting emissions reductions.

The current guidelines do not set a minimum size for a reporting entity, or for reported emissions, emissions reductions, avoided emissions, or sequestered carbon. Identify and discuss whether and how an improved program might appropriately set minimum thresholds for these categories of data.

• Reduction activity reports on domestic and international projects. The current GHG Registry accepts reports of project-level data for both domestic and international projects, without regard to entity-level emissions data. Discuss the need for, and appropriateness of, entity-level emissions data accompanying information on projects either within or outside the U.S.

• Transferable credits and transferring ownership of reductions. Discuss any attributes of GHG emissions reductions or carbon sequestration that may be appropriate or necessary for transferable emissions reduction or carbon sequestration credits. Provide information on reporting parameters you believe are necessary to establish and transfer ownership of real emissions reductions or carbon sequestration credits.

• Reporting joint activities, addressing duplication of reported emissions and reductions, and ownership. The current guidelines permit reporters, or third parties on the behalf of others, to report individual and joint activities, and to modify reporter-identification as needed. Discuss whether and what changes are appropriate or necessary to minimize duplicative reporting, and assure correct identification of the owner of emissions, emission reductions or avoidance, and carbon sequestration.

• Verification and third-party audit standards. As required by 1605(b)(2), the current guidelines and EIA forms require that the reporter self-certify the accuracy of the reported information (42 U.S.C. 13385(b)(2)). No independent certification or verification is required. While the Federal government does not certify reported data, EIA currently reviews each report for consistency with the program guidelines, comprehensiveness, and arithmetic accuracy. Identify and discuss any forms of verification that may be appropriate in a program that contemplates the use of the GHG Registry for transferable credits. If you suggest third party verification or certification, discuss possible standards for certifying bodies.

• Confidentiality of reported data; public availability of information. The current guidelines provide that information determined under DOE regulations to be confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4)) does not appear in EIA's public database and is not made available to the public. This is consistent with the provision in section 1605(b) requiring the protection of trade secret and commercial or financial information that is privileged or

confidential (42 U.S.C. 13385(b)(3)). Discuss whether revised guidelines should include a provision requiring reporters to waive the protection provided by section 1605(b)(3) if they wish to obtain a certificate of emission reductions for potential use in connection with transferable credits, or for protection against penalty under future climate policy.

D. Technical Issues

• Measurement and estimation techniques. Although the current guidelines and reporting forms provide a number of default and other estimation techniques, they do not prescribe measurement and estimation techniques. Identify and discuss the need for prescribed techniques for measurement and estimation under an improved GHG Registry that could provide the basis for transferable credits or protection against penalty under future climate policy. Provide specific examples and citations to techniques you identify.

Issued in Washington, DC, on April 15, 2002.

Robert Card,

Undersecretary.

[FR Doc. 02–11180 Filed 5–3–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR02–8–000]

Big West Oil, LLC 333 West Center Street, Salt Lake City, Utah 84054; Chevron Products Company, 2351 N. 1100 West, Salt Lake City, UT 84116; Sinclair Oil Corporation, 550 East South Temple, Salt Lake City, UT 84102 and Tesoro Refining and Marketing Company, 300 Concord Plaza Dr., San Antonio, Texas 78216; Complainants, v. Express Pipeline LLC, Suite 2500, 255 5th Avenue, SW, Calgary, Alberta T2P 3G6, Canada, Respondent; Notice of Complaint

April 30, 2002.

Take notice that on April 26, 2002, Big West Oil LLC (Big West), Chevron Products Company (Chevron), Sinclair Oil Corporation (Sinclair) and Tesoro Refining and Marketing Company (Tesoro) tendered for filing a Complaint against Express Pipeline LLC (Express). Big West, Chevron, Sinclair and Tesoro state in their Complaint that their refineries use substantial quantities of crude oil and synthetic crude oil (syncrude) that have been transported from Canada on the Express pipeline system. Big West, Chevron, Sinclair and Tesoro allege that the rates Express is charging for pipeline transportation service from the US/Canadian Border to Casper, Wyoming are unjust and unreasonable and, therefore, in violation of the Interstate Commerce Act. Big West, Chevron, Sinclair and Tesoro further maintain that Express has violated and is continuing to violate the Interstate Commerce Act by improperly shifting costs to its shippers for the transfer of crude petroleum from the Express pipeline to a pipeline operated by Frontier Pipeline Company.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 16, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before May 16, 2002. 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, interventions and answers 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11143 Filed 5–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG02–2–000]

Central New York Oil and Gas Company, LLC; Notice of Filing

April 30, 2002.

On April 4, 2002, Central New York Oil and Gas Company, LLC filed its initial standards of conduct.

Central New York Oil and Gas Company, LLC states that it served copies of the filing on all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding 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 or 385.214) All such motions to intervene or protest should be filed on or before (15 days after date of notice) 2002. 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11142 Filed 5–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR02–9–000]

Chevron Products Company, Complainant v. CalNev Pipe Line, L.L.C., Respondent; Notice of Complaint

April 30, 2002.

Take notice that on April 26, 2002, Chevron Products Company (hereinafter referred to as Complainant) filed a complaint alleging that the rates of CalNev Pipe Line, L.L.C. (CalNev) subject to the jurisdiction of the Federal Energy Regulatory Commission are not just and reasonable.

According to Complainant, the overcharges are 22.8 percent in excess of the claimed just and reasonable return claimed by CalNev in its year 2000 interstate cost of service.

Complainant further alleges that the rate are not subject to the threshold

''changed circumstances'' standard pursuant to the Energy Policy Act of 1992.

Complainant alleges that it is aggrieved and damaged by the acts of CalNev Pipe Line LLC and seeks relief in the form of reduced rates in the future and reparations for past and current overcharges for transportation and terminalling, with interest.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 16, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before May 16, 2002. 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, interventions and answers 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11144 Filed 5–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9974–048]

Wisconsin Department of Natural Resources, Complainant, v. Halstead Construction, Respondent; Notice of Complaint

April 30, 2002.

Take notice that on April 26, 2002, the Wisconsin Department of Natural Resources (WDNR) filed a complaint against Halstead Construction, owner of the Upper Watertown Dam.

WDNR states that a copy of the complaint was delivered to Thomas Philipsborn, Hastead Construction, Chicago IL.

WDNR states that the Upper Watertown Dam, project no. 9974 is not in compliance with the Exemption issued in 1989. The WDNR alleges that the dam is not fully operational, doesn't have the necessary spillway capacity, is not following the Public Safety Plan, is not maintained ice-free; and the turbine leaks oil if generating.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 16, 2002 . Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before May 16, 2002. 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, interventions and answers 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11147 Filed 5–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–125–000, et al.]

PSEG Fossil LLC, et al.; Electric Rate and Corporate Regulation Filings

April 26, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PSEG Fossil LLC

[Docket No. EG02–125–000]

Take notice that on April 24, 2002, PSEG Fossil LLC (PSEG Fossil or Applicant), having its principal place of business at 80 Park Plaza, T–16, Newark, New Jersey, filed with the Federal Energy Regulatory Commission (Commission), an application for redetermination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

PSEG Fossil is a limited liability company organized under the laws of the State of Delaware. PSEG Fossil states that it will be engaged, directly or indirectly through an affiliate as defined in section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating eligible generating facilities, and engaging in sales of electric energy at wholesale.

Comment Date: May 17, 2002.

2. New England Power Pool

[Docket No. ER02–1618–000]

Take notice that on April 23, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted the Eighty-Fourth Agreement Amending New England Power Pool Agreement (Eighty-Fourth Agreement), which proposes changes to the NEPOOL Tariff and the Restated NEPOOL Agreement to integrate the merchant transmission facility Cross Sound Cable project into the NEPOOL Tariff and to provide for operational control of the facility by the New England independent system operator. Expedited consideration, a waiver of the sixty-day notice requirement and a June 1, 2002 effective date has been requested.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment Date: May 14, 2002.

3. Ameren Services Company

[Docket No. ER02–1619–000]

Take notice that on April 23, 2002, Ameren Services Company (ASC) tendered for filing a Parallel Operating Agreement between ASC and Clay County Trust 2000. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Clay County Trust 2000 pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: May 14, 2002.

4. Exelon Generation Company, LLC

[Docket No.ER02–1620–000]

Take notice that on April 23, 2002, Exelon Generation Company, Inc. (EXELON) filed under section 205 of the Federal Power Act, 16 USC 792 *et seq.*,

a Transaction Agreement dated March 22, 2002 with Kennebunk Light and Power District (KLPD) under EXELON's FERC Electric Tariff Original Volume No. 1 (Tariff).

EXELON requests an effective date of May 1, 2002 for the Agreement.

Comment Date: May 14, 2002.

5. Southern California Edison Company

[Docket No. ER02–1621–000]

Take notice, that on April 23, 2002, Southern California Edison Company (SCE) tendered for filing revisions to the Interconnection Facilities Agreement (Interconnection Agreement) between SCE and the City of Colton (Colton). The revisions reflect SCE's and Coltons's (Parties) negotiations to revise the original Interconnection Agreement in order to incorporate into it the Interconnection Facilities and a cost estimate to accommodate Colton's request to replace the existing metering facilities at SCE's Colton Substation with new metering.

SCE requests the Commission to assign an effective date of April 11, 2002 to the Amended Interconnection Agreement. Copies of this filing were served upon the Public Utilities Commission of the State of California and Colton.

Comment Date: May 14, 2002.

6. Entergy Services, Inc.

[Docket No. ER02–1624–000]

Take notice that on April 23, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and RWE Trading Americas Inc.

Comment Date: May 14, 2002.

7. PPL Electric Utilities Corporation

[Docket No. ER02–1625–000]

Take notice that on April 23, 2002, PPL Electric Utilities Corporation (PPL Electric) filed an Interchange Scheduling Procedures and Data Access Agreement between PPL Electric and Citizens' Electric Company of Lewisburg (Citizens' Electric).

PPL Electric states that a copy of this filing has been provided to Citizens' Electric.

Comment Date: May 14, 2002.

8. Arizona Public Service Company

[Docket No. ER02–1627–000]

Take notice that on April 23, 2002, the Arizona Public Service Company tendered for filing proposed revisions to Arizona Public Service Company's fuel adjustment clause contained in certain wholesale power agreements on file with the Federal Energy Regulatory Commission (Commission).

A copy of this filing has been served on all parties on the service list.

Comment Date: May 14, 2002.

9. Ameren Energy, Inc. on Behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–1628–000]

Take notice that on April 23, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 USC 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with *American Electric Power Service Corporation*.

Ameren Energy seeks Commission acceptance of these service agreements effective April 15, 2002. Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the counterparty.

Comment Date: May 14, 2002.

10. Ameren Energy, Inc. on Behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–1629–000]

Take notice that on April 23, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 USC 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with *American Electric Power Service Corporation*.

Ameren Energy seeks Commission acceptance of these service agreements effective April 10, 2002. Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the counterparty.

Comment Date: May 14, 2002.

11. PacifiCorp

[Docket No.ER02–1630–000]

Take notice that on April 24, 2002, PacifiCorp tendered for filing in accordance with 18 CFR part 35 of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations, Umbrella Service Agreement No. 73 with the City of Hermiston under PacifiCorp's FERC Electric Tariff, Third Revised Volume No. 12.

Copies of this filing were supplied to the Public Utility Commission of Oregon.

Comment Date: May 15, 2002.

12. Aquila, Inc.

[Docket No. ER02–1631–000]

Take notice that on April 24, 2002, Aquila, Inc. (Aquila), filed with the Federal Energy Regulatory Commission (Commission), pursuant to section 205 of the Federal Power Act, 16 USC 824d, and Part 35 of the Commission's regulations, Service Agreement No. 21 to Aquila's Market Based Power Sales Tariff (Aquila's FERC Electric Tariff No. 28). The service agreement is a Power Purchase Agreement between Aquila and Midwest Energy Inc., Missouri.

Comment Date: May 15, 2002.

13. Energy America LLC

[Docket No. ER02–1632–000]

Take notice that on April 24, 2002, Energy America tendered for filing an application for authorization to sell energy, capacity and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act. Energy America is a direct subsidiary of Centrica US Holdings Ltd., and an indirect subsidiary of Centrica plc.

Comment Date: May 15, 2002.

14. Auburndale Peaker Energy Center, L.L.C.

[Docket No. ER02–1633–000]

Take notice that on April 24, 2002, Auburndale Peaker Energy Center, L.L.C. (Applicant) tendered for filing, under section 205 of the Federal Power Act a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Applicant proposes to own and operate a 115 megawatt electric generating facility located in Florida.

Comment Date: May 15, 2002.

15. Entergy Services, Inc.

[Docket No. ER02–1634–000]

Take notice that on April 24, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Cleco Power LLC.

Comment Date: May 15, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11095 Filed 5–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 10855–002, Michigan, and 2589–024, Michigan]

Upper Peninsula Power Company, and Marquette Board of Light and Power; Notice of Availability of Draft Environmental Assessment

April 30, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 F.R. 47897]), the Office of Energy Projects Staff (Staff) has reviewed the application for an initial license for the Dead River Project and a new license for the Marquette Project, both located on the Dead River in Marquette County, Michigan, and has prepared a draft environmental assessment (DEA) for the projects. In this DEA, the Staff has analyzed the potential environmental effects of the existing projects and has concluded that licensing the projects, with staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426. This DEA may also be viewed on the Internet at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions. Please call (202) 208–2222 for assistance.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix ''Dead River Project No. 10855–002'' and/or ''Marquette Project No. 2589–024,'' as appropriate, to all comments. For further information, please contact Lee Emery at (202) 219–2779.

Comments, may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11148 Filed 5–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 637–022]

Notice of Application and Applicant-Prepared Environmental Assessment Accepted for Filing, Notice Soliciting Motions To Intervene and Protests, and Notice Soliciting Comments, Final Terms and Conditions, Recommendations and Prescriptions

April 29, 2002.

Take notice that the following hydroelectric application and applicant-prepared environmental assessment have been accepted for filing with the Commission and are available for public inspection:

a. *Type of Application:* New License.

b. *Project No.:* 637–022.

c. *Date filed:* March 28, 2002.

d. *Applicant:* Public Utility District No.1 of Chelan County (Chelan PUD).

e. *Name of Project:* Lake Chelan Hydroelectric Project.

f. *Location:* On the Chelan River in Chelan County, Washington. The project occupies about 465 acres of federal lands administered by the U.S. Forest Service and the National Park Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregg Carrington, Chelan PUD, 327 North Wenatchee Ave, Wenatchee WA 98801 or P.O. Box 1231, Wenatchee WA 98807–1231, 509–663–8121 or within Washington State toll-free at 888–663–8121, email: gregg@chelanpud.org.

i. *FERC Contact:* Vince Yearick, FERC, 888 First Street, NE., Room 61–11, Washington, DC 20426, (202) 219–3073, email: vince.yearick@ferc.gov.

j. *Deadline for filing interventions, protests, comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commissions, 888 First Street, NE., Washington, DC 20426. Documents may also be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments

or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Brief Project Description:* The existing Lake Chelan Project consists of: Lake Chelan, a natural glacial lake that was raised 21 feet by construction of the dam to a current normal maximum water surface elevation of 1,100 feet; a 40-foot-high, 490-foot-long, concrete gravity, steel-reinforced dam; a 14-foot-diameter power tunnel, 2.2 miles long; a 45-foot-diameter-by-125-foot-high steel surge tank located along the power tunnel approximately 700 feet upstream of the powerhouse; a 90-foot-long penstock transition that reduces from 14 feet in diameter to 12 feet in diameter and then bifurcates; two 9-foot-diameter, steel-lined, concrete-encased penstocks that reduce to 7.5 feet in diameter at the turbine shutoff valves; a 140-foot-long, 100-foot-wide and 124-foot-high reinforced concrete powerhouse that contains two vertical-shaft, Francis-type turbines with a rated generating capacity of 24,000 kilowatts (kW) each; and a 1,700-foot-long excavated tailrace channel adjacent to the mouth of the Chelan River that discharges into the Columbia River.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. 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). A copy is also available for inspection and reproduction by contacting the applicant identified in item h above.

m. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item n. below.

n. *Comments, Recommendations, Terms and Conditions, Prescriptions, and Reply Comments:* The Commission is requesting comments on the applicant's application and draft environmental assessment, final recommendations, terms and conditions, prescriptions, and final reply comments.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedures, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or motions to intervene must be received on or before the specified comment date for the particular application.

The Commission directs, pursuant to Section 4.34(b) of the regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' OR ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis; and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11145 Filed 5–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice That Application is Accepted for Filing and Ready for Environmental Analysis; Solicitation of Comments, Terms and Conditions, Recommendations, Prescriptions, and Motions To Intervene and Protests

April 30, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 6418–007.

c. *Date filed:* February 12, 2002.

d. *Applicant:* Judith A. Burford.

e. *Name of Project:* A J Allen Power Plant.

f. *Location:* On East Brush Creek, a tributary of the Eagle River, in Eagle County, Colorado. The project occupies 1.008 acres of land within the White River National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825 (r).

h. *Applicant Contact:* J Richard Allen, 5401 East Dakota Avenue # 21, Denver, Colorado 80426, Tel. # (303) 333–1339.

i. *FERC Contact:* Gaylord Hoisington, (202) 219–2756, or *gaylord.hoisington@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. *Deadline for filing motions to intervene and protests, comments, and terms and conditions, recommendations, and prescriptions and request for cooperating agency status:* July 1, 2002.

All documents (original and eight copies) should be filed with: Magalie R Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions and requests for cooperating agency status 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 (*http://www.ferc.gov*) under the ''e-Filing'' link.

l. This application has been accepted for filing, and is now ready for environmental analysis.

We will consider the prefiling consultation process that has occurred as satisfying National Environmental Policy Act scoping and intend on issuing one environmental assessment (EA) rather than issuing a draft and final EA. Tentatively, we plan on issuing an EA by August 2002.

m. *The existing A J Allen Project consists of:* (1) An 8-inch-diameter 970-foot-long steel pipeline; (2) a rock pile diversion structure; (3) a gate valve just upstream of the turbine; (4) a 9-foot by 11-foot concrete and wood powerhouse containing a Pelton impulse turbine having a rated capacity of 8-kilowatts; (5) a 5-volt, 112-foot-long transmission line; and (6) other appurtenances.

n. A copy of the application is on file with the Commission and is 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). A copy is also available for inspection and reproduction at the address in item h above.

o. Anyone may submit comments, a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified deadline date for the particular application.

The Commission directs, pursuant to Section 4.34 (b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20 1991) that all comments, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11146 Filed 5–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL02–3–000]

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Disseminated Information; Statement of Policy on Maximizing the Quality, Objectivity, Utility, and Integrity of Disseminated Information and Reqyest for Comments

April 30, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice, availability of draft report with Proposed guidelines and request for comments.

SUMMARY: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554), directed the Office of Management and Budget (OMB) to issue government-wide guidelines to ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.'' OMB's final guidelines were published on February 22, 2002. 67 FR 8452 (2002). Agencies are directed to issue implementing guidelines by October 1, 2002. The Federal Energy Regulatory Commission (FERC or Commission) is issuing and requesting comments on these draft guidelines as part of this process.

DATES: Comments are due June 7, 2002.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Taylor, Office of the Chief Information Officer, Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426, (202)208–0826, e-mail: *Elizabeth.Taylor@ferc.gov*.

SUPPLEMENTARY INFORMATION: In section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554), Congress directed the Office of Management and Budget (OMB) to issue by September 30, 2001, government-wide guidelines that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies. (OMB subsequently revised its

guidelines to reflect comments by federal agencies and this revision as noted above was noticed in the **Federal Register** on February 22, 2002).

Section 515 directs agencies subject to the Paperwork Reduction Act (44 U.S.C. 3502(1)) to:

1. Issue their own information quality guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by the agency no later than one year after the date of issuance of the OMB guidelines;

2. Establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the OMB guidelines; and

3. Report annually, beginning January 1, 2004, to the Director of OMB the number and nature of requests for correction received by the agency regarding agency compliance with these OMB guidelines concerning the quality, objectivity, utility, and integrity of information and how such requests for correction were resolved.

The FERC's draft guidelines are included as Attachment A. The request for correction and request for reconsideration processes are described in Attachment B. Attachments A and B are available on the FERC website at *http://www.ferc.gov/* and in the Public Reference Room, 888 First Street., NE., Washington, DC 20426 (202–208–1371, extension 0, or *Public.ReferenceRoom@FERC.fed.us*).

Magalie R. Salas,

Secretary.

[FR Doc. 02–11149 Filed 5–3–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7206–1]

Availability of ''Award of Grants and Cooperative Agreements for the Special Projects and Programs Authorized by the Agency's FY 2002 Appropriations Act''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: EPA is announcing availability of a memorandum entitled ''Award of Grants and Cooperative Agreements for the Special Projects and Programs Authorized by the Agency's FY 2002 Appropriations Act.'' This memorandum provides information and guidelines on how EPA will award and administer grants for the special projects and programs identified in the State and Tribal Assistance Grants (STAG) account of the Agency's fiscal year (FY) 2002 Appropriations Act (Public Law 107–73). The STAG account provides budget authority for funding identified water, wastewater and groundwater infrastructure projects, as well as budget authority for funding the United States-Mexico Border program, the Alaska Rural and Native Villages program, the Above Ground Storage Tank Grant Program, and the Long Island Sound Restoration Program. Each grant recipient will receive a copy of this document from EPA.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for electronic access of the guidance memorandum.

FOR FURTHER INFORMATION CONTACT: Larry McGee, (202) 564–0619 or *mcgee.larry@epa.gov.*

SUPPLEMENTARY INFORMATION: The subject memorandum may be viewed and downloaded from EPA's homepage, *http://www.epa.gov/owm/mab/owm319.pdf.*

Dated: April 16, 2002.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 02–11177 Filed 5–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0026; FRL–6836–1]

Atrazine; Availability of Revised Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the revised risk assessments and related documents for the triazine pesticide, atrazine. In addition, this notice starts a 60–day public participation period during which the public is encouraged to submit comments on risk management ideas or proposals for atrazine. This action is in response to a joint initiative between EPA and the U.S. Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for all pesticides.

DATES: Comments, identified by docket control number OPP–34237C, must be received by EPA on or before July 5, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34237C in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Kimberly Nesci Lowe, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8059; e-mail address: lowe.kimberly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on atrazine, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially 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 or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document and other related documents 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 information about pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/reregistration/atrazine/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–34237C. 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 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 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.

III. How Can I Respond to this Action?

A. 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–34237C in the subject line on the first page of your response.

1. *By mail*. Submit comments 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.

2. *In person or by courier*. Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, 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*. Submit electronic comments by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34237C. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information 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**.

IV. What Action is EPA Taking in this Notice?

EPA is making available for public viewing the revised risk assessments and related documents for the triazine pesticide, atrazine. These documents have been developed as part of the public participation process that EPA and USDA are using to involve the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). A pilot public participation process was developed as part of the EPA and the USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process has been to find a more effective way for the public to participate at critical junctures in the Agency's development pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the atrazine preliminary risk assessments, which were released to the public on February 14, 2001 (66 FR 10287) (FRL–6765–3) and September 26, 2001 (66 FR 49186) (FRL–7063–7), through notices in the **Federal Register**.

In addition, this notice starts a 60–day public participation period during which the public is encouraged to submit risk management proposals or other comments on risk management for atrazine. The Agency is providing an opportunity, through this notice, for interested parties to provide written comments on risk management proposals or ideas for atrazine. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific atrazine use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commenters may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest (''preharvest intervals''), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, commenters may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commenters may suggest ways to reduce environmental exposure, e.g., exposure to birds, fish, mammals, and other non–target organisms. All comments and proposals must be received by EPA on or before July 5, 2002. Comments and proposals will become part of the Agency record for the pesticide specified in this notice.

List of SubjectsP≤Environmental protection, Chemicals, Pesticides and pests, Atrazine, Triazines.

Dated: April 19, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–11159 Filed 5–1–02; 2:28 pm]

BILLING CODE 6560–50–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal

agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collections of information titled: (1) Notification of Performance of Bank Services; and (2) Prompt Corrective Action.

DATES: Comments must be submitted on or before July 5, 2002.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room F–4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838; Internet address: *comments @ fdic.gov*].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* Notification of Performance of Bank Services.

OMB Number: 3064–0029.

Form Number: FDIC 6120/06.

Frequency of Response: On occasion.

Affected Public: Business or other financial institutions.

Estimated Number of Respondents: 412.

Estimated Time per Response: ½ hour.

Total Annual Burden: 206 hours.

General Description of Collection: Insured state nonmember banks are required to notify the FDIC, under section 7 of the Bank Service Corporation Act (12 U.S.C. 1867), of the relationship with a bank service corporation. Form FDIC 6120/06 (Notification of Performance of Bank Services) may be used by banks to satisfy the notification requirement.

2. *Title:* Prompt Corrective Action.

OMB Number: 3064–0115.

Frequency of Response: On occasion.

Affected Public: All financial institutions.

Estimated Number of Respondents: 10.

Estimated Time per Response: 4 hours.

Total Annual Burden: 40 hours.

General Description of Collection: The prompt corrective action provisions of FDICIA require or permit the FDIC and other federal financial regulators to take certain supervisory actions when FDIC-insured institutions fall within one of five categories. The collection consists of applications required to obtain FDIC exceptions to otherwise restricted activities.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC, this 30th day of April, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–11140 Filed 5–3–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1407–DR]

Kentucky; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky, (FEMA–1407–DR), dated April 4, 2002, and related determinations.

EFFECTIVE DATE: April 26, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or madge.dale@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 4, 2002:

Floyd, Martin, and Pike Counties for Individual Assistance.

Johnson, Knott, and Magoffin Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–11122 Filed 5–3–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1408–DR]

Tennessee; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee, (FEMA–1408–DR), dated April 5, 2002, and related determinations.

EFFECTIVE DATE: April 23, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or madge.dale@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the

State of Tennessee is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 5, 2002:

Anderson County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–11123 Filed 5–3–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Radiological Emergency Preparedness: Exercise Credit

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice with request for comments.

SUMMARY: Pursuant to the Radiological Emergency Preparedness (REP) Program Strategic Review initiative 1.6, the Federal Emergency Management Agency (FEMA) is proposing to implement a policy for granting REP exercise credit to offsite response organizations (ORO) for participation in an actual incident or in a non-REP exercise. The subject notice contains the activities eligible for consideration for credit, guidelines for submitting a request, and documentation required.

DATES: FEMA must receive comments on or before July 5, 2002.

ADDRESSES: You may submit your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, or send them by e-mail to *rules@fema.gov.* Please reference ''REP Exercise Credit'' in the subject line of your e-mail or comment letter.

FOR FURTHER INFORMATION CONTACT: Vanessa E. Quinn, Chief, Radiological Emergency Preparedness Branch, Technological Services Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472; (202) 646–3664; vanessa.quinn@fema.gov.

SUPPLEMENTARY INFORMATION: Pursuant to the REP Program Strategic Review initiative 1.6, FEMA is proposing to implement a policy for granting REP exercise credit to offsite response organizations for participation in an actual incident or in a non-REP exercise. The subject notice contains the activities eligible for consideration for credit, guidelines for submitting a request, and documentation required.

Background

A radiological emergency response plan is developed and exercised in order to have reasonable assurance that adequate protective measures can be taken in the event of a radiological emergency. FEMA evaluates the exercises to ensure that the OROs have the capability to respond to a radiological emergency. An ORO's response to man-made or natural events or participation in a non-REP exercise may also test all or part of the plan. For those areas that were tested, it may be appropriate to give credit in place of certain aspects of an evaluated REP exercise.

Credit for Responding to an Actual Emergency

When an ORO responds to an actual incident involving radioactive materials, FEMA can consider granting exercise credit for such response activities as environmental monitoring; monitoring for contamination of persons and equipment and/or other activities, if these activities were successfully performed according to the applicable plan and procedures. FEMA may also consider granting credit for generic response activities, such as mobilization of personnel and facilities,[1] for those OROs affected by an actual radiological incident.

When an ORO responds to an actual incident that does not involve radioactive materials, the ORO may qualify for credit for generic response functions and activities, such as mobilization, facilities[1], communications equipment, and congregate care. The Credit columns in Table 1, Federal Evaluation Process Matrix, indicate which functions and activities may be considered for the granting of exercise credit for response to a radiological or a non-radiological emergency.

When requesting exercise credit for a response to an actual emergency, an ORO should ensure that the response included the following four elements:

- A prompt and timely mobilization of key State and local government staff and providers responsible for REP emergency functions;
- An actual reporting of the key REP staff who, in accordance with the plans, would report to the facility;
- Activation of the facility(ies) of the responding jurisdiction(s); and
- Establishment of communication links among responding organizations.

The ORO should then provide the following documentation to FEMA:

1. Type and nature of the emergency;
2. Timeline, to include time of response and time State and local REP staff arrived at the facility;
3. Sign in-out sheet with name, function, date and time;
4. List of involved REP personnel and organizations and their connection to a REP response;
5. Communications log showing the establishment of communication links with other organizations;
6. List of involved jurisdictions;
7. Emergency decisions made and implemented;
8. Resources (facilities, equipment, etc.) used; and
9. List of corrective actions or improvement items identified in the after-action report.

Credit for Participating in Preparedness Exercises Other Than REP

ORO(s) may request REP exercise credit for demonstrating preparedness capabilities in FEMA exercises other than REP. These capabilities could include congregate care, facilities, [1] and/or other activities performed in the exercise. The Credit columns in the attached Table 1 indicate which functions and activities may be considered for the granting of exercise credit for participation in an exercise other than REP when the exercise has a radiological component or when the exercise does not have a radiological component.

ORO credit requests for participating in non-REP exercises must specify the exercise and document the ORO's participation, including the activities it performed and a list of corrective actions or improvement items identified in the exercise after-action report. If credit is granted, the ORO must also include its exercise participation in the Annual Letter of Certification.

Process

An ORO submits its application for credit to the appropriate FEMA Region.

[1] FEMA will evaluate all facilities, as a baseline, during the first exercise under the new Evaluation Criteria. Therefore, FEMA will not grant exercise credit for facilities for the first exercise using the new Evaluation Criteria.

[1] FEMA will evaluate all facilities, as a baseline, during the first exercise under the new Evaluation Criteria. Therefore, FEMA will not grant exercise credit for facilities for the first exercise using the new Evaluation Criteria.

The application must specify the basis for the credit (response to a radiological emergency, response to a non-radiological emergency, participation in a radiological exercise other than REP or participation in a non-radiological exercise other than REP) and the REP evaluation area criterion (a) for which credit is requested. The application must also contain the appropriate documentation, as specified above. The FEMA Region will submit the request for credit, along with the Region's review and recommendations, to FEMA Headquarters. FEMA Headquarters will determine whether the credit requested will be granted, and if so, will issue an exemption to an ORO from FEMA evaluation of this criterion (a) in the next REP exercise. However, even if FEMA exempts a criterion from exercise evaluation, certain fundamental radiological emergency response functions and activities that are integral to the REP exercise must still be demonstrated in order to conduct the exercise. FEMA will specify any exempted activities that the ORO must still demonstrate. FEMA will not evaluate these activities unless their demonstration had a potential or actual adverse effect on the REP exercise.

Timeline

The ORO requesting credit for responding to an actual radiological or non-radiological emergency should submit the request to the appropriate FEMA Regional Office within 90 days following the event. The ORO requesting credit for participation in a non-REP exercise should submit the initial information 60 days in advance of the non-REP exercise and follow-up documentation within 90 days after the non-REP exercise. Any credit that is granted must be completed in time to allow inclusion in the extent-of-play discussions 90 days prior to the REP exercise for which credit is granted. FEMA will grant exemption from evaluation of a specific exercise criterion only once during the six-year cycle for the applicable REP exercise. In addition, FEMA will not consider exemption from evaluation if the emergency response activity for which credit would be sought occurred more than two years before the date of the next scheduled REP exercise.

Dated: April 23, 2002.

Michael D. Brown,

General Counsel.

Table 1, Federal Evaluation Process Matrix, reads as follows:

TABLE 1.—FEDERAL EVALUATION PROCESS MATRIX[1]

Evaluation Area and Sub-Elements	Consolidates REP–14 objective(s)	Minimum frequency[2]	Out-of-sequence of exercise scenario	Credit		Staff ass't visit
				Radiological	Non-radiological	
1. Emergency Operations Management	1, 2, 3, 4, 5, 14, 17, 30.					
a. Mobilization		Every Exercise	NO	YES	YES	NO
b. Facilities		Every Exercise	NO	YES	YES	YES
c. Direction and Control		Every Exercise	NO	NO	NO	NO
d. Communications Equipment		Every Exercise	NO	NO	NO	NO
e. Equipment and Supplies to Support Operations.		Every Exercise	YES	YES	NO	YES
2. Protective Action	5, 7, 9, 14, 15, 16, 17, 26, 28.					
a. Emergency Worker Exposure Control		Every Exercise	YES	YES	NO	YES
b. Radiological Assessment & Protective Action Recommendations & Decisions for the Plume Phase of the Emergency.		Every Exercise	NO	YES	NO	NO
c. Protective Action Decisions for the Protection of Special Populations.		Every Exercise	NO	YES	YES	NO
d. Radiological Assessment and Decision-making for the Ingestion Exposure Pathway[3].		Once in 6 years	NO	YES	NO	NO
e. Radiological Assessment and Decision-making Concerning Relocation, Re-entry, and Return[3].		Once in 6 years	NO	YES	NO	NO
3. Protective Action Implementation	5, 14, 15, 16, 17, 27, 29.					
a. Implementation of Emergency Worker Exposure Control.		Every Exercise	YES	YES	NO	NO
b. Implementation of KI Decision		Once in 6 years	YES	YES	NO	NO
c. Implementation of Protective Actions for Special Populations.		Once in 6 years	YES	YES	YES	YES
d. Implementation of Traffic and Access Control[5].		Every Exercise	YES	YES	YES	YES
e. Implementation of Ingestion Pathway Decisions.		Once in 6 years	NO	YES	NO	NO
f. Implementation of Relocation, Re-entry, and Return Decisions.		Once in 6 years	NO	YES	NO	NO
4. Field Measurement and Analysis	6, 8, 24, 25					
a. Plume Phase Field Measurements and Analysis.		Every Full Participation Exercise[2].	YES	YES	NO	NO
b. Post Plume Phase Field Measurements and Sampling.		Once in 6 years	YES	YES	NO	NO
c. Laboratory Operations		Once in 6 years	YES	YES	NO	NO
5. Emergency Notification and Public Information	10, 11, 12, 13					

TABLE 1.—FEDERAL EVALUATION PROCESS MATRIX[1]—Continued

Evaluation Area and Sub-Elements	Consolidates REP–14 objective(s)	Minimum frequency[2]	Out-of-sequence of exercise scenario	Credit		Staff ass't visit
				Radiological	Non-radiological	
a.1 Activation of the Prompt Alert and Notification System[5].		Every exercise	NO	NO	NO	NO
a.2 Activation of the Prompt Alert and Notification System (Fast Breaking).	10					
a.3 Notification of Exception Areas and/or Backup Alert and Notification System within 45 minutes.		Every exercise	NO	NO	NO	NO
b. Emergency Information and Instructions for the Public and the Media.		Every exercise	NO	NO	NO	NO
6. Support Operations/Facilities	18, 19, 20, 21, 22					
a. Monitoring and Decontamination of Evacuees and Emergency Workers and Registration of Evacuees.		Once in 6 yrs.[4]	YES	YES	NO	NO
b. Monitoring and Decontamination of Emergency Worker Equipment.		Once in 6 yrs.[4]	YES	YES	NO	NO
c. Temporary Care of Evacuees		Once in 6 yrs.[6]	YES	YES	YES	YES
d. Transportation and Treatment of Contaminated Individuals.		Every 2 years	YES	YES	NO	NO

[1] See Evaluation Criteria for specific requirements.
[2] Each State within the 10-mile EPZ of a commercial nuclear power site shall fully participate in an exercise jointly with the licensee and appropriate local governments at least every two years. Each State with multiple sites within its boundaries shall fully participate in a joint exercise at some site on a rotational basis at least every two years. When not fully participating in an exercise at a site, the State shall partially participate at that site to support the full participation of the local governments.
[3] The plume phase and the post-plume phase (ingestion, relocation, re-entry and return) can be demonstrated separately.
[4] All facilities must be evaluated once during the six-year exercise cycle.
[5] Physical deployment of resources is not necessary.
[6] Facilities managed by the American Red Cross (ARC), under the ARC/FEMA Memorandum of Understanding, will be evaluated once when designated or when substantial changes occur; all other facilities not managed by the ARC must be evaluated once in the six-year exercise cycle.

[FR Doc. 02–11121 Filed 5–3–02; 8:45 am]
BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 20, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Michael Leo Middleton, Sara Ann Middleton and Barbara Ann Ehrenstrom, all of La Plata, Maryland, Rebecca Lynn McDonald, Vienna, Virginia, Kate Elizabeth Middleton, Arlington, Virginia, James Edgar Middleton, Waldorf, Maryland, Frances Leona Rock, Westminster, Maryland, and Muriel Theresa Werking, Port Tobacco, Maryland; to acquire voting shares of Tri-County Financial Corporation, Waldorf, Maryland, and thereby indirectly acquire Community Bank of Tri-County, Waldorf, Maryland.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. John R. Madden,*Oak Brook, Illinois, Lenore McCarter, LaGrange Park, Illinois, Edward J. Madden and Debbie Maloney, both of Chicago, Illinois, John J. Madden, and Martin P. Madden, both of LaGrange, Illinois, Marilyn Hessert and Thomas Hessert, both of Cherry Hill, New Jersey, Thomas Herbsrtitt, Franklin Park, Illinois, Jane Lyman, Winnetka, Illinois, Julie Scanlon, Western Springs, Illinois, and Amy Reardon, River Forest, Illinois; to acquire control of First Schaumburg Bancorporation, Inc., Schaumburg, Illinois, and thereby indirectly acquire Heritage Bank of Schaumburg, Schaumburg, Illinois, by utilizing Schaumburg Bancshares, Inc., Hinsdale, Illinois. First Schaumburg Bancorporation, Inc.'s name will be change to Schaumburg Bancshares, Inc.

Board of Governors of the Federal Reserve System, April 30, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–11096 Filed 5–3–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the

Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 30, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Hometown Independent Bancorp, Inc., Employee Stock Ownership Plan and Trust, Morton, Illinois; to acquire an additional 6.6 percent, for a total of 37.1 percent, of the voting shares of Hometown Independent Bancorp, Inc., Morton, Illinois, and thereby indirectly acquire Morton Community Bank, Morton, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. South Central Bancshares, Inc., Russellville, Kentucky; to merge with Commerce Bancshares, Inc., Franklin, Tennessee, and thereby indirectly acquire Peoples State Bank of Commerce, Trenton, Tennessee.

Board of Governors of the Federal Reserve System, April 30, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–11097 Filed 5–3–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–48]

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)498–1210.

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

National Nursing Home Survey (OMB No. 0920–0353)—Reinstatement with Change—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). Section 306 of the Public Health Service Act states that the National Center for Health Statistics ''shall collect statistics on health resources * * * [and] utilization of health care, including utilization of * * * services of hospitals, extended care facilities, home health agencies, and other institutions.'' The data system responsible for collecting this data is the National Health Care Survey (NHCS). The National Nursing Home Survey (NNHS) is part of the Long-term Care Component of the NHCS. The NNHS was conducted in 1973–74, 1977, 1985, 1995, 1997, and 1999. NNHS data describe a major segment of the long-term care system and are used extensively for health care research, health planning and public policy. NNHS provides data on the characteristics of nursing homes in relation to their residents and staff, Medicare and Medicaid certification, basic rates for Medicaid and private pay residents, sources of payment, residents' functional status and diagnoses. The survey provides detailed information on utilization patterns and quality of care that is needed in order to make accurate assessments of the need for and effects of changes in the provision and financing of long-term care for the elderly. The use of long-term care services is becoming an increasingly important issue as the number of elderly increases and persons with disabilities live longer. Data from the NNHS have been used by the National Immunization Program at CDC, the Office of the U.S. Attorney General, the Bureau of Health Professionals at the Health Resources and Services Administration, the National Institute of Dental and Craniofacial Research at the National Institutes of Health, the Agency for Healthcare Research and Quality, the American Health Care Association, Johnson and Johnson Pharmaceutical, the Rand Corporation, AARP, National Academy of Social Insurance, and by newspapers and journals. NCHS plans to conduct the next NNHS in September-December 2003. This national survey will be preceded by a pretest of forms and procedures in January-February 2003. The data collection forms and procedures have been extensively revised from the previous NNHS. The 2003 NNHS will be based on computer-assisted personal interview (CAPI) methodology. The is no cost to respondents.

Forms	Number of respondents	Number of responses/ respondent	Average burden/ response (in hrs.)	Total burden (in hrs.)
Facility Questionnaire	100	1	20/60	33.3
Nursing Home Staff Questionnaire	100	1	2.5	250
Current Resident Sampling List	100	1	20/60	33.3
Current Resident Questionnaire	100	8	25/60	333.3
Discharged Resident Sampling List	100	1	15/60	25

Forms	Number of respondents	Number of responses/ respondent	Average burden/ response (in hrs.)	Total burden (in hrs.)
Discharged Resident Questionnaire	100	8	25/60	333.3
Total				1,008.3

Forms	Number of respondents	Number of responses/ respondent	Average burden/ response (in hrs.)	Total burden (in hrs.)
Facility Questionnaire	3,000	1	20/60	1,000
Nursing Home Staff Questionnaire	3,000	1	2.5	7,500
Current Resident Sampling List	3,000	1	20/60	1,000
Current Resident Questionnaire	3,000	8	25/60	10,000
Discharged Resident Sampling List	3,000	1	15/60	750
Discharged Resident Questionnaire	3,000	8	25/60	10,000
Total				30,250

Dated: April 26, 2002.

Nancy E. Cheal,

Acting Associate Director for policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–11080 Filed 5–3–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02115]

National Asthma Health Education Enhancement Program; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for National Asthma Health Education Enhancement. This program addresses the ''Healthy People 2010'' focus areas of Environmental Health and Respiratory Diseases.

The purpose of the program is to strengthen the nation's capacity to carry out public health activities in the area of asthma education. The objectives are to: (1) Disseminate educational information on a national level to families impacted by asthma; (2) help families learn to cope with challenges they face due to having a child with asthma; and (3) serve as a resource for families impacted by asthma.

Organizations that are well-established and have a history and demonstrated capacity of providing asthma education to a national audience are targeted with this announcement. This announcement is not intended to build capacity of start up organizations.

Measurable outcomes of the program will be in alignment with one or more of the performance goals of the Government Performance Results Act: increasing the understanding of the relationship between environmental exposures and health effects.

1. Use of Funds

No research may be conducted as a part of this cooperative agreement.

2. Funding Preferences

Preference may be given to organizations who have demonstrated their capacity and ability to reach a national audience with asthma education materials that were developed within the National Asthma Education and Prevention Program (NAEPP) guidelines.

B. Eligible Applicants

Assistance will be provided only to the applicants that are well-established national, non-profit organizations with experience in development and dissemination of asthma educational materials and whose membership includes families of children with asthma or others affected by the disease.

To be eligible, applicants must:

1. Demonstrate that your organization's mission is explicitly committed to improving the lives of families impacted by asthma, or other similar lung diseases, through the provision of timely, accurate, and useful information about the disease and how it can be controlled. You must have experience providing asthma education to a nationwide audience. The foregoing may be demonstrated by submission of your charter, articles of incorporation, or other governing documents.

2. Demonstrate that your organization is non-profit and recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code. This may be demonstrated through inclusion of your Internal Revenue Service determination letter.

3. Demonstrate your organization has capacity and experience providing educational services to families with asthma on a nationwide basis. This may be demonstrated through letters of support.

4. Demonstrate that you have a national membership of families or a national network of local organizations. This may be done through a letter from your organization's leadership which describes your national network/ membership (number of members and national coverage of the membership).

This information should be placed directly behind the face page (first page) of your application. Applications that fail to submit evidence requested above will be considered non-responsive and returned without review.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $300,000 is available in FY 2002, to fund approximately two to three awards. It is expected that the award will range from $100,000 to $150,000. It is expected that the awards will begin on or about September 1, 2002, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Review and disseminate asthma currently available education information to reach your members and other community members on both a local and national level. Materials must be reviewed to insure they are in accordance with sound asthma management practices and appropriate NAEPP Guidelines.

b. In cases where appropriate educational information does not exist and a need for such material is identified, develop scientifically-based, accurate, user-friendly, culturally-appropriate educational materials to be used to educate your members and other community members, or any targeted group for which a gap in currently available information is identified. Literacy level and appropriate demographics of your target audience should be considered.

c. Conduct community and outreach education at the local level, aimed at your members and community members affected by asthma.

d. Collaborate with partners, including CDC, and appropriate asthma education organizations, to insure that best practices are used in the development and dissemination of asthma education materials for your target group(s).

e. For all of the above activities ''a. through d.'' develop and implement an evaluation plan which measures the effectiveness of your activities involved in each step indicated.

2. CDC Activities

a. Collaborate with recipients in the development of scientifically-based, accurate, user-friendly, culturally-appropriate educational information concerning asthma, reaching a variety of literacy levels and considering appropriate demographic information for the target audience. Ensure coordination of this activity among all recipients and facilitate information sharing.

b. Review recipients' identification of currently available educational materials and gap analysis. Ensure coordination of this activity among all recipients and facilitate information sharing and to eliminate duplication of efforts.

c. Facilitate and coordinate meetings to bring together national groups as collaborators, as appropriate.

d. Collaborate with recipients on the development of an appropriate evaluation plan which measures the effectiveness of recipient activities involved in each step indicated, and approve the plan.

e. Coordinate recipient activities with asthma education partners (such as the Robert Wood Johnson Foundation's Allies Against Asthma resource bank) to insure no duplication of activities occurs.

E. Content

Letter of Intent (LOI)

A non-binding LOI is requested for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than one, double-spaced page, printed on one side, with one inch margins, and unreduced font. It should identify the name of your proposed project director and name of the organization. Your letter of intent will be used to allow CDC to determine the level of interest in the announcement, to plan the review more efficiently.

Applications

The Program Announcement title and number must appear in the application kit. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan.

The narrative should be no more than 20 pages, double spaced, printed on one side, with one inch margins, and unreduced font. The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

F. Submission and Deadline

Letter of Intent (LOI)

On or before May 15, 2002, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*.

Application forms must be submitted in the following order:
Cover Letter
Table of Contents
Application
Eligibility Documents
Budget Information Form
Checklist
Assurances
Certifications
Disclosure Form
Indirect Cost Rate Agreement (if applicable)
Narrative

On or before 5:00 PM Eastern Time on June 24, 2002, submit the application to: Technical Information Management Section, PA #02115, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146

Deadline: Applications shall be considered as meeting the deadline if they are received before 5:00 PM Eastern Time on the deadline date.

Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will, upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

G. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of Effectiveness must relate to the performance goal as stated in section A. ''Purpose'' of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. History and Experience (30 points)

The extent to which the proposal clearly demonstrates the applicant's solid reputation and history of serving families affected by asthma. The proposal should demonstrate that the applicant has a broad range of knowledge and expertise in the field of asthma, as well as significant years of experience in the dissemination and application of this knowledge and expertise. The proposal should also demonstrate that the applicant's membership is comprised of families affected by asthma and that this membership is national in scope.

2. Proposed Program (30 points)

The extent to which the proposal clearly demonstrates the applicant's understanding of the issues surrounding asthma and asthma education activities and addresses gaps in the current state of asthma educational materials and activities. The proposal demonstrates that the applicant has a clear understanding of the gaps and needs and has a clear plan of activities which will address these gaps. The applicant must demonstrate their educational materials are in adherence to the NAEPP guidelines and when these guidelines are updated, materials are appropriately updated.

3. Evaluation Plan (30 points)

The extent to which the applicant describes a realistic plan to accurately measure the effectiveness of their activities and which has mechanisms to insure quality improvement occurs over the life of the project.

4. Facilities, Staff, and Resources (10 points)

The extent to which the applicant can provide adequate facilities, staff and/or collaborators, and resources to accomplish the proposed goal(s) and objectives during the project period. The extent to which the applicant demonstrates staff and/or collaborator availability, expertise, previous experience, and capacity to perform the undertaking successfully.

5. Budget (not scored)

The extent to which the proposal demonstrates appropriateness and justification of the requested budget relative to the activities proposed.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports (The progress report will include a data requirement that demonstrates measures of effectiveness.) The progress report shall include the following items.

a. A brief project description;

b. A comparison of actual accomplishments to the goals and objectives established for the period;

c. In the case that established goals and objectives may not be accomplished or are delayed, documentation of both the reason for the deviation and the anticipated corrective action or a request for deletion of the activity for the project;

d. A financial summary of obligated dollars to date as a percentage of total available dollars;

e. Other pertinent information (i.e. curriculum vitae for new key personnel).

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–21 Small, Minority, Women-Owned Businesses

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 and 317(k)(2) of the Public Health Service Act, [42 U.S.C. 241 and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on ''Funding'' then ''Grants and Cooperative Agreements.''

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Sonia Roswell, Grants Management Specialist
Acquisition Assistance Branch B, Procurement and Grants Office
Centers for Disease Control and Prevention
Announcement 02115
2920 Brandywine Road, Room 3000
Atlanta, GA 30341–4146
Telephone number (770) 488–2724
email address srowell@cdc.gov

For program technical assistance, contact:

Sheri Disler, Public Health Advisor
National Center for Environmental Health
Centers for Disease Control and Prevention
1600 Clifton Road, NE, MS E–17
Atlanta, GA 30333
Telephone number (404) 498–1018
email address sdisler@cdc.gov

Dated: April 30, 2002.

Sandra R. Manning, CGFM,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–11117 Filed 5–3–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02086]

Prevention of Viral Hepatitis Among High-Risk Youth Through Integrating Prevention Services Into Existing Programs; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for Prevention of Viral Hepatitis among High-Risk Youth Through Integrating Prevention Services into Existing Programs. This program addresses the ''Healthy People 2010'' focus area of Immunization and Infectious Diseases.

The purpose of the program is to evaluate the feasibility and effectiveness of integrating activities to prevent infection with Hepatitis A Virus (HAV), Hepatitis B Virus (HBV), and Hepatitis C Virus (HCV) into existing programs that serve high-risk adolescents populations.

High-risk adolescents are youth aged 11–19 years who engage or are at risk for engaging in behaviors shown to be associated with transmission of infection with hepatitis viruses or other blood borne virus infections such as Human Immunodeficiency Virus (HIV/AIDS), injecting or non-injecting drug

use, male homosexual activity, sexual activity with multiple partners, and behaviors leading to incarceration.

Prevention of infection with hepatitis viruses is achieved through immunization (HAV, HBV) and risk reduction intervention (HCV) to prevent injection drug use and high risk sexual practices. For adults, activities to prevent viral hepatitis have been effectively integrated into other prevention programs. However, the feasibility of providing such services for high-risk youth, and the effectiveness of these prevention services in reducing all types of viral hepatitis in this population has not been evaluated. This announcement is intended to support the formative, operational and evaluation research required to determine the most effective means of integrating viral hepatitis prevention activities into existing disease prevention and health promotion programs.

B. Eligible Applicants

Applications may be submitted by public and private non-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their *bona fide* agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian Tribal Governments, Indian Tribes, or Indian Tribal Organizations. Faith-based Organizations are eligible to apply.

Eligible applicants are required to have a minimum of two years of experience in developing and implementing public health prevention or promotion activities in addition to having access to the at risk adolescent population to be served.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

A. Availability of Funds

Approximately $150,000 is available in FY 2002 to fund one award. It is expected that the award will begin on or about September 1, 2002 and will be made for a 12 month budget period within a project period up to five years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preferences

Preference will be given to population based programs that deliver or provide oversight for public health services to large adolescent populations (1000 to 3000 individuals served per year) in which a high proportion have risk factors for infection with hepatitis viruses. Such community-based programs should attempt to identify and follow cohorts of youth through indicators of risk and specific programs, including: demographic characteristics and health disparities which identify high-risk youth, correctional settings, residential community programs, court mandated programs, job corps, drug detoxification and rehabilitation programs, homeless and runaway shelters, HIV/AIDS prevention services, and Sexually Transmitted Disease (STD) prevention and treatment programs.

B. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Develop and implement protocol(s) to integrate currently recommended viral hepatitis prevention services into existing public health programs and services, as appropriate for adolescents in the particular setting(s) proposed. Viral hepatitis prevention services may include, but are not limited to:

(1) Providing hepatitis B vaccination.

(2) Assessing risk histories for viral hepatitis among clients.

(3) Providing client-centered prevention counseling to patients with risks for infection.

(4) Providing testing to appropriate risk groups for HCV infection (anti-HCV), and chronic or past hepatitis B virus (HBV) infection, hepatitis B surface antigen, (HbsAg) or anti-HBc, when appropriate.

(5) Providing hepatitis A vaccine to persons in appropriate risk groups (e.g., men having sex with men (MSM) and, illegal drug users).

(6) Providing secondary prevention services for anti-HCV positive and HBsAg-positive persons, including: (1) Counseling on how to prevent transmission to others, (2) identification of partners (sex and/or needle sharing) for counseling and referral services, if appropriate, and (3) providing hepatitis B vaccination for at-risk (sex or needle sharing) partners and household contacts of HBsAg-positive persons.

(7) Providing, either directly or by referral, appropriate services to persons found to be HBsAg-positive or anti-HCV positive, including: (1) Alcohol and drug counseling, and (2) appropriate medical referral and assistance in accessing medical care for evaluation of chronic liver disease and possible treatment.

b. Provide staff training regarding viral hepatitis prevention and control related to implementing this program.

c. Develop and implement protocols, data collection and analytic systems to assess the feasibility, impact, and effectiveness of integrating viral hepatitis prevention services into existing programs for high-risk youth. Areas of analysis could include prevention of infections, completion of hepatitis B vaccine series, determining cost effectiveness of interventions, and defining the determinants of prevention services.

d. Conduct appropriate data analysis and interpretation.

e. Attend and participate in an annual meeting of project managers, to plan and present program activities and evaluate activities.

2. CDC Activities

a. Provide technical support for and training in the design, implementation, and evaluation of program activities, if requested. This includes training on participation in the Vaccine for Children (VFC) Program on how to acquire vaccine for eligible adolescents.

b. Assist in data management, analysis, presentation, and publication of project findings.

c. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Content

Letter of Intent (LOI)

An LOI is optional for this program. The narrative should be no more than five double spaced pages, printed on one side, with one inch margins, and unreduced font. Your letter of intent will be used to plan and execute the evaluation of applications, and should include the following information: (1) Name and address of institution, and (2) name, address, and telephone number of a contact person.

Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 double spaced pages, printed on one side, with one inch margins, and unreduced fonts.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, and Evaluation. The Budget should contain a line item descriptive justification for personnel, travel, supplies, laboratory testing, and other services related to the project. Contracts should include the name of the person or firm to receive the contract, the method of selection, the period of performance, and a description of the contracted service requested, itemized budget with narrative justification and method of accountability. Funding levels for years two and three should be estimated. A one page executive summary and a complete index to the application and its appendices should be provided.

F. Submission and Deadline

Letter of Intent (LOI)

On or before June 1, 2002, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*

On or before July 1, 2002, submit the application to the Technical Information Management Section 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date.

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

Late: Applications which do not meet the criteria in 1. or 2. above will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (10 total points)

a. The extent to which the applicant demonstrates a clear understanding of the subject area and of the purpose and objectives of this cooperative agreement. (5 points)

b. The extent to which the applicant demonstrates need based on disease burden of viral hepatitis (i.e., prevalence, incidence data) among adolescent high-risk populations, as well as prevalence of risk factors for viral hepatitis among populations accessible to the applicant programs and services. (5 points)

2. Capacity (40 total points)

The extent to which the applicant provides evidence of ability to provide all recommended and appropriate viral hepatitis prevention and control activities and services annually to 1000 to 3000 adolescents with identifiable risk factors for viral hepatitis. This should include:

a. Description of adequate resources, including personnel and facilities (both technical and administrative), either direct or through collaboration, for conducting the project. (10 points)

b. Description of population served by existing program(s) and access to additional populations with identifiable risk factors for viral hepatitis (heterosexuals at high risk, MSM, injection drug users (IDUs), sex partners of IDUs), that may accept viral hepatitis prevention and control activities and services provided through an integrated program. (10 points)

c. The extent to which the applicant documents experience of proposed personnel, either direct or collaborating, in providing viral hepatitis prevention and control activities and services (*e.g.*, training, testing, counseling, vaccination, clinical services). (10 points)

d. Evidence of existing quality assurance mechanisms to insure appropriate counseling and other services as recommended for the proposed setting, as provided by published CDC guidelines in various settings (e.g. STD, HIV, Drug Treatment) and the extent the applicant demonstrates how the planned integration activities may improve existing prevention services. (10 points)

3. Objectives and Technical Approach (45 total points)

a. The extent to which the applicant describes objectives of the proposed project which are (1) consistent with the purpose and goals of this cooperative agreement program, (2) measurable and time-phased, and (3) consistent with published CDC guidelines on prevention and control of Hepatitis C (MMWR 1998;47[No. RR–19], Hepatitis B (MMWR 1991;40[No.RR–13] and Hepatitis A (MMWR 1999;48[No.RR–12]. (15 points)

b. The extent and quality of an operational plan proposed for implementing the program, including maximizing the use of existing resources and staff to integrate viral hepatitis prevention services, which clearly and appropriately addresses all ''Recipient Activities'' in the application. (10 points)

c. The extent to which the applicant clearly identifies specific assigned responsibilities of all key professional personnel. (5 points)

d. The extent to which the applicant prioritizes resources for evaluation and determination of effectiveness of integrating services through a detailed and adequate plan for evaluating progress toward achieving program process and outcome objectives. This should include methods and instruments for evaluating progress in planning, implementation, and effectiveness of interventions through measurement of outcomes related to viral hepatitis and to impact of integrating these services on other prevention services offered (e.g., HIV counseling and testing). (10 points)

e. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed program. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation. (2) The proposed justification when representation is limited or absent. (4) A statement as to whether the plans for recruitment and outreach for participants include the process of establishing partnerships with community or communities and recognition of mutual benefits. (5 points)

4. Measures of Effectiveness

The extent the applicant provide Measures of Effectiveness that will demonstrate the accomplishment of the purpose of the cooperative agreement. The measures must be objective/quantitative and must adequately

measure the intended outcome? (5 points)

5. Budget (Not Scored)

The budget will be reviewed to determine the extent to which it is reasonable, clearly justified, consistent with the intended use of funds, and allowable.

6. Human Subjects (Not Scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Semiannual progress reports.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301(a) and 317(k)(2) of the Public Health Service Act [42 U.S.C. Sections 241(a) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Reneé Benyard, Grants Management Specialist, Acquisition and Assistance, Branch B, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770)488–2722, Fax number: (770)488–2777, email address: *bnb8@cdc.gov.*

For program technical assistance, contact: Joanna Buffington, Program Management Official, Division of Viral Hepatitis, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Mailstop G–37, Atlanta, GA 30333, Telephone number: (404)371–5460, Fax number: (404) 371–5488, e-mail address: *jyb4@cdc.gov.*

Dated: April 30, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Center for Disease Control and Prevention.

[FR Doc. 02–11116 Filed 5–3–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0123]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food Canning Establishment Registration, Process Filing and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting and recordkeeping requirements for firms that process acidified foods and thermally processed low-acid foods in hermetically sealed containers.

DATES: Submit written or electronic comments on the collection of information by July 5, 2002.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Canning Establishment Registration, Process Filing and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers (OMB Control Number 0910–0037)—Extension

Under the Federal Food, Drug, and Cosmetic Act (the act), FDA is authorized to prevent the interstate distribution of food products that may be injurious to health or that are otherwise adulterated, as defined in section 402 of the act (21 U.S.C. 342). Under the authority granted to FDA by section 404 of the act (21 U.S.C. 344), FDA regulations require registration of food processing establishments, filing of process or other data, and maintenance of processing and production records for acidified foods and thermally processed low-acid foods in hermetically sealed containers. These requirements are intended to ensure safe manufacturing, processing, and packing procedures and to permit FDA to verify that these procedures are being followed. Improperly processed low-acid foods present life-threatening hazards if contaminated with foodborne microorganisms, especially *Clostridium botulinum*. The spores of *C. botulinum* must be destroyed or inhibited to avoid production of the deadly toxin that causes botulism. This is accomplished with good manufacturing procedures, which must include the use of adequate heat processes or other means of preservation.

To protect the public health, FDA regulations require that each firm that manufactures, processes, or packs acidified foods or thermally processed low-acid foods in hermetically sealed containers for introduction into interstate commerce register the establishment with FDA using Form FDA 2541 (§§ 108.25(c)(1) and 108.35(c)(2) (21 CFR 108.25(c)(1) and 108.35(c)(2))). In addition to registering the plant, each firm is required to provide data on the processes used to produce these foods, using Form FDA 2541a for all methods except aseptic processing, or Form FDA 2541c for aseptic processing of low-acid foods in hermetically sealed containers (§§ 108.25(c)(2) and 108.35(c)(2)). Plant registration and process filing may be accomplished simultaneously. Process data must be filed prior to packing any new product, and operating processes and procedures must be posted near the processing equipment or made available to the operator (21 CFR 113.87(a)).

Regulations in parts 108, 113, and 114 (21 CFR parts 108, 113, and 114) require firms to maintain records showing adherence to the substantive requirements of the regulations. These records must be made available to FDA on request. Firms are also required to document corrective actions when process controls and procedures do not fall within specified limits (§§ 113.89, 114.89, and 114.100(c)); to report any instance of potential health-endangering spoilage, process deviation, or contamination with microorganisms where any lot of the food has entered distribution in commerce (§§ 108.25(d) and 108.35(d) and (e)); and to develop and keep on file plans for recalling products that may endanger the public health (§§ 108.25(e) and 108.35(f)). To permit lots to be traced after distribution, acidified foods and thermally processed low-acid foods in hermetically sealed containers must be marked with an identifying code (§§ 113.60(c) (thermally processed foods) and 114.80(b) (acidified foods)).

FDA estimates the burden of complying with the information collection provisions of the agency's regulations for acidified foods and thermally processed low-acid foods in hermetically sealed containers as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form No.	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Form FDA 2541 (Registration)	108.25(c)(1) and 108.35(c)(1)	500	1	500	.17	85
Form FDA 2541a (Process Filing)	108.25(c)(2) and 108.35(c)(2)	1,000	7	7,000	.333	2,331
Form FDA 2541c (Process Filing)	108.35(c)(2)	275	2	550	.75	412
Total				8,050		2,828

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Part	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
108, 113, and 114	6,000	1	6,000	250	1,500,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden for §§ 108.25(d) and 108.35(d) and (e) is insignificant because notification of spoilage, process deviation or contamination of product in distribution occurs less than once a year. Most firms discover these problems before the product is distributed and, therefore, are not required to report the occurrence. To avoid double-counting, estimates for §§ 108.25(g) and 108.35(h) have not been included because they merely cross-reference recordkeeping requirements contained in parts 113 and 114.

Dated: April 23, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11132 Filed 5–3–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–17]

Notice of Submission of Proposed Information Collection of OMB; Land Survey Report for Insured Multifamily Projects

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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:* June 5, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0010) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Joseph_F._Lackey_Jr@OMB.EOP.GOV.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Land Survey Report for Insured Multifamily Projects.

OMB Approval Number: 2502–0010.

Form Numbers: HUD–2457.

Description of the Need for the Information and Its Proposed Use: To secure a marketable title and title insurance for their property, multifamily programs submit a land survey and related information.

Respondents: Business or other for-profit, not-for-profit institutions.

Frequency of Submission: On occasion, twice, during application period and closing period.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	750	2		.50		750

Total Estimated Burden Hours: 750.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 26, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–11081 Filed 5–3–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1220–MA]

Change to Shooting Closure Order and Closure Order for Motor Vehicle Travel on Public Lands in Fremont County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Change to shooting closure order, and closure order.

SUMMARY: The BLM Royal Gorge Field Office (BLM or ''we'') is adjusting the boundary of the recreational target shooting closure established in 1995 in the Garden Park Fossil Area, located in Fremont County, Colorado (60 FR 26452). The boundary adjustment is necessary to enhance public safety, to protect a power line right-of-way, and to protect a range improvement. Approximately 150 acres will be added to the closure area and approximately 20 acres will be excluded from the original recreational target shooting closure area and opened to recreational target shooting.

Also, we are making the following closures: We are temporarily closing approximately 40 acres to all types of motor vehicle travel to allow for reclamation of damaged soils and vegetation. We are permanently closing approximately two miles of two track roads to all types of motor vehicle travel to enhance public safety in areas adjacent to recreational target shooting activity in the Garden Park Fossil Area.

DATES: The shooting closure change and motor vehicle travel closure will be effective upon publication. The temporary motor vehicle travel closure will remain in effect until April 1, 2005, to allow for successful reclamation.

ADDRESSES: You may obtain copies of the map and details of the boundary adjustment and closure from the Field Manager, BLM Royal Gorge Field Office, 3170 East Main Street, Canon City, CO 81212; telephone (719) 269–8500.

FOR FURTHER INFORMATION CONTACT: Leah Quesenberry, Interpretive Specialist, or Diana Kossnar, Outdoor Recreation Planner, at the address and phone number listed above.

SUPPLEMENTARY INFORMATION:

Background

BLM administers approximately 3,000 acres of public land in the Garden Park Fossil Area, located 5 miles north of Canon City, CO. Target shooting is one of many public uses in the area. The area includes nationally significant paleontological and historic sites and the Gold Belt Tour National Scenic Byway. Private lands with residential and agricultural developments adjoin the area. In 1995, approximately 1,840 acres of public land in this area were closed to recreational target shooting to enhance public safety. This closure was accomplished through an extensive public process. Public meetings were held to address public safety and resource protection concerns. Stakeholders involved in developing the closure proposal included Fremont County Commissioners, target shooting enthusiasts, residents of the adjoining private lands, public land grazing permit holders, and the Garden Park Paleontology Society.

Authority: BLM issues this order under the authority of 43 CFR 8364.1, Closure and restriction orders, and 43 CFR 8341.2 (a), Special rules.

Reasons for Closures

This notice adjusts the boundary of the closure area established in 1995, to address additional public safety concerns. The primary public safety concern is the on-going vandalism of an existing high voltage power line by recreational target shooters. The power line, owned by WestPlains Energy Corporation, provides power to Cripple Creek and Victor, Colorado. Specific concerns include the cost of repairing damage to the power line caused by recreational target shooting, the possibility that this vandalism will result in a major power outage in Cripple Creek and Victor, and the dangers (electrocution, fire) posed by vandalism of live high voltage power lines in an area that is heavily used by the public.

Affected Lands

The public lands affected by this boundary adjustment and containing the closed areas and roads are identified as follows:

Sixth Principal Meridian, Colorado

T.17S., R.70W., Sections 28, 33, & 34.

Map

Notice of this closure and a detailed map will be posted at the Royal Gorge Field Office.

Exceptions

This closure does not apply to emergency, law enforcement, and Federal or other government vehicles while being used for official or emergency purposes, or to any other vehicle whose use is expressly authorized or otherwise officially approved by BLM.

Penalties

Violation of this order is punishable by imprisonment for up to 12 months and/or a fine as defined in 18 U.S.C. 3571.

Roy L. Masinton,

Field Manager.

[FR Doc. 02–11087 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–129–5882–AC–CD00; GP2–0133]

Notice of Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Coos Bay District Resource Advisory Committee will hold a meeting in Reedsport, Oregon. Agenda topics include review of last meeting minutes; presentations on proposed fiscal year 2003 Title II projects, and decide which projects to recommend for implementation.

DATES: August 1, 2002. The meeting will begin at 9 a.m. A public comment period will be held at 1 p.m. The meeting is expected to adjourn by 4 p.m. If the Committee cannot complete the agenda by 4 p.m., they will reconvene on August 8, 2002, at the BLM office in North Bend, Oregon. If held, that meeting will begin at 9 a.m.

ADDRESSES: The August 1 meeting will be held at the Reedsport City Council chambers at 451 Winchester Ave. in Reedsport, Oregon. If the August 8th meeting is held, it will meet in the U.S. Bureau of Land Management office at 1300 Airport Lane, North Bend, Oregon.

FOR FURTHER INFORMATION CONTACT: Alan Hoffmeister, Coos Bay District Office, (541) 751–4249.

Dated: March 15, 2002.

Sue E. Richardson,

Coos Bay District Manager.

[FR Doc. 02–11088 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR090–02–5882–PH–EEDO; GP2–0148]

Notice of Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meetings.

SUMMARY: The Eugene Resource Advisory Committee will hold two meetings in Eugene, Oregon. Agenda topics include review of last meeting minutes, presentations on proposed fiscal year 2003 Title II projects and discussion and recommendations for approval for funding of such projects. Meetings are being held under the authority of Public Law 106–393.

DATES: June 13, 2002 and July 25, 2002. The meetings will begin at 9 a.m. A public comment period will be held during each meeting at 11:30 am. The meetings are expected to adjourn by 4 pm.

ADDRESSES: The meetings will be held at the U. S. Bureau of Land Management Office, 2890 Chad Drive, Eugene, Oregon 97408.

FOR FURTHER INFORMATION CONTACT: Wayne Elliott, Eugene District Office, Eugene, Oregon, (541) 683–6989.

Dated: April 1, 2002.

Julia Dougan,

Eugene District Manager.

[FR Doc. 02–11089 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–600–02–1040–PG–241A]

Southwest Colorado and Northwest Colorado Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meetings.

SUMMARY: Notice is hereby given that the next two meetings of the Southwest Resource Advisory Council (RAC) will be held June 7, 2002, at the Gunnison County Multi Purpose Bldg., 275 South Spruce, in Gunnison, Colorado and August 16, 2002, at the Anasazi Heritage Center, 27501 Highway 184, in Dolores, Colorado. Notice is also given that the next two meetings of the Northwest RAC will be held June 13, 2002, at the Holiday Inn, 755 Horizon Drive, in Grand Junction, Colorado and August 8, 2002, at the U.S. Forest Service Office, 925 Weiss Dr., in Steamboat Springs, Colorado.

DATES: Southwest RAC meetings June 7, 2002 and August 16, 2002; Northwest RAC meetings June 13, 2002 and August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Larry J. Porter, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3012.

SUPPLEMENTARY INFORMATION: The Southwest RAC will meet on Friday, June 7, 2002, at the Gunnison County Multi Purpose Bldg., 275 South Spruce, in Gunnison, Colorado. The meeting will begin at 9:30 a.m. and adjourn at 4 p.m. Purpose of the meeting is to consider several resource management topics including wildlife issues, Gunnison Gorge National Conservation Area update, Canyon of the Ancients

National Monument update, and the County Partnership Restoration project. The Southwest RAC will also meet on Friday, August 16, 2002, at the Anasazi Heritage Center, 27501 Highway 184, in Dolores, Colorado. The meeting will begin at 9 a.m. and adjourn at 4 p.m. Purpose of the meeting is to consider several resource management topics including Canyon of the Ancients National Monument update, Gunnison Gorge National Conservation Area update, and the County Partnership Restoration project.

The Northwest RAC will meet on Thursday, June 13, 2002, at the Holiday Inn, 755 Horizon Drive, in Grand Junction, Colorado. The meeting will begin at 9 a.m. and adjourn at 4 p.m. Purpose of the meeting is to consider several resource management topics including wildlife issues, oil and natural gas program review, Grand Mesa Slopes update, Weeds Committee report, National Forest Study Committee report, Cultural Resources report, status of travel management planning, and the Colorado Canyons National Conservation Area planning update. The Northwest RAC will also meet on August 8, 2002, at the Forest Service Office located at 925 Weiss Dr. in Steamboat Springs, Colorado. The meeting will begin at 9 a.m. and adjourn at 4 p.m. Purpose of the meeting is to consider several resource management topics including Grand Mesa Slopes update, Colorado Canyons National Conservation Area planning update, and RAC Committee reports.

These meetings are open to the public. Interested members of the public may present written or oral comments to either of the RACs in the morning from 9:30 to 9:50 a.m. and in the afternoon sessions, at a time to begin no later than 3 p.m., on the respective meeting dates. Personal time limits for oral statements may be set to allow all interested individuals an opportunity to speak. Subject to time available, individuals may also be allowed to provide input to the councils during the discussion of agenda topics.

Summary minutes of RAC meetings are maintained in the BLM Western Slope Center Office located at 2815 H Road, Grand Junction, CO 81506, phone (970) 244–3000. Minutes are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: April 10, 2002.

Dave Atkins,

Acting Northwest Center Manager.

[FR Doc. 02–11090 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(NM–930–1310–02); (OKNM 98652)]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease OKNM 98652

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease OKNM 98652 for lands in Dewey County, Oklahoma, was timely filed and was accompanied by all required rentals and royalties accruing from June 1, 2001, the date of termination.

No valid lease has been issued affecting the lands. The lessees have agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessees have paid the required $500.00 administrative fee and have reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The Lessees have met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 USC 188), and the Bureau of Land Management is proposing to reinstate the lease effective June 1, 2001, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Bernadine T. Martinez, BLM, New Mexico State Office, (505) 438–7530.

Dated: March 19, 2002.

Bernadine T. Martinez,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 02–11084 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1310–02; OKNM 98653]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease OKNM 98653

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease OKNM 98653 for lands in Dewey County, Oklahoma, was timely filed and was accompanied by all required rentals and royalties accruing from June 1, 2001, the date of termination.

No valid lease has been issued affecting the lands. The lessees have agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessees have paid the required $500.00 administrative fee and have reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The Lessees have met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 USC 188), and the Bureau of Land Management is proposing to reinstate the lease effective June 1, 2001, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Bernadine T. Martinez, BLM, New Mexico State Office, (505) 438–7530.

Dated: March 19, 2002.

Bernadine T. Martinez,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 02–11085 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(NM–930–1310–02); (OKNM 96107)]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease OKNM 96107 for lands in Woodward County, Oklahoma, was timely filed and was accompanied by all required rentals and royalties accruing from December 1, 2001, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C 188), and the Bureau of Land Management is proposing to reinstate the lease effective December 1, 2001, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Lourdes B. Ortiz, BLM, New Mexico State Office, (505) 438–7586.

Dated: March 20, 2002.

Lourdes B. Ortiz,

Land Law Examiner.

[FR Doc. 02–11086 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–650–01–1220–JG–064B]

Notice of a Firearm Shooting Restriction on Public Lands Within the Red Mountain Polygon, San Bernardino County, CA

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Firearm shooting restriction on public lands within the Red Mountain Polygon, San Bernardino County, California.

SUMMARY: Notice is hereby given that a firearm shooting restriction in the Red Mountain Polygon, located in the northwestern portion of San Bernardino County, California, is in effect as of January 16, 2002. The Red Mountain Polygon is comprised of approximately 98,043 acres of public lands in the California Desert Conservation Area, and is located within the western Mojave Desert area of northwestern San Bernardino County, California. Specifically, the firearm shooting restriction requires that all target shooting conducted on public lands within the Red Mountain Polygon be directed at paper targets created specifically for such purpose. The use of firearms for hunting administered by the California Fish and Game Commission is not affected by this firearm shooting restriction. This restriction will remain in effect until amendments to the California Desert Conservation Area Plan are finalized which is expected to occur in 2003.

EFFECTIVE DATE: January 16, 2002.

FOR FURTHER INFORMATION CONTACT: Field Office Manager, Bureau of Land Management, Ridgecrest Field Office, 300 South Richmond Road, Ridgecrest CA 93555, (760) 384–5405.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management, Ridgecrest Field Office, has analyzed the effects of the firearm shooting restriction in an environmental assessment entitled ''Environmental Assessment for Interim Closure of Selected Vehicle Routes and a Firearm Shooting restriction in the Red Mountain Polygon, California Desert Conservation Area, dated October 18, 2001, and a supplement to this assessment dated January 14, 2002.

On March 16, 2000, the Center for Biological Diversity, *et al* (Center) filed for injunctive relief in U.S. District Court, Northern District of California (Court) against the Bureau of Land Management. The Center alleged the Bureau of Land Management was in violation of Section 7 of the Endangered Species Act by failing to enter into formal consultation with the Fish and Wildlife Service on the effects of adoption of the California Desert Conservation Area Plan, as amended, upon threatened and endangered species. Instead of litigating the case, and facing a possible injunction of all authorized desert activities, the Bureau of Land Management entered into five stipulated agreements, including the stipulation which includes the firearm shooting restriction.

The authority for proposing a firearm shooting restriction is derived from 43 CFR 8364 (Closures and Restrictions). This regulation allows the authorized officer to issue an order to close or restrict use of designated public lands in order to protect persons, property, and public lands and resources. In this case, the shooting restriction will aid in protecting the desert tortoise from indiscriminate firearm use, and stop the practice of shooting at objects that result in the accumulation of trash, broken glass, cans, electronic parts, propane gas cylinders, metal, etc. in critical habitat for the desert tortoise. Furthermore, the restriction will aid in reducing the incidence of wildfire that could result from bullets striking rocks and generating sparks in combustible materials.

Although the desert tortoise has been fully protected in California since 1961 through regulation of the California Fish and Game Commission, remains of tortoises containing gunshot holes have been observed in numerous areas of the California Desert. From 1972 to 1982, a study of tortoise gunshot mortality was conducted on 11 sites in the California Desert. The highest incidence of gunshot holes in carcasses of desert tortoises occurred in the western Mojave Desert at the Fremont Valley site, the Desert Tortoise Natural Area, and the Fremont Peak site (located at the southern boundary of the Red Mountain Polygon). The percent of tortoises dying on the study sites due to gunshots were 28.9 % at Fremont Valley, 19.6% at the Desert Tortoise Natural Area, and 16.7% at the Fremont Peak. In contrast, the incidence of such deaths in the eastern Mojave Desert sites ranged from 1.8 to 3.1 %. California Department of Fish and Game wardens reported that they occasionally found tortoises dead from gunshots near roads in eastern Kern and northwestern San Bernardino Counties during the 1960s and 1970s. Between 1981 and 1984, Bureau of Land Management and other observers found the remains of 10 tortoises shot and killed in the western Mojave Desert in the vicinity of the Desert Tortoise Natural Area, El Paso Mountains, Fremont Peak and Stoddard Valley. Higher incidence of gunshot deaths of tortoises in the western Mojave was attributed to the higher numbers of human visitors, greater vehicular access and closer proximity to urban centers. Target practice in the California Desert, especially in portions of the western Mojave Desert, is associated with human-caused wildfire from bullets striking rocks, and people shooting at tortoises for target practice. In the Recovery Plan for the Mojave Population of the Desert Tortoise, the U.S. Fish and Wildlife Service reported that shooting and vandalism play a major role in losses of desert tortoises in many areas, particularly where human visitation is high. They also reported that approximately 15 to 29 percent of carcasses of desert tortoises studied on Bureau of Land Management study plots in the western Mojave Desert had evidence of gunshot.

This firearm shooting restriction will enable the Bureau of Land Management to comply with Section 7(a)(1) of the Endangered Species Act using its full authorities to conserve endangered species and threatened species.

This interim firearm shooting restriction will allow BLM to properly evaluate and arrive at a final decision on environmentally acceptable firearm use throughout the West Mojave Planning Area, which will result in amendments to the California Desert Conservation Area Plan, expected to be completed in 2003. This planning process now underway is a formal plan amendment process that involves the public and will conform to the requirements of the National Environmental Policy Act. Maps showing the affected area are available by contacting the Ridgecrest Field Office of the Bureau of Land Management at the address shown above.

Appeal Rights

The decision that instituted this firearm shooting restriction may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR part 4 and the enclosed Form 1842–1. If an appeal is taken, a notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden

of showing that the decision appealed from is in error.

Those wishing to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) or 43 CFR 2804.1 for a stay of the effect of this decision during the time that an appeal is being reviewed by the Board must request a stay in the notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each identified party, to the Interior Board of Land Appeals, and to the appropriate Office of the Solicitor (*see* 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied,

(2) The likelihood of the appellant's success on the merits,

(3) The likelihood of immediate and irreparable harm if the stay is not granted, and

(4) Whether the public interest favors granting the stay.

Dated: January 18, 2002.

Hector A. Villalobos,

Field Office Manager.

[FR Doc. 02–11083 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[66⅔% to CO–956–1420–BJ–0000–241A; 13⅓% to CO–956–9820–BJ–CO001–241A; 20% to CO–956–9820–BJ–CO003–241A]

Colorado: Filing of Plats of Survey

April 1, 2002.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., April 1, 2002. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat representing the entire record of the dependent resurvey Mineral Survey No. 961, Union lode, in the SW¼ of section 33, T. 2 S., R. 73 W., Sixth Principal Meridian, Group 1241, Colorado, was accepted January 17, 2002.

The plat representing the entire record of the dependent resurvey Mineral Survey No. 846, H. B. lode, in the SE¼ of section 34, T. 2 S., R. 73 W., Sixth Principal Meridian, Group 1241, Colorado, was accepted January 17, 2002.

The plat representing the partial subdivision of section 22, T. 14 S., R. 82 W., Sixth Principal Meridian, Group 1320, Colorado, was accepted March 5, 2002.

The Plat representing the dependent resurvey of portions of west boundary, subdivisional lines, certain tract lines and the subdivision of section 7, and a metes-and-bounds survey, T. 37 N., R. 2 W., New Mexico Principal Meridian, Group 1255, Colorado, was accepted March 13, 2002.

The Plat representing the dependent resurvey of a portion of the subdivisional lines, the partial subdivision of sections 12 and 13, and a metes-and-bounds survey, T. 37 N., R. 3 W., New Mexico Principal Meridian, Group 1255, Colorado, was accepted March 13, 2002.

These surveys were requested by the Forest Service for administrative purposes.

The plat representing the dependent resurvey of portions of the west boundary, subdivisional lines, certain private claim lines, and the subdivision of sections 7 and 18, T. 7 S., R. 87 W., Sixth Principal Meridian, Group 1300, Colorado, was accepted January 23, 2002.

The supplemental plat correcting the over distance and the distances of the W½ of the East and West center line of section 35, T. 11 N., R. 79 W. Sixth Principal Meridian, Colorado, was accepted January 24, 2002.

The supplemental plat creating new lots 60 and 61, from original lot 12 in the SW¼NE¼ of section 12, T. 1 N., R. 73 E., Sixth Principal Meridian, Colorado, was accepted January 29, 2002.

The supplemental plat creating new lots 119 and 120, from original lot 107 in the SE¼SW¼ of section 7, T. 1 N., R. 72 E., Sixth Principal Meridian, Colorado, was accepted January 29, 2002.

The supplemental plat creating new lots 62 and 63, based upon the excluded area of Mineral Survey No. 10880, Helen C. lode, in the S½NW¼ of section 12 and also identifies new lot 64 in the SE¼SE¼ of section 12, T. 1 N., R. 73 E., Sixth Principal Meridian, Colorado, was accepted January 30, 2002.

The supplemental plat amending original lot 135, in the S½NE¼SW¼ of section 6 to new lot 178 by excluding the area within Mineral Survey No. 19159, Legal Tender lode as described in the field notes of the Dependent Resurvey and Survey approved January 31, 1996, T. 1 N., R. 72 W., Sixth Principal Meridian, Colorado, was accepted January 31, 2002.

The supplemental plat amending original lot 112, in the SE¼NW¼ of section 6 to new lot 179 by excluding the area within Mineral Survey No. 14963, Maid of Erin lode as described in the field notes of the Dependent Resurvey and Survey approved January 31, 1996, T. 1 N., R. 72 W., Sixth Principal Meridian, Colorado, was accepted January 31, 2002.

The plat of the entire record of the dependent resurvey of Mineral Survey No. 65, Maxwell lode, and a portion of the subdivisional lines, T. 1 N., T. 72 W., Sixth Principal Meridian, Group 1236, Colorado, was accepted February 13, 2002.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 15, T. 50 N., R. 1 E., New Mexico Principal Meridian, Group 1349, Colorado, was accepted February 21, 2002.

The plat representing the entire record of the dependent resurvey of a portion of the subdivisional lines, and the metes-and-bounds survey creating new lots in the NW¼ of section 19, T. 49 N., R. 10 E., New Mexico Principal Meridian, Group 1314, Colorado, was accepted March 27, 2002.

These surveys and supplemental plats were requested by the Bureau of Land Management for administrative purposes.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 02–11091 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of the following described lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., on the dates specified: The plat representing the dependent resurvey of portions of certain lots in section 14,

and a portion of the west boundary of the Fort Sherman Abandoned Military Reservation, and the metes-and-bounds survey of Tract 44, in T. 50 N., R. 4 W., Boise Meridian, Idaho, was accepted January 18, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management. The supplemental plat prepared to create new lottings in section 10, in T. 48 N., R. 3 E., Boise Meridian, Idaho, was accepted January 25, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of portions of the east and north boundaries, the Fourth Guide Meridian East (west boundary), subdivisional lines, certain Mineral Surveys in sections 4, 5, 6, 8, 9, 13, 14, 23, 24, and 25, and the Clayton Townsite in section 25, and the survey of the 1997–2001 meanders of the Salmon River in sections 24 and 25, and the metes-and-bounds survey of certain lots in sections 24 and 25, in T. 11 N., R. 17 E., Boise Meridian, Idaho, was accepted February 5, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management. The plat representing the dependent resurvey of a portion of the subdivisional lines and original meanders of the Salmon River in section 30, and the metes-and-bounds surveys of lot 6 in section 19 and lot 11 in section 30, in T. 11 N., R. 18 E., Boise Meridian, Idaho, was accepted February 5, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management. The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 20, in T. 1 S., R. 5 E., Boise Meridian, Idaho, was accepted February 8, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the south boundary, a portion of the west boundary, and a portion of the subdivisional lines, and the subdivision of sections 31 and 33, and a metes- and bounds survey in section 33, in T. 16 N., R. 43 E., Boise Meridian, Idaho, was accepted March 20, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Duane E. Olsen, Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657, 208–373–3980.

Dated: April 2, 2002.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 02–11094 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–02–1420–BJ]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plat of the following described land is scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

Black Hills Meridian, South Dakota
Tps. 4 S., Rs. 10 and 11 E.

This plat, in 2 sheets, represents the dependent resurvey of portions of the east boundary, the subdivisional lines, and the adjusted original meanders of the left bank of the South Fork of the Cheyenne River through sections 25, 26, 27, and 36 (and section 31, Township 4 South, Range 11 East), the subdivision of section 27, and the survey of lot 7 within section 25, a certain division of accretion line and the new meanders of the left bank of the South Fork of the Cheyenne River through sections 25, 26, 27, and 36 (and section 31, Township 4 South, Range 11 East), in Township 4 South, Ranges 10 and 11 East, Black Hills Meridian, South Dakota, was officially accepted March 29, 2002.

The survey was requested by the U.S. Forest Service, Nebraska National Forest, and was necessary to identify lands administered by the U.S. Forest Service.

A copy of the preceding described plat will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on this plat, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests.

This particular plat will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5001 Southgate Drive, PO Box 36800, Billings, Montana 59107–6800.

Dated: April 8, 2002.

Thomas M. Deiling,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 02–11092 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Minor Boundary Revision, Indiana Dunes National Lakeshore, Indiana, Under the Authority of Public Law 94–549, Enacted October 18, 1976, (16 U.S.C., Section 460u–19) and Section 7 (c) of the Land and Water Conservation Fund Act of 1965, as Amended [16 U.S.C., Section 460*l*–9(c)]

SUMMARY: This notice announces a minor boundary revision of the boundaries of Indiana Dunes National Lakeshore, Indiana, to include eight (8) parcels of land.

FOR FURTHER INFORMATION CONTACT: Superintendent, Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304–1299, or by telephone at 219–926–7561 ext. 429.

SUPPLEMENTARY INFORMATION: Notice is hereby provided that the boundaries of Indiana Dunes National Lakeshore are revised. This revision is effective upon publication of this notice, to include certain parcels of real property situated in Porter County and Lake County, Indiana. These parcels contain 3.99 acres of land, more or less, in Porter County and 58.48 acres, more or less, in Lake County, Indiana. The parcels are identified as follows:

Porter County:
Tracts 109–15, 109–16, 109–18, 109–19, and 109–20 on Segment Map 109, Drawing Number 626/35,109 dated February 2002.

Lake County:
Tract 13–138 on Segment Map 13, Drawing Number 626/35,013 dated February, 2002. and
Tracts 12–113 and 12–114 on Segment Map 12, Drawing Number 626/35,012 dated February 2002.

All of the above-cited Segment Maps are on file at the following locations:

U.S. Department of the Interior, National Park Service, Midwest Region, Land Resources, 1709 Jackson Street, Omaha, Nebraska 68102–2571.

Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304–1299.

Dated: March 15, 2002.

William W. Schenk,

Regional Director, Midwest Region, Department of the Interior, National Park Service.

[FR Doc. 02–11135 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee Nomination Solicitation; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

The National Park Service published a document in the **Federal Register** of April 12, 2002, concerning the solicitation of nominations for the Native American Graves Protection and Repatriation Review Committee. The document contained an incorrect date.

In the **Federal Register** of April 12, 2002, in FR Doc. 02-8575, on page 18034, in the first column, in the last line of the DATES section, correct the date ''May 13, 2002'' to read ''July 11, 2002''.

Dated: April 17, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02-11136 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Glacier Bay National Park, Alaska; Environmental Impact Statement on Vessel Quotas and Operating Requirements for Glacier Bay National Park and Preserve

AGENCY: National Park Service, Interior.

ACTION: Extension of the public scoping period.

SUMMARY: The National Park Service (NPS) announces that the public scoping period for the Environmental Impact Statement on Vessel Quotas and Operating Requirements for Glacier Bay National Park and Preserve, published in the **Federal Register** on February 22, 2002 (67 FR 8313), has been extended through June 7, 2002. The original scoping period was through April 22, 2002.

Public scoping meetings will be conducted during the period May 20–31, 2002 in Anchorage, Juneau, Gustavus, Hoonah, Elfin Cove, and Pelican, Alaska and in Seattle, Washington. Specific dates, times, and locations of scoping meetings will be announced in local area newspapers and by other media.

DATES: Comments concerning the scope of this project will be accepted through June 7, 2002.

ADDRESSES: Comments should be mailed to the address provided below.

FOR FURTHER INFORMATION CONTACT: Nancy Swanton, Park Planner, National Park Service, Alaska Support Office, 2525 Gambell Street, Anchorage, Alaska 99503. Telephone (907) 257–2651, Fax (907) 257–2517.

Dated: April 25, 2002.

Fran P. Mainella,

Director, National Park Service.

[FR Doc. 02–11134 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The following Water Management Plans are available for review:

- Banta-Carbona Water District
- Bella Vista Water District
- City of Tracy
- Clear Creek Community Services District
- Dunnigan Water District
- East Bay Municipal Utility District
- Kanawha Water District
- Glide Water District
- Shafter Wasco Irrigation District
- Stockton East Water District
- Tea Pot Dome Water District

To meet the requirements of the Central Valley Project Improvement Act of 1992 (CVPIA) and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Management Plans (Criteria). **Note:** For the purpose of this announcement, Water Management Plans (Plans) are considered the same as Water Conservation Plans. The above entitie(s) have developed a Plan, which Reclamation has evaluated and preliminarily determined to meet the requirements of these Criteria. Reclamation is publishing this notice in order to allow the public to comment on the preliminary determinations. Public comment to Reclamation's preliminary (i.e., draft) determination is invited at this time.

DATES: All public comments must be received by June 5, 2002.

ADDRESSES: Please mail comments to Bryce White, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, or contact at 916–978–5208 (TDD 978–5608), or e-mail at *bwhite@mp.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Bryce White at the e-mail address or telephone number above.

SUPPLEMENTARY INFORMATION: We are inviting the public to comment on our preliminary (*i.e.,* draft) determination of Plan adequacy. Section 3405(e) of the CVPIA (Title 34 Public Law 102–575), requires the ''Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982.'' Also, according to Section 3405(e)(1), these criteria must be developed ''* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.'' These criteria state that all parties (Contractors) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 acre-feet and agricultural contracts over 2,000 irrigable acres) must prepare Plans that contain the following information:

1. Description of the District
2. Inventory of Water Resources
3. Best Management Practices (BMPs) for Agricultural Contractors
4. BMPs for Urban Contractors
5. Plan Implementation
6. Exemption Process
7. Regional Criteria
8. Five-Year Revisions

Reclamation will evaluate Plans based on these criteria. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your

comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entity.

A copy of these Plans will be available for review at Reclamation's Mid-Pacific (MP) Regional Office located in Sacramento, California. Plans may be available locally. If you wish to review a copy of these Plans, please contact Mr. White to find the office nearest you.

Dated: April 12, 2002.

Donna E. Tegelman,

Acting Regional Resources Manager.

[FR Doc. 02–11118 Filed 5–3–02; 8:45 am]

BILLING CODE 4210–MN–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 26, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 219–8904 or Email *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used:
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: OFCCP Recordkeeping and Reporting Requirements: Supply and Service.

OMB Number: 1215–0072.

Affected Public: Business or other for-profit; not-for-profit institutions; State, Local or Tribal Government.

Frequency: On occasion.

Number of Respondents: 95,311.

Number of Annual Responses: 95,311.

ESTIMATED TIME PER RESPONSE

Requirements	Average hours per response	Frequency
Recordkeeping:		
Initial Development of AAP	112.65	Once.
Update of AAP	51.14	Annually.
Maintenance of AAP	51.14	Annually.
Uniform Guidelines on Employee Selection Procedures	2.18	Annually.
Reporting:		
Standard Form 100	3.8	Annually.
Scheduling Letter	4.5	On occasion.
Compliance Check Letter	.4	On occasion.

Total Burden Hours: 9,967.675.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $23,096.

Description: The Office of Federal Contract Compliance Programs (OFCCP) is responsible for the administration of equal opportunity (EO) programs prohibiting employment discrimination against employees of Federal Contractors. OFCCP administers three programs: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA), 38 USC 4212. This information collection covers the supply and service aspects of these EO programs to substantiate compliance with nondiscrimination and affirmative action requirements enforced by OFCCP.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–11152 Filed 5–3–02; 8:45 am]

BILLING CODE 4510–CM–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 30, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 693–4127 or by E-mail to *Kurz-Karin@dol.gov*). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E-Mail to *King-Darrin@dol.gov*).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC

20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Application for Farm Labor Contractor and Farm Labor. Contractor Employee Certificate of Registration.

OMB Number: 1215–0037.

Affected Public: Individuals or households; business or other for-profit; and Farms.

Frequency: On occasion and biennially.

Number of Respondents: 9,200.

Number of Annual Responses: 9,200.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 4,600.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $2,153.

Description: Section 101(a) of the Migrant and Seasonal Agricultural Worker Protection Act provides that no individual may perform farm labor contracting activities without a certificate of registration. Form WH–530 is the application form that provides the Department of Labor with the information necessary to issue certificates specifying the farm labor contracting activities authorized. This collection of information is authorized by 29 CFR part 500.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–11153 Filed 5–3–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 30, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on (202) 693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comment should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Officer of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated; electronic, mechanical, or other technological collection techniques or other forms of information information technology, *e.g.,* permitting electronic submission of responses.

Type of Review: Extension of currently approved collection.

Agency: Employment and Training Administration (ETA).

Title: WIA Management Information and Reporting System.

OMB Number: 1205–0420.

Affected Public: State, Local, or Tribal Government and Individuals or households.

Type of Response: Reporting and recordkeeping.

Number of Respondents: 53.

Annual Responses: 318.

Average Response Time: 2,410 hours (per State).

Estimated Burden Hours: 766,451.

Total Annualized Capital/Startup Costs: $919,213.

Total Annual Costs (operating/maintaining systems or purchasing $18,986,229.

Description: Selected standardized information pertaining to participations in Workforce Investment Act (WIA) Title IB program is collected and reported for the purposes of general programs is collected and reported for the purposes of general program oversight, evaluation and performance assessment. State governments are responsible for providing the required reports. On a voluntary basis, program participants may be asked to respond to a customer satisfaction survey in order to assess to effectiveness of State WIA Title IB programs. This collection of information is authorized under WIA section 188 and 185 (d) (1) (A–E).

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 02–11154 Filed 5–3–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 29, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on (202) 693–4129 or E–Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Hazard Communication—29 CFR 1200; 1915; 1917; 1918; 1926; 1928.

OMB Number: 1218–0072.

Affected Public: Business or other for-profit; farms; Federal Government; and State, Local, or Tribal Government.

Frequency: On occasion.

Number of Respondents: 6,035,925.

Type of Response: Recordkeeping and Third-party disclosure.

Requirement	Annual responses	Average response time (hours)	Estimated annual burden hours
1. Written Hazard Communication Program—New Establishments:			
Manufacturing	5,258	5.00	26,290
Non-Manufacturing	61,465	2.50	153,663
2. Written Hazard Communication Program—Existing Establishments:			
Manufacturing	154,644	1.00	154,644
Non-Manufacturing	2,259,726	0.50	1,129,863
3. Hazardous Determination	30,248	8	241,984
4. Existing Establishments Sending of MSDSs for New Hazardous:			
Manufacturing	1,014,462	0.14	142,025
Non-Manufacturing	3,434,784	0.14	480,870
5. New Establishments Sending MSDSs for All Hazardous Chemicals:			
Manufacturing	465,648	0.14	65,191
Non-Manufacturing	1,261,262	0.14	176,577
6. Obtaining & Maintaining MSDSs—Existing Establishments:			
Manufacturing	154,644	1.00	154,644
Non-Manufacturing	2,259,726	1.00	2,259,726
7. Obtaining & Maintaining MSDSs—New Establishments:			
Manufacturing	465,648	0.14	65,191
Non-Manufacturing	1,261,262	0.14	176,577
8. Labeling Shipping Containers	0	0.00	0
9. Labeling In-Plant Containers	443,636,930	0.0033	1,464,002
10. Access to Trade Secrets	62,870	4.00	251,480
Employee Access	3,621,555	0.17	603,351
Federal Access	92,351	0.08	7,388
Total	460,242,484	.....	7,553,465

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $247,039.

Description: 29 CFR 1200; 1915; 1917; 1918; 1926; and 1928 require all employers to establish hazard communication programs and to transmit information on the hazards of chemicals to their employees by means of container labels, material safety data sheets and training programs. These actions reduce the incidents of chemical-related illnesses and injury in the workplace.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–11155 Filed 5–3–02; 8:45 am]

BILLING CODE 4510–23–M

NUCLEAR REGULATORY COMMISSION

Pre-PIRT Meeting on Triso Coated Fuel Particles

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

Purpose: The Nuclear Regulatory Commission will hold a pre-PIRT (Phenomena Identification and Ranking Table) meeting to identify Phenomena and issues related to TRISO coated fuel particles in order to develop research program. PIRTs have been used at NRC since 1988, and they provide a structured way to obtain a technical understanding that is needed to address certain issues.

DATES: May 28–29, 2002 (9 a.m.–5 p.m. and 9 a.m.–3:30 p.m. respectively).

ADDRESSES: Rooms T–10C2 on May 28, 2002 and T–2C2 on May 29, 2002 of the Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD.

Participants

This is a technical workshop to be conducted as roundtable discussions and presentation of handouts between the NRC staff and NRC and DOE contractors. Agenda will be provided to invited participants before the meeting. All handouts will be published as part of a NUREG/CR report. Invited NRC and DOE contractors are as follows:

Brent Boyack, Los Alamos National Laboratory
Syd Ball, Oak Ridge National Laboratory
Robert Morris, Oak Ridge National Laboratory
David Petti, Idaho National Engineering Laboratory
Dana Powers, Sandia National Laboratory
Randy Gaunt, Sandia National Laboratory
NRC Staff

Public Attendance

The meeting will be conducted as roundtable discussions between the invited participants and NRC staff.

Although the focus of discussions will be among invited participants and NRC staff, the meeting is open to public. Members of the audience will be given opportunity to comment before the lunch breaks and at the end of the meetings each day. They may also submit written comments after the meeting. All written comments should be received within 15 days of conclusion of the meeting. All written comments which are received within 15 days of the conclusion of the meeting will be published as part of the NUREG/CR report.

SUPPLEMENTARY INFORMATION: The meeting agenda will be posted on the NRC Web site at *www.nrc.gov/RES/meetings.html* by May 20, 2002. Attendees will need to obtain a visitor badge at the TWFN building lobby and an escort is required.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Odar, SMSAB, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research, Washington, DC 20555–0001, telephone (301) 415–6500.

Dated at Rockville, Maryland, this 30th day of April 2002.

For the Nuclear Regulatory Commission.

Farouk Eltawila,

Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.

[FR Doc. 02–11137 Filed 5–3–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Competition in Contracting; Contract Bundling

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of Management and Budget (OMB) is reviewing federal agencies' use of competition in their contracting activities. Although ''full and open'' competition remains the general rule when agencies acquire goods and services, a variety of legislative, regulatory, and policy initiatives, implemented primarily over the past decade, authorize competition on a significantly more restricted and informal basis. The purpose of this review, which has been called for by the White House, is to identify steps for ensuring that agency competition practices facilitate access to the full range of marketplace capabilities—especially those of small businesses—to consistently achieve good quality at lower cost to the taxpayer. This review will occur in conjunction with an initiative to address contract bundling (i.e., the consolidation of two or more requirements previously provided or performed under separate smaller contracts into a single contract that is likely to be unsuitable for award to a small business).

OMB invites interested parties from both the public and private sector, and especially from small businesses, to provide comments on: The positive and negative effects of agency competition practices from the 1990s to the present, and the impact of contract bundling. Interested parties may offer oral and/or written comments at a public meeting to be held on June 14, 2002. Parties may also provide written comments directly to OMB's Office of Federal Procurement Policy (OFPP) by the date indicated below.

DATES: *Public Meeting:* A public meeting will be conducted at the address shown below on June 14, 2002, from 1 p.m. to 3 p.m. Eastern standard time. The time period may be extended based on the level of interest expressed. Parties wishing to make formal oral presentations at the public meeting must contact Ms. Barbara Diering of OFPP by June 3, 2002. Due to time limitations, OFPP will notify individuals of their speaking status (time) prior to the meeting. Time allocations for oral presentations will depend on the number of individuals who desire to make presentations. Parties wishing to share written statements at the public meeting must submit such statements to OFPP by June 7, 2002.

Statements: In lieu of, or in addition to, participating in the public meeting, interested parties may submit comments to OFPP at the address shown below on or before July 1, 2002.

ADDRESSES: *Public Meeting:* The public meeting will be held at the General Services Administration (GSA) auditorium, 18th and F Streets NW., Washington, DC 20405.

Statements: Interested parties may send comments by electronic mail (e-mail) to *bdiering@omb.eop.gov.* While e-mail is preferred, parties may alternatively submit comments by facsimile (202) 395–5105. In either case, please cite ''Competition in contracting review'' as the subject. Since hard copy mail is not being accepted on a regular basis (due to security reasons), comments should not be submitted in this mode. Parties that cannot submit comments using either e-mail or facsimile should contact Ms. Diering.

FOR FURTHER INFORMATION CONTACT: *For clarification of subject matter related to the review of competition practices:* Mr. Mathew Blum, OFPP, (202) 395–4953.

For clarification of subject matter related to contract bundling and small business issues: Mr. Michael Gerich, OFPP, (202) 395–6811.

For public meeting information and submission of comments to OFPP: Ms. Barbara Diering, OFPP, (202) 395–3256.

The TTY number for further information is: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In 1984, the Competition in Contracting Act (CICA), Public Law 98–369, sec. 2701, established ''full and open'' as the competition standard in federal contracting. CICA's enactment marked a culmination of concerns that competition had become the exception, rather than the rule, in acquiring goods and services. Despite these concerns, CICA's approach to competition has been criticized as unduly burdensome and complex. These concerns led to a series of legislative, regulatory, and policy reforms—the most significant of which occurred in the mid-1990s—to streamline and simplify competition and contracting processes. Many of these changes authorize competition on a relatively restrictive and informal basis. These changes include, among others:

- Authority to conduct limited competitions under multiple award task and delivery order contracts (MACs) or GSA's Multiple Award Schedules (MAS) program, where the source selection process for becoming a contract holder is open to all interested sources but competitions for orders are limited to pre-qualified contract holders; and
- Authority to seek competition ''to the maximum extent practicable'' using simplified source selection procedures for all actions under the simplified acquisition threshold (SAT), which is currently at $100,000, and, on a test basis, up to $5 million for commercial items.

An increasing number of recent reports addressing streamlined acquisition processes and competition practices, including studies by the General Accounting Office and agency inspectors general, call into question whether agencies are taking advantage of the full range of marketplace capabilities in their use of competition. In addition, concerns have been voiced that other acquisition practices are also limiting opportunities for contractors, especially small businesses. In particular, there is ongoing concern that agencies are unnecessarily bundling

contracts and, in doing so, have created an environment that makes it difficult for small businesses to flourish.

The President is committed to ensuring that agencies take full advantage of competition in contracting, especially the services of small business contractors. This commitment, like those in the President's Management Agenda generally, reflect the Administration's focus on strengthening the performance of government through results-oriented initiatives—i.e., in this case, improving the return on taxpayer investments in contracting. To this end, OMB has been instructed both to review competition practices at agencies with significant procurement activities and to develop a strategy to address contract bundling.

OMB has established two inter-agency working groups to carry out these efforts: one working group will address agency competition practices; the other will develop a strategy for unbundling contracts whenever practicable. OMB seeks public comment from all interested parties, and especially from small businesses, to inform these working groups. Comments are especially welcome on the following topics:

1. *Use of other than full and open competition.* What are the positive and negative effects of authorities that allow competition on other than a full and open basis?

• Authorities to consider might include:

(1) Micro-purchase authority (see Federal Acquisition Regulation (FAR) Subpart 13.2);

(2) Authority to transact using the government-wide purchase card (see FAR 13.301);

(3) Authority to seek competition to the ''maximum extent practicable'' and use of simplified source selection procedures for acquisitions under the SAT (see FAR part 13 generally) and up to $5 million for the acquisition of commercial items (see FAR subpart 13.5);

(4) Authority to conduct limited competitions through MACs (see FAR 16.504 and 16.505) and the MAS program (see FAR subpart 8.4); and

(5) Inter-agency contracting through government-wide acquisition contracts (i.e., task or delivery order contracts for information technology established for government-wide use and operated by executive agents designated by OMB), multi-agency contracts (i.e., task or delivery order contracts established for use by government agencies consistent with the Economy Act), or other contracts for multiple agency use.

• Effects to consider might include:

(a) Opportunities to learn about and participate in planned acquisitions;

(b) Ability of contractors to offer, or agencies to secure: (i) Fair and reasonable pricing, (ii) favorable terms and conditions, and (iii) timely delivery of good and services; and

(c) Ability of contractors to make meaningful offers and agencies to make rationally-based decisions.

2. *Use of full and open competition.* What are the effects, positive and negative, of changes made in the way full and open competition is pursued, such as under Part 15 of the FAR? (For effects to consider, see question no. 1.)

3. *Areas of impact.* Have the authorities identified in question nos. 1 and 2 had an especially noticeable effect on any particular: (a) Dollar range, (b) contract type, or (c) product or service category?

4. *Barriers to small business participation.* What barriers presently make it difficult for small businesses to participate in federal procurement, and what steps can be taken to remove barriers to participation, particularly in full and open competitions?

5. *Contract bundling.* If you believe that agency contract bundling has direct effects on participation by small businesses in federal contracting, what steps can be taken to mitigate those effects?

6. *Application of electronic commerce techniques.* How has electronic commerce affected contractor participation in government contracting in general, and small business participation in particular, and in what, if any, ways can its applications be improved to increase participation in government contracting?

7. *Studies and articles on competition and bundling.* What, if any, recent studies or articles addressing competition or contract bundling in federal contracting should be considered by OMB's competition and bundling working groups?

Special Accommodations

The public meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Diering (202–395–3254) at least 5 days prior to the meeting date.

Angela B. Styles,

Administrator.

[FR Doc. 02–11139 Filed 5–3–02; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Expiring Information Collection: Establishment Information Form, Wage Data Collection Form, Wage Data Collection Continuation Form DD 1918, DD 1919, and DD 1919C

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for clearance of an information collection. The Establishment Information Form, the Wage Data Collection Form, and the Wage Data Collection Continuation Form are wage survey forms developed by OPM for use by the Department of Defense to establish prevailing wage rates for Federal Wage System employees.

The Department of Defense contacts approximately 21,200 businesses annually to determine the level of wages paid by private enterprise establishments for representative jobs common to both private industry and the Federal Government. Each survey collection requires 1–4 hours of respondent burden, resulting in a total yearly burden of approximately 75,800 hours.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, 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; 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.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, fax (202) 418–3251, or e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal must be received within 60 calendar days after the date of this publication.

ADDRESSES: Send or deliver written comments to:

Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and

Performance Service, U.S. Office of Personnel Management, 1900 E Street NW., Room 7H31, Washington, DC 20415–8200.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mark A. Allen, Salary and Wage Systems Division, Office of Compensation Administration, (202) 606–2848.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–11204 Filed 5–3–02; 8:45 am]

BILLING CODE 6325–39–P

POSTAL RATE COMMISSION

[Order No. 1339; Docket No. MC2002–1]

Classification and Fees for Confirm® Service

AGENCY: Postal Rate Commission.

ACTION: Notice and order concerning Confirm® service.

SUMMARY: This document informs the public that the Postal Service has asked the Commission for a decision on classification and fees for Confirm®, a new service to enable mailers to track automation compatible letter-size and flat mail pieces. It also establishes several procedural deadlines and sets a date for a prehearing conference and possible informal settlement discussions.

DATES: *May 16, 2002:* deadline for notices of intervention.

May 20, 2002: prehearing conference (at 1 p.m.) and tentatively scheduled informal settlement discussion (at 9:30 a.m.) if notice is served on participants by the Postal Service.

May 23, 2002: deadline for answers to conditional motion for waiver.

ADDRESSES: The prehearing conference will be held in the Commission's hearing room, 1333 H Street NW., suite 300, Washington, DC 20268–0001. Send notices and comments to the attention of Steven W. Williams, secretary, 1333 H Street NW., suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6824.

SUPPLEMENTARY INFORMATION:

A. Authority To Consider the Service's Request

39 U.S.C. 3622 and 3623.

B. Background

On April 24, 2002, the Postal Service filed a request for a recommended decision on classification and fees for Confirm®, a new service using PLANET Codes (a new form of bar code) to enable commercial mailers to track individual automation compatible letter-size and flat mail pieces. Request of the United States Postal Service for a recommended decision on classification and fees for Confirm®, April 24, 2002 (request). The request was accompanied by a statement of compliance with the Commission's filing requirements and a conditional motion for waiver. In addition, the Postal Service requests that proceedings to consider Confirm® be expedited.

Establishing a Formal Docket

The Postal Service's request was filed pursuant to sections 3622 and 3623 of the Postal Reorganization Act, 39 U.S.C. 101 *et seq.* The Commission hereby institutes a proceeding, designated as docket no. MC2002–1, to consider the instant request. In the course of this proceeding, participants may propose alternatives to the Service's proposal, and the Service itself may revise, supplement, or amend its initial filing. The Commission's review of the Service's request, including any revisions, alternatives proposed by others, or options legally within the purview of the Service's request, may result in recommendations that differ from those proposed by the Postal Service in its initial filing.

Contents of the filing

As a preliminary matter, the Commission has posted the request and related material on its website at *www.prc.gov.* Subsequent filings in this case will also be posted on the website, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's website is available online or by contacting the Commission's webmaster at 202–789–6873.

The entire filing and related documents are also available for public inspection in the Commission's docket section. The docket section's hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on federal government holidays. The docket section telephone number is 202–789–6846.

The request includes six attachments as follows. Attachment A contains the proposed amendments to the domestic mail classification schedule (DMCS); Attachment B sets forth the proposed fee schedule. Attachment C is the required certification concerning the accuracy of the cost statements and supporting data submitted as part of the request. Attachment D contains the audited financial statements for FY 2000 and FY 2001. Citing USPS–LR–J–2, the Postal Service notes that the cost and revenue analysis report for FY 2000 was filed in docket no. R2001–1. Appendix E is an index of testimonies, workpapers, and associated attorneys. Appendix F represents the Postal Service's compliance statement in response to Commission rules 54 and 64, 39 CFR 3001.54 and 3001.64.

In support of the request, the Postal Service also submitted the testimony of five witnesses. Witness Bakshi, a Postal Service employee, describes Confirm® service, its operation, and its implementation. *See* USPS–T–1. Witness Lubenow, a consultant, provides both background and an industry perspective concerning Confirm® service. *See* USPS–T–2. Witness Nieto, a consultant, provides estimated test year costs in support of the proposed Confirm® fees. *See* USPS–T–3. Witness Rothschild, a consultant, presents the results of survey research undertaken to assess the market demand for Confirm® products at two different pricing scenarios. *See* USPS–T–4. Witness Keifer, a Postal Service employee, describes the proposed fee design and classification changes. Witness Keifer also addresses the financial impacts associated with Confirm®. *See* USPS–T–5.

In addition, the Postal Service filed two Category 2 library references supporting the prepared testimony: USPS–LR–1, witness Rothschild's (USPS–T–4) CONFIRM market research, and USPS–LR–2 supporting spreadsheets for witness Nieto (USPS–T–3).

Brief Description of the Proposal

The Postal Service proposes to offer Confirm® in a three-tiered subscription format, with the subscriptions labeled platinum, gold, and silver. As proposed, Confirm® service will be available to users of First-Class Mail, Standard mail, and Periodicals. Confirm® service will enable subscribers to track qualified outgoing and incoming mail, providing information about each mailpiece, *e.g.,* the date and time processed, the processing facility, and barcode data.

The proposed annual fee for a platinum subscription is $10,000, which entitles the subscriber to three ID codes and unlimited scans. The proposed annual fee for a gold subscription is $4500, entitling the subscriber to one ID code and 50 million scans. A silver subscription is available for a term of three months and entitles the subscriber to one ID code and 15 million scans. The proposed fee is $2000. See USPS–T–5 at 2.

As proposed, subscribers may obtain additional ID codes for $500 per three months, or $2000 per year. Silver and gold subscribers may obtain additional scans, silver in blocks of 2 million scans for $500, and gold in blocks of 6 million scans for $750. Ibid.

Proposed Classification Changes

The Postal Service proposes to amend the DMCS to include new sections 990 and 991, which, among other things, define the service, and describe its availability and customer requirements. A new fee schedule, 991, is also proposed. Request at attachments A and B.

Conditional Motion for Waiver

In addition to attachment F, the Postal Service submitted a separate statement concerning its compliance with the filing requirements. This statement was coupled with a conditional motion for waiver. See statement of United States Postal Service concerning compliance with filing requirements and conditional motion for waiver (statement). The Postal Service indicates that it has supplemented materials developed specifically to support its request by incorporating testimony and documentation submitted in the recently concluded omnibus rate case, docket no. R2001–1. Statement at 1. The Postal Service suggests that this approach is justified for several reasons, including, among others, congruent test years (FY 2003) and a substantial overlap between the information required by the general filing requirements and that already provided in docket no. R2001–1. Id. at 2–3. Further, the Postal Service asserts that its compliance should be assessed in light of the nature of Confirm® service and the minor extent that total cost-revenue relationships will be affected by its implementation. Id. at 3. The Postal Service, therefore, contends that it is in compliance with the Commission's filing requirements. Alternatively, however, the Postal Service requests a waiver of the filing requirements pursuant to 39 CFR 3001.22, 3001.54(r), and 3001.64(h)(3).

Request for Expedition

The Postal Service accompanied its filing with a precatory request for expedition. See United States Postal Service request for expedition. In support, the Postal Service states its belief that an early recommended decision will benefit mailers and facilitate an orderly transition to the proposed service and fees. The Postal Service emphasizes, however, that it is not advocating any schedule that would compromise any participants' opportunity to be heard consistent with due process requirements or that would otherwise limit the Commission's ability to develop a record on which to make its recommendations. Further, the Postal Service suggests that this proceeding warrants expeditious procedures, noting its optimism on the possibility that it may be settled. The Postal Service concludes with a request that ''due consideration be given to taking measures that would expedite proceedings and lead to an early Recommended Decision.'' United States Postal Service request for expedition at 2.

Intervention

Each interested person wishing to be heard in this matter is directed to file a notice of intervention with Steven W. Williams, secretary of the Commission, 1333 H Street NW., suite 300, Washington, DC 20268–0001, on or before May 16, 2002. Each notice should specify whether the party seeks to participate on a full or limited basis. *See* 39 CFR 3001.20 and 3001.20a. Written discovery pursuant to rules 25–28 may be undertaken upon intervention.

Representation of Interests of the General Public

The Commission designates Shelley S. Dreifuss, acting director of the Commission's office of the consumer advocate, to represent the interests of the general public in this proceeding, pursuant to 39 U.S.C. 3624(a). Ms. Dreifuss shall direct the activities of Commission personnel assigned to assist her and, at an appropriate time, provide the names of these employees for the record. Neither Ms. Dreifuss nor the assigned personnel shall participate in or advise as to any Commission decision in this proceeding, other than in their designated capacity. Participants shall serve the OCA separately with three copies of all filings in addition to, and at the same time, as they effect service on the Commission.

Prehearing Conference Date; Informal Settlement Discussion

The Commission will hold a prehearing conference on May 20, 2002, at 1:00 p.m. in the Commission's hearing room, 1333 H Street NW., suite 300, Washington, DC 20268–0001. In light of the Postal Service's statement concerning the prospects of settling this proceeding, the Commission will make its hearing room available at 9:30 a.m. on May 20, 2002 for the participants to engage in informal settlement discussions. If such discussions are scheduled, the Postal Service should provide notice to all participants. At the prehearing conference, the Postal Service shall present a status report concerning settlement discussions, if any.

Ordering Paragraphs

It is ordered:

1. Docket no. MC2002–1 is established to consider the Postal Service's request for a recommended decision on classification and fees for Confirm® service.
2. The Commission will sit en banc in this proceeding.
3. Notices of intervention are due no later than May 16, 2002.
4. A prehearing conference will be held May 20, 2002 at 1:00 p.m. in the Commission's hearing room.
5. Answers to the Postal Service's conditional motion for waiver are due May 23, 2002.
6. Shelley S. Dreifuss, acting director of the Commission's office of the consumer advocate, is designated to represent the interests of the general public.
7. The Secretary shall cause this notice and order to be published in the **Federal Register**.

Dated: April 29, 2002.

Steven W. Williams,

Secretary.

[FR Doc. 02–11107 Filed 5–3–02; 8:45 am]

BILLING CODE 7715–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45816; File No. SR–ISE–2002–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC Relating to a Market Maker Inactivity Fee

April 24, 2002.

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 April 16, 2002, the International Securities Exchange LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to adopt a $25,000 per month fee on Competitive Market Makers (''CMMs'') if their membership is not actively trading. Below is the text of the proposed rule change. Additions are italicized.

* * * * *

ISE SCHEDULE OF FEES

Electronic Market Place	Amount	Billable unit	Frequency
* * * * *		*	*
Inactive PMM Fee	$100,000	Membership [3]	Monthly
Minimum PMM Fee	$50,000	Membership [4]	Monthly
Inactive CMM Fee	$25,000	Membership [5]	Monthly
* * * * *		*	*

[3] Effective January 1, 2001, if a group has not been open for trading, the PMM appointed to that group will be subject to an ''inactive'' fee of $100,000 per month; provided that, for an entity that owns a PMM membership and that is not itself a registered broker-dealer, the fee will become effective on May 7, 2001.

[4] Effective January 1, 2001, PMMs are subject to a minimum fee of $50,000 per options group. To the extent that aggregate execution fees in a group do not total at least $50,000 per month, the PMM for that group must pay a fee representing the difference between $50,000 and the aggregate actual execution fees.

[5] *Effective July 1, 2002, CMMs are subject to an inactivity fee of $25,000 per CMM membership that is not actively trading. In applying this fee: (1) this fee shall not apply to any CMM membership in an options group for which the CMM also is leasing a PMM membership; and (2) if a CMM is approved with respect to more than one CMM membership that is not actively trading (any such inactive CMM membership in addition to one inactive membership referred to as ''additional inactive memberships''), an Exchange official designated by the Board may grant the CMM an exemption from this fee for any or all additional inactive memberships if the CMM presents a business plan that an Exchange official designated by the Board determines will lead to active trading in such additional inactive membership(s) within a reasonable period of time.*

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 ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt a fee allowing the ISE to recoup a portion of the revenue it loses when a CMM owns or leases one or more memberships that are not open for trading. While the Exchange currently has a Primary Market Maker (''PMM'') inactivity fee, there is no similar fee for CMMs. The Exchange proposes that the fee be effective on July 1, 2002, in order to give members a reasonable period of time to begin trading in inactive memberships.

The fee will not apply if a member holds an inactive CMM membership in a group of securities in which it also is operating the PMM membership pursuant to a lease. In that case, the member cannot operate both the PMM and CMM membership, and the member reasonably may want to retain control of the CMM membership so that it can operate the membership when its PMM lease expires. The proposal also will authorize the Exchange staff to grant exemptions if a member holds multiple inactive CMM memberships. In that situation, the Exchange can grant exemptions for all but one such membership as long as the member presents a business plan establishing that trading will begin in the inactive memberships over a reasonable time period.

The Exchange proposes a $25,000 fee based on conservative estimates of the revenues lost due to an inactive CMM membership. For the first quarter of 2002, an average CMM membership generated just over $25,000 in transaction-based fees. This does not include other fees that the Exchange loses, such as session/API fees. The Exchange will periodically reevaluate this fee to maintain the relationship between the amount of the fee and the lost revenue being recouped.

2. Statutory Basis

The basis for this proposed rule change is the requirement under section 6(b)(4) of the Act [6] that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

[6] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2002–11 and should be submitted by May 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11104 Filed 5–3–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45840; File No. SR–ISE–2002–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the International Securities Exchange LLC Relating to Fee Changes

April 29, 2002.

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 April 15, 2002, the International Securities Exchange LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. On April 23, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On April 25, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.[4] 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 proposes three fee changes: (i) an extension of its waiver of customer transaction and comparison fees for an additional year and one month; (ii) an extension of its waiver of multiple ''Click'' trading terminal charges for an additional year; and (iii) the deletion of Torque trading application fees.

Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

ISE SCHEDULE OF FEES

Electronic market place	Amount	Billable unit	Frequency
Execution Fees			
• Customer	$0.05	contract/side	Transaction
(Fee waived through *June 30, 2003* [May 31, 2002])			
* * * *	*	*	*
Comparison Fee	0.03	contract/side	Transaction
(Fee waived for Customer Trades through *June 30, 2003* [May 31, 2002])			
* * * *	*	*	*
Trading Application Software			
* * * *	*	*	*
Software License & Maintenance			
• [Torque			
First	1,250.00	Terminal	Monthly
Second through Fourth	750.00	Terminal	Monthly
Fifth and More	250.00	Terminal	Monthly]
• Click/Trade Review Terminal**			
First through Fifth	500.00	Terminal.	
Sixth and More	250.00	Terminal.	
Session/API Fee			
• EAM/Trade Review Terminal* * *			
First Through Fifth	250.00	API	Monthly
Sixth and More	100.00	API	Monthly
* * * *	*	*	*

** All Click fees for a second and subsequent terminals are waived through *May 31, 2003* [May 31, 2002]. Thereafter, fees are waived for third and subsequent Click terminals (''incremental Click terminals'') if the member executes, on average, at least 500 customer or firm proprietary contracts per day per incremental Click terminal on the Exchange for the month.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael J. Simmons, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated April 22, 2002 (''Amendment No. 1''). In Amendment No. 1, the ISE amended its proposal to extend a waiver for the API Session fee as it relates to the Click through May 31, 2003.

[4] *See* letter from Michael J. Simmons, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division, Commission, dated April 23, 2002 (''Amendment No. 2''). In Amendment No. 2, the ISE amended its proposal to include reasoning for the extended waiver for its API fee associated with Click terminals.

*** All API Session/API fees associated with a second and subsequent Click terminals are waived through *May 31, 2003* [May 31, 2002]. Thereafter, such fees are waived for third and subsequent Session/API associated with an incremental Click terminal for EAMs if the member executes, on average, at least 500 customer or firm proprietary contracts per day per incremental Click terminal on the Exchange for the month.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The ISE proposes to amend three aspects of the its current fee schedule. First, the ISE proposes to extend the waiver of customer transaction fees. While the ISE currently waives customer transaction and comparison fees, this waiver will expire on May 26, 2002. The ISE proposes to extend this waiver through June 30, 2003 for competitive reasons.

Second, the ISE proposes to extend the waiver of the Click terminal fee and the API fee associated with the use of Click terminals for an additional year. ''Clicks'' are ISE order-entry terminals, and the waiver applies to a member's second and subsequent Click terminals. By its terms, this waiver will expire on May 31, 2002. Because this fee waiver has worked well to encourage firms to install and use multiple Clicks, the ISE proposes to extend the program for an additional year.

Third, the ISE proposes to delete the ''Torque'' fees from our fee schedule. ISE market makers can use either the Torque application or any other application of their choice to support their trading. Recently, the ISE ceased to provide Torque directly to market makers. Instead, market makers using Torque currently contract directly with the supplier of that application, and pay all fees directly to that supplier. Thus, the ISE believes that Torque fees are no longer relevant and proposes to delete these fees from its fee schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act, [5] in general, and Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective as of the date of filing of Amendment No. 2, on April 25, 2002, pursuant to Section 19(b)(3)(A) [7] of the Act and subparagraph (f)(2) of Rule 19b-4 [8] thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on April 25, 2002, the date the ISE filed Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, 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 ISE. All submissions should refer to File No. SR–ISE–2002–08 and should be submitted by May 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11105 Filed 5–3–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45847; File No. SR–Phlx–2002–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Adoption of a Fee for Construction of Kiosks

April 30, 2002.

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 April 24, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 proposes to amend its schedule of dues, fees and charges to require specialists and specialist units (collectively referred to as ''specialist units'') to pay for the construction cost of a kiosk if the specialist unit initiates the construction request for the kiosk.[3] The text of the proposed rule change is available at the Phlx's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to require specialist units to pay for the cost of constructing a kiosk, if requested by them, due to the considerable costs associated with construction. These requests for construction may not be consistent with the Exchange's floor development plans, thereby requiring an unbudgeted expenditure of capital by the Exchange. However, consistent with current Exchange billing policies, if the Exchange chooses to construct a kiosk, it will charge the specialist unit the fee for a trading post with kiosk. Therefore, for future kiosk construction requests initiated by a specialist unit, the Exchange will pass through the construction cost to the specialist unit.[4]

The Exchange intends to request one-half of the cost prior to construction, with the remainder charged after construction is completed.[5] Because the specialist unit would pay for the construction cost of the kiosk, the Exchange's current monthly fee of $375 for trading post with kiosk will not apply.[6] However, the Exchange's current monthly fee of $250 for a trading post will continue to apply.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4) of the Act,[9] in particular, by providing for the equitable allocation of reasonable dues, fees and other charges among the Exchange's members because the members who request and pay for the construction of the kiosk will incur the benefit of using the kiosk.

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 solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b–4(f)(2) thereunder.[11] At any time within 60 days of the filing of Amendment No. 1 to 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 purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2002–30 and should be submitted by May 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11106 Filed 5–3–02; 8:45 am]

BILLING CODE 8010–01–P

[3] A kiosk is an open, flat surface that contains computer terminals and allows the specialist units to face the trading crowd.

[4] The decision to construct a kiosk at a particular post is solely within the Exchange's discretion, even if the specialist unit pays for the construction cost for the kiosk.

[5] This fee is not eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

[6] *See* Securities Exchange Act Release No. 44744 (August 24, 2001), 66 FR 45884 (August 30, 2001) (SR–Phlx–2001–80).

[7] Generally, post space is space on the Exchange's trading floor for specialist units.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3404]

Commonwealth of Kentucky; Amendment #1

In accordance with information received from the Federal Emergency Management Agency, dated April 26, 2002, the above numbered declaration is hereby amended to include Floyd, Johnson, Knott, Magoffin, Martin and Pike Counties in the Commonwealth of Kentucky as disaster areas due to damages caused by severe storms and flooding occurring on March 17 through March 21, 2002.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Buchanan and Dickenson

Counties in the Commonwealth of Virginia; and Mingo County in the State of West Virginia. All other counties contiguous to the above-named primary counties have been previously declared.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is June 3, 2002, and for loans for economic injury the deadline is January 6, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 29, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–11119 Filed 5–3–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4005]

Bureau of Consular Affairs, Passport Services; Information Collection

AGENCY: Department of State.

ACTION: 60-day notice of information collection; Form DS–71, affidavit of identifying witness; OMB #1405–0088.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 60 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Regular—extension of a currently approved collection.

Originating Office: Bureau of Consular Affairs, CA/PPT/FO/FC.

Title of Information Collection: Affidavit of Identifying Witness.

Frequency: On occasion.

Form Number: DS–71.

Respondents: Individuals or households.

Estimated Number of Respondents: 120,000.

Average Hours Per Response: 1/12 hr. (5 min).

Total Estimated Burden: 10,000.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Margaret A. Dickson, CA/PPT/FO/FC, Department of State, 2401 E Street, NW., Room H904, Washington, DC 20522, and at 202–633–2460.

Dated: April 19, 2002.

Georgia A. Rogers,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–11160 Filed 5–3–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4006]

Bureau of Consular Affairs, Passport Services; Information Collection

AGENCY: Department of State.

ACTION: 60-Day notice of information collection; Form DS–86, statement of non-receipt of passport (Formerly DSP–86); OMB #47–R0178.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Regular—Reinstatement, with change, of a previously approved collection for which approval has expired.

Originating Office: Bureau of Consular Affairs, CA/PPT/FO/FC.

Title of Information Collection: Statement of Non-Receipt of Passport.

Frequency: On occasion.

Form Number: DS–86 (Formerly DSP–86).

Respondents: Individuals or households.

Estimated Number of Respondents: 20,000.

Average Hours Per Response: 1/12 hr. (5 min).

Total Estimated Burden: 1,667 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Margaret A. Dickson, CA/PPT/FO/FC, Department of State, 2401 E Street, NW., Room H904, Washington, DC 20522, and at 202–633–2460.

Dated: April 19, 2002.

Georgia A. Rogers,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–11161 Filed 5–3–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 4007]

Passport Services; Information Collection

AGENCY: Department of State.

ACTION: 60-Day notice of information collection; Form DS–19, passport amendment/validation application; OMB #1405–0007.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 60 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Regular—Revision of a Currently Approved Collection.

Originating Office: Bureau of Consular Affairs, CA/PPT/FO/FC.

Title of Information Collection: Passport Amendment / Validation Application.

Frequency: On occasion.

Form Number: DS–19.

Respondents: Individuals or households.

Estimated Number of Respondents: 230,912.

Average Hours Per Response: ½ hr. (5 min).

Total Estimated Burden: 19,243 hours.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Margaret A. Dickson, CA/PPT/FO/FC, Department of State, 2401 E Street, NW., Room H904, Washington, DC 20522, and at 202–633–2460.

Dated: April 19, 2002.

Georgia A. Rogers,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–11162 Filed 5–3–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4008]

Bureau of Consular Affairs, Passport Services; Information Collection

AGENCY: Department of State.

ACTION: 60-day notice of information collection; Form DS–64, statement regarding lost or stolen passport; OMB #1405–0014.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 60 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Regular—extension of a currently approved collection.

Originating Office: Bureau of Consular Affairs, CA/PPT/FO/FC.

Title of Information Collection: Statement Regarding Lost or Stolen Passport.

Frequency: On occasion.

Form Number: DS–64.

Respondents: Individuals or households.

Estimated Number of Respondents: 75,000.

Average Hours Per Response: ½ hr. (5 min).

Total Estimated Burden: 6,250.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Margaret A. Dickson, CA/PPT/FO/FC, Department of State, 2401 E Street, NW., Room H904, Washington, DC 20522, and at 202–633–2460.

Dated: April 19, 2002.

Georgia A. Rogers,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–11163 Filed 5–3–02; 8:45 am]

BILLING CODE 4710–06–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries That Deny Adequate Protection, or Market Access, for Intellectual Property Rights Under Section 182 of the Trade Act of 1974

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Trade Representative (USTR) has submitted its annual report on the identification of those foreign countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection, and those foreign countries determined to be priority foreign countries, to the Committee on Finance of the United States Senate and the Committee on Ways and Means of the United States House of Representatives, pursuant to section 182 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2242).

DATES: This report was submitted on April 30, 2002.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Kira Alvarez, Director for Intellectual Property, (202) 395–6864, or Stephen Kho, Assistant General Counsel, (202) 395–3581, or Victoria Espinel, Assistant General Counsel, (202) 395–7305.

SUPPLEMENTARY INFORMATION: Section 182 of the Trade Act requires USTR to identify within 30 days of the publication of the National Trade Estimates Report all trading partners that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices that have the greatest adverse impact (actual or potential) on the relevant United States products must be identified as ''priority foreign countries,'' unless they are entering into good faith negotiations or are making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection for intellectual property rights. In identifying countries in this manner, the USTR is directed to take into account the history of intellectual property laws and practices of the foreign country, including any previous identifications as a priority foreign country, and the history of efforts of the United States, and the response of the foreign country, to achieve and effective protection and enforcement of intellectual property rights. In making these determinations, the USTR must consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, other appropriate officials of the Federal Government and take into account information from other sources such as information submitted by interested persons.

On April 30, 2002, USTR identified 51 trading partners that deny adequate and effective protection of intellectual property or deny fair and equitable market access to United States artists and industries that rely upon

intellectual property protection. USTR maintained Ukraine's designation as a Priority Foreign Country, and again designated Paraguay and China for ''Section 306 monitoring'' to ensure both countries comply with the commitmetns made to the United States under bilateral intellectual property agreements.

USTR also announced placement of 15 trading partners on the ''Priority Watch List'': Argentina, Brazil, Colombia, Dominican Republic, European Union, Egypt, Hungary, India, Indonesia, Israel, Lebanon, Philippines, Russia, Taiwan, and Uruguay. In addition, USTR placed 33 trading partners on the ''Watch List.'' Moreover, out-of-cycle reviews will be conducted of Indonesia, Israel, the Philippines, the Bahamas, Costa Rica, Poland, and Thailand. While Mexico is not listed, USTR will also conduct an out-of-cycle review of it later in the year.

Kira M. Alvarez,

Director for Intellectual Property.

[FR Doc. 02–11151 Filed 5–3–02; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Office of the United States Trade Representative

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is seeking written comments from the public concerning the agency's draft Information Quality Guidelines. These Information Quality Guidelines describe USTR's pre-dissemination information quality control and the proposed administrative mechanism for requests for correction of information publicly disseminated by USTR.

DATES: USTR will accept comments received on or before June 5, 2002.

ADDRESSES: Submit comments to Richard Kristobek, Office of Computer Operations, Room F203, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508. Comments will also be accepted via electronic mail at *USTRIQG@ustr.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Kristobek, Acting Director, Office of Computer Operations, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC (202) 395–5140.

SUPPLEMENTARY INFORMATION: The USTR draft Information Quality Guidelines are posted on the USTR website, *www.ustr.gov.*

Richard F. Kristobek,

Acting Director, Office of Computer Operations.

[FR Doc. 02–11150 Filed 5–3–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34193]

Toledo, Peoria & Western Railway Corporation—Corporate Family Merger Transaction Exemption

Toledo, Peoria & Western Railroad Corporation (TPWRR), Marksman Corp. (Marksman), Toledo, Peoria & Western Railway Corporation (TPWRY), and Florida Rail Lines, Inc. (Florida Rail), have jointly filed a verified notice of exemption under the Board's class exemption procedure at 49 CFR 1180.2(d)(3).[1] The exempt transaction is a corporate reorganization which involves the merger of TPWRR, TPWRY, and Florida Rail into Marksman. After the merger, Marksman, the surviving corporation, will change its name to Toledo, Peoria & Western Railway Corporation.

The transaction was scheduled to be consummated on or shortly after April 15, 2002, the effective date of the exemption.

The transaction is intended to simplify the corporate structure and reduce overhead costs and duplication by eliminating three corporations while retaining the same assets to serve customers.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34193, must be filed with the Surface Transportation Board, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, Ball Janik LLP, Suite 225, 1455 F Street, NW, Washington, DC 20005.

Board decisions and notices are available on our website at *''WWW.STB.DOT.GOV.''*

Decided: April 25, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–10755 Filed 5–3–02; 8:45 am]

BILLING CODE 4915–00–P

[1] Florida Rail, a noncarrier, directly controls TPWRR, which in turn directly controls Marksman, and Marksman directly controls TPWRY. Florida Rail is directly controlled by RailAmerica Transportation Corp., which is directly controlled by Palm Beach Rail Holding, Inc., a wholly owned subsidiary of RailAmerica, Inc.

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Vessel Entrance or Clearance Statement Form

ACTION: Notice and request for comments.

SUMMARY: Customs published a document in the **Federal Register** on April 19, 2002, entitled ''Proposed Collection; Comment Request; Master's Oath on Entry of Vessel in Foreign Trade'', inviting comment on an information collection requirement. The document contained many errors, including that the particular information collection on which comments were being sought, the Customs Form (CF) 1300, is no longer called the ''Master's Oath on Entry of Vessel in Foreign Trade''. The CF 1300 is now called the ''Vessel Entrance or Clearance Statement''. Accordingly, the document published on April 19, 2002, is withdrawn. This document, in which

Customs invites the general public and other Federal agencies to comment on the information collection entitled ''Vessel Entrance or Clearance Statement'' replaces the April 19 document. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3502(c)(2)).

DATES: Written comments should be received on or before July 5, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION:

Background

On April 19, 2002, Customs published a document in the **Federal Register** (67 FR 19477) inviting the public to comment on an information collection entitled the ''Master's Oath on Entry of Vessel in Foreign Trade''. The document contained many errors, including that the particular information collection on which comments were being sought, the Customs Form (CF) 1300, is no longer called the ''Master's Oath on Entry of Vessel in Foreign Trade''. The CF 1300 is now called ''the Vessel Entrance or Clearance Statement''. This document replaces the April 19, 2002 document.

Request for Comments

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Vessel Entrance or Clearance Statement Form.

OMB Number: 1515–0060.

Form Number: Customs Form 1300.

Abstract: This form is used by a master of a vessel to attest to the truthfulness of all other forms associated with the manifest.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, individuals, institutions.

Estimated Number of Respondents: 12,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 21,991.

Estimated Total Annualized Cost on the Public: $314,470.

Dated: April 29, 2002.

Tracey Denning,

Information Services Group.

[FR Doc. 02–11078 Filed 5–3–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 02–21]

Duty-Free Treatment of Articles Imported in Connection With the 2002 World Basketball Championship for Men

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of designation of international athletic event for purposes of preferential tariff provision.

SUMMARY: This notice advises the public of the designation of the 2002 World Basketball Championship for Men to be held in Indianapolis, Indiana, August 29, 2002, through September 8, 2002, as a qualifying international athletic event under subheading 9817.60.00, Harmonized Tariff Schedule of the United States (HTSUS).

EFFECTIVE DATE: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: T. James Min II, Office of Regulations & Rulings (202–927–1203).

SUPPLEMENTARY INFORMATION:

Background

Section 1456 of the Tariff Suspension and Trade Act of 2000 (the ''Act'') (Pub. L. 106–476, 114 Stat. 2101) promulgated the duty-free treatment provided under subheading 9817.60.00, HTSUS, for certain articles brought into the United States for certain international athletic events. Subheading 9817.60.00, HTSUS, which implements section 1456(a) of the Act, states:

> Any of the following articles not intended for sale or distribution to the public: personal effects of aliens who are participants in, officials of, or accredited members of delegations to, an international athletic event held in the United States, such as the Olympics and Paralympics, the Goodwill Games, the Special Olympics World Games, the World Cup Soccer Games, or any similar international athletic event as the Secretary of the Treasury may determine, and of persons who are immediate family members of or servants to any of the foregoing persons; equipment and materials imported in connection with any such foregoing event by or on behalf of the foregoing persons or the organizing committee of such an event, articles to be used in exhibitions depicting the culture of a country participating in such an event; and, if consistent with the foregoing, such other articles as the Secretary of the Treasury may allow.

Section 1456(b) of the Act, as implemented in Note 6 of Subchapter XII, HTSUS, provides that ''[a]ny article exempt from duty under heading 9817.60.00 shall be free of taxes and fees that may otherwise be applicable, but shall not be free or otherwise exempt or excluded from routine or other inspections as may be required by the Customs Service.''

The 2002 World Basketball Championship for Men will be held in Indianapolis, Indiana, from August 29, 2002, through September 8, 2002. This event is sponsored by the *Fédération Internationale de Basketball* (FIBA), which is basketball's international governing body. USA Basketball and the Indianapolis Sports Corporation also will sponsor the event, which features 16 national men's teams from five continents. These teams will be from the United States, Angola, Algeria, Argentina, Brazil, Canada, Puerto Rico, Venezuela, China, Lebanon, Yugoslavia, Turkey, Spain, Germany, Russia, and New Zealand. A total of 62 games will be played over the 11-day event.

The Managing Director of the 2002 World Basketball Championship for Men has requested that the event be designated as a qualifying international athletic event for purposes of subheading 9817.60.00, HTSUS.

Determination

Section 1456 of the Tariff Suspension and Trade Act of 2000 provides that the Secretary of the Treasury may determine that international athletic events not explicitly mentioned in the statute qualify as similar to those mentioned for purposes of the duty-free treatment provided for in subheading 9817.60.00, HTSUS.

Noting that the 2002 World Basketball Championship for Men is organized by FIBA, the international governing body for basketball, and that the event includes finalists from over five continents, it is therefore determined that the event qualifies as a ''similar international athletic event'' in accordance with section 1456 of the Tariff Suspension and Trade Act of 2000. Therefore, articles meeting the conditions and requirements set forth in subheading 9817.60.00, HTSUS, imported in connection with the 2002 World Basketball Championship for Men, will be entitled to duty-free treatment.

Robert C. Bonner,

Commissioner of Customs.

Approved: April 30, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–11131 Filed 5–3–02; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register

Vol. 67, No. 87

Monday, May 6, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Microsoft Corporation; Public Comments

Correction

In notice document 02–5355 beginning on page 23654 in the issue of Friday, May 3, 2002, make the following correction:

On page 30305, third column, second line from the bottom, the file date ''5-3-02'' should read ''5-2-02''.

[FR Doc. C2–5355 Filed 5–3–02; 8:45 am]

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Federal Register

Monday,
May 6, 2002

Part II

Environmental Protection Agency

40 CFR Part 51

Proposed Revisions to Regional Haze Rule To Incorporate Sulfur Dioxide Milestones and Backstop Emissions Trading Program for Nine Western States and Eligible Indian Tribes Within That Geographic Area; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7205–4]

RIN 2060–AJ50

Proposed Revisions to Regional Haze Rule To Incorporate Sulfur Dioxide Milestones and Backstop Emissions Trading Program for Nine Western States and Eligible Indian Tribes Within That Geographic Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The purpose of this proposal is to request comment on revisions to the EPA's regional haze rule to incorporate certain provisions for Western States and eligible Indian Tribes.

The Western Regional Air Partnership (WRAP) submitted an Annex to the 1996 report of the Grand Canyon Visibility Transport Commission (GCVTC) to EPA on September 29, 2000. This submittal was required under the regional haze rule in order for nine Western States (and Indian Tribes within the same geographic region) to have the option of submitting plans implementing the GCVTC recommendations. The Annex contains recommendations for implementing the regional haze rule in the West, including a set of recommended regional emissions milestones for 2003–2018 sulfur dioxide (SO_2), a key precursor to the formation of fine particles and regional haze.

In this proposal, EPA proposes to approve the provisions of the Annex submitted by the WRAP as meeting the requirements of the regional haze rule and applicable requirements under the Clean Air Act (CAA). In this proposal, we include specific proposed changes to the regional haze rule to incorporate recommendations from the Annex.

DATES: *Comments:* We are requesting written comments by July 5, 2002.

Public Hearings: The public hearing will be held on June 4, 2002 at 2 p.m.

ADDRESSES: *Comments:* You should submit comments on today's proposal and the materials referenced herein (in duplicate if possible) to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–2000–51, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. You may also submit comments to EPA by electronic mail at the following address: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. All comments and data in electronic form must be identified by the docket number [A–2000–51]. Electronic comments on this proposed rule also may be filed online at many Federal Depository Libraries.

Public Hearings: The public hearing will be held in rooms 1709 and 1710, Arizona Department of Environmental Quality, 3033 North Central, Phoenix, Arizona, located on the South Mall.

If you wish to attend the public hearing or wish to present oral testimony, please send notification no later than one week prior to the date of the public hearing to Ms. Marty Robin, Air Division (AIR–1), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 947–4143, email robin.marty@epa.gov.

Written statements (duplicate copies preferred) should be submitted to docket number A–2000–51 at the address listed above for submitting comments. The hearing schedule, including lists of speakers, will be posted on EPA's webpage at *http://www.epa.gov/air/visibility/whatsnew.html.*

A verbatim transcript of the hearings and written statements will be made available for copying during normal working hours at the Air and Radiation Docket and Information Center at the address listed above.

Docket: Information related to this proposal is available for inspection at the Air and Radiation Docket and Information Center, docket number A–2000–51. The docket is located at the U.S. EPA, 401 M Street, SW., Room M–1500, Washington, DC 20460, telephone (202) 260–7548. The docket is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Tim Smith (telephone 919–541–4718) , Mail Code C504–02 , EPA, Air Quality Strategies and Standards Division, Research Triangle Park, North Carolina, 27711, or Steve Frey (telephone 415–972–3990), EPA Region 9 (AIR–5), 75 Hawthorne Street, San Francisco, CA 94105. Internet addresses: *smith.tim@epa.gov* and *frey.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: We are providing the public with the opportunity to comment on EPA's incorporation of SO_2 milestones and a backstop emissions trading program for nine Western states and eligible Indian Tribes within that geographic area.

Oral testimony at the public hearing will be limited to 5 minutes each. The hearing will be strictly limited to the subject matter of the proposal, the scope of which is discussed below. Any member of the public may file a written statement by the close of the comment period.

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I. Overview of the Proposed Stationary Source SO_2 Reduction Program

The purpose of this rulemaking is to propose revisions to 40 CFR 51.309 of the regional haze rule to incorporate additional provisions to address visibility impairment in the 16 Class I areas on the Colorado Plateau.

A. What Is the Regional Haze Rule?

The CAA, in section 169A establishes a national goal for protecting visibility in 156 scenic areas. These 156 ''Class I'' areas are federally protected areas and include national parks and wilderness areas. The national visibility goal is to remedy existing impairment and prevent future impairment in these Class I areas, consistent with the requirements of sections 169A and 169B of the CAA.

Regional haze is a type of visibility impairment caused by air pollutant emissions from a broad region. The EPA uses the term regional haze to distinguish these types of visibility problems for those which are more local in nature. In 1999, EPA issued a regional haze rule requiring States to develop implementation plans designed to make ''reasonable progress'' toward the national visibility goal. The first State plans for regional haze are due between 2003 and 2008, (64 FR 35714, July 1, 1999). The regional haze rule provisions appear at 40 CFR 51.308 and 40 CFR 51.309.

B. What Are the Special Provisions for Western States and Eligible Indian Tribes in 40 CFR 51.309 of the Regional Haze Rule?

The regional haze rule at 40 CFR 51.308 sets forth the requirements for State implementation plans (SIPs) under the regional haze program. The rule requires State plans to include visibility progress goals for each Class I area, as well as emissions reductions strategies and other measures needed to meet these goals. The rule also provides an optional approach, described in 40 CFR 51.309, that may be followed by the nine Western States (Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming) that comprise the transport region analyzed by the GCVTC during the 1990's. This optional approach is also available to eligible Indian Tribes within this geographic region. The regulatory provisions at 40 CFR 51.309 are based on the final report issued by the GCVTC in 1996,[1] which included a number of recommended emissions reductions strategies designed to improve visibility at the 16 Class I areas on the Colorado Plateau.

In developing the regional haze rule, EPA received a number of comments on the proposed rule encouraging the Agency to recognize explicitly the work of the GCVTC. In addition, in June 1998, Governor Leavitt of Utah provided comments to EPA on behalf of the Western Governors Association (WGA), further emphasizing the commitment of Western States to implementing the GCVTC recommendations. The WGA comments also suggested the translation of the GCVTC recommendations into a separate section of the rule. The EPA issued a Notice of Availability during the fall of 1998 requesting further comment on the WGA proposal and a draft translation into regulatory language. Based on the comments received on this **Federal Register** notice, EPA developed the provisions set forth in 40 CFR 51.309 that allow the nine Transport Region States and eligible Tribes within that geographic area to implement many of the GCVTC recommendations within the framework of the national regional haze rule.

The provisions in 40 CFR 51.309 comprise a comprehensive long-term strategy for addressing sources that contribute to visibility impairment within this geographic region. The strategy addresses the time period between the year 2003,[2] when the implementation plans are due, and the year 2018. The provisions address emissions from stationary sources, mobile sources, and area sources such as emissions from fires and windblown dust.

One element of the GCVTC's strategy to address regional haze is a program to reduce stationary source emissions of SO_2. This program calls for setting a series of declining caps on emissions of SO_2. These declining caps on emissions are referred to as emissions milestones and provide for a reduction in SO_2 emissions over time. In designing this program, the GCVTC intended for these milestones to be reduced through voluntary measures, but also included provisions for an enforceable market-based program that would serve as a ''backstop'' if voluntary measures did not succeed. At the time the regional haze rule was published, however, it was broadly recognized that the specific emission milestones, and the details of how both the voluntary and enforceable phases of the program would be implemented, were necessary elements of a regulatory program. Accordingly, the regional haze rule, in 40 CFR 51.309(f), required the development of an ''Annex'' to the report of the GCVTC that would fill in these details. The regional haze rule provided that the option afforded by 40 CFR 51.309 would only be available if an Annex addressing the specific requirements of 40 CFR 51.309(f) was submitted to EPA by October 1, 2000. The EPA required the submission of an Annex by this date to ensure that EPA would be able to act on it before the December 31, 2003 deadline for SIPs under 40 CFR 51.309(c).

C. What Was Required To Be Included in the Annex to the GCVTC Report?

The regional haze rule required the GCVTC (or a regional planning body formed to implement the Commission recommendations, i.e., the WRAP) to provide recommendations to fill in the details for two main aspects of the program:

—Emissions reductions milestones for stationary source SO_2 emissions for the years 2003, 2008, 2013, and 2018. The milestones must provide for ''steady and continuing emissions reductions'' for the 2003–2018 time period. In addition, the milestones must ensure greater reasonable progress than would be achieved by application of best available retrofit technology (BART) pursuant to section 51.308(e)(2).

—Documentation for implementing a market trading program in the event that voluntary measures are not sufficient to meet the required milestones. This documentation must include model rules, memoranda of understanding, and other documentation describing in detail how emissions reductions progress will be monitored, what conditions will require the market trading program to be activated, how allocations will be performed, and how the program will operate.

The EPA received the Annex from the WRAP in a timely manner, on September 29, 2000. The EPA recognizes the significant amount of work that was devoted to developing the Annex and we commend the WRAP participants for their efforts. Under 40 CFR 51.309(f)(3), if EPA finds that the Annex meets the requirements of the regional haze rule, EPA committed to revise the regional haze rule based on

[1] Recommendations for Improving Western Vistas. Grand Canyon Visibility Transport Commission, June 10, 1996.

[2] As explained in unit III of this preamble, Indian Tribes are given the flexibility under EPA regulations to submit implementation plans and opt into the program after the 2003 deadline.

the Annex to incorporate provisions requiring compliance with the milestones and backstop trading program. Along with the existing elements of 40 CFR 51.309, these new provisions would also be addressed in the 2003 SIPs by the Transport Region States. This proposed rule is the first step in revising section 51.309 based on the Annex.

D. What Topics Are Covered in This Preamble?

The preamble addresses the following topics:

- The proposed regional SO_2 milestones and WRAP's determination that the milestones meet the criteria for approval in the regional haze rule. The EPA has reviewed the WRAP's methodology for developing specific milestones for SO_2 for the years between 2003 and 2018. The EPA proposes to approve the milestones as satisfying the broad requirements of the regional haze rule. The EPA believes that the milestones provide for ''steady and continuing emissions reductions.'' The EPA also believes that the milestones provide for ''greater reasonable progress'' than the BART emission limits that would otherwise be required by the regional haze rule.
- Ways in which the milestones may be adjusted in the future. The preamble discusses the limited circumstances under which the milestones may be adjusted in the future and the proposed administrative process for making those changes.
- The stationary sources of SO_2 that are included in the program. This unit of the preamble discusses the stationary sources of SO_2 that would be required to participate in the program, and whose cumulative emissions would be compared to the milestones.
- The annual process for determining whether a milestone is exceeded, thereby triggering the trading program. This section describes the steps to be followed in evaluating emissions data at the State, tribal and regional levels. It also describes a mechanism by which States and Tribes can activate the trading program in 2013 if evidence indicates that the 2018 milestone will not be reached without such action.
- Key trading program elements that are required in SIPs and Tribal implementation plans (TIPs). This unit of the preamble covers issuance of and compliance with allowances, emissions quantification protocols and tracking system, the annual reconciliation process, and penalty provisions.
- Status of the program after 2018. This unit of the preamble discusses what happens to the milestones and backstop trading program at the completion of the first implementation period, in 2018.

Unit II of the preamble describes each of these programmatic areas in detail, including EPA's review of the relevant portion of the WRAP submittal. Unit III discusses issues related to implementation of this program in Indian country. Unit IV documents that this proposal complies with the administrative requirements of various Executive Orders and statutes.

E. What Is the Next Step If the Regional Haze Rule Is Revised?

If this proposal is finalized, it will modify the requirements in 40 CFR 51.309 of the regional haze rule. As a result, 40 CFR 51.309 will then provide the complete regulatory framework to be used by Western States and Tribes in developing regional haze implementation plans. The EPA will continue to work closely with the States and Tribes to support their efforts to develop plans that meet the applicable requirements of the regional haze rule. Once State and tribal plans that meet the applicable requirements of the regional haze rule are reviewed and approved by EPA, they will be federally enforceable.

The requirements in 40 CFR 51.309, if revised, will be the product of a substantial effort by many States, Tribes, Federal agencies, and other interested parties, extending over a number of years from the work of the GCVTC to that of the WRAP. The EPA recognizes, however, that the States and Tribes do have the option of implementing the regional haze rule under 40 CFR 51.308 rather than 40 CFR 51.309. Because the objective of 40 CFR 51.309 is to provide a regional approach to protecting air quality at the 16 Class I areas on the Colorado Plateau, EPA believes that there must be a ''critical mass'' of States participating for 40 CFR 51.309 SIPs to be approvable.

II. Proposed Program Details

Today's proposal closely follows the provisions of the Annex submitted by the WRAP on September 29, 2000, and the supplement to the Annex submitted on June 1, 2001. [3] [4] The EPA proposes to incorporate those provisions into 40 CFR 51.309 of the regional haze rule by adding a new paragraph (h), by adding language to refer to this new paragraph, and by adding a few new definitions.

In this section of the preamble, we discuss the details of the proposed regional emission tracking and backstop trading program for stationary source SO_2 emissions. For each provision of the program, we provide:

—An overview of the provision,
—The requirements that apply to the provision in 40 CFR 51.309(f)(1) of the regional haze rule,
—The section of the Annex and/or supporting documents where the WRAP discusses the provision and its rationale,
—A discussion of EPA's proposed finding that the provision meets the requirements of the CAA and the regional haze rule, and
—A description of how EPA proposes to incorporate the provision into the regional haze rule.

A. What Are the Proposed Regional SO_2 Emission Milestones? [5]

A key provision of the WRAP's SO_2 reduction program is a set of SO_2 emissions milestones. The Annex includes a set of milestones, which represent targets for the total annual amounts of SO_2 emissions that may be emitted from stationary sources of SO_2 within the nine-State region. The program is designed to ensure that these milestones will be met. The EPA agrees with the WRAP's conclusion that these milestones meet the requirements of the CAA and the regional haze rule, and EPA proposes to amend the regional haze rule to incorporate the milestones into the rule. The rationale for EPA's position is set forth in this unit of the preamble.

1. Background. Requirement in the Regional Haze Rule that the Milestones Must Provide for ''Greater Reasonable Progress'' than BART and for ''Steady and Continuing'' Progress.

The regional haze rule, in 40 CFR 51.309(f)(1)(i), requires the Annex to contain milestones for the years 2003, 2008, 2013, and 2018. Moreover,

[3] *Supplementary Submittal to EPA in Support of the SO_2 Annex to the Grand Canyon Visibility Transport Commission Report.* Submitted to EPA by the Western Regional Air Partnership, June 1, 2001.

[4] The WRAP submitted a satisfactory Annex, which included all of the elements listed in 40 CFR 51.309(f)(1) (i) and (ii). This enabled EPA to begin work immediately on assessing the substance of the WRAP's strategy for addressing visibility impairment in the 16 Class I areas covered by 40 CFR 51.309(f). The October 1, 2000 deadline was accordingly met. The supplemental information submitted by the WRAP after the October 1, 2000 deadline has served to improve the clarity of today's proposal and will improve the implementation of the program.

[5] In 40 CFR 51.309 of the regional haze rule issued on July 1, 1999, we defined the term ''milestone'' as a reduction in emissions relative to a 1990 actual emissions baseline. In discussions of the WRAP, and in the Annex itself, the term almost has most often been used to mean an emissions cap for the region that reflects a reduction in emissions. To avoid any confusion, EPA is proposing to revise the definition of ''milestone'' to more closely conform to the way it is used in the Annex.

paragraph 40 CFR 51.309(f)(1)(i) requires that the milestones ''must be shown to provide for greater reasonable progress than would be achieved by application of best available retrofit technology (BART) pursuant to § 51.308(e)(2).''

In order to understand the implications of these requirements for ''greater reasonable progress * * * than * * * BART,'' it is important to understand the basic provisions for BART in the CAA and in the regional haze rule. The CAA, in section 169A(b)(2) requires that SIPs for visibility protection must apply BART to certain large-emitting sources. More specifically, BART is required for sources that: [6]

(1) Are in one of 26 specific listed source categories;

(2) Were in existence as of August 1977 but were not in operation in August of 1962;

(3) Have the potential to emit 250 tons per year; and

(4) Emit an air pollutant that ''may reasonably be anticipated to cause or contribute to any impairment of visibility'' in any of 156 protected scenic areas.

When EPA published its regulations for regional haze SIPs in 1999, we included a requirement for BART. In their regional haze SIPs, States must identify sources subject to the BART requirement, and for these sources there are two options. The first option, set forth in 40 CFR 51.308(e)(1), is to establish case-by-case BART emissions limits for each source subject to BART. The second option, set forth in 40 CFR 51.308(e)(2), is to develop an alternative program, such as an emission trading program, that provides for ''greater reasonable progress'' in visibility improvement than would be achieved through the case-by-case imposition of BART. The BART requirements of the regional haze rule are described in detail in the preamble to the regional haze rule, (64 FR 35737, July 1, 1999). Additionally, the EPA has proposed guidelines for implementing the BART requirement, (66 FR 38108, July 20, 2001).

Paragraph 40 CFR 51.309(f)(1)(i) requires that the milestones:

> Must provide for steady and continuing emissions reductions for the 2003–2018 time period consistent with the Commission's definition of reasonable progress, its goal of 50 to 70 percent reduction in sulfur dioxide emissions from 1990 actual emission levels by 2040, applicable requirements under the CAA, and the timing of implementation plan assessments and identification of deficiencies which will be due in the years 2008, 2013, and 2018.

The requirement for ''steady and continuing'' emissions reductions originated in a recommendation of the 1996 report of the GCVTC (*Recommendations for Improving Western Vistas. Report of the Grand Canyon Visibility Transport Commission to the United States EPA,* p. 34).

The Annex includes the WRAP's recommended milestones. The milestones are listed Table 1 in section III (page 55) of the Annex, and are also listed and discussed further in section II (pages 9–15) of the Annex and in Attachment C of the Annex. The WRAP has concluded that the milestones meet the requirements of the regional haze rule discussed above. The EPA agrees with the WRAP's conclusions and is proposing to amend the regional haze rule to incorporate these milestones into the rule. The following discussion sets forth the technical analysis and rationale for (1) EPA's proposed conclusion that the year 2018 milestone provides for ''greater reasonable progress than BART,'' and (2) EPA's conclusion that the milestones provide for ''steady and continuing progress.''

2. Milestone for the Year 2018. Rationale for EPA's Proposal that the Year 2018 Milestone Represents ''Greater Reasonable Progress'' than BART.

Attachment C to the Annex discusses (1) the WRAP's process for developing a regional emissions milestone for SO_2 for the year 2018, and (2) the WRAP's determination that the regional milestone will provide for greater reasonable progress than would be achieved by BART. Considerable discussions, technical analyses, and negotiations were held within the WRAP to develop the year 2018 milestone.[7]

To identify the year 2018 milestone, the WRAP:

—Estimated the baseline SO_2 emissions for the year 2018, (e.g., the predicted SO_2 emissions in the year 2018 in the absence of a program to reduce SO_2 emissions);

—Developed a list of BART-eligible sources in the region;

—Estimated the emissions reductions that BART sources could achieve, and

—Selected a year 2018 milestone that reduces the baseline emissions by an amount that would achieve greater reasonable progress in improving visibility than by requiring each BART-eligible source to install BART. The EPA agrees with the WRAP that these are appropriate steps for demonstrating that the year 2018 milestone is consistent with the regional haze rule requirement for achieving greater reasonable progress than BART if source-specific BART is not applied.

Baseline emissions. The WRAP conducted a technical analysis to calculate a best estimate of the projected actual SO_2 emissions baseline for the year 2018. Based upon a review of the documentation of this analysis, and based upon EPA's participation in the WRAP's technical forums and committees, the EPA believes that the data used and assumptions made by the WRAP for projecting the baseline are reasonable. The EPA invites comment on these baseline emission estimates, including whether there are any elements of the calculations for which alternative assumptions would be more technically appropriate. The point source SO_2 emission inventory for the nine-State region can be subdivided into four broad classes: (1) Electric utility boilers, (2) cogeneration facilities, (3) copper smelters, and (4) other sources. Electric utility boilers are by far the largest emitting category, comprising about two-thirds of the overall SO_2 inventory. Copper smelters are the next largest source of SO_2 emissions. A host of smaller sources contribute to the ''other source'' category, including industrial boilers, petroleum refineries, cement kilns, paper mills, and natural gas production plants.

For each of these broad classes, estimation of any future year's emissions involves the estimation of actual emissions for a year in the recent past, and then making assumptions on how those emissions will change in the future. We provide an overview here of how the WRAP developed the year 2018 baseline by taking emissions estimates for the most recently available year (generally 1998 or 1999) and by making assumptions on how those emissions would change by the year 2018. Further details are available in the technical support information provided by the WRAP.[8]

[6] In the regional haze rule, EPA uses the term ''BART-eligible source'' to refer to sources meeting criteria (1) to (3), and uses the term ''sources subject to BART'' to refer to sources meeting all four criteria.

[7] You will find complete information on discussions related to this milestone at the WRAP's website (*http://www.wrapair.org.* These discussions generally took place within the WRAP's Market Trading Forum.

[8] *Technical Support Documentation. Voluntary Emission Reduction Program for Major Industrial Sources of Sulfur Dioxide in Nine Western States and a Backstop Trading Program.* WRAP, October 16, 2000.

The WRAP estimated utility emissions for the year 2018 using, as a starting point, 1999 emissions data that the utilities submitted to EPA to comply with the requirements of the national acid rain program. In order to estimate how these current emissions would change for the year 2018, the WRAP took into account several considerations. The resulting utility emissions forecast for the year 2018, taking into account all of these considerations, is 415,000 tons.

First, the WRAP took into account for utilities the expected future operations at coal-fired power plants. The WRAP assumed that boilers would be shut down by the year 2018 if they had been in operation more than 60 years by that date (that is, sources which began operation in the year 1957 or before). For the remaining boilers, the WRAP assumed they would continue to operate and would increase their utilization of capacity from current rates (typically less than 80 percent of name plate capacity) to an 85 percent utilization rate. In developing the emission forecasts, the WRAP took into account future demand growth. The WRAP assumed there would be an increase of 1.4 percent per year in net generation in the GCVTC region. As noted above, the WRAP assumed that existing sources would continue to be used until they reached 85 percent of capacity. When existing available generation is exhausted, new sources are assumed to emit on average 0.02 pounds per million BTU. The 0.02 pounds per million BTU figure assumes that well-controlled coal-fired boilers would comprise 20 percent of the new generation capacity, with the remainder of generation using gas-firing (either natural gas or from coal gasification). Documentation of the WRAP's assumptions for power generation is found in section 2.C of the document entitled *Technical Support Documentation. Voluntary Emissions Reduction Program for Major Industrial Sources of Sulfur Dioxide in Nine Western States and a Backstop Trading Program.* Submitted by the WRAP to the U.S. EPA, October 16, 2000.

Second, the WRAP considered the expected reductions in SO_2 emissions from the Mohave Generating Station in Nevada and from a number of plants on the Colorado Front Range. For the Mohave Generating Station, the plant's owners and a number of environmental organizations entered into a consent decree on December 21, 1999. A proposed revision to the Federal Implementation Plan (FIP) for Nevada, reflecting the terms of the consent decree, was published in the **Federal Register** on February 8, 2002, (67 FR 6130). For the Colorado Front Range plants, reductions are expected from a voluntary agreement between Public Service Company of Colorado and the Colorado Air Pollution Control Division.[9]

Third, the WRAP applied a 10,000 ton downward adjustment to account for the expected effects of a recent revision to the procedure for measuring the stack flow rate, which is an integral part of the measurement of SO_2 emissions using a continuous emission monitor (CEM). The procedure in place before the revision, which was used in the calculation of the 1999 baseline emissions, could overestimate the flow rate for certain types of stacks, and thus lead to an overestimate of the measured emissions. This same overestimate would also be present in estimates of future year emissions for the 2003 to 2018 time period, which used the 1999 emissions as a starting point. Accordingly, the new procedure, if used, would lead to a decrease in the measured and forecasted emissions even if the emitting characteristics of the boiler (fuel used and sulfur content) did not change. Such a ''paper'' decrease would not represent real emissions reductions. The WRAP estimated that for the year 2018, there will be 10,000 tons of emission decreases that will be solely due to expected changes in the flow rate measurement method for the boiler population. Thus, 10,000 tons were subtracted from the year 2018 milestone.

Finally, the WRAP included an upward adjustment to account for continued operation of three of the Colorado Front Range boilers that would be operating more than 60 years in the year 2018. Even though the general methods used to forecast emissions assumed that these boilers would shut down after 60 years, the WRAP believed that planned capital investments would likely extend the operations of these three boilers for a longer time period. The WRAP's estimated emissions increase, to account for these three boilers, is 4,000 tons.

[9] ''Voluntary Emissions Reduction Agreement between the Colorado Air Pollution Control Division and Public Service Company of Colorado,'' submitted for approval to the Air Quality Control Commission, July 16, 1998.

For cogeneration facilities, the WRAP assumed that year 1999 emissions of 8,000 tons would remain constant through the year 2018, with no growth or retirement of these plants.

For copper smelters, the WRAP used emissions data for 1998 [10] provided by the State air quality agencies as the starting point for projecting SO_2 emissions for 2018. Since 1998, two smelters have temporarily suspended operations. It is difficult to predict the national and international market conditions that would influence whether these smelters will resume operation. Accordingly, the WRAP decided to include two separate emissions forecasts for the year 2018 for smelters. The first forecast assumes that the two suspended smelters will be permanently shut down by the year 2018, and emissions from the remaining smelters would be 48,000 tons. The second forecast operations at the two currently suspended smelters will have resumed, which results in an overall smelter emissions total of 78,000 tons.

For the broad ''other source'' category, the WRAP used recent inventory data as the starting point for future projections. To forecast emissions to the year 2018, the WRAP used general growth and retirement rates that are included in the Integrated Assessment System (IAS) used by the GCVTC. The growth and retirement rates in the IAS are annual percentages that are applied to the base year inventory total.[11] The inventory amount is reduced according to the retirement rates, and increased according to the growth rates. The WRAP funded a technical review of the emissions for the ''other source'' category, which was completed in July 2000. This report, *Historical and Future SO_2 Emissions Analysis. 9 State Western Region Draft Report,* is included as section 2.A of the WRAP's technical support documentation. For these sources, emissions were predicted to decline from the 1998 total of about 162,000 tons to 141,000 tons in the year 2018.

[10] For all other sources besides utility boilers, the year 1998 was the most recent year of data available to the WRAP at the time the Annex was developed.

[11] For non-utility sources, the WRAP's IAS took demand growth into account through an economic model called the Regional Economics Model, Inc (REMI) model. The REMI model predicts changes in economic indicators for source categories and regions within the overall geographic area studied. The REMI model was used to determine the degree to which activity levels are predicted to increase for a given source type and sub-region.

In summary, the WRAP estimates year 2018 emissions as follows:

Electric utility boilers [12]	415,000
Cogeneration units	8,000
Copper smelters	48,000 or 78,000
Other stationary sources	141,000
Total (if suspended smelters remain closed)	612,000
Total (if suspended smelters resume operation)	642,000

[12] Including adjustment for new flow rate method, and including the retirement adjustment for Colorado Front Range plants. This value represents the 421,000 tons for ''utility emissions'' on page C–8 of the Annex, plus the 4,000 tons for ''front range adjustment'' on page C–8, minus the 10,000 tons referred to as ''CEMS bias adjustment'' on page C–11 of the Annex.

List of BART-eligible sources. The WRAP, as described in Appendix C of the Annex, pages C–2 and C–3, developed a list of BART-eligible sources using the definitions in the regional haze rule and a number of assumptions. Subsequent to the submittal of the Annex, the EPA formally proposed BART guidelines in a rulemaking proposal published on July 20, 2001 (66 FR 38108). These proposed guidelines include proposed methods for identifying BART-eligible sources. In order to meet the October 2000 deadline for the Annex, the WRAP needed to identify BART-eligible sources before the guidelines were proposed by EPA.

In identifying BART-eligible sources, the WRAP identified individual emission units that have a potential to emit more than 250 tons per year. In the proposed BART guidelines, the EPA takes a slightly different approach. Using the method in the proposed BART guidelines, a source would be BART-eligible when the sum of the potential emissions over all emission units built between the 1962–1977 time period is greater than 250 tons per year. For example, assume a plant had two emission units built within the 1962–1977 time period, emission unit A with a potential to emit 125 tons per year of SO_2, and unit B with a potential to emit 150 tons per year of SO_2. Under the proposed BART guidelines, you would add the potential emissions of both units. Thus, both of these units would be BART-eligible under EPA's proposed BART guidelines because their combined potential to emit exceeds 250 tons per year. Under the system used by the WRAP, these units would not have been identified as BART-eligible.

The EPA believes that even if the BART guidelines are finalized as proposed, the BART-eligible sources identified by the WRAP, and the SO_2 emissions resulting from those sources, would be nearly identical to those identified under the BART guidelines. The EPA estimates that the difference in emissions coverage between the method used by the WRAP and the method in EPA's proposed guidelines is at most a few thousand tons. We request comment on this assessment.

Emissions reductions from BART-eligible sources. The WRAP's next step was to calculate the emissions reductions that would be achieved by requiring the installation and operation of BART on all BART-eligible sources in the region. The first step in this process was to identify the ''appropriate'' retrofit technologies for categories of BART-eligible sources. This is described in section C of Annex Attachment C. The WRAP discusses in Attachment C, page C–4, that the factors to consider for BART, including cost, energy and non-air environmental impacts, existing pollution controls, and remaining useful life were addressed in a broad way through the identification of technologies that were currently being used as retrofits in the region. The WRAP's Market Trading Forum looked at ranges of potential retrofit controls and established a level that it expected to be valid as a regional average. Further documentation of the technology analysis is found in section 6 of the Technical Support Document (*Technical Support Documentation. Voluntary Emissions Reduction Program for Major Industrial Sources of Sulfur Dioxide in Nine Western States and a Backstop Trading Program.* Submitted by the WRAP, October 16, 2000). This technology analysis was performed on a source category basis, as is allowed by the regional haze rule.

The WRAP developed a series of control technology assumptions for specific categories in the region. These control technology assumptions are summarized in Annex Table 1, page C–5. Another table describing the types of controls considered is included as Table 1 on pages 12–18 of Section 6.A of the *Technical Support Document.* The technology determination with the greatest effect on emissions was for utility boilers, which represent about ⅔ of projected 2018 emissions, and which also have the greatest potential for further emissions control. For utility boilers, the WRAP developed a three-tier system as follows. For uncontrolled utility boilers, and for boilers currently with controls achieving less than a 70 percent reduction in SO_2 emissions, the WRAP assumed an ''appropriate'' technology level of 85 percent control. For boilers currently achieving a 70 to 80 percent reduction in SO_2 emissions, the WRAP assumed that control efficiencies could be increased by five percent. For example, if a boiler is currently achieving 72 percent reduction in SO_2 emissions, the WRAP assumed it would be controlled to 77 percent. For utility boilers currently achieving greater than 80 percent reduction in SO_2 emissions, no additional reductions were assumed.

In developing the three-tier system for boilers, the WRAP assumed that emissions can be reduced by flue gas desulfurization, and made broad judgments on the level of control that this technology could achieve. These judgments included a general discussion of whether any of the statutory factors for BART would likely mitigate against application of the technology. As noted in Table 1, page C–5 of the Annex, the WRAP assumed controls for additional categories as follows:

—Petroleum refineries. For sulfur recovery units, the WRAP assumed BART was 98 percent control or the equivalent of a 3-stage Claus unit. For catalytic crackers, the WRAP assumed 90 percent control level. For flares, the WRAP assumed no additional control.

—Industrial boilers. For non-utility boilers, the WRAP used the same 3-tier assumptions as for utility boilers.

—All other categories, including cement kilns, recovery furnaces at kraft pulp mills, and copper smelters. The WRAP assumed that BART would require no additional SO_2 control.

The WRAP calculated the emissions reductions for the BART-eligible sources for the year 2018 as outlined in section 6.B of the *Technical Support Documentation.* By applying the 3-tier approach to utility boilers, and the assumptions noted above for refineries and industrial boilers, the WRAP calculated emissions reductions from BART-eligible sources of about 168,000 tons for the year 2018. Of this amount, the great majority of the reductions (152,000 of the 168,000) were from utility boilers.

During May 2000, EPA provided the WRAP with a technical review of the control technology judgments made by the WRAP for utility boilers.[13] As noted in this technical review, EPA believes that for utility boilers that are currently uncontrolled, emissions reductions of 90 percent or better are readily achievable. Of the total of 53 BART-eligible utility boilers in the WRAP

[13] May 22, 2000 letter from Lydia Wegman, Richard R. Long, and Deborah Jordan, EPA to Colleen Delaney, co-chair, WRAP Market Trading Forum.

region, 21 are currently uncontrolled. The EPA's technical analysis also provided upper and lower-bound estimates of the degree to which the 30 units with existing wet scrubbers could be upgraded. This technical analysis resulted in emissions reductions of 170,000 to 190,000 tons, which were about 15,000 to 35,000 tons greater than estimated by the WRAP.[14]

Inclusion of an additional amount of emissions to account for ''uncertainty'' and ''headroom.'' In calculating the year 2018 milestone, the WRAP included 35,000 tons for ''uncertainty'' and ''operational headroom.'' This is discussed on pages C–9 through C–11 of Annex Attachment C.

The WRAP uses the term ''headroom'' generally to mean an amount that accounts for unexpected future events. For example, if a WRAP-developed milestone is established at 800,000 tons, and expected emissions are 750,000 tons, then the difference—50,000 tons—is ''headroom'' that provides additional assurances that the milestone would not be expected to be exceeded.

The WRAP uses the term ''uncertainty'' generally in the context of data parameters whose actual values in the future may differ from current projections. All parties to the WRAP discussions agree that there is a fair degree of uncertainty in projecting emissions nearly 20 years in the future. Projections for the year 2018 involve numerous inherent assumptions about economic and other conditions, and the SO_2 emissions results of those conditions. For example, the tool used for emissions forecasting, the IAS, assumes a certain percentages of plant retirements, and emissions reductions from those plant retirements. There is nothing that would prohibit these sources that are assumed to retire from continuing operating, or even increasing their operations. Scenarios different from those projected by the IAS would result in emission increases for the ''other source'' category of several tens of thousands of tons per year. Another example of uncertainty leading to an unexpected increase in emissions would be an increase in the overall average sulfur content of coal used in coal-fired boilers. If this value increased by 5 percent, for example, then the forecasted emission baseline for utility boilers would increase by more than 20,000 tons. It is also possible that boilers that are currently burning natural gas could switch to fuel oil if the relative prices of the two fuels were to change. Finally, there are uncertainties regarding the number of new coal-fired utility boilers that will be built in the region, and the emissions from such boilers.

The EPA agrees with the WRAP that long-term emissions predictions are uncertain and that it is accordingly difficult to predict with accuracy the level of SO_2 emissions for the region in 2018. We request comment on the WRAP's use of the 35,000 tons per year of ''headroom/uncertainty'' as an amount that is included in the calculation of a year 2018 milestone.

Milestones for the year 2018 selected by the WRAP. The WRAP determined the milestone for the year 2018 by taking the projected baseline amount, subtracting the 168,000 tons for ''appropriate'' control technology, and adding the 35,000 tons for ''uncertainty and headroom.'' Because the WRAP projected two cases for future smelter operations, there were two associated milestones for the year 2018. For the case without operation of the two smelters, the WRAP determined that the milestone would be 612,000 − 168,000 + 35,000, or 480,000 tons (the WRAP rounded the value of 479,000 tons up to 480,000). For the case which assumes that the two smelters will resume operation, similar calculations yield a milestone of 510,000 tons.

Discussion of EPA's finding that the year 2018 milestone meets the requirements of the regional haze rule. The EPA believes that the year 2018 milestone fulfills the requirement in 40 CFR 51.309(f)(1)(ii) of the regional haze rule that ''the milestones must be shown to provide for greater reasonable progress than would be achieved by application of BART under 51.308(e)(2).'' 40 CFR 51.308(e)(2) of the regional haze regulations requires that the analysis of whether ''greater reasonable progress'' would be achieved must include the following:

—A list of all BART-eligible sources,
—A source-specific or category-wide analysis of possible BART controls, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use, and the remaining useful life, and
—An analysis of the degree of visibility improvement that would be achieved from application of BART-level controls.

The EPA believes that the WRAP's analysis, described above, meets these requirements. The WRAP has provided a list of BART-eligible sources, and a sufficient category-wide analysis of the possible BART controls. The WRAP also provided an analysis of the visibility improvement from the SO_2 emissions reduction program, in addition to a number of possible scenarios for BART-level controls. This visibility analysis is discussed in section F of Attachment C to the Annex. Supplemental information, which included additional visibility analyses, was submitted to EPA on September 24, 2001 in a document entitled ''Sensitivity Analysis to Quantify the Benefits Achieved by an Emission Cap.''

The EPA has reviewed the calculations, analyses and other documentation provided by the WRAP in order to judge whether the 2018 SO_2 milestone provides for greater reasonable progress than BART. One important consideration in making this judgment, as noted by the WRAP in the Annex, is that the program establishes an enforceable cap for the Region on the emissions of SO_2 from all stationary sources in the region emitting more than 100 tons per year. In contrast, a program that addressed only the BART sources would result in a reduction in emissions from the sources covered by the BART requirements, but it would not limit the overall emissions of SO_2 in the WRAP region.

It is an inherently uncertain exercise to predict future SO_2 emissions in the absence of this program, and there is also uncertainty in predicting what appropriate BART-level emissions controls would be for the year 2018. The EPA believes that the future emissions in the WRAP region could plausibly be greater than or less than those forecasted by the WRAP. For the utility sector, we believe there is a relatively low probability that existing utility boilers will increase their use of capacity by a greater percentage than the overall capacity factor of 85 percent assumed by the WRAP. There is, however, a growing likelihood that there will be more new coal-fired power plants in place in 2018 than assumed when the Annex was submitted to EPA. For copper smelters, it is unlikely that emissions would increase by any appreciable amount above those forecasted in the two scenarios developed by the WRAP. For the ''other'' source category incorporating all non-utility and non-smelter sources, greater use of capacity or new source growth could plausibly lead to emissions that are greater than the 141,000 tons forecasted by the WRAP. In summary, taking into account all of these categories, it is possible that future emissions could be more or less than calculated by the WRAP.

Likewise, the EPA believes there is some uncertainty regarding the level of

[14] Subsequent to EPA's May 2000 analysis, the WRAP developed refined estimates of the year 2000 emissions baseline. This estimate of 170,000 to 190,000 tons was based on the emissions information available at the time of EPA's May 2000 analysis.

emissions control that would be achieved by applying SO_2 controls to the BART-eligible source population on a source-by-source basis. While EPA, as noted above, calculates a somewhat greater degree of possible SO_2 reductions than the WRAP, it is also possible that a State-by-State, source-specific analysis of BART would result in a lesser degree of control on some sources.

The visibility analyses conducted by the WRAP attempted to capture the uncertainty that exists in comparing a program with a fixed cap on emissions to a program that would achieve a given level of control on the BART population. The emissions reductions from the trading program are guaranteed, because they assure that emissions will not exceed the milestones. On the other hand, the overall effect of emissions reductions from application of BART is best expressed as a range of results. Because of the factors States and Tribes may consider when determining BART for individual sources, there is no guarantee of the amount of reductions application of BART would achieve.

The uncertainty of the comparison is compounded to a degree by the fact that under a trading program, it is not possible to predict with precision where the emissions reductions would occur. The modeling results showed that the visibility impacts of the trading program are likely to be very similar to those for the range of possible BART results, and that the visibility impacts of the trading program could be slightly greater or slightly less than a BART-only program would achieve.

Taking all of these uncertainties into account, EPA believes that it is reasonable to conclude that the year 2018 milestone meets the requirements for ''greater reasonable progress'' in the regional haze rule. The WRAP has satisfied the requirements of the regional haze rule that the milestones provided for greater reasonable progress than would be achieved by BART, and the WRAP has provided the necessary documentation to support that conclusion. Central to their finding of greater reasonable progress is that the program provides for an overall cap instead of individual emission limits which do not guarantee the same emissions reductions. Modeling scenarios show that the trading program is likely to achieve results equivalent to, or greater than, an emission limit-based program. Although not determinative of whether the program achieves better than BART reductions, EPA believes that it is also important to recognize that the WRAP program has resulted from a consensus effort, which included broad-based participation of many Western stakeholders.

3. Milestones for the Interim Years (2003 through 2017). Rationale for EPA's Proposal that the Milestones Represent ''Steady and Continuing'' Progress.

As discussed above, 40 CFR 51.309 (f)(1)(i) of the regional haze rule requires that the milestones in the Annex:

> Must provide for steady and continuing emission reductions for the 2003–2018 time period consistent with the Commission's definition of reasonable progress, its goal of 50 to 70 percent reduction in sulfur dioxide emissions from 1990 actual emission levels by 2040, applicable requirements under the CAA, and the timing of implementation plan assessments and identification of deficiencies which will be due in the years 2008, 2013, and 2018.

The WRAP discusses the milestones for these interim years in section II.b, pages 11–15, of the Annex. The milestones selected by the WRAP in the Annex are as follows:

TABLE 1.—WRAP'S PROPOSED REGIONAL DIOXIDE MILESTONES FOR STATIONARY SOURCES EMITTING MORE THAN 100 TPY

[Amounts listed are tons per year]

Year	Each year between 2003 through 2007	Each year between 2008 through 2012	Each year between 2013 and 2017	2018
Maximum Milestone (smelters in)	720,000	715,000	655,000	510,000
Minimum Milestone (smelters out)	682,000	677,000	625,000	480,000

The EPA believes that these milestones provide for ''steady and continuing'' emissions reductions and the requirements of 40 CFR 51.309(f)(1)(i). Taking each phrase of 40 CFR 51.309(f)(1) separately, our rationale for this finding is as follows.

First, 40 CFR 51.309(f)(1)(i) requires steady and continuing progress ''consistent with the Commission's definition of reasonable progress.'' As noted in section II.A.1.b of the Annex, the GCVTC defined reasonable progress as follows:

> Reasonable progress towards the national visibility goal is achieving continuous emission reductions necessary to reduce existing impairment and attain steady improvement of visibility in mandatory Class I areas, and managing emissions growth so as to prevent perceptible degradation of clean air days.

For the reasons set forth below, EPA is proposing to find that the milestones listed above are consistent with this definition in the Commission report.

In its analysis of whether the milestones provide for ''continuous'' or ''continuing'' reductions for the 2003 to 2018 time period, the WRAP uses as its starting point, or frame of reference, the Commission's goal of achieving a 13 percent reduction in 1990 baseline emissions by the year 2000, rather than an estimate of actual emissions for 2000. A 13 percent reduction from the 1990 baseline emission of about 830,000 tons results in emissions of about 720,000 tons. Using the emission inventory estimates for the most recently available year at the time of the Annex, generally from 1998 or 1999, the WRAP estimated that the total actual emissions for the 1998–1999 time period were about 652,000 tons, roughly a 22 percent reduction from the 1990 baseline. Thus, the milestones, which range from 677,000 tons to 715,000 tons for the 2008–2012 time period, allow for actual emission increases to occur between this 1998/1999 time period and this time period. The EPA agrees that the WRAP may use the 13 percent level, rather than current actual emissions, as the basis for determining that ''steady'' reductions are occurring. Otherwise, EPA believes that the region would in essence be penalized for achieving early reductions in emissions. Also, there is future emission growth expected due to increased use of operating capacity at utility boilers and other source types. Accordingly, a relatively ''flat'' line between 2003 and 2012 can represent a significant reduction in emissions that would have otherwise been expected. The EPA requests comment on this finding.

Second, 40 CFR 51.309(f)(1)(i) requires steady and continuing progress ''consistent with * * * (the Commission's) * * * goal of 50 to 70

percent reduction in sulfur dioxide emissions from 1990 actual emission levels by 2040.'' Because the 1990 actual emissions of SO_2 for the region were 830,000 tons per year, the 2018 milestones proposed by the WRAP for 2018 represent a 39 to 43 percent reduction from 1990 baseline emissions. Emissions reductions consistent with the 2018 milestone will achieve a substantial portion of the Commission's goal set by the Commission for the 50-year period, 1990 to 2040. The EPA believes that the criterion for steady and continuing emissions reductions consistent with this long-term goal of 50–70 percent reduction in SO_2 emissions is clearly met.

Third, 40 CFR 51.309(f)(1)(i) requires steady and continuing progress ''consistent with applicable requirements under the CAA.'' The EPA believes that the milestones recommended by the WRAP are consistent with all applicable requirements of the CAA. As noted above, EPA proposes that the milestones constitute ''greater reasonable progress'' than would be achieved through implementation of the BART requirements in section 169A of the CAA.

Finally, 40 CFR 51.309(f)(1)(i) requires steady and continuing progress ''consistent with the timing of implementation plan assessments and identification of deficiencies which will be due in the years 2008, 2013, and 2018.'' In the Annex, the WRAP has established an annual process for comparing emissions with milestones. This annual process, discussed in greater detail below, ensures that emissions will be compared against the milestones each year, and not just in 2008, 2013, and 2018. The EPA believes that this annual check is a helpful clarification of the way the program will be implemented, and that it will ensure that ample information will be available at the time of the 5-year program reviews required by 40 CFR 51.309(d)(10) of the regional haze rule.

In summary, EPA believes that the milestones in the Annex fulfill all of the requirements for ''steady and continuing'' progress. We request comment on this proposed finding.

4. How the Milestones are Listed in the Proposed Amendments to 40 CFR 51.309.

The Annex, in sections II.A.3.b and III.A.6.b, clarifies that the annual process for comparing emissions to the milestones will, with one exception, involve a comparison of multi-year averages. Because the program does not begin until 2003, compliance with the 2003 milestone will be based on 2003 emissions data only. Compliance with the program in 2004 will be based on an average of 2003 and 2004 emissions data. In subsequent years, compliance with the milestones will be determined by using a 3-year average of emissions. The Annex also makes clear that for the 2005 through 2017 time period, compliance will be determined by comparing 3-year averages of emissions with 3-year averages of the milestones. For example, the milestones for 2006, 2007, and 2008 are 677,000 682,000, and 682,000 tons, respectively (see Table 1 above, smelters out). The 3-year average of the milestones is: (682,000 + 682,000 + 677,000)/3, or about 680,000 tons. Thus, after the end of calendar year 2008, under the system of averaging contained in the Annex, the participating States and Tribes will compare the 3-year average of emissions (that is, the average of emissions for the years 2006, 2007, and 2008) against 680,000 tons.

To minimize any confusion from this system of averaging, EPA has included in the proposed amendments to 40 CFR 51.309 a table which sets out, for each year of the program, the emission inventory years to be used, and the amount of tons per year that the emissions will be compared against. This is included in the proposed rule amendments as Table 1 in proposed paragraph 40 CFR 51.309(f)(1). This table also makes clear that for the year 2018, participating States and Tribes will compare the year 2018 inventory to the year 2018 milestone, without any averaging of previous years.

B. What Future Adjustments to the Milestones Are Allowed by the Proposed Rule?

The Annex provides for future adjustments to the milestones under certain prescribed circumstances. The EPA understands that the WRAP's negotiations succeeded largely because the participants were able to reach agreement on milestones that addressed stakeholder interests, met the requirements of the CAA, provided certainty to the regulated community, and provided interest groups with a fixed set of milestones that would ensure long-term progress in reducing SO_2 emissions and improving visibility. However, the WRAP did anticipate that there were a number of specific circumstances under which the milestones should be adjusted. The EPA believes that these are the only circumstances that should lead to changed milestones. The EPA requests comment on the appropriateness of these adjustments and whether additional adjustment to the milestones may be appropriate. These adjustments are described in sections III.A.3, III.A.4, and III.A.5 of the Annex and are discussed further in section II.A.2 of the Annex. The EPA believes that each of these adjustments is consistent with the requirements of the regional haze rule.

The WRAP identified the following seven possible adjustments to the milestones:

(1) Adjustments to be made at the outset of the program if certain States and Tribes choose not to participate in the program, and for Tribes that choose to opt into the program after the 2003 deadline;

(2) Adjustments to account for specific contingencies regarding the future operations of copper smelters;

(3) Adjustments for changes in emission measurement techniques;

(4) Adjustments for changes in flow rate measurement methods;

(5) Adjustments for illegal emissions;

(6) Adjustments due to periodic reviews and audits; and

(7) Adjustments for individual sources opting into the program.

For the first adjustments (1) and (2), the specific amounts by which the milestones would change are listed in the proposed amendments to 40 CFR 51.309 of the regional haze rule. For adjustment (4), a specific defined process for calculating the adjustment can be specified in the rule. The specifics of each of the adjustments are described in detail below. In addition, for three adjustments, (1) (2) and (4), we are proposing in today's amendments the specific circumstances under which the adjustments would occur and the procedures for making these types of adjustments to the milestones. Because we are proposing the specific emission quantities, circumstances and procedures in the rule, and are taking comment on these specific details, we are also proposing to allow States and eligible Tribes to make these adjustments without triggering a requirement to revise their SIP. For the remaining adjustments, we are proposing to require States and eligible Tribes to revise their implementation plans, consistent with the procedures at 40 CFR 51.102 and 40 CFR 51.103, before making the adjustment.

1. Adjustment for States and Tribes That Choose Not To Participate in the Program, and for Tribes That Choose To Opt Into the Program After 2003

As noted previously, 40 CFR 51.309 of the regional haze rule provides nine Western States with an optional

program to meet the requirements of the CAA and the regional haze rule. States that choose to meet the requirements of 40 CFR 51.309 are assured of having an approvable long-range visibility strategy for 16 Class I areas in the vicinity of the Grand Canyon. It is not yet known, however, which States will choose to exercise the option under 40 CFR 51.309. Accordingly, the Annex, including the supplemental information submitted in June 2001[15], provides for adjustments to the milestones in the event that not all eligible States and Tribes choose to participate.

The WRAP has identified for each State, and for each year from 2003 to 2018, the amount of emissions that would be deducted from the milestones for each State that chooses not to participate. The methodology and data sources for determining these individual State opt-out amounts are explained further in the WRAP's supplementary information submitted to EPA in June 2001. The EPA includes in the proposed amendments to 40 CFR 51.309 of the regional haze rule a table (Table 2) displaying the opt-out amounts.

The EPA notes that the emissions amount budgeted in this table are only for the purpose of determining the milestones at the outset of the program should some States and Tribes choose not to participate. The amounts budgeted to each State in this table are not necessarily the amounts that will be allocated to sources in the State if a trading program is triggered. Further discussion on the requirements for source allocations under a trading program are discussed below in unit II.D. of the preamble.

The EPA believes that for the program under 40 CFR 51.309 to achieve the WRAP's objectives and the objectives of the GCVTC, a sufficient number of States must participate in the program. The WRAP recognizes this issue of ''critical mass'' as well and has funded a study to review the results of a number of scenarios for possible participation in the program. The EPA proposes to defer to the WRAP's judgment on the issue of ''critical mass,'' and we request comment on this proposal.

The process for taking the State opt-out amounts into account would happen automatically at the outset of the program and would be reflected in the SIPs submitted in 2003. For the States that opted out, the amounts in Table 2 of the rule (included in the proposed rule in 40 CFR 51.309(h)(1)(i)) would be deducted from the amounts in Table 1 for purposes of establishing the program milestones.

As is discussed below in unit III.D of this preamble, Tribes have the flexibility to opt into the program after the 2003 deadline. The process for taking into account the tribal amounts in Table 2 of the rule needs to take this into account. For Tribes that have not opted into the program by the 2003 date, the amounts in Table 2 will be deducted from the amounts in Table 1 at the outset of the program. For Tribes that opt into the program at a later date, these amounts will be automatically added to the amounts in Table 1, beginning with the first year after the TIP implementing 40 CFR 51.309 is approved by EPA. [16]

2. Adjustment for Smelter Operations

Currently, two of the copper smelters in the nine-State Visibility Transport Region are temporarily shutdown due to economic conditions. These smelters are the Phelps Dodge Corporation's Hidalgo Smelter in New Mexico, and the BHP Company San Manuel Smelter in Arizona. As noted above, it is difficult to predict whether long-term economic conditions may lead to resumed operation of these two smelters. Because of the significance of these smelters, the Annex makes provisions to adjust the milestones upward if either of the two smelters resume operation. The Annex also has a provision to adjust the milestones upward if either one, or both, of the two smelters remain shutdown, but other smelters in the region increase copper production such that SO_2 emissions exceed the year 2000 baseline level. This adjustment for the currently suspended smelters is described in section III.A.3.a. of the Annex and is discussed further in section II.A.2.a of the Annex.

During the last full year of operation of the two smelters, 1998, the Phelps Dodge Hidalgo smelter emitted 22,000 tons of SO_2, while the BHP San Manuel Smelter emitted 16,000 tons. These two smelters have air quality permits from the respective State air agencies, and the Annex states that they would be allowed to resume full operation at any time. The Annex provides for the following adjustments if one or both of these smelters resumes full operation consistent with its existing permitted levels:

—22,000 tons is added to each of the milestones if Phelps Dodge Hidalgo resumes operation but BHP San Manuel does not resume operation,
—16,000 tons is added to each of the milestones if BHP San Manuel resumes operation but Phelps Dodge Hidalgo does not resume operation, and
—If both smelters resume operation, then 38,000 tons is added to the milestones for each subsequent year up to the year 2012, and 30,000 tons is added to each milestone for the year 2013 through the year 2018.

The Annex describes two sets of circumstances under which resumed operations of the smelters could result in emissions that are less than historical levels. The first is if a smelter were to operate in a ''substantially different'' manner than it had operated in the past. For example, if only a portion of a plant were to resume operation, then emissions would fall below past levels. This would happen, for example, if the plant were to resume operation but used the acid plant to produce acid from elemental sulfur, rather than to resume copper production. The Annex states that in such a case, the State will reduce the emissions adjustment amount to reflect such conditions in the milestones.

The second set of circumstances addressed in the Annex for reducing the adjustments is when one or both of the two smelters resumes operations in a manner that triggers new source review requirements under parts C or D of title I of the CAA. The Annex recognizes that this new source review process might lead to a change in the level of SO_2 emission levels as compared to past levels. The Annex states that under such circumstances the State will determine an ''appropriate'' adjustment to the milestone based upon the emission levels allowed by the new source review permit. For this case, the ''appropriate'' emission level will be added to the milestone for each subsequent year after the source remains in operation at the newly permitted levels. The Annex clarifies that in no instances may the adjustments exceed 22,000 tons for the Hidalgo smelter or 16,000 tons for the San Manuel smelter.

The final consideration in the Annex for making adjustments to the milestones to reflect future changes in smelter operations involves those smelters in the region other than Phelps Dodge Hidalgo or BHP San Manuel. The Annex provides for smelter-specific adjustments to the milestones if two conditions are met:

(1) Either the Phelps Dodge Hidalgo or BHP San Manuel smelter has not resumed operations, and

[15] *Supplementary Submittal to EPA in Support of the SO_2 Annex to the Grand Canyon Visibility Transport Commission Report.* Western Regional Air Partnership, June 1, 2001.

[16] If EPA promulgates a FIP implementing 40 CFR 51.309 for a Tribe, that FIP will be treated in the same manner as a TIP for purposes of this provision.

(2) One of the remaining smelters increases its actual emissions [17] above its year 2000 baseline level.

The following table illustrates the smelter-specific adjustments provided for in the Annex.

TABLE 2.—SMELTER-SPECIFIC ADJUSTMENTS

Company/smelter	Baseline emissions (tons per year)	Maximum adjustment to the milestone for any year where emissions exceed 2000 baseline levels
BHP San Manuel	16,000	1,500
Asarco Hayden	23,000	3,000
Phelps Dodge Chino	16,000	3,000
Phelps Dodge Hidalgo	22,000	4,000
Phelps Dodge Miami	8,000	2,000
Kennecott Salt Lake	1,000	100

The EPA interprets the Annex as providing for an adjustment to the milestones by the amount by which a smelter's actual emissions exceed the baseline levels, up to the amount listed in the right-hand column. For example, if in the year 2006 BHP San Manuel has not resumed operation and Asarco Hayden's actual emissions for that year are 25,000 tons (2,000 tons more than Asarco Hayden's baseline emissions), then the milestone would increase by 2,000 tons. If, on the other hand, Asarco Hayden's actual emissions are 28,000 tons, (5,000 tons more than baseline emissions), the milestone would be adjusted by 3,000 tons, the maximum amount listed in the table.

40 CFR 51.309(h)(1)(ii) of the proposed rule identifies the adjustments to the milestones under the various operating scenarios identified in the Annex by the WRAP. The EPA has attempted to clarify the adjustments with a series of ''if-then'' tables consistent with EPA's plain language guidelines. We request comment on these adjustments, and whether these tables properly interpret the procedures in section III.A.3.a of the Annex. In addition, EPA has included in the proposed rule a requirement that any adjustments to the milestones made to reflect changes in smelter operating conditions, and the basis for those adjustments, must be clearly identified by the States and Tribes in the annual process to determine whether the milestone is exceeded. (This annual process is described further in unit II.C of this preamble).

3. Adjustment for Changes in Emissions Calculation Methods

The Annex provides for adjusting the milestones if there are changes in emissions calculation methods. Such changes could result, for example, if States or Tribes were to find errors in the 1998/99 inventories used to establish the milestones, or based on State, tribal and EPA efforts to improve the accuracy of emissions calculation methods.

In establishing an emissions baseline, the WRAP has used a number of different techniques to estimate or measure the emissions from the sources covered by the program. These current methods vary in their accuracy and reliability. For example, EPA believes that the most reliable method for measuring emissions is that currently being used to monitor electric utility boilers under the CAA acid rain program. This monitoring method measures the amount of SO_2 in the exhaust from the boilers and the quantity (flow) of exhaust on a continuous basis. This allows the hourly tracking of SO_2 emissions. Another method for calculating SO_2 emissions for industrial coal-fired boilers is to measure the amount of sulfur in the coal and the quantity of coal burned, and to use EPA emission factors to determine the SO_2 emissions. The EPA considers this method to be less accurate than the method for monitoring emissions for the acid rain program because coal is a heterogeneous mixture. As such, there are variations in the fuel sulfur which result in inherent uncertainties in knowing whether a given fuel sulfur measurement is representative of the entire quantity of fuel combusted. The copper smelters in the WRAP region are also considered to have a reliable method of determining their SO_2 emissions, relying on a combination of monitoring and mass balance.[18] For a number of other source types—such as portland cement plants, fluid cat cracker regenerators and sulfur plants, emissions are usually estimated using emission factors (that is, multipliers that are expressed in terms of amount emitted per amount of throughput or production). For sources relying on emission factors or other calculation techniques, there is a greater probability that there will be future improvements in the emission estimation methods.

As the WRAP's SO_2 program progresses, it is likely that some facilities that have relied on emission factors and other less accurate methods for determining the emissions will improve the accuracy of the emission estimates. The Annex provides for adjustments to the milestones when emission calculation techniques change is to avoid the creation of ''paper'' increases or decreases in emissions that do not reflect actual changes in emissions. As an example, assume that in their baseline inventory, a State in the WRAP region estimated emissions for a portland cement plant using an emission factor that a subsequent source test shows to be inaccurate. If the source test indicated that the plant is emitting 10 percent more emissions per unit of production than predicted by the emission factor, the emission estimate for the portland cement plant would increase even if production levels remained the same. While the new information shows that the emissions from the plant are more than previously thought, this does not mean that emissions have increased. Similarly, a

[17] Although not stated explicitly in the Annex, EPA interprets this to mean legally permissible increases in actual emissions within levels allowed by permits and regulations.

[18] ''Mass balance'' (also sometimes called ''material balance'') techniques use data on the total amount of pollutant present, along with the amount that ends up in product or wastes, to deduce the amount that is emitted to the air. For some source categories, this can be a highly accurate method for determining the emissions. For others, it is much more uncertain.

new method of calculating emissions that shows that emissions per unit of production are less than previously estimated would not indicate that emissions have decreased. Accordingly, in a program which depends on long-term comparisons of emission inventories relative to initial expectations, EPA agrees with the WRAP that it is important that the system avoid creating such ''paper'' increases and decreases.

This provision for making these adjustments is discussed in sections II.A.d. and III.a.4.b of the Annex, and in a supplemental paper entitled ''Emission Tracking Prior to Triggering the Backstop Trading Program.'' In summary, the Annex provides for:

—Documenting the method of estimating or measuring emissions that was used in developing a baseline for the program,
—Keeping track of when these emission calculations methods change relative to the baseline,
—Periodically revising the SIPs to adjust the milestones to reflect these changes, and
—Using the method in place pending the SIP revision.

The Annex provides that the implementation plan submittals must document how the emissions were determined for each unit that is part of the program. This information will be used to track the changes that occur over the years in the emission estimating and measuring techniques. As noted below in unit II.C of this preamble, States will report these changes annually in ''exceptions reports,'' which are reports that are intended to facilitate public review of the annual inventories by highlighting items of interest. The EPA agrees with the WRAP that future adjustments to the milestones for currently unknown changes in emissions calculation methods should only be made through revisions of SIPs/TIPs. The milestones are a fundamental component of the SO_2 reduction program. Accordingly, it is important that any changes to those milestones be transparent to the public in order to ensure the overall integrity of the program. The implementation plan revision process assures that such a public review will take place. At the same time, we agree with the WRAP that it is not practical to provide for SIP revisions every year to account for such adjustments. In the supplemental paper, the WRAP recommends that these adjustments be made every 5 years and be included in the SIP revisions required by 40 CFR 51.309(d)(10). The EPA believes that this is a reasonable time frame for making these changes. The EPA notes, however, that during the time period between the date the calculation method changes and the date that the SIP is revised, it is equally important to ensure that there not be ''paper'' emissions increases and decreases relative to the milestones. This would occur if emissions were reported using a new method, while the milestone reflected baseline estimates based on the previous method. The EPA agrees with the WRAP's suggestion that for purposes of the annual determination, the same method be used for reporting emissions, that is, the old method (on which the baseline emissions were calculated), pending the completion of the periodic SIP revision. The WRAP's process would accomplish this by having the regional planning body identify and account for any such ''paper'' increases and decreases in the annual determination process.

The EPA has incorporated the proposed adjustment for emission calculation method changes in the proposed rule as paragraph 40 CFR 51.309(h)(1)(iii).

4. Adjustments for Utility Boilers Opting to Use More Refined Flow Rate Methods.

In 1999, EPA adopted revisions to EPA's Reference Method 2, the standard method for measuring stack flow rates, (64 FR 26484, May 14, 1999). The revisions provided three new procedures: Methods 2F, 2G, and 2H. The new procedures, if used for a given source, allow for a more detailed assessment of the stack flow rates to provide more accurate results. The changes addressed concerns raised by utilities that Reference Method 2 may over-estimate flow in certain cases, such as when the flow is not going straight up the stack. If the flow rate is over-estimated, this would also lead to the overestimation of SO_2 emissions because the facility's continuous flow rate monitor is calibrated to correspond to the flow test method. Facilities subject to the acid rain program under title IV of the CAA must perform these flow tests at least once a year to determine the accuracy of their continuous flow monitors. Facilities have an option to use either the old Method 2, or one or more of the new methods.

When the WRAP made its emission projections for purposes of developing the milestones, the new methods were not yet in place. Accordingly, if a source owner chooses to use the new flow methods, and if as expected it results in a reduced flow rate for the same level of operation, then there will be a corresponding decrease in the emissions estimate. The EPA agrees with the WRAP that this would create the possibility of a ''paper'' decrease relative to the milestone if the milestone reflects the old method. As discussed in section III.A.5 of the Annex, the WRAP notes that a protocol is needed for adjusting the milestones to reflect changes in the baseline emission for utility boilers any time that a source opts to change its CEMs method. The WRAP addressed this issue in greater detail in a supplemental paper entitled ''Emissions Tracking Prior to Triggering the Backstop Trading Program,'' which was submitted to EPA on June 1, 2001.

The WRAP has identified three possible technical procedures for developing an ''adjustment factor'' for the new flow method. The EPA agrees that any of these three procedures would be acceptable. Under the first procedure, there would be a side-by-side comparison of flow rates using both the new and the old flow reference methods. For example, if the new method measured 760,000 cubic feet per minute, and the old method measured 800,000 feet per minute, the adjustment factor would be (760,000/800,000), or 0.95. The second method would use annual average heat rate, which is reported to the Energy Information Administration (EIA), as a surrogate for the flow rate. Under this method, the flow adjustment factor would be calculated using the annual average heat rate using acid rain heat input data (MMBtu) and total generation (MWHrs) reported to EIA, calculated as the following ratio:

Heat Input/MW for first full year of data using new flow rate method
Heat Input/MW for last full year of data using old flow rate method

The third method would use data reported to EPA's acid rain program. Under this method, there would be a comparison of the standard cubic feet per minute (CFM) per megawatt (MW) before and after the new flow reference method based on CEMs data, as follows:

SCF/Unit of Generation for first full year of data using new flow rate method
SCF/Unit of Generation for last full year of data using old flow rate method

In the supplemental information paper, the WRAP identified three possible approaches for using the adjustment factors for making a correct comparison of emissions to the milestones. The WRAP did not indicate a preference for any single approach. The three options are as follows:

(a) Using one of the options described above for determining the flow adjustment factor, revise the source's baseline emissions forecast for 2003,

2008 and 2013. For each year following the adoption of the new flow reference method through 2017, reduce the interim milestone by the corresponding amount. Using the example above where the adjustment factor is 0.95, this means that the previous baseline emissions for that source would be multiplied by 0.95. The annual compliance check will then be done by comparing regional SO_2 emissions (unadjusted, as reported to EPA's acid rain program) to the revised milestone.

(b) Using one of the options described above for determining the flow adjustment factor, revise the source's reported emissions on an annual basis, and do not adjust the milestone. For the example noted above, the emissions reported to EPA's acid rain program would be adjusted upward by multiplying the amount times (1/0.95). For each year following the adoption of the new flow reference method through 2017, the annual compliance check will be done by comparing the adjusted regional SO_2 emissions to the unadjusted milestones.

(c) Use a combination of the two approaches. Under this approach, interim milestones would be adjusted only every 5 years [using option (a) above] and the reported emissions for additional sources making the change in the intervening years are adjusted for comparison to the milestones [using option (b) above].

The EPA believes that any one of these three approaches would be acceptable, but that a specific approach needs to be selected for the final rule. The EPA also believes that these adjustments to the milestone or to the reported emissions would not necessarily require SIP or TIP revisions, because the precise method for making the adjustment, and the publicly available data elements that will be used for making the adjustment, could be specifically identified in the final rule.

5. Adjustments for Illegal Emissions

The Annex at section III.A.4.d. provides for future decreases to the milestones if it is determined that ''the milestones were based on illegal emissions.'' The Annex also includes a discussion of this adjustment in Attachment A, Draft Model Rule, sections A3.3(b)(4) and C4.6. These sections of the Annex provide a brief discussion of this adjustment and noted that ''the specific mechanism for this adjustment needs further discussion by the WRAP.''

In developing the milestones, the WRAP identified the baseline emissions for each source during the base year, and estimated emissions for the source during the 2003 to 2018 time period, taking into consideration growth, utilization, retirement, and the absence of any additional requirements. The compilation of these source-specific baseline emissions resulted in the baseline emission inventory totals, which serve as a ''starting point'' for measuring progress from the program. The WRAP recognized in the Annex that if a source was in violation during the base year when its emissions were determined, the baseline emissions during 2003–2018 would be overestimated.For example, assume the baseline emissions for a boiler were calculated based upon an emission factor of 0.6 pounds per million BTU, and using actual and projected fuel amounts, the baseline emissions source were 10,000 tons in the year 1998, increasing to 20,000 tons in the year 2008 and continuing at 20,000 tons for the years between 2008 and 2018. For this example case, it is later discovered that the source has been in violation since 1998 of an emission limit of 0.3 pounds per million BTU. Based on a final enforcement action that takes place in the year 2007, it is determined that if the source was in compliance with its limit, baseline emissions would have been 5000 tons in the year 1998, increasing to 10,000 tons in the year 2008 and continuing at 10,000 tons for the years between 2008 and 2018. For this example case, baseline emissions for each year between 1998 and 2018 would be overestimated, by amounts that vary from 5,000 to 10,000 tons.

The Annex and the WRAP's supplementary information include this provision without any further explanation of what should be considered as illegal emissions, who makes the determination, or what is the process for making this adjustment. The EPA is proposing the rule with the language consistent with the Annex, and we solicit comments on whether the term ''illegal emissions'' should be further clarified in the final rule.

There are many types of outcomes between plaintiffs and defendants when resolving a dispute over illegal emissions. The most obvious example is when a case goes to court and there is a court decision that the emissions were not legal. This is the rarest of the dispute resolution methods. It is more typical that the disputing parties resolve their differences through one of the following two methods:

—A consent decree that is either entered through Federal or State courts, or
—An administrative enforcement proceedings by either States, Tribes, or EPA.

Under these two methods of resolving an allegation of an illegal emission, it is typical that the defendant neither admits nor denies the alleged violation. They simply agree to correct the situation through injunctive relief and often pay penalties for being in violation.

Sometimes, States and EPA disagree over whether or not a particular alleged violation was correct. This is typical in cases when EPA files a case that a State has opted not to pursue. There also can be disagreement when citizen groups pursue violations. Many of these cases are due to a difference in the federally enforceable SIP regulations and the current State regulations.

Because of the issues referred to above, EPA is soliciting comment on how these types of settlements should affect the milestones. An important consideration to note is that under any of the options described below, adjustments to the milestone would occur only after the source in the enforcement case has achieved the additional control of their SO_2 emissions. Consequently, adjustments to the milestone will have no affect on any other facility's operation because all of the reductions are being achieved by the source subject to the enforcement action. We seek comment on the following possible options:

Option 1. Under this option, the rule would require that if there is any resolution to an alleged illegal SO_2 emission, then all of the reductions would be considered as ''illegal emissions.'' Taking into account these reductions, there would be a ''re-forecast'' of the source's emissions and its effect on the milestone. ''Re-forecast'' means to re-apply the forecasting process, that is the process the WRAP originally used to project future emissions and develop the milestones, using the corrected baseline sulfur dioxide emissions for the affected source. A comparison of this re-forecasted emission level with the previously forecasted emissions would yield a calculation of the amount of the adjustment for each year up through 2018.

Option 2. Under this option, the rule would allow for case-by-case judgments on the appropriateness of the adjustment, and would clarify the entity responsible for deciding whether a case involves illegal emissions warranting an adjustment to the milestones. Under this option, we also seek comment on the entity responsible for this determination, that is whether the rule should clarify whether the parties entering into a settlement, the States, the Tribes, the WRAP, or EPA would

determine the settlement's impact on the milestones.

Another issue that EPA is soliciting comments on is how to treat any extra SO_2 emissions reductions that a facility might achieve as a result of a settlement. The EPA will often allow a company that is settling through a consent decree or consent agreement to perform a ''supplementary environmental project'' and allow the expenditures on this project to partially offset penalties that the company would be assessed. If the milestones are not reduced by the amount of extra emissions reductions from this type project, then the environment may see little benefit, since another company would be allowed more SO_2 emissions. We seek input on whether these ''extra'' emissions reductions should be considered part of this ''illegal emission'' adjustment and factored into a recalculation of the milestone.

In the proposed rule, EPA includes, at 40 CFR 51.309(h)(1)(v), the Annex's provision for decreasing the milestone for illegal emissions. The EPA requests comment on how we have incorporated this provision, including whether the final rule should add further detail on the timing of the adjustment, and on the administrative steps that would be followed in making the adjustment. For example, EPA believes it may be useful to clarify that the adjustment to the milestone should be made beginning with the year that the source comes into compliance, rather than beginning with the date of the enforcement action.

6. Adjustment Based Upon Findings of Future Program Audits

As will be discussed in greater detail below, there are several types of program reviews and audits that are part of this program. The Annex includes a provision to adjust the milestones if these program reviews and audits identify reasons for an adjustment. The Annex describes this adjustment in section III.A.4.c. and in Attachment A, Draft Model Rule sections B5 and C14.2. The WRAP has further clarified this process in the Supplemental Paper, ''Emissions Tracking Prior to Triggering the Trading Program.''

There are three types of program reviews and audits in this program: (1) Audits of the data quality and administrative aspects of the program if the trading program is not triggered, (2) a review of data quality, administrative process and other issues related to the trading program if it is triggered, and (3) the 5-year SIP or TIP review (due in 2008, 2013, and 2018) required by the regional haze rule in 40 CFR 51.309(d)(10). The WRAP recommends, and EPA agrees, that such program reviews and independent party audits may identify the need for adjustments to the milestones to correct errors that do not fit into any of the other categories of adjustments discussed above. Accordingly, the Annex and the proposed rule provide a process for making such adjustments as appropriate.

As indicated, in a supplemental paper to the Annex,[19] the pre-trigger audits of the program will be completed by the third year of each 5-year cycle (that is, by 2006, 2011, and 2016). A requirement for these audits is included in the proposed rule at 40 CFR 51.309(h)(3)(v). The timing of these pre-trigger audits is designed to provide participating States and Tribes with sufficient lead-time to make any necessary changes during the general program review due 2 years later (in 2008, 2013, and 2018, respectively).

The EPA includes the requirement to adjust milestones based on the results of the three types of data and program audits described above. This provision is included in the proposed rule as 40 CFR 51.309(h)(1)(vi). The proposed rule also requires that if, during any audit or program review, the WRAP finds that changes need to be made then they will be incorporated at the time of the next SIP revision required under 40 CFR 51.309(d)(10).

The EPA wishes to clarify that each 5-year SIP review under 40 CFR 51.309(d)(10) should include an evaluation of:

(1) Key program assumptions against current findings, (2) the adequacy of State and tribal resources to implement the program, and (3) the effectiveness of interstate coordination and memoranda of understanding between the States and Tribes implementing the program.

7. Adjustments for Individual Sources Opting Into the Program

The Annex, in section III.A.4.a. on page 58, and in section II.A.2.c on pages 21 and 22, provides for possible adjustments to the milestones for small sources that choose to participate in the program. Because the program includes all sources whose emissions exceed 100 tons per year, any such source opting into the program would be one that emits less than this amount.

The EPA does not view the individual source opt-in as an essential element of the regional SO_2 program, but we do not object to its inclusion. We believe that if the program allows an expansion of the universe of sources subject to the program, it is reasonable that the milestones be adjusted upward to account for the inclusion of additional sources. The proposed rule, in proposed 40 CFR 51.309(h)(1)(vii), allows for adjustments to the milestones if such sources opt into the program. In addition, the proposed rule requires that the adjustment be done through SIP revision procedures.

C. What Is the Annual Process for Determining Whether a Trading Program Is Triggered?

The regional haze rule requires the Annex to identify the specific process for determining whether the milestones are exceeded. The WRAP included in the Annex a discussion of an annual process for making the determination, and in a supplemental paper submitted to EPA in June 2001. In this unit of the preamble, we discuss this annual process and how EPA has incorporated this process into the proposed rule.

Regional Haze Rule Requirements for Specifying How the Market Trading Program Would Be Activated

The regional haze rule, in 40 CFR 51.309(f)(1)(ii) requires that the Annex provide documentation ''describing in detail how emissions reduction progress will be monitored, and what conditions will require the market trading program to be activated. * * *'' In addition, 40 CFR 51.309(d)(4)(i) requires that implementation plans submitted under 40 CFR 51.309 must

> include provisions requiring the monitoring and reporting of actual stationary source sulfur dioxide emissions within the State. The monitoring and reporting must be sufficient to determine whether a 13 percent reduction in actual stationary source emissions has occurred between the years 1990 and 2000, and whether milestones required by paragraph * * * [40 CFR 51.309(f)(1)(i)] * * * have been achieved for the transport region. The plan submission must provide for reporting of these data by the State to the Administrator. Where procedures developed under paragraph (f)(1)(ii) of this section and agreed upon by the State include reporting to a regional planning organization, the plan submission must provide for reporting to the regional planning body in addition to the Administrator.

Finally, 40 CFR 51.309(d)(4)(ii) requires that implementation plans submitted under 40 CFR 51.309 must include ''the criteria and procedures for activating a market trading program or other program consistent with paragraph (f)(1)(i) of this section if an applicable regional milestone is exceeded, * * *'', that is, consistent with the Annex.

[19] *Supplementary Submittal to EPA in Support of the SO_2 Annex to the Grand Canyon Visibility Transport Commission Report.* Submitted to EPA by the Western Regional Air Partnership, June 1, 2001.

How the Regional Haze Rule Requirements for Program Activation Are Addressed in the Annex

The WRAP addresses the requirements for documenting how the program would be activated in the Annex, and in a June 2001 supplemental paper entitled ''Emissions Tracking Prior to Triggering the Emissions Trading Program.'' Regarding the requirement to ''include provisions requiring the monitoring and reporting of actual stationary source sulfur dioxide emissions,'' the Annex provides that participating States and Tribes will compile an annual emissions report indicating the emissions of all stationary sources with actual SO_2 emissions greater than 100 tons per year, beginning with the year 2003 inventory. Any source which reduces emissions below 100 tons per year in later years will continue to be subject to the program.

As further described in the Annex (III.A.6.b and II.A.3.b), participating States and Tribes must determine annually from 2003 to 2018 whether the market trading program is triggered by comparing the regional SO_2 emissions from stationary sources covered by the program to the applicable milestone. Compliance with the milestone is measured by using a 3-year average of total regional emissions with the 3-year average of the milestones except for the years 2003, 2004, and 2018. For 2003, the determination is based on 2003 emissions data only. For 2004, the program will use an average of 2003 and 2004 emissions data. Compliance using a 3-year average will begin with the 2003–05 emissions data for comparison with the year 2005 milestone. For the year 2018, total emissions will be compared to the 2018 milestone, not a 3-year average.

As outlined in greater detail in the supplemental paper cited above, the annual process that participating States and Tribes will use consists of the following steps:

(1) Each participating State and Tribe will compile annual emissions reports from all sources within their jurisdiction that are subject to the program (this includes all sources with actual emissions of 100 tons/year or greater of SO_2 during the year 2003 or any subsequent year),

(2) Each State and Tribe will solicit public comment on its annual emissions report for stationary sources,

(3) States and Tribes will submit their annual emissions report to the WRAP. The annual emissions report would be due by September 30 of the following year. (For example, the emissions report for calendar year 2003 would be due September 30, 2004),

(4) The WRAP will consolidate the data into a regional emissions report, assure the integrity of the regional reporting process and the quality of the data, and issue a draft regional emissions report. The draft regional emissions report will compare regional emissions to the milestone. (**Note:** This function could also be carried out by another State and tribal designee approved by EPA, for example, a regional modeling center or other program tracking administrator.) The draft regional emissions report will be completed by December 31 of the following year (for example, the draft finding for the year 2003 will be completed by the end of calendar year 2004), and

(5) Taking into account public comment, participating States and Tribes will review and approve the final regional emissions report and make a formal submittal to EPA documenting their final determination of whether the milestone has been exceeded. The WRAP's supplementary information paper clarifies that this final submittal will be due the following March (for example, March 2005 for the emissions report for the year 2003), and this March deadline is included in the proposed rule. If the regional inventory exceeds the applicable milestone, participating States and Tribes will formally trigger the program by notifying EPA and the public at the time that the final report is submitted.

Special Provisions for the Year 2018

As discussed in sections III.A.6.c and II.A.3.c of the Annex, the participating States and Tribes will compare the total regional emissions of SO_2 for 2018 against the year 2018 milestone. Unlike for the comparison for years before 2018, there is no averaging of the emissions for 2018 with emissions of previous years. If emissions in 2018 are greater than the 2018 milestone, then source-specific penalties will be imposed if sources exceed their trading program emissions allowances.[20]

Option for Triggering the Program in the Year 2013 Based Upon Projected Emissions for the Year 2018

The Annex provides participating States and Tribes an option for triggering the market trading program in the year 2013 even if the milestone has not been exceeded. This 2013 trigger option will be implemented by consensus of those States and Tribes that have implementation plans under 40 CFR 51.309. Implementation of the early trigger will be based on emissions forecasts indicating that compliance with the 2018 milestone is not expected. The purpose of the optional trigger is to help sources to avoid penalties for the year 2018 by formally triggering the trading program in advance. Triggering the trading program early would also help ensure that actual emissions in the year 2018 will be less than the milestone.

Special Provisions for Mohave Electric Generation Station for the Years Between 2003 and 2006

The Annex also provides for special provisions in the annual emissions reporting for the Mohave Electric Generating Station for the years between 2003 and 2006. For this plant, controls will be installed by the year 2006 consistent with the Consent Decree for Grand Canyon Trust v. Southern California Edison (District of Nevada CV–S–98–00305–LDG, dated December 15, 1999).

When the interim milestones were first recommended by the WRAP Initiatives Oversight Committee (IOC), there was an error in the baseline emissions projection for the Mohave Generating Station. In estimating this baseline, the WRAP assumed that controls required for the Mohave Electric Generating Station in 2006 would be in place in 2003. Therefore, as discussed in Annex sections III.a.6.d. and II.A.3.d, the WRAP has included a correction for this error that will be used when measuring compliance with the milestones for 2003 through 2006. For these years, emissions from the Mohave Generating Station will be calculated using an SO_2 emissions rate of 0.15 pound per million BTU of coal input, consistent with the maximum allowable emissions rate effective in 2006 under the Consent Decree. These calculated emissions for Mohave will be substituted for the actual emissions in 2003, 2004, and 2005. For the year 2006, the emissions will be calculated based upon 05 pound per million BTU for any part of 2006 prior to the installation of the controls.

Reliance on Current Emissions Reporting Requirements

The WRAP, in the Annex, recommends that the current inventory techniques and requirements that States are using in the development of emissions inventories should be sufficient for quantifying the regional SO_2 emissions on an annual basis for the pre-trigger program. Consistent with this recommendation, the Annex does

[20] See preamble unit II.D below for a further discussion of the trading program allowances.

not provide for the development of emission quantification protocols for the pre-trigger phase of the program. The WRAP recommends that this should be adequate since the large majority of emissions come from the coal-fired power plants and the copper smelters, which are accurately measured using current methods. As noted above, the Annex includes adjustments to the milestones to take into account any changes to emission estimating or measuring techniques. If the trading program is triggered, as discussed below, the WRAP recognizes the need for protocols for consistent and ''best available'' emission monitoring and reporting for each source category. The EPA proposes to agree with the WRAP's recommendation that existing emissions reporting requirements are sufficient for the pre-trigger phase. However, EPA recognizes that there is some measure of uncertainty in the program because there is currently less information on the specific methods being used for reporting emissions from the other sources (that is, other than utilities and smelters), and the level of accuracy with the methods for each of these sources is not as well understood. Reliance on current inventory techniques and requirements will also result in sources in the same source category using different methodologies since the inventory reporting process allows for such variability. There will also be variability from State to State, or Tribe to Tribe, since there is no requirement for consistency between States or Tribes. We request comment on the acceptability of reliance on current emission inventory methods being used for sources in the region.

Exceptions Reports

The supplemental information provided by the WRAP indicates that the program will include a requirement for participating States and Tribes to include what are termed ''exceptions reports.'' These exceptions reports will contain the following information:

—Identification of any new or additional SO_2 sources greater than 100 tons per year that were not contained in the previous inventory;

—Identification of sources shut down or removed from the previous inventory;

—Explanation for emissions variations at any covered source that exceeds plus or minus 20 percent from the previous year's emissions; and

—Identification and explanation of new emissions reporting methods at any source.

Incorporation of the Annual Process Into the Proposed Rule

The EPA believes that the detailed information provided by the WRAP in the Annex and in supplemental materials fulfills the requirements for the Annex that are contained in 40 CFR 51.309(f)(1)(ii) for ''documentation describing in detail how emissions reduction progress will be monitored.'' In addition, EPA believes that State SIPs and tribal TIPs submitted consistent with these provisions will satisfy the requirements of 40 CFR 51.309(d)(4)(i) for monitoring and reporting of SO_2 emissions.

How EPA Proposes To Incorporate the Annual Process Into 40 CFR 51.309 of the Regional Haze Rule

In the proposed rule, EPA includes the WRAP program's requirements for an annual process for determining whether the milestones are exceeded. This process appears in the proposed rule at 40 CFR 51.309(h)(2) and (3). The EPA proposes that the Annex (including the supplemental papers) meets all of the requirements of 40 CFR 51.309 of the regional haze rule for ''describing in detail how emission progress will be monitored, and what conditions will require the market trading program to be activated.''

Proposed paragraph 40 CFR 51.309(h)(2) describes the process for collecting emissions data each year and for the reporting of such data by each participating State and Tribe. This includes provisions describing which sources must be included in the program, a requirement for States to submit emissions reports for the previous year by September 30th of each year, a requirement that the annual emissions report include exceptions reports, the special provisions for the Mohave Generating Stations for the years 2003 through 2006, and the option for including year 2018 emissions projections in the year 2013.

The regional haze rule requires, as noted above, that:

> The plan submission must provide for reporting of these data by the State to the Administrator. Where procedures developed under paragraph (f)(1)(ii) of this section and agreed upon by the State include reporting to a regional planning organization, the plan submission must provide for reporting to the regional planning body in addition to the Administrator. 40 CFR 51.309(d)(4)(i).

This provision does not require participating States and Tribes to report the relevant data to a regional planning organization, but it does give the WRAP the ability to include procedures in the Annex for the collection of data by a regional planning body. Such procedure would facilitate each State and Tribe's ability to determine whether the milestones are exceeded.

As indicated in the WRAP's supplemental paper ''Emissions Tracking Prior to Triggering the Emissions Trading Program'' the Annex includes a regional planning body, that is, the WRAP, for the reporting of emissions. Assuming that each participating State and Tribe designates the WRAP as the ''regional planning body,'' each State and Tribe would report to the WRAP. The EPA, therefore, expects that the WRAP will be compiling the information from each participating State and Tribe.

The EPA assumes at this point that the participating States and Tribes will agree on the procedures for reporting data to the WRAP. However, to ensure that there would be a process in place in the unlikely instance that the participating States and Tribes do not designate a regional planning body for this purpose, or do not agree on the reporting procedures, the proposed rule provides that each State and Tribe would make the determination of whether a milestone is exceeded based on the information submitted to them by the other participating States and Tribes.

Proposed paragraph 40 CFR 51.309(h)(3) describes the process for making the annual determination of whether the milestone was met. A draft determination would be submitted by the regional planning body (which EPA assumes will be the WRAP) or each State or Tribe by the end of the following year (for example, the end of 2004 for the determination for the year 2003). The proposed rule requires a final determination, based on comments received on the draft determination, by the end of the following March (for example, the end of March 2005 for the year 2003).

D. What Must Each Participating State and Tribe's Implementation Plan Include for Administering the Trading Program, If It Is Triggered?

The regional haze rule, at 40 CFR 51.309(d)(4)(iii) and (iv), requires that SIPs/TIPs provide for a market trading program that would serve as a ''backstop'' to ensure that SO_2 emissions would not exceed the milestone. The regional haze rule, at 40 CFR 51.309(f)(1)(ii), requires that the annex provide information on this market trading program, consistent with 51.309(d)(4). This provision requires that the Annex must contain ''documentation'' of the market trading program, including model rules,

memoranda of understanding, and other documentation describing in detail how emissions reduction progress will be monitored, what conditions will require the market trading program to be activated, how allocations will be performed, and how the program will operate.

The regional haze rule, in 40 CFR 51.309(d)(4)(iii) requires that the implementation plans submitted under 40 CFR 51.309 must:

—Contain provisions to activate the market trading program or other program within 12 months after the emissions for the region are determined to exceed the applicable emissions reductions milestone, and

—Must assure that all affected sources are incompliance with allocation and other requirements within 5 years after the emissions for the region are determined to exceed the applicable emissions reductions milestone.

Additionally, 40 CFR 51.309(d)(4)(iv) requires that the implementation plans include provisions for market trading program compliance reporting, and provisions requiring the State to provide annual reports assuring that all sources are in compliance with the market trading program.

The Annex includes documentation of the market trading program in sections II.D and II.E of the Annex, pages 28–53, and in section III.D of the Annex, pages 63–67. A draft model rule is included as Appendix A to the Annex. A draft memoranda of understanding is included as Appendix B. A few clarifications on trading program issues are included in the supplemental information submitted by the WRAP during June 2001.

These sections of the Annex provide the ''documentation'' required by 40 CFR 51.309(f)(2)(ii), and they include ''model rules, memoranda of understanding, and other documentation describing in detail how emissions reduction progress will be monitored, what conditions will require the market trading program to be activated, how allocations will be performed, and how the program will operate.'' Therefore, EPA proposes a finding that the information submitted in the Annex, including the Appendices and supplemental information, satisfies the requirements in 40 CFR 51.309(f)(2)(ii) of the regional haze rule.

The EPA also proposes a finding that the Annex provides for a trading program which, if followed in the 2003 SIP submittals, will satisfy the requirements in 40 CFR 51.309(d)(4)(iii) and (iv). The June 2001 supplemental information makes clear that the backstop market trading provisions will be activated within 12 months after the emissions for the region are determined to exceed the applicable emissions reductions milestone. The Annex also, as clarified with the example in section II.D.1 on page 29, provides that all affected sources must be in compliance with allocation and other requirements within 5 years after the emissions for the region are determined to exceed the applicable emissions reductions milestone. The Annex includes provisions requiring annual reports assuring that all sources are in compliance with applicable requirements of the market trading program.

Incorporation of Annex Trading Program Provisions in the Proposed Rule

The EPA has incorporated the Annex provisions for a market trading program in proposed 40 CFR 51.309(h)(4). In the proposed rule, EPA also has included a list of fundamental elements that the SIPs must contain, and the basic requirements for those elements that will help guide EPA's review of the SIPs. These fundamental elements are aimed at ensuring the integrity of the market trading program, and are consistent with the provisions of EPA's guidance for economic incentive programs (EIPs). (*Improving Air Quality with Economic Incentive Programs* EPA–452/R–01–001, January 2001). The fundamental elements are as follows:

(1) Provisions for the allocation of allowances to each source in the program;

(2) Emissions quantification protocols;

(3) Provisions for the monitoring, record keeping and reporting of emissions;

(4) Provisions for a centralized system to track allowances and emissions;

(5) Provisions requiring the identification of an authorized account representative for each source in the program;

(6) Provisions requiring the account representative to demonstrate annual compliance with allowances;

(7) Provisions for the process of transferring allowances between parties;

(8) Provisions describing the ''banking'' of extra emissions reductions for use in future years, if the implementation plan allows for banked allowances;

(9) Provisions establishing enforcement penalties for noncompliance with the trading program; and

(10) Provisions for periodic evaluation of the trading program.

The EPA believes that the detailed draft model rule, which is Appendix A to the Annex, addresses these general principles. The draft model rule is intended to provide detailed regulatory language to implement the program and will serve as a template that individual States and Tribes can use to develop their SIPs under 40 CFR 51.309. The EPA intends to work together with States and Tribes to ensure that the final model rule, and the resulting State and tribal plans, are consistent with the requirements of the regional haze rule, with the provisions for TIPs contained in 40 CFR part 49, and with other requirements that are common to all State/tribal implementation plans and EIPs. The EPA believes that completion of this model rule effort in a timely manner is very important to the overall success of the program. In a supplemental paper entitled, ''State Rulemaking Schedules for 309,'' the WRAP provided estimated timelines for each of the 9 States in the transport region to complete a SIP under 40 CFR 51.309. Based on this paper, it appears that the WRAP intends to refine and finalize the model rule by early 2002.

The EPA believes that the Annex provisions in 40 CFR 51.309 do not require the WRAP's submittal to contain the same level of detail that is required in the final model rule. First, EPA believes that it need not incorporate into 40 CFR 51.309 the same level of detail regarding the trading program that will be set forth in the model rule. Second, the model rule addresses details that are essential to the program, but may not be appropriate as Federal mandates. For example, while it is essential that the program issue specific emissions allocations to each source under the trading program, it is not necessary or appropriate for EPA to dictate that a specific method be used. Finally, we believe that if SIPs/TIPs submitted under 40 CFR 51.309 adequately address the basic fundamental criteria that we are proposing, they will provide for a sound program consistent with EPA regulations and policies.

The following is a description of each of the trading program requirements that are included in proposed 40 CFR 51.309(h)(4). For each of these proposed requirements, EPA requests comment on whether we have addressed the requirement to an appropriate level of detail, and on whether the substance of the requirement is sufficient to ensure program integrity for the backstop market trading program.

Allowances. 40 CFR 51.309(h)(4)(i) and (ii)

Allowances are a key feature of the backstop market trading program. An allowance authorizes a source to emit one ton of SO_2 during a given year or (with some exceptions) in a future year. At the end of the compliance period, which is a 12-month period ending with each calendar year, a source owner's

allowances must exceed or equal its annual emissions. For example, a source that emits 5,000 tons of SO_2 in a given year must hold at least 5,000 allowances for that year.

Allowances are fully marketable commodities. Once allocated, allowances may be bought, sold, traded, or (where allowed) banked for use in future years. If the trading program is triggered, allowances are the currency with which compliance with the SO_2 emissions requirements is achieved. Sources that reduce their emissions below the number of allowances they hold may transfer allowances to other units in their system, sell or trade allowances to other sources or private parties on the open market, or bank them to cover emissions in future years. Allowance trading provides incentives for energy conservation and technology innovation that can both lower the cost of compliance and yield pollution prevention benefits.

The Annex includes a hypothetical timeline in section II.D.1. on page 29 of the Annex, which clarifies how the market trading program would be implemented. This Annex shows sources must hold sufficient allowances to cover their emissions by the 6th year following the calendar year for which emissions exceed a milestone. For example, if the milestone is exceeded in 2004, then the first calendar year for which a source would have to comply with allowances would be the calendar year 2010. As a result, the milestones become an enforceable ''cap'' on emissions, and the total amount of allowances issued for participating States may not exceed this ''cap.'' A table listing the allowance totals by year is included in the proposed rule as Table 4.[21]

The proposed rule requires States and Tribes to include initial source-specific allowance allocations for each source in their implementation plans submitted under 40 CFR 51.309. These initial allocations must specify the tons per year allocated for each source for each year between 2009 and 2018.

The Annex, in section II.D (pages 28–37) and in section III.D.7 (pages 63–67) contains a detailed discussion of the methodology that the WRAP proposes for distributing allowances to sources. This methodology outlines in detail the parameters and considerations that States and Tribes will use for issuing initial allowances to sources, and for adjusting those allowances with time. The EPA proposes not to include the details of this methodology in 40 CFR 51.309. So long as the SIPs/TIPs contain source-specific allowances for each source included within the program, and those allowances add up to the appropriate regional total, EPA believes the objectives of the program are met. The EPA views the choice of method, and the implementation of the method, to be primarily an issue for States and Tribes to address.

There is one element of the allocation methodology that EPA has chosen to include in the proposed rule to ensure that it is included in the program. This element, a 20,000 ton ''set-aside'' for use by Tribes, over and above any amount allocated in the process described above, can probably be assured only if EPA includes a requirement in the rule. Accordingly, 40 CFR 51.309(h)(4) requires that before issuing allowances to individual sources, 20,000 tons must be subtracted from the total for use by Tribes. The EPA believes that this 20,000 ton set-aside should not be used for issuing initial allowances to tribal sources of SO_2 included within the program, and for adjusting those allowances with time. Further discussion of issues related to tribal participation in the program, and use of the ''set-aside'' for Tribes, is included below in unit III of this preamble.

Emissions Quantification Protocol, and Monitoring, Recordkeeping and Reporting Provisions. 40 CFR 51.309(h)(4)(iii) and (iv)

The proposed rule requires that States include specific emissions quantification protocols, that is the procedures for determining actual emissions. These procedures will be used to measure, or determine, annual emissions if the trading program is triggered. The proposed rule also requires that States include the necessary monitoring, record keeping, and reporting provisions to measure and track results.

The WRAP recognized the need to have detailed and prescribed emission quantification protocols and proposes that the participating States and Tribes establish such provisions in the SIPs submitted under 40 CFR 51.309. The Annex describes the WRAP's approach to monitoring in section II, pages 39–41, in section III, item III.D.3 on page 64, and in Attachment A, Draft Model Rule section C.2.3 Monitoring Requirements, and section C9 Emissions Monitoring. In particular, the WRAP recognized the need for emission monitoring protocols which ensure that emissions are accurate and comparable for participating sources. For the trading program, the emissions amount becomes a tradeable, fungible commodity. Accordingly, it is important to the integrity of the program to ensure that one ton of emissions from one source is equivalent to one ton of emissions from another source. The WRAP plans to develop the specific emissions quantification protocols in a subsequent collaborative process involving States, Tribes, and EPA.

Under this program, the WRAP in the Annex proposes that sources subject to the acid rain program under title IV of the CAA will continue to follow the continuous emission monitoring procedures in the acid rain program, which appear on 40 CFR part 75. As a result, EPA would not develop or require separate emission protocols for these sources as part of implementing 40 CFR 51.309.

For the other source categories not covered by part 75, the WRAP in the Annex recognizes the need to develop protocols based upon ''best available'' monitoring techniques for each source category. The EPA proposes that the criteria for acceptability of these protocols in the implementation plans are the same criteria as listed in section 5.2 and 5.3 of the EIP guidelines. These guidelines state that emission quantification protocols:

—Must ensure reliable results, and that they must ensure that repeated application of the protocol obtains results equivalent to EPA-approved test methods;

—Must be replicable, that is, the protocol ensures that different users will obtain the same or equivalent results in calculating the amount of emissions and/or emissions reductions.

These guidelines also specify that trading programs need to include monitoring, record keeping, and reporting provisions to provide adequate information for determining a source's compliance with the program. Adequate monitoring, record keeping and reporting procedures have several key attributes, including representativeness (characteristic of the source category and available monitoring techniques), reliability, replicability, frequency (that is, the monitoring is sufficiently repeated within the compliance period), enforceability (that is, the monitoring is independently verifiable), and timeliness.

[21] Note that while the Annex provides for averaging of emissions reporting and milestones for purposes of making the annual determination of whether the milestone is exceeded, once a trading program is in place, there is no averaging of the milestones for purposes of the trading program. For example, milestones for the year 2013 must add up to 655,000 (with suspended smelters) or 625,000 tons (without suspended smelters). There is no averaging of the year 2013 with 2012 and 2011 as is done for the annual determination.

Tracking Process. 40 CFR 51.309(h)(4)(v)

The proposed rule requires that the implementation plans submitted under 40 CFR 51.309 must include provisions identifying a specific tracking process to track allowances and emissions. Consistent with the EIP guidance, the proposed rule requires that the implementation plans must provide that all emissions, allowance, and transaction information is transparent and publicly available in a secure, centralized data base.

The WRAP, in the Annex and draft model rule, has included numerous provisions detailing the system that States and Tribes intend to use to satisfy this proposed requirement. These provisions are outlined in detail in the draft Model Rule section C.8 and on pages 64–65 of the Annex. The overall program is referred to as the Western Emission Budget, or WEB. The tracking system includes a centralized tracking systems administrator who would be appointed by States and Tribes as the administrator of a ''WEB allowance tracking system'' and a ''WEB emissions tracking system.'' The WRAP and EPA recognize that in assigning duties to any such tracking system administrator, States and Tribes may not delegate any inherent governmental responsibilities. For example, emissions data certification and program enforcement must remain with the States and Tribes. The WRAP envisions that the central tracking system will serve a number of functions: To identify which sources hold allowances in the program, to identify how many allowances a source owner holds, and to record allowance transactions. Another function of the tracking system administrator in the trading system is to record allowance transfers and to ensure at the end of the year that a source's emissions do not exceed the number of allowances it holds. The tracking system serves as the official record and operates much like a bank account.

The allowance accounts are the official records for allowance holdings for compliance purposes. It is for that reason that the EIP requires that these systems be secure and allow for frequent updates (EIP, section 7.4(g)). Also consistent with the EIP, there must be a way to uniquely identify each allowance and there must be enforceable procedures for recording data.

Responsible Party. 40 CFR 51.309(h)(4)(vi)

The EPA believes that it is important that each source owner or operator designate a person who is responsible for the data reported for that source. The proposed rule includes a requirement that the SIPs/TIPs must include such a provision.

The market trading program described in the Annex includes this requirement and refers to this person as the Authorized Account Representative (AAR). The Annex discusses the role and responsibilities of the AAR on pages 44 and 45 and in section C3 of the Draft Model Rule. The representative's responsibilities include performing permit, compliance, and allowance related actions for the WEB Program. That person will be responsible for certification for each emissions and allowance transaction.

Requirement for Annual Demonstration of Compliance. 40 CFR 51.309(h)(4)(vii)

The proposed rule requires that the SIPs/TIPs include a provision requiring the responsible party for each source to demonstrate that the source holds a quantity of allowances equal to or greater than the amount of SO_2 emitted during that year. The responsible party must make this determination within a specified number of days following the end of each calendar year. The responsible party must determine the amount of SO_2 emitted in accordance with the approved emissions quantification protocols and monitoring, record keeping and reporting provisions developed by the participating States and Tribes or the WRAP as part of this program. The EPA believes that 60 days should be generally sufficient for preparing this demonstration. This time period is consistent with the national acid rain program, and thus has been demonstrated as a reasonable time period for utility boiler sources covered by that program. The WRAP has indicated that the time necessary for determining compliance will be dependent on emission quantification protocols adopted. As these protocols are still under development, the WRAP believes that it is possible that a longer time period may be warranted in some cases. The EPA proposes that the WRAP deadline be 60 days unless a specific need is identified. We request comment on whether EPA should include a specific, generally applicable, deadline in the final rule.

Requirement for Provisions Detailing the Process for Transferring Allowances Between Parties. 40 CFR 51.309(h)(4)(viii)

The proposed rule requires that SIPs/TIPs must contain provisions detailing the process for transferring allowances from one source to another. Section C6 of the Draft Model Rule in the Annex provides a detailed description of allowance transfer procedures. The program would provide procedures for sources to request an allowance transfer, for the Tracking System Administrator to record the requests, and for notification of the source and the public of each transfer and request.

Banking Provisions. 40 CFR 51.309(h)(4)(ix)

The banking of allowances occurs when allowances that have not been used for compliance are set aside for use in a later compliance period. Banking provides flexibility to sources, encourages early reductions, and encourages early application of innovative technology. However, banking also carries an associated risk of delayed or impaired achievement of air quality goals due to the use of banked allowances.

The Annex discusses banking on page 64 and the Draft Model Rule outlines the banking procedures in section C7. The Annex states that the use of banked allowances in the compliance process will be regulated by management provisions, which would act as a disincentive for sources to use banked allowances in years where there is a substantial bank of allowances available to use in compliance. The purpose of these management provisions, sometimes referred to as ''flow control'' is to ensure that there would not be a substantial increase in emissions in a year for which a relatively large fraction of banked emissions were used. This provision, accordingly, will help to ensure that the milestones continue to be met.

The proposed rule allows trading programs to include provisions for banked allowances, so long as the SIPs/TIPs clearly identify how unused allowances may be kept for use in future years, and the restrictions for use of any such banked allowances. Because a key objective of the Annex is to ensure that actual emissions will not exceed the milestone for the year 2018, the proposed rule requires that any banking provision of the trading program must be designed in a way that would not allow actual emissions to exceed this milestone.

Allowing the use of banking raises a potential issue regarding records retention. While records are normally required to be retained for a minimum of 5 years from their creation, banking allows for the possibility that an unused allowance could be banked for some time before being used. Consequently, in order to ensure that records are retained for a sufficient period of time

to provide for enforceability of the program, the proposed rule requires that records relating to the banked allowances must be retained for at least 5 years after the use of those allowances. For example, if an unused allowance from the year 2009 is used in 2012, the source owner or operator must retain records relating to that allowance for 5 years after its use, which in this example would be 2017.

Enforcement Penalties. 40 CFR 51.309(h)(4)(x)

The proposed rule requires that the trading program describe the specific enforcement penalties that will be applied if a source's emissions exceed its allowances. The EPA agrees with the WRAP that it is important to provide automatic and stringent penalties to provide for sufficient incentive for source owners to comply with their allowances.[22]

The EPA requires all market trading programs to include provisions for imposing penalties when a source fails to hold enough allowances to cover emissions, violates its record keeping obligations, or violates any other obligations under the program. The program must define a violation, establish the procedure for determining the magnitude of a violation, set potential penalties, and maintain the ability to impose the maximum monetary penalty consistent with the CAA. The EIP (section 7.4(h)) outlines the compliance provisions EPA considers to be essential in multi-source emission cap-and-trade programs.

The EIP also outlines the provisions for assessing liability, in section 6.1(a). Emission trading, unlike traditional regulatory mechanisms, generally involves more than one party. These parties can be not only the owners or operators of the sources participating in the program but sometimes another party who facilitated the trade (e.g., a broker). To ensure integrity in the trading system, all parties are normally responsible for ensuring the validity of the trades or their use of emissions reductions.

The penalty provisions in the emissions trading program must include mechanisms that enable the State to assess monetary penalties and impose corrective actions against the sources participating in the trading program.

The Annex outlines the enforcement elements developed by the WRAP in section II.E.6.f and in Draft Model Rule section C13. These provisions include two automatic penalties for excess emissions. First, there would be an automatic surrendering of two future year allowances for every one ton of excess emissions. Second, there would be a financial penalty that would exceed by a factor of three to four the projected range of prices for allowances. In addition to these penalties for excess emissions, the Annex provides for penalties for failure to comply with other program requirements, such as the monitoring, record keeping and reporting requirements, that would be consistent with CAA civil and criminal penalties.

Provisions for Periodic Evaluation of the Trading Program. 40 CFR 51.309(h)(4)(xi)

The proposed rule requires the backstop trading program to include a provision for periodic evaluations of the program. Such periodic evaluations are required as a means of determining whether the program, in its actual implementation, needs any mid-course corrections. The EPA, in the proposed rule, includes a list of questions that the program evaluations should address. These questions are derived from the EIP, section 5.3(b).

E. What Additional Provisions Must the SIP or TIP Include Regarding the Market Trading Program?

As included in the proposed rule in 40 CFR 51.309(h)(5), EPA proposes to include two provisions of the Annex that provide for integration with other CAA programs.

The proposed language in 40 CFR 51.309(5)(i) notes that the requirements of this program, including the backstop market trading program, are applicable requirements of the CAA that must be included in permits issued under title V of the CAA. The EPA expects that most, if not all, sources included within the program will have title V permits. The program requires participation by all sources with actual emissions of SO_2 of more than 100 tons per year. These sources would also have a potential to emit of more than 100 tons per year. As the requirements of title V apply to sources with the potential to emit 100 tons per year of any air pollutant, EPA anticipates that almost all sources in the program would have a title V permit. The only likely sources which may not have title V permits would be any source that chose to opt into the program with potential emissions of less than 100 tons per year. In the Annex in section II.E.4., the WRAP discusses permit requirements for the program. This discussion describes in detail the mechanisms that would be used to ensure that any such opt-in sources have federally enforceable permit requirements. The EPA does not believe it is necessary in 40 CFR 51.309 to include this same level of detail for opt-in sources. The proposed rule does include in 40 CFR 51.309(h)(5)(i) a requirement that all requirements of the program be enforceable by EPA, and by citizens to the extent permitted under the CAA.

As the WRAP noted in section III.D. on page 47 of the Annex, the market trading program must not interfere with other provisions of the CAA. The program must also provide for provisions to ensure its integration with other programs. For example, some sources in the market trading program may be subject to title IV of the CAA or the Southern California RECLAIM program and these sources would be subject to more than one trading program. We have included as 40 CFR 51.309(h)(5)(ii) a requirement that the SIPs submitted in 2003 must ensure that this program does not eliminate or interfere with any other requirements a source may have under the CAA.

F. What Happens to the Program After the Year 2018?

It is EPA's understanding that the Annex did not attempt to address the fate of this program beyond calendar year 2018. The regional haze rule requires that SIPs be submitted in the year 2018 for a long-term regional haze strategy covering the time period between 2018 and 2028. There may be significant technological advances between now and the time that these SIPs/TIPs are developed that affect the possible measures for visibility protection, or the reasonableness of existing measures. Accordingly, EPA believes it is reasonable to defer until that time the judgment on the specific levels of SO_2 that can be achieved.

At the same time, EPA believes it is important to recognize that any actions that occur after 2018 should not be allowed to increase SO_2 emissions beyond the 2018 milestone. Accordingly, we note in the discussions of the milestones in Table 1 of the proposed rule that any milestone developed for years after 2018 must not allow increases over and above those for the year 2018.

[22] It should be noted that EPA policy for the Administration of Environmental Programs on Indian Reservations, reaffirmed by the Administrator on July 11, 2001 and the EPA Office of Enforcement and Compliance Assurance (OECA) Guidance on the Enforcement Principles outlined in the 1984 Indian Policy dated January 17, 2001 provide guidance on EPA's response to noncompliance at tribal facilities. The EPA intends to act in a manner consistent with the Indian Policy and OECA guidance with regard to enforcement actions that would be taken under this program against tribal facilities.

III. Implementation of the Regional SO_2 Emissions Reduction Program in Indian Country

The provisions in 40 CFR 51.309 of the regional haze rule provide for a regional visibility program within a geographic area of nine Western States. Within that geographic area, there are more than 200 federally recognized Indian Tribes. Throughout the development of the GCVTC report, and in the subsequent activities of the WRAP, including the development of the Annex, Indian Tribes have been involved in the discussions. The GCVTC and the WRAP have clearly benefitted from their understanding of the tribal perspective. These discussions have also served the Tribes in ensuring that unique issues of importance to Tribes have been carefully considered by both entities. The GCVTC report included section IV, ''Tribal Perspectives and Position Regarding Recommendations.'' The Annex includes specific consideration of tribal interests, including a specific provision of the program for Tribes in the market trading program that is described in Attachment F to the Annex.

As demonstrated by the Tribes' participation in the WRAP, EPA believes that continued involvement by Tribes is important to any program for visibility protection in the Western United States, including the program in the Annex for stationary source SO_2 emissions. In this unit of the preamble, we discuss issues related to tribal implementation of the SO_2 program contained in the Annex.

A. Current Stationary Source SO_2 Emissions in the Region

The Annex includes only those sources whose annual emissions exceed 100 tons per year. Although as noted previously there are more than 200 Indian reservations in the geographic region potentially covered by the Annex, it appears that only four currently have stationary sources that would be affected by the program.[23] The EPA is aware of only six such sources located in Indian country within the geographic area covered by the Annex, as noted in the following table:

Reservation	Source	Base year emissions (tons/yr)
Navajo (NM)	Four Corners Power Plant	42,522 (1999)
Navajo (AZ)	Navajo Generating Station	9,162 (1999)
Fort Hall (ID)	Astaris-Idaho elemental phosphorous production facility	4,994 (1998)
Wind River (WY)	Snyder Oil	147 (1998)
Wind River (WY)	Koch Sulfur Products	1,237 (1998)
Uintah and Ouray (UT)	Bonanza Power Plant	1,135 (1999)
Total		59,197

Together, these sources represent about nine percent of the total base year stationary source inventory of 652,000 tons of SO_2 emissions in the region.

B. ''Set-Aside'' for Tribes in the Market Trading Program

A key feature of the Annex program provides that if the market trading program is triggered, a 20,000 ton amount will be allocated to Tribes. This amount is in addition to any allocations to the six individual sources within Indian country (see table above), and is also in addition to specific amounts in the Annex that are allocated for new source growth. As discussed in Attachment F to the Annex, this 20,000 ton set-aside is intended to help ensure equitable treatment for tribal economies and to prevent barriers to economic development. The 20,000 ton amount of allowances would be available to Tribes to either: (1) Allow for new source growth over and above the amounts allocated for new sources by the Annex program, (2) sell for revenue, such that the source owners could purchase the allowances and increase their emissions or (3) retire the allowances, which would mean they would not be sold and would therefore lead to emission decreases relative to the milestones.

The process for allocating the tribal set-aside allowances is still to be determined. In Attachment F to the Annex, the WRAP states that:

> In order to insure that all Tribes in the region have a fair and meaningful opportunity to take part in this determination, it must be done in the context of government-to-government consultation between EPA and the Tribes, during the rule making process to amend 40 CFR 51.309.

While EPA agrees with the need for meaningful consultation, EPA proposes that the process of allocating need not be determined during the rulemaking process to amend 40 CFR 51.309. For example, the proposed rule for participating States and Tribes, as noted above, allows for initial allocations in the SIPs/TIPs submitted in the year 2003. Moreover, States and Tribes could amend these initial allocations later consistent with a methodology they include in their SIPs/TIPs. The EPA proposes that allocation of the additional 20,000 tons for Tribes could take place over a more extended time frame.

C. Background on Provisions for Tribal Air Quality Programs in the CAA and in EPA Regulations

On November 8, 1984, the EPA adopted a policy entitled ''EPA Policy for the Administration of Environmental Programs on Indian Reservations.'' This policy, available on the Internet at *http://www.epa.gov/indian/1984.htm,* establishes a number of principles that guide EPA in the conduct of our congressionally mandated responsibilities. In particular, EPA will pursue the principle of tribal ''self-government'' and will work with tribal governments on a ''government-to-government'' basis. The EPA will work with interested tribal governments in developing environmental programs for Indian country. Generally, EPA will retain responsibility for protecting tribal air quality until such time as Tribes administer their own air quality protection programs. Administrator Whitman reaffirmed the 1984 EPA Indian policy on July 11, 2001.

The CAA, as amended in 1990, added section 301(d) which authorizes EPA to ''treat Tribes as States'' for the purposes of administering CAA programs. Section 301(d) requires that EPA promulgate regulations listing CAA provisions for which it would be appropriate to treat

[23] To date, EPA has not received any TIPs from these four Tribes. Nothing in this preamble is intended to suggest that these Tribes are authorized by EPA to administer CAA regulatory programs.

Tribes as States and establishing the criteria that Tribes must meet in order to be eligible for such treatment under the CAA. The EPA proposed these regulations on August 25, 1994 (59 FR 43956), and finalized the rule on February 12, 1998 (63 FR 7254). Much of the regulatory language in this rule is codified in the CFR as a new 40 CFR part 49. This rule is generally referred to as the Tribal Authority Rule or TAR.

The TAR includes general eligibility requirements, codified in 40 CFR 49.6, for Tribes interested in assuming program responsibilities. Tribes may request a formal eligibility determination using administrative procedures contained in 40 CFR 49.7. Tribes may also use the administrative procedures in 40 CFR 49.7 to seek approval to implement CAA programs. As noted in 40 CFR 49.7(c), Tribes that are interested in seeking EPA approval to implement air quality programs under the CAA may request approval to implement only partial elements of a CAA program, so long as the elements of the partial program are ''reasonably severable.''

Section 301(d)(4) of the CAA confers discretionary authority on EPA to provide through regulation alternative means of air quality protection in cases where it determines that treating Tribes as ''identical'' to States would be inappropriate or administratively infeasible. In promulgating the TAR, EPA provided flexibility to Tribes seeking to implement the CAA. Some flexibility is established by virtue of EPA's decision, under 40 CFR 49.4 of the final rule, not to treat Tribes as States for specified provisions of the CAA. The rationale for this approach is discussed in the preamble to the TAR (63 FR 7264–7265) and in the preamble to the proposed rule (59 FR 43964–43968). For example, unlike States, Tribes are not required by the TAR to adopt and implement CAA plans or programs. Tribes are also not subject to mandatory deadlines for submittal of implementation plans. As discussed in the preamble previously, EPA believes that it generally would not be reasonable to impose the same types of deadlines on Tribes as on States. Among the CAA provisions for which EPA has determined it will not treat Tribes as States is section 110(c)(1) of the CAA, which requires EPA to intervene and ensure air quality protection within 2 years after a State either fails to adopt a SIP or does not win EPA approval for a SIP that was determined to be deficient. The EPA did not apply this provision to Tribes because the section 110(c) obligation on EPA to promulgate a FIP is based on failures with respect to required submittals, and, as noted above, tribal submissions under the TAR are voluntary, not mandatory. Instead, pursuant to its section 301(d)(4) discretionary authority, EPA has provided in the TAR that, where necessary and appropriate, it will promulgate FIPs within reasonable timeframes to protect air quality in Indian Country. See 40 CFR 49.11(a).

D. Discussion of the TAR as it Relates to Tribal Participation in the SO_2 Reduction Program

The EPA believes that clarification is needed on whether Tribes, like States, must develop and submit implementation plans by the end of the year 2003 in order to exercise the option provided by 40 CFR 51.309. Regarding this year 2003 deadline, in the preamble to the regional haze rule we laid out the framework for waiving the 51.309(c) deadline with respect to Indian Tribes. Section 309(c) requires that, in order to exercise the option provided by section 309, each Transport Region State must submit an implementation plan addressing regional haze visibility impairment in the sixteen Class I areas by December 31, 2003. The preamble reiterates the Agency's recognition that some Tribes have limited resources and/or expertise to participate in regional planning efforts for regional haze, stating:

> [i]n order to encourage Tribes to develop self-sufficient programs, the TAR provides Tribes with the flexibility of submitting programs as they are developed, rather than in accordance with statutory deadlines. This means that Tribes that choose to develop programs, where necessary may take additional time to submit implementation plans for regional haze over and above the deadlines in the Transportation Equity Act for the 21st Century (TEA–21) legislation as codified in today's final rule. (See unit III.B for discussion of those deadlines.) (64 FR 35759, July 1, 1999).

Unit III.B of the preamble, entitled, ''Timetable for Submitting the First Regional Haze State Implementation Plan (SIP)'' includes in the summary of the timetable for submitting SIPs, the 40 CFR 51.309 deadline of Dec. 31, 2003.

The preamble further discusses the link between the TEA–21 legislation changing the SIP deadlines for regional haze, and the TAR 49.4(f) provision waiving the section 169(b)(e)(2) SIP submittal deadline with regard to Indian Tribes.

The TEA–21 legislation changed the deadlines for State submission of SIP revisions to address regional haze, which were originally set out in section 169(B)(e)(2) of the CAA. Section 49.4(a) of the TAR provides that specific plan submittal and implementation deadlines for NAAQS-related requirements do not apply to Tribes. Section 49.4(e) states that Tribes will not be subject to specific visibility implementation plan submittal deadlines established under 169A of the CAA. Section 49.4(f) of the TAR provides that deadlines related to SIP submittals under section 169(B)(e)(2) do not apply to Tribes. Under section 49.4(f) Tribes will not be treated in the same manner as States with regard to, ''[specific implementation plan submittal deadlines related to sections 169B(e)(2), 184(b)(1) & (c)(5) of the Act. For eligible Tribes participating as members of such commissions, the Administrator shall establish those submittal deadlines that are determined to be practicable or, as with other non-participating Tribes in an affected transport region, provide for federal implementation of necessary measures.''

Under 40 CFR 51.309(c), each Transport Region State must submit an implementation plan addressing regional haze visibility impairment in the sixteen Class I areas by December 31, 2003. Otherwise, the State must submit SIPs consistent with 40 CFR 51.308. Based on the above provisions of the TAR, however, Tribes are not required to develop and submit implementation plans by the end of the year 2003 and may choose to opt-in to the program at a later date. We encourage Tribes choosing to develop implementation plans to make every effort to submit by the deadlines to ensure that the plans are integrated with and coordinated with regional planning efforts.

E. Current Thinking on Tribal Program Assistance

For Tribes which choose to implement 40 CFR 51.309, EPA believes there are a number of ways that EPA can provide assistance. As discussed above, a number of major sources of SO_2 are located on areas within Indian country. The EPA would like to help the Tribes that have major SO_2 sources to comply with the pre-trigger emission tracking requirements of the program, and to help them develop ways to participate in the backstop trading program.

The EPA also sees a possible need to help facilitate allocation of the 20,000 tons allocated to Tribes under the backstop market trading program. The EPA believes, however, that the critical need for the allocation does not exist until a trading program is triggered. As discussed above in unit II.D of this preamble, the earliest year for compliance with allowances is the year 2009. While it is preferable to have any allowances in place well in advance of

this date, EPA does not see the distribution of the tribal set-aside as a critical issue for EPA involvement in the near term. The EPA expects that Tribes will develop a method for allocating the 20,000 tons. The EPA will seek to provide assistance as necessary to facilitate the process.

In summary, EPA is committed to ensuring protection of tribal air resources, building tribal air program capacity and working with Tribes on a government-to-government basis. We request comment from Tribes on how we can implement this program in the best way consistent with EPA's Indian Policy.

IV. Administrative Requirements

In preparing any proposed rule, EPA must meet the administrative requirements contained in a number of statutes and executive orders. In this unit of the preamble, we discuss how today's regulatory proposal for incorporating the provisions of the WRAP Annex addresses these administrative requirements.

A. Executive Order 12866: Regulatory Planning and Review by the Office of Management and Budget (OMB)

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action.'' As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

Today's proposed rulemaking would amend the regional haze rule by incorporating a specific set of SO_2 emission targets for region-wide stationary sources of SO_2 emissions for a nine-State region in the western United States. The emission targets would affect and have potential economic impacts only for States choosing to participate in the optional program provided by 40 CFR 51.309 of the regional haze rule. The emissions reductions resulting from the program vary over the 2003 to 2018 time period. If all nine States participate in the program, the WRAP estimates that for the year 2018, SO_2 emissions would be reduced from a projected baseline of 612,000–642,000 tons to an enforceable milestone of 480,000–510,000 tons (described above in unit II.A.). If the milestones are not achieved through voluntary emissions reductions by the affected sources, then they will be achieved through an enforceable backstop market trading program.

The EPA believes that in order to understand the possible regulatory impacts of today's proposed rule, it is important to review the previous analysis that EPA completed for the regional haze program overall. In 1999, the EPA prepared a Regulatory Impact Analysis (RIA) for the regional haze rule (available in the docket for the regional haze rule (A–95–38)). In that RIA, the EPA assessed ''the costs, economic impacts, and benefits for four illustrative progress goals, two sets of control strategies, two sets of assumptions for estimating benefits, and systems of national uniform verus regionally varying progress goals,'' (64 FR 35760, July 1, 1999). Because EPA had no way of predicting the visibility goals each State would pick under the regional haze rule requirements, EPA conducted an extensive analysis of ''what if'' scenarios. For example, one of the scenarios assumed that all States would choose to achieve a 10 percent improvement in visibility (measured in deciviews) over a 10-year period, while another of the scenarios assumed a 1.0 deciview improvement over a 15-year period. For each scenario, the RIA determined the control measures that would be needed to achieve the given degree of visibility improvement, and the cost of those control measures. In addition to calculating the national impacts of the regional haze rule under the various scenarios, the RIA also presented results for six specific sub-regions. Four of the sub-regions (''Rocky Mountain,'' ''West,'' ''Northwest,'' and ''South Central'') contained one or more States within the nine-State region addressed by the WRAP Annex. The regional approach reflected the distinction across regions in the nature of the impairment in the Class I areas, the causes of the visibility impairment, and the costs of achieving the various progress objectives in each region. Emission reductions under the various scenarios by sub-region are provided in the RIA in tables 6–7 and 6–8.

The EPA believes that some of the emission reductions resulting from the Annex provisions for stationary source SO_2 (assuming that States exercise the option for this program) may result from other environmental obligations under the CAA. For example, SO_2 reductions may be required for attainment of the national ambient air quality standard for $PM_{2.5}$. To the extent that this is the case, the emissions reductions required by the WRAP's SO_2 milestones and backstop trading program may have already been addressed in other regulatory impact analyses for those programs.

The remainder of the emissions reductions resulting from the WRAP's program for stationary source SO_2 would be over and above those required to meet other environmental obligations. Where this is the case, EPA believes that the control costs and other potential economic consequences of achieving the reductions are reflected in the RIA for the 1999 regional haze rule. The range of results for the eight scenarios analyzed in the RIA resulted in predicted sulfur dioxide emission reductions that are within the range of emission reductions included in the Annex. Two of the eight scenarios resulted in 284,000 tons of stationary source reductions in regions containing one or more of the WRAP Annex States. Five other scenarios included sulfur dioxide emissions reductions ranging from 95,000 to 128,000 tons per year. Hence, the costs and benefits associated with the WRAP's program are captured in the RIA for the 1999 final regional haze rule.

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

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (as discussed on the SBA website at *http://www.sba.gov/size/SIC2NAICSmain.html*); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the potential for economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Today's proposed rule amends the requirements of the regional haze program to provide nine western States and a number of Tribes with an optional method for complying with the requirements of the CAA. No State or Tribe is required to submit an implementation plan meeting its requirements. For States or Tribes that choose to submit an implementation plan under this optional program, however, today's proposed rule requires those States and/or Tribes to meet a series of regional SO_2 emission milestones. The EPA will determine whether these milestones are met based on the actual emissions from stationary sources with SO_2 emissions of more than 100 tons per year. From data EPA obtained from the WRAP's website, it appears that there are 197 establishments meeting the 100 tons per year of SO_2 criterion for this program, including 39 utility power plants, and 158 non-utility sources.[24] The vast majority of these establishments—which include sources such as power plant boilers, copper smelters, chemical plants, petroleum refineries, natural gas production plants, large manufacturing operations, paper mills—are not small entities. The EPA estimates that 12 facilities are likely to be small entities, and 166 are not small. The EPA has been unable to determine the size of 16 entities at this time.[25] Even if all 16 were determined to be small entities, and all nine States and those Tribes with covered sources adopted the optional approach to complying with the visibility requirements of the CAA, less than 30 small entities would be potentially affected by this proposed rule. The goal of the WRAP is for the regional SO_2 milestones established by the rule to be met through voluntary measures, see Annex at 23, and EPA believes that participating States and Tribes may be able to meet the milestones through such measures. However, as a backstop in the event the milestones are not met in this manner, the proposed rule requires the implementation of a market trading program to ensure that emissions in the relevant region do not exceed the milestones. The proposed rule gives the States and Tribes the discretion to structure the emissions trading program, including the discretion to allocate emissions credits to sources, as the States and Tribes determine appropriate. Thus, ultimately, the impact on small entities will be determined not by this rule, but rather by how the relevant State or Tribe exercises its discretion in adopting the optional program and allocating emissions credits. The EPA encourages the States to consider the impact of its market trading program on small entities in structuring the program, but EPA cannot predict the impact of the rule on small entities. Nonetheless, EPA believes that no more than 28 small entities will be effected by this rule, and most likely less, given that EPA does not anticipate that all 9 States with the option of adopting this program will do so. Thus, EPA believes that this action will not have a significant economic impact 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.

C. Paperwork Reduction Act—Impact on Reporting Requirements

The information collection requirements in this proposal have been submitted 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. 1813.03) and a copy may be obtained from Sandy Farmer, by mail at Collection Strategies Division; U.S. EPA (2822) 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by 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.*

This ICR contains burden estimates specific to the implementation of the WRAP's program for stationary sources of SO_2. Because this proposed rule is an amendment to the regional haze rule, this ICR will revise the existing ICR for the regional haze rule (ICR 1813.02). For future ICR renewals for the regional haze rule, EPA will incorporate the effects of this rule.

The EPA has prepared burden estimates for the specific burden impacts of today's proposed rule. These burden estimates are calculated using the assumption that 7 eligible States and 4 Tribes would participate in the program. The results of the calculations indicate 16,100 hours to 19,990 hours for affected sources, 14,010 to 14,430 hours for States, 2520 to 2600 hours for Tribes, and 1305 to 1375 for the Federal government.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200

[24] The number of power plants was obtained from ''Data Worksheets from ICF Consulting Detailing Utility Emissions Projections,'' Item 3 in supplemental information transmitted to Tim Smith, EPA, from Patrick Cummins, WRAP. June 29, 2001. The non-utility estimate was obtained from: *Technical Support Documentation. Voluntary Emissions Reduction Program for Major Industrial Sources of Sulfur Dioxide in Nine Western States and a Backstop Market Trading Program.* Section 2.A. Revised Appendix A for the Pechan Report, table A–1.

[25] The EPA provides documentation of these estimates in a technical memorandum, ''Size of Potentially Affected Entities Should the Western Regional Air Partnership States Choose to Adopt Regulations in Accordance with the Draft Proposed Rule Revising Section 51.309(h).'' Allen Basala, EPA, October 17, 2001. This memorandum is included in the docket for today's proposal.

Pennsylvania Ave., NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after May 6, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by June 5, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that ''includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year.'' A ''Federal mandate'' is defined under section 421(6), 2 U.S.C. 658(6), to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate.'' A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is ''a condition of Federal assistance,'' section 421(5)(A)(i)(I). A ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector,'' with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

Before promulgating an EPA rule for which a written statement is needed under section 202 of the UMRA, section 205, 2 U.S.C. 1535, of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

By proposing to incorporate into the regional haze rule the provisions of the Annex for a voluntary emissions reductions program and backstop trading program, EPA is not directly establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. The entire program under 40 CFR 51.309, including the proposed amendments, is an option that each of the States may choose to exercise. The program is not required and thus is clearly not a ''mandate.'' Thus, EPA is not obligated to develop under section 203 of the UMRA a small government agency plan.

The EPA also believes that because today's proposal provides those States potentially subject to the proposed rule with substantial flexibility, the proposed rule meets the UMRA requirement in section 205 to select the least costly and burdensome alternative in light of the statutory mandate for SIPs for visibility protection that address BART. The proposed rule provides States and sources with the flexibility to achieve regional SO_2 reductions in a way that is cost effective and administratively effective. Sources are given the opportunity to achieve voluntary reductions. If such reductions do not occur, the rule provides for the establishment of a trading program to achieve targeted emissions reductions. If a trading program is implemented, sources have the flexibility to buy and sell allowances in order to reach emissions reduction milestones in the most cost-effective way. The proposed rule therefore, inherently provides for adoption of the least costly, most cost-effective, or least-burdensome alternative that achieves the objective of the rule.

The EPA believes that this rulemaking action is not subject to the requirements of UMRA. For regional haze SIPs overall, it is questionable whether a requirement to submit a SIP revision constitutes a Federal mandate, as discussed in the preamble to the regional haze rule, (64 FR 35761, July 1, 1999). However, today's proposed rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for States, local, or tribal governments or the private sector. The program contained in 40 CFR 51.309, including today's proposed amendments, is an optional program.

E. Executive Order 12898: Environmental Justice

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations.

The EPA believes that this proposed rule should not raise any environmental justice issues. The overall result of the program is regional reductions in SO_2. Because this program would likely reduce regional and local SO_2 levels in the air, and because there are separate programs under the CAA to ensure that SO_2 levels do not exceed national ambient air quality standards, it appears unlikely that this program would permit any adverse affects on local populations.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. The proposal to codify the SO_2 emissions reduction program is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

G. Executive Order 13132: Federalism

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

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct

compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As an optional program, the proposed rule will not directly impose significant new requirements on State and local governments. In addition, even if the proposed rule did have federalism implications, it will not impose substantial direct compliance costs on State or local governments, nor will it preempt State law.

Consistent with EPA policy, EPA nonetheless consulted with State and local officials early in the process of developing the proposed regulation, to provide them an opportunity for meaningful and timely input into its development. These consultations included a working meeting with State and local officials, and numerous discussions with committees and forums of the WRAP. 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.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to, among other things, 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.''

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of the Executive Order, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation.

This proposed rule may have tribal implications, but EPA believes that it will neither impose substantial direct compliance costs on the Tribes nor preempt tribal law. The EPA is seeking input from potentially affected Tribes before reaching a conclusion on whether this rule will have tribal implications. This is due, in large part, to the voluntary nature of this program and the uncertainty of potential impacts on Tribes in the event a State or Tribe chooses to participate in the program. Possible impacts on Tribes choosing to opt into the program are discussed above in unit III of this preamble. The EPA specifically requests comments from tribal governments on whether this proposed rule, if finalized, constitutes a policy that has tribal implications as defined in E.O. 13175.

The EPA notes that the WRAP consulted extensively with tribal representatives in the development of the Annex, the document which provided the basis for today's proposed rulemaking. The Annex provides recognition of Tribes throughout the document and a specific discussion of tribal issues in Attachment F. Today's rulemaking closely mirrors the recommendations of the WRAP and therefore reflects discussions between the WRAP and Tribes.

In any case, prior to the issuance of the final rule, EPA will provide additional opportunities for consultation with tribal officials or authorized representatives of tribal governments on the potential impacts of the proposed rule on Tribes and whether the rule has tribal implications. The EPA will consider concerns expressed by tribal officials during these consultations in the development of the final rule. This consultation will be conducted consistent with the requirements of E.O. 13175 and afford Tribes opportunities to provide additional input into the development of this rule. In the preamble to the final rule, EPA will include a discussion of the consultation we have undertaken and our conclusions regarding tribal implications. The EPA specifically solicits additional comment on this proposed rule from tribal officials.

I. National Technology Transfer and Advancement Act

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) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

However, this action does not incorporate any requirements to use any particular technical standards, such as specific measurement or monitoring techniques. Therefore, EPA is not considering the use of any voluntary consensus standards in this rulemaking. The proposed rule does require States to develop emissions quantification protocols and monitoring procedures for their SIPs as part of the market trading program. However, EPA generally defers to the choices the States make in their SIPs when the CAA does not prescribe requirements, so EPA is not proposing to require the use of specific, prescribed techniques or methods in those SIPs. Nevertheless, while EPA believes that it is not necessary to consider the use of any voluntary consensus standards for this proposal, we will encourage States and tribes to consider the use of such standards in the development of these protocols.

We welcome comments on this aspect of the proposed rulemaking.

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

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355, May 22, 2001), provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, OMB, a Statement of Energy Effects for certain actions identified as ''significant

energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.'' Under Executive Order 13211, a Statement of Energy Effects is a detailed statement by the agency responsible for the significant energy action relating to: (i) Any adverse effects on energy supply, distribution, or use including a shortfall in supply, price increases, and increased use of foreign supplies should the proposal be implemented, and (ii) reasonable alternatives to the action with adverse energy effects and the expected effects of such alternatives on energy supply, distribution, and use.

While this rulemaking is a ''significant regulatory action'' under Executive Order 12866, EPA has determined that this rulemaking is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. In the proposed rule, if States chose to implement the option provided by 40 CFR 51.309, this would lead to a regional reduction in SO_2 emissions in order to meet the WRAP's SO_2 milestones for the 2003–2018 time period. The WRAP's analysis of the program's requirements results in the following projections: [26]

—No reduction in crude oil supply;
—No reduction in fuel production;
—0.0 percent to 0.2 percent increase in wholesale electricity prices in 2018;
—Production cuts in coal in the western States balanced by increases in coal production in the Appalachian region;
—No increase in energy distribution costs;
—No significantly increased dependence on foreign supplies of energy;
—Adverse impacts on employment, gross regional product, and real disposable incomes in the affected western States of less than 0.05 percent in 2018;
—Room for new sources of electrical generating capacity within the target SO_2 emission levels.

Given the particular concern in the West regarding needed electrical generating capacity, EPA believes it important to note the WGA statement that ''the conclusion [* * * of their analysis * * *] is that sulfur dioxide emissions reductions milestones should in no way impede the construction of new coal-fired power plants in the West [27] * * *''

Furthermore, an assessment by WGA of the effects of the WRAP Annex indicates that it is possible to build 7000 megawatts or more of new coal fired generation at any time between 2001 and 2018 without exceeding the SO_2 emission milestones in the Annex.[28] However the amount of megawatts that could be built is affected by analytical assumptions regarding fuel mix and quality, capacity utilization, control levels, and the demarcation of fuel use regions. Additional scenarios included in the WGA analysis show that there could be room for 19,000 megawatts of generation capacity.

The EPA believes that the program contained in the Annex and in today's proposed rule will not result in energy reduction of 500 or more megawatts installed production capacity. Under this program, considerable flexibility is afforded to electricity generators on how to comply with the program. Even if the trading program is triggered and sources must comply with allowances, we believe that the least-cost solutions afforded by the trading program, and the ability to secure emissions reductions from other sources, will make it very unlikely that the program would lead to plant shutdowns.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Nitrogen dioxide, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: April 25, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

Subpart P—Protection of Visibility

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7410–7671q.

2. Section 51.309 is amended by:
a. Revising paragraph (b)(5).
b. Adding paragraphs (b)(8) and (b)(9).
c. Revising paragraph (c).
d. Revising paragraphs (d)(4)(i) through (d)(4)(iv).
e. Revising paragraph (f)(1)(i).
f. Adding paragraph (h).

The revisions and additions read as follows:

§ 51.309 Requirements Related to the Grand Canyon Visibility Transport Commission.

* * * * *

(b) * * *

(5) Milestone means the maximum level of annual regional sulfur dioxide emissions for a given year, assessed annually consistent with paragraph (h)(2) of this section beginning in the year 2003.

* * * * *

(8) BHP San Manuel means:

(i) The copper smelter located in San Manuel, Arizona which operated during 1990, but whose operations were suspended during the year 2000,

(ii) The same smelter in the event of a change of name or ownership.

(9) Phelps Dodge Hidalgo means:

(i) The copper smelter located in Hidalgo, New Mexico which operated during 1990, but whose operations were suspended during the year 2000,

(ii) The same smelter in the event of a change of name or ownership.

(c) Each Transport Region State may meet the requirements of § 51.308(b) through (e) by electing to submit an implementation plan that complies with the requirements of this section. Each Transport Region State must submit an implementation plan addressing regional haze visibility impairment in the 16 Class I areas no later than December 31, 2003. Indian Tribes may submit implementation plans after the December 31, 2003 deadline. A Transport Region State that elects not to submit an implementation plan that complies with the requirements of this section (or whose plan does not comply with all of the requirements of this section) is subject to the requirements of § 51.308 in the same manner and to the same extent as any State not included within the Transport Region.

* * * * *

[26] ICF consulting, Final Report on Regional Economic Impacts of Annex. Transmitted to Tim Smith, EPA/OAQPS by Patrick Cummins, WRAP Co-Project Manager, June 29, 2001.

[27] Memorandum from Jim Souby to Staff Council, State Environmental Directors and State Air Directors, ''Energy and Air Quality Issues.'' February 23, 2001.

[28] Technical Memorandum, ''Analysis of New Coal-Fired Power Plants Under the Proposed Sulfur Dioxide Emission Reduction Milestones for the Nine-State Grand Canyon Visibility Transport Region.'' February 22, 2001.

(d) * * *

(4) * * *

(i) Sulfur dioxide milestones consistent with paragraph (h)(1) of this section.

(ii) Monitoring and reporting of sulfur dioxide emissions. The plan submission must include provisions requiring the annual monitoring and reporting of actual stationary source sulfur dioxide emissions within the State. The monitoring and reporting data must be sufficient to determine whether a 13 percent reduction in actual emissions has occurred between the years 1990 and 2000, and for determining annually whether the milestone for each year between 2003 and 2018 is exceeded, consistent with paragraph (h)(2) of this section. The plan submission must provide for reporting of these data by the State to the Administrator and to the regional planning organization consistent with paragraph (h)(2) of this section.

(iii) Criteria and Procedures for a Market Trading Program. The plan must include the criteria and procedures for activating a market trading program within 5 years consistent with paragraph (h)(3) of this section if an applicable milestone is exceeded. The plan must also provide for implementation plan assessments of the program in the years 2008, 2013, and 2018.

(iv) Provisions for market trading program compliance reporting consistent with paragraph (h)(3) of this section.

* * * * *

(f) * * *

(1) * * *

(i) The annex must contain quantitative emissions milestones for stationary source sulfur dioxide emissions for the reporting years 2003, 2008, 2013 and 2018. The milestones must provide for steady and continuing emissions reductions for the 2003–2018 time period consistent with the Commission's definition of reasonable progress, its goal of 50 to 70 percent reduction in sulfur dioxide emissions from 1990 actual emission levels by 2040, applicable requirements under the CAA, and the timing of implementation plan assessments of progress and identification of deficiencies which will be due in the years 2008, 2013, and 2018. The milestones must be shown to provide for greater reasonable progress than would be achieved by application of best available retrofit technology (BART) pursuant to § 51.308(e)(2) and would be approvable in lieu of BART.

* * * * *

(h) *Emissions Reduction Program for Major Industrial Sources of Sulfur Dioxide.* The first implementation plan submission must include a stationary source emissions reduction program for major industrial sources of sulfur dioxide that meets the following requirements:

(1) *Regional sulfur dioxide milestones.* The plan must include the milestones in Table 1, and provide for the adjustments in paragraphs (h)(1)(i) through (iv) of this section. Table 1 follows:

TABLE 1.—SULFUR DIOXIDE EMISSIONS MILESTONES

Column 1	Column 2	Column 3	Column 4
For the year—	* * * if BHP San Manuel and Phelps Dodge Hidalgo resume operation, the maximum regional sulfur dioxide milestone is—	* * * if neither BHP San Manuel nor Phelps Dodge Hidalgo resumes operation, the minimum regional sulfur dioxide milestone is—	* * * and the emission inventories for these years will determine whether emissions are greater than or less than the milestone—
2003	720,000 tons	682,000 tons	2003.
2004	720,000 tons	682,000 tons	Average of 2003 and 2004.
2005	720,000 tons	682,000 tons	Average of 2003, 2004 and 2005.
2006	720,000 tons	682,000 tons	Average of 2004, 2005 and 2006.
2007	720,000 tons	682,000 tons	Average of 2005, 2006, and 2007.
2008	718,333 tons	680,333 tons	Average of 2006, 2007, and 2008.
2009	716,667 tons	678,667 tons	Average of 2007, 2008 and 2009.
2010	715,000 tons	677,000 tons	Average of 2008, 2009 and 2010.
2011	715,000 tons	677,000 tons	Average of 2009, 2010, and 2011.
2012	715,000 tons	677,000 tons	Average of 2010, 2011, and 2012.
2013	695,000 tons	659,667 tons	Average of 2011, 2012, and 2013.
2014	675,000 tons	642,333 tons	Average of 2012, 2013, and 2014.
2015	655,000 tons	625,000 tons	Average of 2013, 2014, and 2015.
2016	655,000 tons	625,000 tons	Average of 2014, 2015, and 2016.
2017	655,000 tons	625,000 tons	Average of 2015, 2016, and 2017.
2018	510,000 tons	480,000 tons	Year 2018 only.
each year after 2018	no more than 510,000 tons	no more than 480,000 tons	Three-year average of the year and the two previous years, or any alternative provided in a future plan revisions under § 51.308(f).

(i) Adjustment for States and Tribes Which Choose Not to Participate in the Program, and for Tribes that choose to opt into the program after the 2003 deadline. If a State or Tribe chooses not to submit an implementation plan under the option provided in this section, the amounts for that State or Tribe which are listed in Table 2 must be subtracted from the milestones that are included in the implementation plans for the remaining States and Tribes. For Tribes that opt into the program after 2003, the amounts in Table 2 of this paragraph will be automatically added to the milestones that are included in the implementation plans for the participating States and Tribes, beginning with the first year after the tribal implementation plan implementing this section is approved by the Administrator. The amounts listed in Table 2 are for purposes of adjusting the milestones only, and they do not represent amounts that must be allocated under any future trading program. Table 2 follows:

TABLE 2.—AMOUNTS SUBTRACTED FROM THE MILESTONES FOR STATES AND TRIBES WHICH DO NOT EXERCISE THE OPTION PROVIDED BY § 51.309

State or Tribe	2003	2004	2005	2006	2007	2008	2009	2010
1 Arizona	117,372	117,372	117,372	117,372	117,372	117,941	118,511	119,080
2. California	37,343	37,343	37,343	37,784	37,343	36,363	35,382	34,402
3. Colorado	98,897	98,897	98,897	98,897	98,897	98,443	97,991	97,537
4. Idaho	18,016	18,016	18,016	18,016	18,016	17,482	16,948	16,414
5. Nevada	20,187	20,187	20,187	20,187	20,187	20,282	20,379	20,474
6. New Mexico	84,624	84,624	84,624	84,624	84,624	84,143	83,663	83,182
7. Oregon	26,268	26,268	26,268	26,268	26,268	26,284	26,300	26,316
8. Utah	42,782	42,782	42,782	42,782	42,782	42,795	42,806	42,819
9. Wyoming	155,858	155,858	155,858	155,858	155,858	155,851	155,843	155,836
10. Navajo Nation	53,147	53,147	53,147	53,147	53,147	53,240	53,334	53,427
11. Shoshone-Bannock Tribe of the Fort Hall Reservation	4,994	4,994	4,994	4,994	4,994	4,994	4,994	4,994
12. Ute Indian Tribe of the Uintah and Ouray Reservation	1,129	1,129	1,129	1,129	1,129	1,131	1,133	1,135
13. Wind River Reservation	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384

State or Tribe	2011	2012	2013	2014	2015	2016	2017	2018
1. Arizona	119,080	119,080	116,053	113,025	109,998	109,998	109,998	82,302
2. California	34,402	34,402	33,265	32,128	30,991	30,991	30,991	27,491
3. Colorado	97,537	97,537	94,456	91,375	88,294	88,294	88,294	57,675
4. Idaho	16,414	16,414	15,805	15,197	14,588	14,588	14,588	13,227
5. Nevada	20,474	20,474	20,466	20,457	20,449	20,449	20,449	20,232
6. New Mexico	83,182	83,182	81,682	80,182	78,682	78,682	78,682	70,000
7. Oregon	26,316	26,316	24,796	23,277	21,757	21,757	21,757	8,281
8. Utah	42,819	42,819	41,692	40,563	39,436	39,436	39,436	30,746
9. Wyoming	155,836	155,836	151,232	146,629	142,025	142,025	142,025	97,758
10. Navajo Nation	53,427	53,427	52,707	51,986	51,266	51,266	51,266	44,772
11. Shoshone-Bannock Tribe of the Fort Hall Reservation	4,994	4,994	4,994	4,994	4,994	4,994	4,994	4,994
12. Ute Indian Tribe of the Uintah and Ouray Reservation	1,135	1,135	1,135	1,135	1,135	1,135	1,135	1,135
13. Northern Arapaho and Shoshone Tribes of the Wind River Reservation	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384

(ii) Adjustment for Future Operation of Copper Smelters.

(A) The plan must provide for adjustments to the milestones in the event that Phelps Dodge Hidalgo and/or BHP San Manuel resume operations or that other smelters increase their operations.

(B) The plan must provide for adjustments to the milestones according to Tables 3a and 3b of this paragraph except that if either the Hidalgo or San Manuel smelters resumes operation and is required to obtain a permit under 40 CFR 52.21 or 40 CFR 51.166, the adjustment to the milestone must be based upon the levels allowed by the permit. In no instance may the adjustment to the milestone be greater than 22,000 tons for the Phelps Dodge Hidalgo, greater than 16,000 tons for BHP San Manuel, or more than 30,000 tons for the combination of the Phelps Dodge Hidalgo and BHP San Manuel smelters for the years 2013 through 2018. Tables 3a and 3b follow:

TABLE 3A.—ADJUSTMENTS TO THE MILESTONES FOR FUTURE OPERATIONS OF COPPER SMELTERS

Scenario	If this happens–	* * * and this happens—	* * * then you calculate the milestone by adding this amount to the value in column 3 of Table 1:—
1	Phelps Dodge Hidalgo resumes operation, but BHP San Manuel does not.	Phelps Dodge Hidalgo resumes production consistent with past operations and emissions.	A. Beginning with the year that production resumes, and for each year up to the year 2012, the milestone increases by: (1) 22,000 tons PLUS (2) Any amounts identified in Table 3b. B. For the years 2013 through 2018, the milestone increases by this amount or by 30,000 tons, whichever is less.

TABLE 3A.—ADJUSTMENTS TO THE MILESTONES FOR FUTURE OPERATIONS OF COPPER SMELTERS—Continued

Scenario	If this happens–	* * * and this happens—	* * * then you calculate the milestone by adding this amount to the value in column 3 of Table 1:—
2	Phelps Dodge Hidalgo resumes operation, but BHP San Manuel does not.	Phelps Dodge Hidalgo resumes operation in a substantially different manner such that emissions will be less than for past operations (an example would be running only one portion of the plant to produce sulfur acid only).	A. Beginning with the year that production resumes, and for each year up to the year 2012, the milestone increases by: (1) Expected emissions for Phelps Dodge Hidalgo (not to exceed 22,000 tons), PLUS (2) Any amounts identified in Table 3b. B. For the years 2013 through 2018, the milestone increases by this amount or by 30,000 tons, whichever is less.
3	BHP San Manuel BHP San Manuel operation, but Phelps Dodge Hidalgo does not.	BHP San Manuel BHP San Manuel resumes production consistent with past operations and emissions.	A. 16,000 tons PLUS B. Any amounts identified in Table 3b.
4	BHP San Manuel resumes operation, but Phelps Dodge Hidalgo does not.	BHP San Manuel resumes operations in a substantially different manner such that emissions be less than for past operations (an example would be running only one portion of the plant to produce sulfur acid only).	A. Expected emissions (not to exceed 16,000 tons) PLUS B. Any amounts identified in Table 3b.
5	Both Phelps Dodge Hidalgo and BHP San Manuel resume operations.	Both smelters resume production consistent with past operations and emissions.	A. Beginning with the year that production resumes, and for each year up to the year 2012, the milestone increase by 38,000 tons. B. For the years 2013 through 2018, the milestone increases by 30,000 tons.
6	Both Phelps Dodge Hidalgo and BHP San Manuel resumes operations.	Phelps Dodge Hidalgo resumes production consistent with past operations and emissions, but BHP Manuel operations in a substantially different manner such that emissions will be less than for past operations (an example would be running only one portion of the plant to produce sulfur acid only).	A. For the year that production resumes, and for each year up to the year 2012, the milestone increases by: (1) 22,000 PLUS (2) Expected emissions San Manuel (not to exceed 16,000 tons). B. For the years 2013 though 2018, the milestone increases by this same amount, or by 30,000 tons, whichever is less.
7	Both Phelps Dodge Hidalgo and BHP San Manuel resume operations.	BHP San Manuel resumes production consistent with past operations and emissions, but Phelps Dodge Hidalgo resumes operations in a substantially different manner such that emissions will be less than for past operations (an example to exceed would be running only one portion of the plant to produce sulfur acid only).	A. For the year that production resumes, and for each year up to the year 2012, the milestone increases by: (1) 16,000 PLUS (2) expected Hidalgo emissions (not 22,000 tons). B. For the years 2013 though 2018, the milestone increases by this same amount, or by 30,000 tons, whichever is less.
8	Both Phelps Dodge Hidalgo and BHP San Manuel do not resume operations.	.....	A. Any amounts identified in Table 3b.

TABLE 3B. ADJUSTMENTS FOR CERTAIN COPPER SMELTERS WHICH OPERATE ABOVE BASELINE LEVELS.

Where it applies in table 3a, if the following smelter—	Complies with existing permits but has actual annual emissions that exceed the following baseline level—	* * * the milestone increases by the difference between actual emissions and the baseline level, OR the following amount, whichever is less.
Asarco Hayden	23,000 tons	3,000 tons.
BHP San Manuel	16,000 tons	1,500 tons.
Kennecott Salt Lake	1,000 tons	100 tons.
Phelps Dodge Chino	16,000 tons	3,000 tons.
Phelps Dodge Hidalgo	22,000 tons	4,000 tons.
Phelps Dodge Miami	8,000 tons	2,000 tons.

(iii) Adjustments for changes in emission monitoring or calculation methods. The plan must provide for adjustments to the milestone to reflect changes in sulfur dioxide emission monitoring or measurement methods for a source that is included in the program, including changes identified under paragraph (h)(2)(iii)(D) of this section. Any such adjustment based upon changes to emissions monitoring or measurement methods must be made in the form of an implementation plan revision that complies with the procedural requirements of § 51.102 and § 51.103. The implementation plan revision must be submitted to the Administrator no later than the first due

date for a periodic report under paragraph(d)(10) of this section following the change in emission monitoring or measurement method.

(iv) Adjustments for changes in flow rate measurement methods. The implementation plan must provide for adjustments to the milestones for sources using the methods contained in 40 CFR part 60, appendix A, Methods 2F, 2G, and 2H.

(v) Adjustments for illegal emissions. The implementation plan must provide for adjustments to the milestones if any source in the program decreases its sulfur dioxide emissions in order to comply with applicable regulations which were in effect prior to the calculation of the source's baseline sulfur dioxide emissions. The plan must provide that the milestone must be decreased by an appropriate amount based on a reforecasted calculation of the source's decreased sulfur dioxide emissions. Any such adjustment based upon illegal emissions must be made in the form of an implementation plan revision that complies with the procedural requirements of §§ 51.102 and 51.103.

(vi) Adjustment based upon program audits. The plan must provide for appropriate adjustments to the milestones based upon the results of program audits. Any such adjustment based upon audits must be made in the form of an implementation plan revision that complies with the procedural requirements of §§ 51.102 and 51.103. The implementation plan revision must be submitted to the Administrator no later than the first due date after the audit for a periodic report under paragraph (d)(10) of this section.

(vii) Adjustment for individual sources opting into the program. The plan must provide for adjustments to the milestones for any source choosing to participate in the program even though they do not meet the 100 tons per year criterion for inclusion. Any such adjustments must be made in the form of an implementation plan revision that complies with the procedural requirements of §§ 51.102 and 51.103.

(2) *Requirements for monitoring, record keeping and reporting of actual annual emissions of sulfur dioxide.*

(i) *Sources included in the program.* The implementation plan must provide for annual emission monitoring and reporting, beginning with calendar year 2003, for all sources whose actual emissions of sulfur dioxide are 100 tons per year or more as of 2003, and all sources whose actual emissions are 100 tons or more per year in any subsequent year. States and Tribes may include other sources, if the implementation plan provides for the same procedures and monitoring as for other sources in a way that is federally enforceable.

(ii) *Documentation of emissions calculation methods.* The implementation plan must provide documentation, consistent with EPA's applicable guidance on preparation of emissions inventories, of the specific methodology used to calculate emissions for each emitting unit during the base year. The implementation plan must also provide for documentation for each emission unit of any change to the specific methodology for each year after the base year.

(iii) *Record keeping.* The implementation plan must provide for the retention of records for at least 5 years from the establishment of the record. If a record will be the basis for an adjustment to the milestone as provided for in paragraph (h)(1) of this section, that record must be retained for at least 5 years after the date of the SIP revision which reflects the adjustment.

(iv) *Completion and submission of emissions reports.* The implementation plan must provide for collection of the emissions data, quality assurance, and public review and submission to the Administrator and to each State and Tribe which has submitted an implementation plan under this section by no later than September 30 of the following year. For sources for which changes in emission quantification methods require adjustments under paragraph (h)(1)(iii) of this section, the emissions reports must reflect the method in place before the change, for each year until the milestone has been adjusted. If each of the States which have submitted an implementation plan under this section have identified a regional planning organization to coordinate the annual comparison with the milestone, the implementation plan must provide for reporting of this information to the regional planning body.

(v) *Exceptions reports.* The emissions report submitted by each State and Tribe under paragraph (h)(2)(ii) of this section must provide for exceptions reports containing the following:

(A) Identification of new or additional sulfur dioxide sources greater than 100 tons per year that were not contained in the previous year emissions report;

(B) Identification of sources shut down or removed from the previous year emissions report;

(C) Explanation for emissions variations at any covered source that exceeds plus or minus 20 percent from the previous year emissions report;

(D) Identification and explanation of new emissions monitoring and reporting methods at any source. The use of any new methods requires an adjustment to the milestones according to paragraph (h)(1)(iii) of this section.

(vi) *Reporting of emissions for the Mohave Generating Station for the years 2003 through 2006.* For the years 2003, 2004, 2005, and for any part of the year 2006 before installation and operation of sulfur dioxide controls at the Mohave Generating Station, emissions from the Mohave Generating Station will be calculated using a sulfur dioxide emission factor of 0.15 pounds per million BTU.

(vii) *Special provision for the year 2013.* The implementation plan must provide that in the emissions report for calendar year 2012, which is due by September 30, 2013 under paragraph (h)(2)(ii) of this section, each State has the option of including calendar year 2018 emission projections for each source, in addition to the actual emissions for each source for calendar year 2012.

(3) *Annual comparison of emissions to the milestone.*

(i) The implementation plan must provide for a comparison each year of annual SO_2 emissions for the region against the appropriate milestone. In making this comparison:

(A) Each State or Tribe must make the comparison, using its annual emissions report and emissions reports from other States and Tribes reported under paragraph (h)(2)(ii) of this section, or

(B) Where each State or Tribe has designated a regional planning organization for this purpose, the regional planning organization makes the comparison, using information provided by each State and Tribe.

(ii) Beginning with an initial public review draft report due December 31, 2004 that makes the comparison for the year 2003 milestone, the implementation plan must provide the public with a public review draft comparison by no later than December 31 of each year. This public review draft must be issued by each State or Tribe or in a coordinated report by the regional planning body.

(iii) The implementation plan must provide for a final determination by each State or Tribe, or by the regional planning organization designated by each State or Tribe, of whether or not the annual milestone is exceeded. The determination must take into account public comments on the draft report. This determination must be submitted to the Administrator by the end of March of the year following issuance of the initial public review draft report. The first final determination will be due to the Administrator on March 31, 2005.

(iv) Special considerations for year 2012 report. If each State or Tribe has included calendar year 2018 emission projections under paragraph (h)(2)(v) of this section, then the report for the year 2012 milestone which is due by December 31, 2013 under paragraph (h)(3)(ii) of this section may also include a comparison of the regional year 2018 emissions projection with the milestone for calendar year 2018. If the report indicates that the year 2018 milestone will be exceeded, then each State or Tribe, or the regional planning organization may choose to implement the market trading program beginning in the year 2018.

(v) Independent review. The implementation plan shall provide for reviews of the annual emissions reporting program by an independent third party. This independent review is not required if a determination has been made under paragraph (h)(3)(iii) of this section to implement the market trading program. The independent review shall be completed by the end of 2006, and every 5 years thereafter, and shall include an analysis of:

(A) The uncertainty of the reported emissions data;

(B) Whether the uncertainty of the reported emissions data is likely to have an adverse impact on the annual determination of emissions relative to the milestone; and,

(C) Whether there are any necessary improvements for the annual administrative process for collecting the emissions data, reporting the data, and obtaining public review of the data.

(4) *Market trading program.* The implementation plan must provide for implementation of a market trading program if the determination required by paragraph (h)(3)(iii) of this section indicates that a milestone has been exceeded. The implementation plan must provide for the option of implementation of a market trading program if a report under paragraph (h)(3)(iv) of this section indicates that projected emissions for the year 2018 will exceed the year 2018 milestone. The implementation plan must provide for a market trading program whose provisions are the same for each State or Tribe submitting an implementation plan under this section. The implementation plan must include the following market trading program provisions:

(i) *Allowances.* For each source in the program, the implementation plan must identify the specific allocation of allowances, on a tons per year basis, for each calendar year from 2009 to 2018. The total of the tons per year allowances across all participating States and Tribes may not exceed the amounts in Table 4 of this paragraph, less a 20,000 ton amount that must be set aside for use by Tribes. The implementation plan may include procedures for redistributing the allowances in future years, so long as the amounts in Table 4 of this paragraph, less a 20,000 ton amount, are not exceeded. The implementation plan must provide that any adjustment for a calendar year applied to the milestones under paragraphs (h)(1)(i) through (v) of this section must also be applied to the amounts in Table 4. Table 4 follows:

TABLE 4.—TOTAL AMOUNT OF ALLOWANCES BY YEAR

For this year—	If the two smelters resume operations, the total number of allowances issued by States and Tribes may not exceed this amount—	If the two smelters do not resume operations, the total number of allowances issued by States and Tribes may not exceed this amount—
2009	715,000	677,000
2010	715,000	677,000
2011	715,000	677,000
2012	715,000	677,000
2013	655,000	625,000
2014	655,000	625,000
2015	655,000	625,000
2016	655,000	625,000
2017	655,000	625,000
2018	510,000	480,000

(ii) *Compliance with allowances.* The implementation plan provide that, beginning with the compliance period 6 years following the calendar year for which emissions exceeded the milestone and for each compliance period thereafter, each source owner must hold allowances for each ton of sulfur dioxide emitted.

(iii) *Emissions quantification protocols.* The implementation plan must include specific emissions quantification protocols for each source category included within the program, including the identification of sources subject to part 75 of this chapter. For sources subject to part 75 of this chapter, the implementation plan may rely on the emissions quantification protocol in part 75. For source categories with sources in more than one State submitting an implementation plan under this section, each State must use the same protocol. The protocols must provide consistent approaches for all sources within a given source category. The protocols must provide for reliability (repeated application obtains results equivalent to EPA-approved test methods), and replicability (different users obtain the same or equivalent results that are independently verifiable). The protocols must include procedures for addressing missing data, which provide for conservative calculations of emissions and provide sufficient incentives for sources to comply with the monitoring provisions.

(iv) *Monitoring and Record keeping.* The implementation plan must include monitoring provisions which are consistent with the emissions quantification protocol. Monitoring required by these provisions must be timely, of sufficient frequency, and ensure the enforceability of the program. The implementation plan must also include requirements that source owners or operators keep records consistent with the emissions quantification protocols, and keep all records used to determine compliance for at least 5 years, unless a longer period is required by paragraph (h)(2)(iii) of this section. For source owners or operators which use banked allowances, all records relating to the

banked allowance must be kept for at least 5 years after the banked allowances are used.

(v) *Tracking system.* The implementation plan must provide for submitting data to a centralized system for the tracking of allowances and emissions. The implementation plan must provide that all necessary information regarding emissions, allowances, and transactions is publicly available in a secure, centralized database. The system must ensure that each allowance may be uniquely identified, allow for frequent updates, and include enforceable procedures for recording data.

(vi) *Authorized account representative.* The implementation plan must include provisions requiring the owner or operator of each source in the program to identify an authorized account representative. The implementation plan must provide that all matters pertaining to the account, including, but not limited to, the deduction and transfer of allowances in the account, and certifications of the completeness and accuracy of emissions and allowances transactions required in the annual report under paragraph (h)(4)(vi) of this section shall be undertaken only by the authorized account representative.

(vii) *Annual report.* The implementation plan must include provisions requiring the authorized account representative for each source in the program to demonstrate and report within a specified time period following the end of each calendar year that the source holds allowances for each ton per year of SO_2 emitted. The implementation plan shall require the authorized account representative to submit the report within 60 days of the end of each calendar year, unless an alternative deadline is specified consistent with emission monitoring and reporting procedures.

(viii) *Allowance transfers.* The implementation plan must include provisions detailing the process for transferring allowances between parties.

(ix) *Emissions banking.* The implementation plan may provide provisions for the banking of unused allowances. Any such provisions must state whether unused allowances may be kept for use in future years and describe any restrictions on the use of any such allowances. Allowances kept for use in future years may be used in calendar year 2018 only to the extent that the implementation plan ensures that such allowances would not interfere with the achievement of the year 2018 amount in Table 4 in paragraph (h)(4)(i) of this section.

(x) *Penalties.* The implementation plan must include specific enforcement penalties to be applied if emissions from a source in the program exceed the allowances held by the source. In establishing specific enforcement penalties, the State or Tribe must ensure that:

(A) When emissions from a source in the program exceed the allowances held by the source, each day of the year is a separate violation; and

(B) Each ton of excess emissions is a separate violation.

(xi) *Provisions for periodic evaluation of the trading program.* The implementation plan must provide for an evaluation of the trading program no later than 3 years following the first full year of the trading program, and at least every 5 years thereafter. Any changes warranted by the evaluation should be incorporated into the next periodic SIP or TIP revision required under paragraph (d)(10) of this section. The evaluation should be conducted by an independent third party and should include an analysis of:

(A) Whether the total actual emissions could exceed the values in paragraph (h)(4)(i) of this section, even though sources comply with their allowances;

(B) Whether the program achieved the overall emission milestone it was intended to reach, and a discussion of actions that have been necessary to reach the milestone;

(C) The effectiveness of the compliance, enforcement and penalty provisions;

(D) The administrative costs of the program to sources and to State and tribal regulators, including a discussion of whether States and Tribes have enough resources to implement the trading program;

(E) Whether the market trading program has likely led to decreased costs for reaching the milestone relative to a non-market based approach, including a discussion of the market price of allowances relative to control costs that might have otherwise been incurred;

(F) Whether the trading program resulted in any unexpected beneficial effects, or any unintended detrimental effects;

(G) Whether the actions taken to reduce sulfur dioxide have led to any unintended increases in other pollutants;

(H) Whether there are any changes needed in emissions monitoring and reporting protocols, or in the administrative procedures for program administration and tracking;

(I) The effectiveness of the provisions for interstate trading, and whether there are any procedural changes needed to make the interstate nature of the program more effective.

(5) What other provisions are required for the program?

The implementation plan must provide for:

(i) *Permitting of affected sources.* For sources subject to part 70 or part 71 of this chapter, the implementation plan requirements for emissions reporting and for the trading program under paragraph (h) of this section must be incorporated into the part 70 or part 71 permit. For sources not subject to part 70 or part 71, the requirements must be incorporated into a permit that is enforceable as a practical matter by the Administrator, and by citizens to the extent permitted under the CAA.

(ii) *Integration with other programs.* In addition to the requirements of paragraph (h) of this section, the restrictions of State, tribal and local rules, and State, tribal and Federal law remain in place. No provision of paragraph (h) of this section should be interpreted as exempting any source from compliance with any other provision of State, tribal or local law, the applicable and approved implementation plan, the tribal implementation plan, a federally enforceable permit, or implementing regulations under the CAA.

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May 6, 2002

Part III

Department of Education

34 CFR Part 200

Title I—Improving the Academic Achievement of the Disadvantaged; Proposed Rules

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AA92

Title I—Improving the Academic Achievement of the Disadvantaged

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the programs administered under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA)—referred to in these proposed regulations as the Title I programs. These proposed regulations are needed to implement recent changes to the standards and assessment requirements of Title I of the ESEA made by the No Child Left Behind Act of 2001 (NCLB Act) and were drafted subject to a negotiated rulemaking process.

DATES: We must receive your comments on or before June 5, 2002.

ADDRESSES: Address all comments about these proposed regulations to Joseph F. Johnson, Jr., Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W230, FB–6, Washington, DC 20202–6132. The Fax number for submitting comments is (202) 260–7764. If you prefer to send your comments through the Internet, use the following address: *TitleIRulemaking@ed.gov*

If you want to comment on the information collection requirements, you must send your comments to Joseph F. Johnson, Jr. at the address above.

FOR FURTHER INFORMATION CONTACT: Susan Wilhelm, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W202, FB–6, Washington, DC 20202–6132. Telephone: (202) 260–0826.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange your comments in the same order as the proposed regulations.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3W204, FB–6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

The NCLB Act reauthorized the ESEA and incorporated the major educational reforms proposed by President George W. Bush in his No Child Left Behind initiative, particularly with regard to standards and assessment, accountability, and school improvement. These provisions are the centerpiece of Title I, Part A of the ESEA, as amended by the NCLB Act, which is designed to help disadvantaged children meet high academic standards.

These proposed regulations would implement changes to the academic standards and assessment provisions of Title I, Part A of the ESEA in a manner that respects State and local control over education while ensuring strong accountability for results. The Secretary also is considering proposing regulations for other provisions in Title I, Part A of the ESEA. Any additional regulations will be part of a future **Federal Register** document. The Secretary intends to regulate only if absolutely necessary; for example, if the statute requires regulations or if regulations are necessary to provide flexibility or clarification for State and local educational agencies.

Rather than regulating extensively, the Secretary intends to issue nonregulatory guidance addressing particular legal and policy issues under the Title I programs. This guidance will inform schools, parents, school districts, States, and other affected parties about the flexibility that exists under the statute, including different approaches they may take to carry out the statute's requirements.

Negotiated Rulemaking

Section 1901(b) of Title I of the ESEA describes procedures that the Department must follow in developing and issuing regulations to implement the Title I programs. Section 1901(b)(1) requires the Secretary to obtain the advice and recommendations of representatives of Federal, State, and local administrators; parents; teachers; paraprofessionals; members of local boards of education; and other organizations involved with the implementation and operation of Title I programs. Accordingly, the Department published in the **Federal Register** on January 18, 2002 (67 FR 2770) a request for advice and recommendations on regulatory issues concerning Title I. We received 178 responses. To obtain additional advice and recommendations, the Secretary invited a broad spectrum of individuals and organizations affected by the Title I programs to participate in focus group sessions in January and February in Tampa, Florida; New Orleans, Louisiana; Washington, DC; and Denver, Colorado.

After obtaining this advice, the Secretary established a negotiated rulemaking process on the issues of academic standards and assessments in accordance with section 1901(b)(3) of Title I. The Secretary appointed members of a negotiated rulemaking committee (the Committee) to participate in this process. The Committee was made up of 2 representatives of the U.S. Department of Education and 22 individuals from all geographic regions of the United States and was balanced between representatives of parents and students and representatives of educators and education officials. The sessions were held on March 11–13 and 19–20, 2002, near Washington, DC.

Under the Committee's protocols, ''consensus'' meant the lack of active objection by any Committee member on all issues within a regulatory section. The Committee reached consensus on every issue in the draft regulations that were the subject of its negotiations. The Secretary therefore proposes these negotiated regulations without change, other than those changes needed to

correct technical, punctuation, or grammatical errors.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Section 200.1 State Responsibilities for Developing Challenging Academic Standards

Statute: Under section 1111(b)(1) of Title I, each State must adopt challenging academic content standards and student academic achievement standards (formerly called ''student performance standards''). These will be used by the State, its local educational agencies (LEAs), and its schools to carry out Part A (Improving Basic Programs Operated by Local Educational Agencies) of Title I. The State must apply these academic standards to all students and all schools in the State. States must have these standards in subjects determined by the State, but, at a minimum, in mathematics, reading/language arts, and, beginning in the 2005–2006 school year, science. The State's content standards must specify what children are expected to know and be able to do in academic subjects. They must contain coherent and rigorous content and encourage the teaching of advanced skills.

States also must have challenging student academic achievement standards that are aligned with the State's content standards and describe at least three levels of achievement: advanced, proficient, and basic. Advanced and proficient levels determine how well children are mastering the State's content standards. The basic level provides complete information about the progress of lower-performing children toward achieving the proficient and advanced levels.

Current Regulations: The current regulations governing State responsibilities for developing academic standards (34 CFR 200.2) reflect provisions of section 1111 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: Proposed § 200.1 would repeat the statutory requirements for States to develop academic content and student academic achievement standards for all schools and all children. It also would clarify that States have the flexibility to develop academic content standards in reading/language arts and mathematics that may cover either each grade specifically or more than one grade. If a State develops academic content standards that cover more than one grade, the State must have content expectations that indicate to teachers and others the portion of the standards to be taught at each grade level.

Proposed § 200.1 would also clarify that high school standards must reflect what a State expects all high school students to know by the time they graduate, without regard to course titles or years completed. In other words, the focus of high school standards is at least on the broad academic content in mathematics, reading/language arts, and, beginning in 2005–2006 school year, science that a State expects high school students to know, rather than content linked to specific courses, such as Algebra I, or the specific year in which a high school assessment is taken. Proposed § 200.1 also incorporates the Committee's recommendations to clarify that these standards are for all public schools and public school children.

Proposed § 200.1(c)(1)(ii) would specify (1) what academic achievement standards must include and (2) the information that is necessary to demonstrate fulfillment of the statutory requirement to set three levels of achievement based on State standards and assessments.

Proposed § 200.1(c)(2) would specify that, although academic content standards may cover more than one grade, States must have academic achievement standards for each grade and subject assessed. Proposed § 200.1(c)(3) would clarify that, with regard to student achievement standards in science, States must have achievement levels and descriptions of those levels in place by the 2005–2006 school year. The actual assessment scores (called ''cut scores'' by the assessment community) for those achievement levels, however, would not have to be set until the assessments are due in the 2007–08 school year.

Reasons: Proposed § 200.1 reflects the Secretary's goals of providing flexibility while remaining true to statutory intent and providing clarity if the statute is ambiguous. Proposed § 200.1(c)(1)(ii) is designed to address past confusion on the meaning and components of ''student academic achievement standards.'' Proposed § 200.1(c)(3) would address the technical problem that it is not possible to set fully academic achievement standards before assessments are final.

Section 200.2 State Responsibilities for Assessment

Statute: Under section 1111(b)(3) of Title I, each State must implement a set of high-quality, yearly student academic assessments in, at a minimum, mathematics, reading/language arts, and, by school year 2007–08, science. The State must use these assessments as the primary means of determining the yearly progress of the State, each LEA, and every public school toward enabling all children to meet the State's student academic achievement standards. The State must use the same assessments to measure the achievement of all children; align the assessments with the State's academic content and student achievement standards; and use the assessments for purposes for which they are valid and reliable.

Assessments must involve multiple up-to-date measures of academic achievement, including measures that assess higher-order thinking skills and understanding.

The State must disaggregate the results of assessments within each State, each LEA, and each school by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities compared to nondisabled students, and by economically disadvantaged students compared to students who are not economically disadvantaged.

The State must produce interpretive, descriptive, and diagnostic reports for each student and itemized score analyses that allow parents, teachers, and principals to understand and address the specific academic needs of the student based on his or her achievement against State standards.

Current Regulations: The current regulations governing State responsibilities for assessments (34 CFR 200.4) reflect provisions of section 1111 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: Proposed § 200.2 incorporates the statutory requirements for a State to implement a system of high-quality, yearly student academic assessments. The Committee's discussions centered on three provisions, and the proposed regulations reflect the changes recommended by the negotiators:

First, proposed § 200.2(b)(2) would include a requirement that a State's assessment system be designed to be valid and accessible for use with the widest possible range of students, including students with disabilities and students with limited English proficiency.

Second, the Committee incorporated in proposed § 200.2(b)(5) statutory language requiring a State's assessment system to be supported by evidence provided by test publishers or other relevant sources. The additional

provisions would specify that the Secretary would provide this evidence to the public on request, consistent with applicable Federal laws governing the disclosure of information.

Third, proposed § 200.2(b)(10)(v) incorporates the Committee's suggestion to clarify that, for purposes of disaggregating assessment data, students with disabilities are those defined under section 602(3) of the Individuals with Disabilities Education Act.

Proposed § 200.2(b)(8) reflects legislative history from the conference report accompanying the NCLB Act clarifying that the requirement to test only objective knowledge does not prohibit essay responses and opinion questions.

Reasons: Proposed § 200.2 reflects the Secretary's goals of providing flexibility while remaining true to statutory intent and providing clarity if the statute is ambiguous. The provision in proposed § 200.2(b)(2) addresses the concern that, often, assessments are not designed to be used for the broadest possible range of students, including students with disabilities and students with limited English proficiency. For example, the design of assessments may not include validation studies with sufficient samples of students with limited English proficiency or students with disabilities, and, thus, may yield invalid results for those populations.

The provisions in proposed § 200.2(b)(5) governing the public availability of certain evidence that supports a State's assessment system represent the Committee's efforts to ensure that the proposed regulations are more clearly aligned with the statutory requirements. The clarification in proposed § 200.2(b)(10)(v) is designed to clarify that under the statute, States, LEAs, and schools would be required to disaggregate results only for children with disabilities as defined under the Individuals with Disabilities Education Act.

Section 200.3 Designing State Academic Assessment Systems; and § 200.4 State Law Exception

Statute: As noted in the discussion under ''Section § 200.2 State responsibilities for assessment,'' section 1111(b)(3) of the ESEA requires each State to implement a set of high-quality, yearly student academic assessments that meet certain requirements.

Proposed regulations: Proposed §§ 200.3 and 200.4 would clarify that a State has flexibility in how it sets up its statewide assessment system, but also would establish qualitative criteria that the system must meet to fulfill statutory requirements and ensure that all students meet challenging State standards. Specifically, proposed § 200.3 would clarify that a State may use different types of assessments as long as each test (for each grade and subject) fully addresses the depth and breadth of the State's academic content standards; is valid, reliable, and of high technical quality; and expresses results in terms of the State's academic achievement standards.

If a State uses only assessments referenced against national norms at a particular grade, these assessments would have to be augmented with additional items as necessary to (1) measure accurately the depth and breadth of the State's academic content standards and (2) express results in terms of the State's academic achievement levels.

If a State includes a combination of assessments (whether different State assessments or State and local assessments), the State must demonstrate (1) that the design is rational and coherent, (2) that the assessments work together to assess fully the State's academic content standards, and (3) that the assessments measure adequate yearly progress, as well as student progress towards meeting the State's standards.

A State would be permitted to include locally designed assessments if the State assumed responsibility for: (1) Setting technical criteria; (2) ensuring that the assessments are equivalent to one another and to State assessments, if any, in content coverage, difficulty, and quality; (3) reviewing and approving each assessment; and (4) ensuring that data from all assessments can be aggregated to make a fair, rational, and equitable determination of adequate yearly progress for school districts and schools. When aggregating data from different assessments, a State must be able to demonstrate that results are sufficiently comparable to be aggregated. Such evidence might include data analysis and analyses by psychometricians with experience in large-scale assessments. The Committee spent a substantial amount of time on these provisions trying to make them as clear as possible.

Proposed § 200.4(a) clarifies that if a State is prohibited by State law from establishing a statewide assessment system, the State would be excepted from the requirement for a single statewide system. Instead, that State could establish a statewide system composed of only local standards and assessments. The State would have to meet the same qualitative criteria that other States must meet with regard to inclusion of local assessments in an overall State accountability framework.

Reasons: Proposed §§ 200.3 and 200.4 would permit States considerable flexibility in designing State academic assessment systems consistent with the statutory provisions.

Section 200.5 Timeline for Assessments

Statute: Under section 1111(b)(3)(C) of the Act, a State must administer assessments consistent with a specified timeline. The statute establishes a three-stage timeline for developing and administering assessments:

- In stage one, through school year 2004–2005, the State must administer the yearly assessments in mathematics and reading/language arts at least once during each of three grade groupings: (1) Grades 3 through 5, (2) grades 6 through 9, and (3) grades 10 through 12.
- In stage two, beginning no later than school year 2005–2006, annually, the State must administer the yearly assessments in mathematics and reading/language arts, at a minimum, in each of grades 3 through 8 and once during grades 10 through 12.
- In stage three, beginning no later than school year 2007–2008, in addition to the assessments required in stage two, the State must administer the yearly assessments that measure proficiency in science at least once during each of three grade groupings: (1) Grades 3 through 5, (2) grades 6 through 9, and (3) grades 10 through 12.

Proposed regulations: Proposed § 200.5 describes the statutory timelines for administering assessments. In particular, it would clarify that, beginning no later than the 2005–06 school year, States must administer yearly assessments in both reading/language arts and in mathematics in each of the required grades 3 through 8 and at least once in grades 10 through 12. It would include the statutory requirement that a State provide assessment results to school districts, schools, and teachers no later than the beginning of the next school year. It would clarify that this requirement starts beginning with the 2002–2003 school year.

Reasons: Proposed § 200.5 is designed to clarify that the assessments in reading/language arts and mathematics are both to be administered each year as opposed to administering the reading/language arts assessment one year and the mathematics assessment in alternate years. It also clarifies the starting date for the requirement to provide assessment results no later than the beginning of the next school year.

Section 200.6 Inclusion of All Students

Statute: A State's assessment system must provide for the inclusion of all students and provide appropriate accommodations for students with disabilities, as defined under section 602(3) of the Individuals with Disabilities Education Act, and students with limited English proficiency.

Moreover, to the extent practicable, a State must assess students with limited English proficiency in the language and form most likely to yield accurate data on what those students know and can do in academic content areas until they have achieved English proficiency. With respect to reading/language arts, a State must assess students with limited English proficiency who have attended schools in the United States (excluding Puerto Rico) for three or more consecutive school years in English. If an LEA determines, on a case-by-case basis, however, that academic assessments in another language would likely yield more accurate and reliable information, the LEA may use those assessments for up to an additional two years.

Proposed Regulations: Proposed § 200.6 incorporates and clarifies the requirement that State assessment systems include all students and provide appropriate accommodations for students with disabilities. Proposed § 200.6(a) was the subject of substantial discussion by the Committee. At the Committee's suggestion, the proposed regulations would specify that the accommodations for students with disabilities be those that each student's IEP team determines are necessary to measure the student's academic achievement relative to the State's academic content and achievement standards for the grade in which the student is enrolled.

The proposed regulations also would clarify that a State's assessment system is to provide appropriate accommodations for students covered under section 504 of the Rehabilitation Act of 1973. The proposed regulations would specify that each student's placement team determines which accommodations are necessary to measure the student's academic achievement relative to the State's academic content and achievement standards for the grade in which the student is enrolled.

Proposed § 200.6(a)(2) reflects the Committee's consensus that a State's academic assessment system must provide one or more alternate assessments for those students with disabilities (as defined under section 602(3) of the Individuals with Disabilities Education Act), who, in the determination of the student's IEP team, cannot participate in all or part of the State assessments, even with appropriate accommodations.

This section would clarify that alternate assessments must yield results in at least reading/language arts, mathematics, and, beginning in the 2007–2008 school year, science. The Committee recommended that this provision be further clarified in future guidance to indicate that a State may use the same alternate assessment for reading and mathematics and, beginning in the 2007–2008 school year, science.

Proposed § 200.6(b) would also clarify the statutory provisions regarding the assessment of children with limited English proficiency. The proposed regulations would make clear that this requirement does not exempt a State from assessing limited English proficient students before those students are required to be assessed in English in reading/language arts. The proposed regulations would require a State to assess limited English proficient students in a valid and reliable manner that includes reasonable accommodations and, to the extent practicable, assessments in native language, if they would yield better information on what those students know. The proposed regulations would also require the State to assess limited English proficient students' achievement in English in reading/language arts if those students have been in schools in the United States (except Puerto Rico) for three or more consecutive years.

Proposed § 200.6(c) would clarify that migrant and other mobile students must be assessed even if they are not included for accountability purposes. The Committee agreed to expand this section to clarify that a State must include homeless children (as defined in section 725(2) of Title VII, Subtitle B of the McKinney-Vento Homeless Assistance Act) in its State assessment, reporting, and accountability systems, consistent with the requirements of the statute addressing mobile students. In other words, homeless students who are mobile must be tested, but their results do not need to be included in determining adequate yearly progress. Non-mobile homeless students must be tested and their results included in accountability.

Reasons: The proposed clarifications in § 200.6(a)(1) reflect the Committee's concern that students covered by section 504 of the Rehabilitation Act of 1973 are not necessarily students with disabilities under section 602(3) of the Individuals with Disabilities Education Act, yet they may need accommodations to ensure that they can participate in a State's assessment system. Proposed § 200.6(a)(1)(i) and (a)(1)(ii) require that accommodations permit measurement of a student's academic achievement relative to grade-level academic content and achievement standards. These provisions reflect the Committee's concerns that the statute's requirements for rigorous accountability for all students not be diluted by permitting accommodations that would evaluate against lower standards students taking assessments with accommodations.

The Committee's recommendation for future guidance to clarify that a State may use the same alternate assessment for reading/language arts and mathematics recognizes a practice already in place in some States. The clarification on including students with limited English proficiency in State assessment systems was designed to eliminate the potential misunderstanding that these students might be exempt from all assessments until they are required to be tested in English in reading/language arts.

Section 200.7 Disaggregation of Data

Statute: The statute requires, for purposes of determining adequate yearly progress, measurement of the achievement of all public elementary and secondary school students, economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency. The statute also requires disaggregation and reporting of assessment results by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities as compared to nondisabled students, and by economically disadvantaged students as compared to students who are not economically disadvantaged. For all of these purposes, disaggregation by these groups would not be required if the numbers are too small to yield reliable information or if the results would reveal personally identifiable information about an individual student.

Proposed Regulations: Proposed § 200.7 would clarify that, in disaggregating data, a State is responsible for determining how many students constitute a sufficient number to make the results reliable for accountability and reporting purposes. It also would clarify that a State must apply section 444(b) of the General Education Provisions Act (the Family Educational Rights and Privacy Act) in determining whether disaggregated data

would reveal personally identifiable information. The proposed regulations would require a State to make every effort to maximize disaggregation of data, while meeting the requirements for privacy and statistical reliability.

Reasons: By allowing a State to establish the minimum numbers for determining reliable disaggregated data, the proposed provisions offer flexibility and acknowledge that these minimums may vary according to circumstance or location.

Section 200.8 Assessment Reports

Statute: A State assessment system must be able to produce student reports and itemized score analyses.

Proposed Regulations: Proposed § 200.8 addresses the types of reports that a State's assessment system must produce. The proposed regulations would clarify that individual student reports must describe achievement measured against the State's academic achievement standards. The proposed regulations also would clarify that the requirement for producing and reporting analyses of student scores does not require the State to release individual test items.

Reasons: Proposed § 200.8 is intended to provide greater clarity regarding the statutory requirements pertaining to student reports and itemized score analyses.

Section 200.9 Deferral of Assessments

Statute: Under section 1111(b)(3)(D) of the ESEA, a State may defer the commencement, or suspend the administration, of certain assessments for each year that the amount appropriated at the Federal level for assessment development falls below a specified minimum. The State may not, however, cease the development of its assessments even if sufficient funds are not appropriated.

Proposed regulations: Proposed § 200.9(b) would clarify that the statute requires a State to continue to develop assessments if amounts appropriated at the Federal level for assessments are below a certain minimum.

Reasons: Proposed § 200.9 is intended to make the intent of this provision more clear and avoid confusion.

Section 200.10 Applicability of a State's Academic Assessments to Private Schools and Private School Students

Statute: Under section 9506 of the ESEA, a student who attends a private school that does not receive funds or services under the ESEA is not required to participate in any assessment referred to in the ESEA.

Proposed Regulations: Proposed § 200.10 is designed to clarify that nothing in proposed § 200.2 would require a private school to participate in a State's assessment system. However, through timely consultation with private school officials, an LEA must determine how it will assess academic services to participating private school students and how it will use the assessment results to improve services to these children. The assessments used could be the State's academic assessments under proposed § 200.2 or other appropriate academic assessments.

Reasons: The proposed regulations would clarify the flexibility given to an LEA in determining how services to participating private school students will be assessed.

Executive Order 12866

1. Potential Costs and Benefits

The proposed costs have been reviewed in accordance with Executive Order 12866. Under the terms of the Order, the Secretary has assessed the costs and benefits of this regulatory action.

The standards and assessments requirements of the new legislation require States to develop additional standards in the area of science, and many States will also need to develop and implement new assessments in order to meet the statutory requirement that they put in place assessments, at least in reading/language and mathematics, in grades 3 through 8. These new requirements will impose costs on States, with the precise amount of these costs dependent on State decisions about the types of assessments they will adopt, whether they will develop these assessments on their own or in partnership with other States, and other factors. The Federal Government is financing the development and implementation of the additional standards and assessments through appropriations for Elementary and Secondary Education programs. The Secretary believes that the costs not met through Federal funding are likely to be minimal, depending on the level of Federal funding Congress provides through appropriations.

The new legislation, and the regulations, also convey major benefits on States. The Department is providing increased support for State and local efforts to raise educational achievement for all students. The standards and assessment requirements of Title I are also part of a package of reforms that includes major new provisions allowing increased State and local flexibility in the use of Federal education funds. These provisions will not only allow States and school districts to use Federal funds in a manner more consistent with their own reform strategies and priorities, they will save money normally spent in complying with multiple Federal requirements. While most of the benefits of the new law are conveyed by the statute, the regulations proposed through this notice would also result in cost savings, by allowing States considerable flexibility in adopting assessment systems composed entirely of State-developed and administered tests, or systems composed of both State and local tests, and by allowing a combination of criterion- and norm-referenced tests, so long as mixed systems meet certain basic requirements.

For these reasons, the Secretary has concluded that these regulations are justified in terms of the costs and benefits.

Summary of Potential Costs and Benefits

Because the Secretary has chosen to regulate on very few statutory provisions, States and LEAs have considerable flexibility in implementing the provisions of Title I to meet their particular needs and circumstances. Moreover, the potential costs associated with the proposed regulations are minimal.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential Memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 200.1 State responsibilities for developing challenging academic standards.)
- Could the description of the proposed regulations in the ''Supplementary Information'' section of this preamble be more helpful in

making the proposed regulations easier to understand? If so, how?

• What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these proposed regulations are small LEAs receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1995

The proposed regulations contain two information collection requirements. Under proposed §§ 200.6(b)(1)(ii) and 200.7(a)(2), a State must include several items in its Title I State plan. First, a State must identify languages other than English that are present in the student population served by the State educational agency and indicate the languages for which student academic assessments are not available and are needed. Second, a State must determine and justify in its State plan the minimum number of students sufficient to yield statistically reliable information for each purpose under the statute where disaggregated data are used.

Title IX, Part C of the ESEA, as amended by the NCLB Act, authorizes the Secretary to provide States with the option of submitting a consolidated application to obtain certain ESEA funds, including Title I funds. The Department is in the process of obtaining Office of Management and Budget (OMB) approval for the clearance package addressing the paperwork requirements for a consolidated application on an emergency basis. That package incorporates the Title I State plan requirements proposed in this regulation. We invite comments on the paperwork requirements of this proposed regulation. These written comments should be addressed to Joseph F. Johnson, Jr. at the address listed under **ADDRESSES.**

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(Catalog of Federal Domestic Assistance Numbers: 84.010 Improving Programs Operated by Local Educational Agencies)

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Coordination, Education, Education of disadvantaged children, Education of children with disabilities, Elementary and secondary education, Eligibility, Family, Family-centered education, Grant programs-education, Indians-education, Institutions of higher education, Interstate coordination, Intrastate coordination, Juvenile delinquency, Local educational agencies, Migratory children, Migratory workers, Neglected, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies, Subgrants.

Dated: May 1, 2002.

Rod Paige,

Secretary of Education.

The Secretary proposes to amend part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

1. The authority citation for part 200 is revised to read as follows:

Authority: 20 U.S.C. 6301 through 6578, unless otherwise noted.

2. Revise the first undesignated center heading in subpart A of this part to read as follows:

Standards and Assessments

3. Revise §§ 200.1 through 200.6, to read as follows:

§ 200.1 State responsibilities for developing challenging academic standards.

(a) *Academic standards in general.* A State must develop challenging academic content and student academic achievement standards that will be used by the State, its local educational agencies (LEAs), and its schools to carry out subpart A of this part. These academic standards must—

(1) Be the same academic standards that the State applies to all public schools and public school children in the State, including the public schools and public school children served under subpart A of this part;

(2) Include the same knowledge, skills, and levels of achievement expected of all children; and

(3) Include at least mathematics, reading/language arts, and, beginning in the 2005–2006 school year, science, and may include other subjects determined by the State.

(b) *Academic content standards.* (1) The challenging academic content standards required under paragraph (a) of this section must—

(i) Specify what all children are expected to know and be able to do;

(ii) Contain coherent and rigorous content; and

(iii) Encourage the teaching of advanced skills.

(2) A State's academic content standards may be grade specific or, if grade-level content expectations are provided for each of grades 3 through 8, may cover more than one grade.

(3) At the high school level, the academic content standards must define the knowledge and skills that all high school students are expected to know and be able to do in at least reading/language arts, mathematics, and, beginning in the 2005–06 school year, science, irrespective of course titles or years completed.

(c) *Academic achievement standards.* (1) The challenging student academic achievement standards required under paragraph (a) of this section must—

(i) Be aligned with the State's academic content standards; and

(ii) Include the following components for each content area:

(A) Achievement levels that describe at least—

(*1*) Two levels of high achievement—proficient and advanced—that determine how well children are mastering the material in the State's academic content standards; and

(*2*) A third level of achievement—basic—to provide complete information

about the progress of lower-achieving children toward mastering the proficient and advanced levels of achievement.

(B) Descriptions of the competencies associated with each achievement level.

(C) Assessment scores (''cut scores'') that differentiate among the achievement levels as specified in paragraph (c)(1)(ii)(A) of this section, and a description of the rationale and procedures used to determine each achievement level.

(2) A State must develop academic achievement standards for every grade and subject assessed, even if the State's academic content standards cover more than one grade.

(3) With respect to academic achievement standards in science, a State must develop—

(i) Achievement levels and descriptions no later than the 2005–06 school year; and

(ii) Assessment scores (''cut scores'') after the State has developed its science assessments but no later than the 2007–08 school year.

(d) *Subjects without standards.* If an LEA serves students under subpart A of this part in subjects for which a State has not developed academic standards, the State must describe in its State plan a strategy for ensuring that those students are taught the same knowledge and skills and held to the same expectations in those subjects as are all other students.

(Authority: 20 U.S.C. 6311(b)(1))

§ 200.2 State responsibilities for assessment.

(a)(1) Each State, in consultation with its LEAs, must implement a system of high-quality yearly student academic assessments that includes, at a minimum, academic assessments in mathematics, reading/language arts and, beginning in the 2007–08 school year, science.

(2) The State may also measure the achievement of students in other academic subjects in which the State has adopted challenging academic content and student academic achievement standards.

(b) The assessment system required under this section must meet the following requirements:

(1) Be the same assessment system used to measure the achievement of all students in accordance with § 200.3 or § 200.4.

(2) Be designed to be valid and accessible for use by the widest possible range of students, including students with disabilities and students with limited English proficiency.

(3)(i) Be aligned with the State's challenging academic content and student academic achievement standards; and

(ii) Provide coherent information about student attainment of those standards.

(4)(i) Be used for purposes for which the assessment system is valid and reliable; and

(ii) Be consistent with relevant, nationally recognized professional and technical standards.

(5) Be supported by evidence (which the Secretary will provide upon request, consistent with applicable federal laws governing the disclosure of information) from test publishers or other relevant sources that the assessment system is—

(i) Of adequate technical quality for each purpose required under the Act; and

(ii) Consistent with the requirements of this section.

(6) Be administered in accordance with the timeline in § 200.5.

(7) Involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding of challenging content.

(8) Objectively measure academic achievement, knowledge, and skills without evaluating or assessing personal or family beliefs and attitudes, except that this provision does not preclude the use of items—

(i) Such as constructed-response, short answer, or essay; or

(ii) That require a student to analyze a passage of text or to express opinions.

(9) Provide for participation in the assessment system of all students in the grades being assessed consistent with § 200.6.

(10) Except as provided in § 200.7, enable results to be disaggregated within each State, LEA, and school by—

(i) Gender;

(ii) Each major racial and ethnic group;

(iii) English proficiency status;

(iv) Migrant status as defined in Title I, Part C of the Act;

(v) Students with disabilities as defined under section 602(3) of the Individuals with Disabilities Education Act as compared to all other students; and

(vi) Economically disadvantaged students as compared to students who are not economically disadvantaged.

(11) Produce individual student reports consistent with § 200.8(a).

(12) Enable itemized score analyses to be produced and reported to LEAs and schools consistent with § 200.8(b).

(c) The State may include academic assessments that do not meet the requirements in paragraph (b) of this section in the assessment system as additional measures. Those additional assessments—

(1) May not reduce the number, or change the identity, of schools that would otherwise be subject to school improvement, corrective action, or restructuring under section 1116 of Title I of the Elementary and Secondary Education Act, as amended by the NCLB Act (hereinafter ''the Act''), if those assessments were not used; but

(2) May identify additional schools for school improvement, corrective action, or restructuring.

(Authority: 20 U.S.C. 6311(b)(3))

§ 200.3 Designing State Academic Assessment Systems.

(a)(1) For each grade and subject assessed, a State's assessments must—

(i) Address the depth and breadth of the State's academic content standards under § 200.1(b);

(ii) Be valid, reliable, and of high technical quality;

(iii) Express student results in terms of the State's student academic achievement standards; and

(iv) Be designed to provide a coherent system across grades and subjects.

(2) A State may include in its academic assessment system under § 200.2 either or both—

(i) Criterion-referenced assessments; and

(ii) Assessments that yield national norms, provided that, if the State uses only assessments referenced against national norms at a particular grade, those assessments—

(A) Are augmented with additional items as necessary to measure accurately the depth and breadth of the State's academic content standards; and

(B) Express student results in terms of the State's academic achievement standards.

(b) A State that includes a combination of assessments, as described in paragraph (a)(2) of this section, or a combination of State and local assessments in its State assessment system must demonstrate that the system has a rational and coherent design that—

(1) Identifies the assessments to be used;

(2) Indicates the relative contribution of each assessment towards—

(i) Ensuring alignment with the State's academic content standards; and

(ii) Determining the adequate yearly progress of each school and LEA; and

(3) Is able to provide information regarding the progress of students relative to the State's academic standards in order to inform instruction.

(c) A State that includes local assessments in the assessment of its content standards must—

(1) Establish technical criteria to ensure that each local assessment meets the requirements of paragraph (a)(2) of this section;

(2) Demonstrate that all local assessments in use for this purpose—

(i) Are equivalent to one another and to State assessments, where they exist, in their content coverage, difficulty, and quality;

(ii) Have comparable validity and reliability with respect to groups of students described in section 1111(b)(2)(C)(v) of the Act; and

(iii) Provide unbiased, rational, and consistent determinations of the annual progress of schools and LEAs within the State;

(3) Review and approve each local assessment to ensure that it meets or exceeds the State's technical criteria in paragraph (c)(1) of this section and the requirements in paragraph (c)(2) of this section; and

(4) Be able to aggregate, with confidence, data from local assessments to determine whether the State has made adequate yearly progress.

(d) A State's academic assessment system may rely exclusively on local assessments only if it meets the requirements of § 200.4.

(Authority: 20 U.S.C. 6311(b)(3))

§ 200.4 State law exception.

(a) If a State provides satisfactory evidence to the Secretary that neither the SEA nor any other State government official, agency, or entity has sufficient authority under State law to adopt academic content standards, student academic achievement standards, and academic assessments applicable to all students enrolled in the State's public schools, the State may meet the requirements under §§ 200.1 and 200.2 by—

(1) Adopting academic standards and academic assessments that meet the requirements of §§ 200.1 and 200.2 on a Statewide basis and limiting their applicability to students served under subpart A of this part; or

(2) Adopting and implementing policies that ensure that each LEA in the State that receives funds under subpart A of this part will adopt academic standards and academic assessments aligned with those standards that—

(i) Meet the requirements in §§ 200.1 and 200.2; and

(ii) Are applicable to all students served by the LEA.

(b) A State that qualifies under paragraph (a) of this section must—

(1) Establish technical criteria for evaluating whether each LEA's—

(i) Academic content and student academic achievement standards meet the requirements in § 200.1; and

(ii) Academic assessments meet the requirements in § 200.2, particularly regarding validity and reliability, technical quality, alignment with the LEA's academic standards, and inclusion of all students in the grades assessed;

(2) Review and approve each LEA's academic standards and academic assessments to ensure that they—

(i) Meet or exceed the State's technical criteria; and

(ii) For purposes of this section—

(A) Are equivalent to one another in their content coverage, difficulty, and quality;

(B) Have comparable validity and reliability with respect to groups of students described in section 1111(b)(2)(C)(v) of the Act; and

(C) Provide unbiased, rational, and consistent determinations of the annual progress of LEAs and schools within the State; and

(3) Be able to aggregate, with confidence, data from local assessments to determine whether the State has made adequate yearly progress.

(Authority: 20 U.S.C. 6311(b)(5))

§ 200.5 Timeline for assessments.

(a) *Reading/language arts and mathematics.* (1) Through no later than the 2004–2005 school year, a State must administer the assessments required under § 200.2 not less than one time during—

(i) Grades 3 through 5;

(ii) Grades 6 through 9; and

(iii) Grades 10 through 12.

(2) Except as provided in paragraph (a)(3) of this section, beginning no later than the 2005–2006 school year, a State must administer both the reading/language arts and mathematics assessments required under § 200.2—

(i) In each of grades 3 through 8; and

(ii) At least once in grades 10 through 12.

(3) The Secretary may extend, for one additional year, the timeline in paragraph (a)(2) of this section if a State demonstrates that—

(i) Full implementation is not possible due to exceptional or uncontrollable circumstances such as—

(A) A natural disaster; or

(B) A precipitous and unforeseen decline in the financial resources of the State; and

(ii) The State can complete implementation within the additional one-year period.

(b) *Science.* Beginning no later than the 2007–2008 school year, the assessments required under § 200.2 must be administered not less than one time during—

(1) Grades 3 through 5;

(2) Grades 6 through 9; and

(3) Grades 10 through 12.

(c) *Timing of results.* Beginning with the 2002–2003 school year, a State must promptly provide the results of its assessments no later than before the beginning of the next school year to LEAs, schools, and teachers in a manner that is clear and easy to understand.

(Authority: 20 U.S.C. 6311(b)(3))

§ 200.6 Inclusion of all students.

A State's academic assessment system required under § 200.2 must provide for the participation of all students in the grades assessed.

(a) *Students eligible under IDEA and Section 504. (1) Appropriate accommodations.* A State's academic assessment system must provide—

(i) For each student with disabilities, as defined under section 602(3) of the Individuals with Disabilities Education Act, appropriate accommodations that each student's IEP team determines are necessary to measure the academic achievement of the student relative to the State's academic content and achievement standards for the grade in which the student is enrolled, consistent with § 200.1(b)(2), (b)(3), and (c); and

(ii) For each student covered under section 504 of the Rehabilitation Act of 1973, appropriate accommodations that each student's placement team determines are necessary to measure the academic achievement of the student relative to the State's academic content and achievement standards for the grades in which the student is enrolled, consistent with § 200.1(b)(2), (b)(3), and (c).

(2) *Alternate assessment.*

(i) The State's academic assessment system must provide for one or more alternate assessments for each student with disabilities as defined under section 602(3) of the Individuals with Disabilities Education Act who the student's IEP team determines cannot participate in all or part of the State assessments under paragraph (a)(1) of this section, even with appropriate accommodations.

(ii) Alternate assessments must yield results in at least reading/language arts, mathematics, and, beginning in the 2007–2008 school year, science.

(b) *Limited English proficient students.* A State must include limited English proficient students in its academic assessment system as follows:

(1) *In general.* (i) Consistent with paragraph (b)(2) of this section, the State must assess limited English proficient

students in a valid and reliable manner that includes—

(A) Reasonable accommodations; and

(B) To the extent practicable, assessments in the language and form most likely to yield accurate and reliable information on what those students know and can do to determine the students' mastery of skills in subjects other than English until the students have achieved English language proficiency.

(ii) In its State plan, the State must—

(A) Identify the languages other than English that are present in the student population served by the SEA; and

(B) Indicate the languages for which yearly student academic assessments are not available and are needed.

(iii) The State—

(A) Must make every effort to develop such assessments; and

(B) May request assistance from the Secretary if linguistically accessible academic assessment measures are needed.

(2) *Assessing reading/language arts in English.* (i) Unless an extension of time is warranted under paragraph (b)(2)(ii) of this section, a State must assess, using assessments written in English, the achievement of any limited English proficient student in meeting the State's reading/language arts academic standards if the student has attended schools in the United States, excluding Puerto Rico, for three or more consecutive years.

(ii) An LEA may continue, for no more than two additional consecutive years, to assess a limited English proficient student under paragraph (b)(1) of this section if the LEA determines, on a case-by-case individual basis, that the student has not reached a level of English language proficiency sufficient to yield valid and reliable information on what the student knows and can do on reading/language arts assessments written in English.

(iii) The requirements in paragraph (b)(2)(i) and (ii) of this section do not permit an exemption from participating in the State assessment system for limited English proficient students.

(3) *Assessing English proficiency.* (i) Unless a State receives an extension under paragraph (b)(3)(ii) of this section the State must require each LEA, beginning no later than the 2002–2003 school year, to assess annually the English proficiency, including reading, writing, speaking, and listening skills, of all students with limited English proficiency in schools in the LEA.

(ii) The Secretary may extend, for one additional year, the deadline in paragraph (b)(3)(i) of this section if the State demonstrates that—

(A) Full implementation is not possible due to exceptional or uncontrollable circumstances such as—

(*1*) A natural disaster; or

(*2*) A precipitous and unforeseen decline in the financial resources of the State; and

(B) The State can complete implementation within the additional one-year period.

(c) *Migrant and other mobile children.* A State must include migrant children, as defined in Title I, Part C, of the Act, and other mobile children in its academic assessment system, even if those students are not included for accountability purposes under section 1111(b)(3)(C)(xi) of the Act.

(d) *Children experiencing homelessness.*

(1) A State must include homeless children, as defined in section 725(2) of Title VII, Subtitle B of the McKinney-Vento Act, in its academic assessment, reporting, and accountability systems, consistent with section 1111(b)(3)(C)(xi) of the Act.

(2) The State is not required to report as a separate disaggregated category as defined in paragraph (b)(10) of this section the assessment results of the children referred to in paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 6311(b)(3))

4. Add § 200.7 to read as follows:

§ 200.7 Disaggregation of data.

(a) *Statistically reliable information.* (1) A State may not use disaggregated data for one or more subgroups under § 200.2(b)(10) to report achievement results under section 1111(h) of the Act (report cards) or to identify schools in need of improvement, corrective action, or restructuring under section 1116 of the Act if the number of students in those subgroups is insufficient to yield statistically reliable information.

(2) Based on sound statistical methodology, a State must determine and justify in its State plan the minimum number of students sufficient to yield statistically reliable information for each purpose for which disaggregated data are used.

(b) *Personally identifiable information.* (1) A State may not use disaggregated data for one or more subgroups under § 200.2(b)(10) to report achievement results under section 1111(h) of the Act (report cards) if the results would reveal personally identifiable information about an individual student.

(2) To determine whether disaggregated results would reveal personally identifiable information about an individual student, a State must apply the requirements under section 444(b) of the General Education Provisions Act (the Family Educational Rights and Privacy Act of 1974).

(3) Nothing in paragraph (b)(1) or (b)(2) of this section shall be construed to abrogate the responsibility of States to implement the requirements of section 1116(a) of the Act for determining whether States, LEAs, and schools are making adequate yearly progress on the basis of the performance of each group listed in section 1111(b)(2)(C)(v)(II) of the Act.

(4) Each State shall include in its State plan, and each State and LEA shall implement, appropriate strategies to protect the privacy of individual students in reporting achievement data under section 1111(h) of the Act and in determining whether schools and LEAs are making adequate yearly progress on the basis of disaggregated groups under section 1111(b)(2)(C)(v)(II) of the Act.

(Authority: 20 U.S.C. 6311(b)(3); 1232g)

5. Revise § 200.8 and place it under the undesignated center heading ''Standards and Assessments'' to read as follows:

§ 200.8 Assessment reports.

(a) *Student reports.* A State's academic assessment system must produce individual student interpretive, descriptive, and diagnostic reports that—

(1)(i) Include information regarding achievement on the academic assessments under § 200.2 measured against the State's student academic achievement standards; and

(ii) Help parents, teachers, and principals to understand and address the specific academic needs of students; and

(2) Are provided to parents, teachers, and principals—

(i) As soon as is practicable after the assessment is given;

(ii) In an understandable and uniform format; and

(iii) To the extent practicable, in a language that parents can understand.

(b) *Itemized score analyses for LEAs and schools.* (1) A State's academic assessment system must produce and report to LEAs and schools itemized score analyses, consistent with § 200.2(b)(4), so that parents, teachers, principals, and administrators can interpret and address the specific academic needs of students.

(2) The requirement to report itemized score analyses in paragraph (b) of this section does not require the release of test items.

(Authority: 20 U.S.C. 6311(b)(3))

6. Add § 200.9 under the undesignated center heading ''Standards and Assessments'' to read as follows:

§ 200.9 Deferral of assessments.

(a) A State may defer the start or suspend the administration of the assessments required under § 200.2 that were not required prior to the date of enactment of the Act for one year for each year for which the amount appropriated for State assessment grants under section 6113(a)(2) of the Act is less than the trigger amount in section 1111(b)(3)(D) of the Act.

(b) A State may not cease the development of the assessments referred to in paragraph (a) of this section even if sufficient funds are not appropriated under section 6113(a)(2) of the Act.

(Authority: 20 U.S.C. 6311(b)(3); 7301b(a)(2))

7. Revise § 200.10 and place it under the undesignated center heading ''Standards and Assessments'' to read as follows:

§ 200.10 Applicability of a State's academic assessments to private schools and private school students.

(a) Nothing in § 200.1 or § 200.2 requires a private school, including a private school whose students receive services under this part, to participate in a State's academic assessment system.

(b)(1) If an LEA provides services to eligible private school students under subpart A of this part, the LEA must, through timely consultation with appropriate private school officials, determine how services to eligible private school students will be academically assessed and how the results of that assessment will be used to improve those services.

(2) The assessments referred to paragraph (b)(1) of this section may be the State's academic assessments under § 200.2 or other appropriate academic assessments.

(Authority: 20 U.S.C. 7886(a))

[FR Doc. 02–11128 Filed 5–1–02; 2:00 pm]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

34 CFR Part 200

Office of Elementary and Secondary Education; Title I of the Elementary and Secondary Education Act of 1965, as Amended (ESEA); Improving the Academic Achievement of the Disadvantaged

AGENCY: Department of Education.

ACTION: Notice of meetings to solicit public comment on proposed regulations.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) of the Department of Education (Department) will convene five regional meetings to solicit additional public comment on the Department's Notice of Proposed Rulemaking (NPRM) published elsewhere in this issue of the **Federal Register**. The NPRM would implement recent changes made by the No Child Left Behind Act of 2001 (NCLB Act) to the standards and assessment requirements under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The proposed regulations were subjected to a negotiated rulemaking process, and we invited the public to submit comments on them. The Assistant Secretary is convening these regional meetings to provide the public additional opportunities to comment on the proposed regulations.

DATES: We will hold five regional meetings as listed in the Schedule of Regional Meetings under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: We will hold the five regional meetings at the locations listed in the Schedule of Regional Meetings under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Susan Wilhelm, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W202, Washington, DC 20202–6132. Telephone (202) 260–0826.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

The meeting sites are accessible to individuals with disabilities. If you need an auxiliary aid or service to participate in the meetings (e.g., interpreting service, assistive listening device, or materials in alternative format), notify the contact person listed in this notice in advance of the scheduled meeting date. We will make every effort to meet any request we receive.

The regional meetings are open to the public.

SUPPLEMENTARY INFORMATION:

Schedule of Regional Meetings

We will hold five regional meetings to solicit public comment on the NPRM on the following dates at the following locations:

1. May 6, 2002, 9 a.m. to 5:15 p.m., Holiday Inn Cincinnati Airport, 1717 Airport Exchange Boulevard, Erlanger, Kentucky.
2. May 7, 2002, 9 a.m. to 5:15 p.m., Sheraton Atlanta, 165 Courtland Street, Atlanta, Georgia.
3. May 13, 2002, 9 a.m. to 5:15 p.m., The Westgate Hotel, 1055 Second Avenue, San Diego, California.
4. May 16, 2002, 9 a.m. to 5:15 p.m., Doubletree Hotel Little Rock, 424 West Markham, Little Rock, Arkansas.
5. May 30, 2002, 9 a.m. to 5:15 p.m., LaGuardia Marriott, 102–05 Ditmars Boulevard, East Elmhurst, New York.

Background

On January 8, 2002, President George W. Bush signed the NCLB Act, amending the ESEA. The NCLB Act incorporated major education reforms proposed by the President in his No Child Left Behind initiative, particularly in the areas of assessment, accountability, and school improvement. Among other things, the NCLB Act reauthorizes—for a six-year period—the programs under Title I of the ESEA (Title I programs), which are designed to help disadvantaged children reach high academic standards.

Section 1901 of Title I of the ESEA contains procedures that the Department must follow in developing and issuing regulations to govern the Title I programs. Consistent with those requirements, the Secretary obtained the advice and recommendations of representatives of Federal, State, and local administrators; parents; teachers; paraprofessionals; members of local boards of education; and other organizations involved with the implementation and operation of the Title I programs. After obtaining this advice, the Secretary conducted a negotiated rulemaking process on issues relating to Title I standards and assessment requirements. The negotiated rulemaking process produced proposed regulations on these issues that the Secretary is publishing without change in the NPRM. The preamble to the NPRM describes in more thorough detail this regulatory process.

Regional Meetings

In addition to the invitation to comment contained in the NPRM, the Assistant Secretary is offering an opportunity for the public to provide

input regarding the proposed regulations at the scheduled regional meetings.

During the morning of each meeting, from 9 a.m. to 12 noon, representatives of the Department will provide background information on the statutory context for the NPRM, the negotiated rulemaking process, and the major issues that the proposed regulations are designed to address. Expert educators will also present their findings and experiences in the field of standards and assessments. During the afternoon of each meeting, from 1 p.m. to 5:15 p.m., the public will have the opportunity to offer oral or written comments, or both, on the NPRM.

Public Comments

The Department will consider all comments obtained during these regional meetings, along with all other comments submitted to the Department in response to the NPRM. During and after the comment period, you may inspect all public comments about these proposed regulations in room 3W204, FB–6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number: 84.010, Improving Programs Operated by Local Educational Agencies)

Program Authority: 20 U.S.C. 6301–6578.

Dated: May 1, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–11127 Filed 5–1–02; 2:00 pm]

BILLING CODE 4000–01–U

Federal Register

Monday,
May 6, 2002

Part IV

Office of Management and Budget

Office of Federal Procurement Policy; Determination of Executive Compensation Benchmark Amount Pursuant to Section 808 of Public Law 105–85; Notice

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy; Determination of Executive Compensation Benchmark Amount Pursuant to Section 808 of Public Law 105–85

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice.

SUMMARY: The Office of Management and Budget (OMB) is hereby publishing the attached memorandum to heads of agencies concerning the determination of the maximum ''benchmark'' compensation that will be allowable under government contracts during contractors' FY 2002—$387,783. This determination is required to be made pursuant to Section 808 of Public Law 105–85. It applies equally to both defense and civilian procurement agencies.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Acting Deputy Administrator, Office of Federal Procurement Policy, on (202) 395–3254.

Angela B. Styles,

Administrator.

To The Heads of Executive Departments and Agencies

Determination of Executive Compensation Benchmark Amount Pursuant to Section 808 of Public Law 105–85

This memorandum sets forth the ''benchmark compensation amount'' as required by Section 39 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 435), as amended. Under Section 39, the ''benchmark compensation amount'' is ''the median amount of the compensation provided for all senior executives of all benchmark corporations for the most recent year for which data is available.'' The ''benchmark compensation amount'' established as directed by Section 39 limits the allowability of compensation costs under government contracts. The ''benchmark compensation amount'' does not limit the compensation that an executive may otherwise receive.

Based on a review of commercially available surveys of executive compensation and after consultation with the Director of the Defense Contract Audit Agency, I have determined pursuant to the requirements of Section 39 that the benchmark compensation amount for contractor fiscal year 2002 is $387,783. This benchmark compensation amount is to be used for contractor fiscal year 2002, and subsequent contractor fiscal years, unless and until revised by OMB. This benchmark compensation amount applies to contract costs incurred after January 1, 2002, under covered contracts of both the defense and civilian procurement agencies as specified in Section 808 of Public Law 105–85.

Questions concerning this memorandum may be addressed to Richard C. Loeb, Acting Deputy Administrator, Office of Federal Procurement Policy, on (202) 395–3254.

Angela B. Styles,

Administrator.

[FR Doc. 02–11138 Filed 5–3–02; 8:45 am]

BILLING CODE 3110–01–P

Federal Register

Monday,
May 6, 2002

Part V

Department of Labor

Employment and Training Administration

20 CFR Parts 655 and 656

Labor Certification for the Permanent Employment of Aliens in the United States; Implementation of New System; Proposed Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 655 and 656

RIN 1205–AA66

Labor Certification for the Permanent Employment of Aliens in the United States; Implementation of New System

AGENCIES: Wage and Hour Division, Employment Standards Administration, and Employment and Training Administration, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of Labor is proposing to amend its regulations governing the filing and processing of labor certification applications for the permanent employment of aliens in the United States to implement a new system for filing and processing such applications. The proposed rule would also amend the regulations governing the employer's wage obligation under the H–1B program. The new system would require employers to conduct recruitment before filing their applications directly with an ETA application processing center on application forms designed for automated screening and processing. State Workforce Agencies (SWA's) would provide prevailing wage determinations to employers. Employers would be required to place a job order with the SWA which would be processed the same as any other job order placed by employers. SWA's would no longer be the intake point for submission of applications and would not be involved in processing the applications as they are now in the present system. The combination of prefiling recruitment, automated processing of applications, and elimination of the role of the SWA's in the processing of applications will yield a large reduction in the average time needed to process labor certification applications and are expected to eliminate the need to periodically institute special, resource intensive efforts to reduce backlogs which have been a recurring problem.

DATES: Interested persons are invited to submit written comments on the proposed rule on or before July 5, 2002.

ADDRESSES: Submit written comments to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4318, Washington, DC 20210, Attention: Dale Ziegler, Chief, Division of Foreign Labor Certifications.

FOR FURTHER INFORMATION CONTACT: Denis M. Gruskin, Senior Specialist, Division of Foreign Labor Certifications, Employment and Training Administration, 200 Constitution Avenue, NW., Room C–4318, Washington, DC 20210. Telephone: (202) 693–2953 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The process for obtaining a permanent labor certification has been criticized as being complicated, time consuming and requiring the expenditure of considerable resources by employers, SWA's and the Federal Government. It can take up to two years or more to complete the process for applications that are filed under the basic process and do not utilize the more streamlined reduction in recruitment (RIR) process. The reduction in recruitment process allows employers that request RIR processing to conduct recruitment before filing their applications and these applications are evaluated on the basis of such recruitment.

The redesigned system we envision would require employers to conduct recruitment before filing their applications. Employers would be required to conduct both mandatory and alternative recruitment steps. The alternative steps would be chosen by the employer from a list of additional recruitment steps in the regulations. The employer would not be required to submit any documentation with its application, but would be expected to have assembled supporting documentation specified in the regulations and would be required to provide it in the event its application is selected for audit.

Employers would be required to submit their applications on forms designed for automated processing to minimize manual intervention to an ETA application processing center for automated screening and processing. After an application has been determined to be acceptable for filing, an automated system would review it based upon various selection criteria that would allow applications to be identified for potential audits before determinations could be made. In addition, some applications would be randomly selected as a quality control measure for an audit without regard to the results of the computer analysis.

A complete application would consist of two forms. *An Application for Permanent Labor Certification* form (ETA Form 9089) and a *Prevailing Wage Determination Request* (PWDR) form (ETA Form 9088). The application form would require the employer to respond to 56 items. The majority of the items on the application form would consist of attestations which would require the employer to do no more than check ''yes'', ''no'', or ''NA'' (not applicable) as a response. These attestations and other information required by the application form elicit information similar to that required by the current labor certification process. For example, the employer will have to attest to, such items as: whether the employer provided notice of the application to the bargaining representative or its employees; whether the alien beneficiary gained any of the qualifying experience with the employer; whether the alien is currently employed by the employer; whether a foreign language requirement is required to perform the job duties; and whether the U.S. applicants were rejected solely for lawful job related reasons. (The term ''applicant'' is defined at § 656.3 as an U.S. worker who is applying for a job opportunity for which an employer has filed an *Application for Permanent Labor Certification* (ETA Form 9089). The term ''U.S. Worker'' is also defined at § 656.3.) The wage offered on the application form would be required to be to equal to or greater than the prevailing wage determination entered by the SWA on the PWDR form described below. Comments are requested on ETA forms 9088 and 9089 which are published at the end of this NPRM.

The application form, however, would not require the employer to provide a job description, or detailed job requirements. The job description and job requirements would be entered on the PWDR form, which the employer would be required to submit to the SWA for a prevailing wage determination. The SWA would enter its prevailing wage determination on the form and return it to the employer with its endorsement. The employer would be required to submit both forms to an ETA servicing office for processing and a determination.

The employer would not be required to provide any supporting documentation with its application but would be required to furnish supporting documentation to support the attestations and other information provided on the form if the application was selected for an audit. The standards used in adjudicating applications under the new system would be substantially the same as those used in arriving at a determination in the current system.

The determination would still be based on: whether the employer has met the requirements of the regulations; whether there are insufficient workers who are able, willing, qualified and available; and whether the employment of the alien will have an adverse effect on the wages and working conditions of U.S. workers similarly employed.

SWA's would no longer be the intake point for submission of applications for permanent alien employment certification and would not be required to be the source of recruitment and referral of U.S. workers as they are in the present system. The required role of SWA's in the redesigned permanent labor certification process would be limited to providing prevailing wage determinations (PWD). Employers would be required to submit a PWDR form to SWA's to obtain a PWD before filing their applications with an ETA application processing center. The SWA's would, as they do under the current process, evaluate the particulars of the employer's job offer, such as the job duties and requirements for the position and the geographic area in which the job is located, to arrive at a PWD.

The combination of prefiling recruitment, automated processing of applications, and elimination of the SWA's' required role in the recruitment and referral of U.S. workers would yield a large reduction in the average time needed to process labor certification applications and would also eliminate the need to institute special, resource intensive efforts to reduce backlogs which have been a recurring problem.

The proposed labor certification application and PWDR have been designed to be machine readable or directly completed in a web-based environment. Initially, depending upon whether or not a processing fee is implemented, applications will be on forms which can be submitted by facsimile transmission or by mail and will be subject to an initial acceptability check to determine whether the application can be processed. If a fee for processing the application is required, all applications will have to be submitted by mail. (However, as indicated in section IV.E, of the preamble below, the Department cannot promulgate and implement a fee charging rule until Congress passes the necessary authorizing legislation.) In the long-term, ETA will be exploring the possibility of further automating the process so that applications and PWDR's may be submitted electronically to an application processing center whether or not a fee is required to be submitted with an application.

After an application, including the PWDR, has been determined to be acceptable for filing, a computer system will review the application based upon various selection criteria that will allow more problematic applications to be identified for audit. Additionally, we anticipate that some applications will be randomly selected for an audit without regard to the results of the computer analysis as a quality control measure. If an audit has not been triggered by the information provided on the application or because of a random selection, the application will be certified and returned to the employer. The employer may then submit the certified application to the Immigration and Naturalization Service (INS) in support of an employment-based I–140 petition. We anticipate that if an application is not selected for an audit, an employer will have a computer-generated decision within 21 calendar days of the date the application was initially filed.

If an application is selected for an audit, the employer will be notified and required to submit, in a timely manner, documentation specified in the regulations to verify the information stated in or attested to on the application. Upon timely receipt of an employer's audit documentation, the application will be distributed to the appropriate ETA regional office where it will be reviewed by the regional Certifying Officer.

After an audit has been completed, the proposed rule provides that the Certifying Officer can certify the application; deny the application; or order supervised recruitment. If the audit documentation is complete and consistent with the employer's statements and attestations contained in the application, the application will be certified and returned to the employer. If the audit documentation is incomplete, is inconsistent with the employer's statements and/or attestations contained in the application, or if the application is otherwise deficient in some material respect, the application will be denied and a notification of denial with the reasons therefor will be issued to the employer. If an application is denied, the employer will be able to request review of the Certifying Officer's decision by the Board of Alien Labor Certification Appeals (Board or BALCA). Additionally, on any application selected for an audit, the regional Certifying Officer will have the authority to request additional information before making a final determination or order supervised recruitment for the employer's job opportunity in any case where questions arise regarding the adequacy of the employer's test of the labor market.

The supervised recruitment that may be required by the regional Certifying Officer, is similar to the current non-RIR regulatory recruitment scheme under the current basic process which requires placement of an advertisement in conjunction with a 30-day job order by the employer. The recruitment, however, will be supervised by ETA regional offices instead of the SWA's. At the completion of the supervised recruitment efforts, the employer will be required to document in a recruitment report that such efforts were unsuccessful, including the lawful, job-related reasons for not hiring any U.S. workers who applied for the position. After a review of the employer's documentation, the regional Certifying Officer will either certify or deny the application. In all instances in which an application is denied, the denial notification will set forth the deficiencies upon which the denial is based. The employer would be able to seek administrative-judicial review of a denial.

II. Statutory Standard

Before the Immigration and Naturalization Service (INS) may approve petition requests and the Department of State may issue visas and admit certain immigrant aliens to work permanently in the United States, the Secretary of Labor must first certify to the Secretary of State and to the Attorney General that:

(a) There are not sufficient United States workers who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(b) The employment of the alien will not adversely affect the wages and working conditions of similarly employed United States workers. (8 U.S.C. 1182(a)(5)(A)).

If the Secretary, through ETA, determines that there are no able, willing, qualified, and available U.S. workers and that employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers, DOL so certifies to the INS and to the Department of State, by issuing a permanent alien labor certification.

If DOL cannot make one or both of the above findings, the application for permanent alien employment certification is denied. DOL may be unable to make the two required

findings for one or more reasons, including:

(a) The employer has not adequately recruited U.S. workers for the job offered to the alien, or has not followed the proper procedural steps in 20 CFR part 656.

(b) The employer has not met its burden of proof under section 291 of the Immigration and Nationality Act (INA or Act.) (8 U.S.C. 1361), that is, the employer has not submitted sufficient evidence of its attempts to obtain available U.S. workers, and/or the employer has not submitted sufficient evidence that the wages and working conditions which the employer is offering will not adversely affect the wages and working conditions of similarly employed U.S. workers.

III. Current Department of Labor Regulations

The Department of Labor has promulgated regulations, at 20 CFR part 656, governing the labor certification process for the permanent employment of immigrant aliens in the United States. Part 656 was promulgated under section 212(a)(14) of the INA (now at section 212(a)(5)(A)). 8 U.S.C. 1182(a)(5)(A).

The regulations at 20 CFR part 656 set forth the factfinding process designed to develop information sufficient to support the granting or denial of a permanent labor certification. These regulations describe the nationwide system of public State Workforce Agency offices available to assist employers in finding available U.S. workers and how the factfinding process is utilized by DOL as the basis of information for the certification determination. See also 20 CFR parts 651 through 658, and the Wagner-Peyser Act (29 U.S.C. Chapter 4B).

Part 656 also sets forth the responsibilities of employers who desire to employ immigrant aliens permanently in the United States. Such employers are required to demonstrate that they have attempted to recruit U.S. workers through advertising, through the Federal-State Employment Service/ One-Stop System, and by other specified means. The purpose of the recruitment process is to assure that there is an adequate test of the availability of U.S. workers to perform the work and to ensure that aliens are not employed under conditions that would adversely affect the wages and working conditions of similarly employed U.S. workers.

In brief, the current process for obtaining a labor certification requires employers to actively recruit U.S. workers in good faith for a period of at least 30 days for the job openings for which aliens are sought. The employer's job requirements must conform to the regulatory standards (e.g., those normally required for the job), and employers must offer prevailing wages and working conditions for the occupation in the area in which the job is located. Further, employers may not favor aliens or tailor the job requirements to any particular alien's qualifications.

During the 30-day recruitment period, employers are required to place a three-day help-wanted advertisement in a newspaper of general circulation, or a one-day advertisement in a professional, trade, or business journal, or in an appropriate ethnic publication. Employers are also required to place a 30-day job order with the local office of the State Workforce Agency in the state in which the employer seeks to employ the alien. Alternatively, if employers believe they have already conducted adequate recruitment efforts seeking qualified U.S. workers at prevailing wages and working conditions through sources normal to the occupation and industry, they may request a waiver of the otherwise mandatory 30-day recruitment efforts. This waiver process is generally referred to as involving ''Reduction in Recruitment'' applications. If the employer does not request RIR processing or if the request is denied, the help-wanted advertisements which are placed in conjunction with the mandatory thirty-day recruitment effort direct job applicants to either report in person to the State Workforce Agency office or to submit resumes to the State Workforce Agency.

Job applicants are either referred directly to the employer or their résumés are sent to the employer. The employer then has 45 days to report to the State Workforce Agency the lawful, job-related reasons for not hiring any U.S. worker referred. If the employer hires a U.S. worker for the job opening, the process stops at that point, unless the employer has more than one opening, in which case the application may continue to be processed. If, however, the employer believes that able, willing and qualified U.S. workers are not available to take the job, the application, together with the documentation of the recruitment results and prevailing wage information, are sent to one of the Department's regional offices. There, it is reviewed and a determination is made as to whether or not to issue the labor certification based upon the employer's compliance with the regulations governing the program. If the Department of Labor determines that there are no able, willing, qualified and available U.S. workers, and that the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers, we so certify to the INS and the DOS, by issuing a permanent labor certification. See 20 CFR part 656; see also section 212(a)(5)(A) of the Immigration and Nationality Act, as amended (INA).

IV. Discussion of Regulatory Amendments

A. Definitions

We have made several changes to the definitions of the terms used in part 656. With the exception of the change of the definition of the term ''employer,'' substantive changes in definitions are discussed along with substantive changes in the relevant regulatory provisions.

The definition of employer would be amended to reflect the longstanding policy articulated in *Technical Assistance Guide No. 656 Labor Certifications*, issued in 1981 that:

- Persons who are temporarily in the United States, such as foreign diplomats, intracompany transferees, students, exchange visitors, and representatives of foreign information media cannot be employers for the purpose of obtaining a labor certification for permanent employment; and
- Job opportunities consisting solely of job duties that will be performed totally outside the United States, its territories or possessions cannot be the subject of a permanent application for alien employment certification.

B. Schedule A

1. General

Schedule A is a list of occupations for which DOL has precertified job opportunities, having made determinations that qualified U.S. workers are not able, willing, and available, and that alien employment will not adversely affect the wages and working conditions of similarly employed U.S. workers. See 20 CFR 656.10 and 656.22. Certification applications are filed with INS or the Department of State, and those agencies determine whether an individual application has been precertified by DOL.

2. Professional Nurses

We have conformed the general description of aliens seeking *Schedule A* labor certification as professional nurses at § 656.5(a)(1) (currently § 656.10(a)(2)) to the procedures at § 656.15(c)(2)

(currently § 656.22(c)(2)) to indicate that only a permanent license can be used to satisfy the alternative requirement to passing the Commission on Graduates of Foreign Nursing Schools exam that the alien hold a full and unrestricted license to practice professional nursing in the State of intended employment. INS has informed us that it has received applications with temporary licenses or permits filed as supporting documentation to *Schedule A* applications. Our intent in promulgating the current *Schedule A* procedures for professional nurses was to put an end to the pre-1981 practice whereby some nurses entered the United States on temporary licenses and permits, but failed to pass State examinations for a permanent license. As we have stated with respect to this issue, ''it is not in the public interest to grant certification to nurses who will not be able to practice their profession or who will likely limit or otherwise adversely affect the wages or job opportunities for U.S. workers in lower-skilled jobs.'' 45 FR 83926, 83927 (December 19, 1980); see also 20 CFR 656.22(c)(2) (1991).

To be consistent with the description of the other occupational groups on Schedule A, the definition of professional nurse would be moved from the section containing the definitions, at § 656.3 in the current rule, to the section providing a general description of *Schedule A,* at § 656.5 in the proposed rule.

3. Aliens of Exceptional Ability In the Performing Arts

The amendments would remove aliens of exceptional ability in the performing arts from the special handling procedures and include them on *Schedule A* as a separate category. The employer or the alien will have to submit to INS the documentation currently required by 20 CFR 656.21a(a)(1)(iv)(A)(*1*) through (a)(1)(iv)(A)(*6*) of the current regulations. Current recruitment requirements consisting of an advertisement or a statement from the union, if customarily used as a recruitment source in the area or industry, will no longer be required. As a practical matter, under 20 CFR 656.21a, once we determined that an alien was of exceptional ability in the performing arts, certification was issued in virtually all such cases. INS can make this determination as readily as DOL. Such determinations are similar to determinations Immigration Officers make for aliens of exceptional ability in the sciences and arts under Group II of *Schedule A.* In both cases a determination has to be made whether or not the alien's work during the past year and intended work in the United States will require exceptional ability.

Aliens of exceptional ability in the sciences or arts comprise Group II of *Schedule A.* We have delegated the determination whether an alien beneficiary of a labor certification application qualifies for *Schedule A* to the Immigration and Naturalization Service (INS). *Schedule A* applications are filed with the INS; not with the Department of Labor. The current and proposed regulations provide that the *Schedule A* determination of the INS shall be conclusive and final. Therefore the employer may not make use of the administrative review procedures in Part 656. The INS, however, in the process of making its *Schedule A* determination may request an advisory opinion as to whether an alien is qualified for the *Schedule A* occupation from the Division of Foreign Labor Certifications.

We have also concluded, based on the small number of applications submitted on behalf of aliens of exceptional ability in the performing arts and experience in evaluating the required recruitment reports submitted in conjunction with such applications, that there are few performing artists, whether alien beneficiaries or U.S. workers, who can satisfy the standards to qualify as an alien of exceptional ability in the performing arts as defined in the regulations. Consequently, the admission of the few aliens who may qualify as aliens of exceptional ability in the performing arts will not have an adverse effect on the wages and working conditions of U.S. performing artists.

C. Schedule B

Schedule B is a list of occupations for which we determined that U.S. workers are generally able, willing, qualified and available, and that the wages and working conditions of United States workers similarly employed will generally be adversely affected by the employment of aliens in the United States in such occupations. (See 20 CFR 656.11(a) and 23(a) and (b)). The current regulations require that a waiver must be obtained to receive certification of *Schedule B* jobs. A request for a waiver must be filed along with the application to obtain a certification for an occupation listed on *Schedule B.*

We propose to eliminate *Schedule B,* because program experience indicates that it has not contributed any measurable protection to U.S. workers. Once an employer files a *Schedule B* waiver, the application is processed the same as any other application processed under the non-RIR, basic process. Whether or not an application for a *Schedule B* occupation is certified is dependent on the results of the basic labor market test detailed in § 656.21 of the current regulations.

D. General Instructions

1. Expansion of Posting Requirement

The posting regulation at § 656.10(d)(ii) in the proposed rule has been expanded to require in addition to a posting a notice of the *Application for Permanent Labor Certification* (ETA Form 9089), that the employer must publish the posting in any and all in-house media, whether electronic or printed, in accordance with the normal procedures generally used in recruiting for other positions in the employer's organization. Employers must also be prepared to provide documentation of the posting requirements in the event of an audit.

2. Ability to Pay and Place the Alien on the Payroll

The current regulations and *Application for Alien Employment Certification* form (ETA 750) require that the employer document that it ''has enough funds available to pay the wage or salary offered the alien'', and that ''(t)he employer will be able to place the alien on the payroll on or before the date of the alien's proposed entrance into the United States''. We propose to eliminate these provisions from the regulations and the *Application for Alien Employment Certification* form, since our examination of these issues is a duplication of the examination of the employer's financial standing and the ability to place the alien on the payroll undertaken by the INS when it processes the employer's petition. Moreover, these provisions are also unnecessary because the underlying issues could still be addressed because we are proposing to retain the provision in the current regulations that ''(t)he job opportunity has been and is clearly open to any qualified U.S. worker.'' If the employer is not in a position to pay the alien and/or place him or her on the payroll, it is not offering a job opportunity that is clearly open to U.S. workers.

E. Fees

The Appendix to the FY 2001 Budget of the United States states that ''(l)egislation will be proposed that would authorize the Secretary of Labor to collect fees from employers for the certification of certain aliens as eligible workers under the Immigration and Nationality Act.'' Although specific legislation has not been proposed to

implement the fee charging language in the President's budget, the proposed rule contains a provision outlining how fee charging would be implemented if it becomes law. If this occurs, the final rule would require employers to submit a fee with their applications. A charge of $30.00 would be imposed if a check in payment of the fee is not honored by the financial institution on which it is drawn. The existence of any outstanding ''insufficient funds'' checks would be grounds for returning applications for alien employment certification to the employer as unacceptable for processing. Receipt of any ''insufficient funds'' checks while the application is being processed would be grounds for denying the application. Receipt of any ''insufficient funds'' checks after an application has been certified would be grounds for revoking the certification. If an application is returned to the employer because it was incomplete, the employer would be able to request a refund of the fee or resubmit the application.

Fees would also be required for *Schedule A* and Sheepherder applications which are submitted to INS for adjudication.

If legislation authorizing the Secretary of Labor to collect fees from employers for the certification of immigrant workers is not passed by the time a Final Rule is to be published, the proposed fee provisions will not be included in the Final Rule.

F. Applications for Labor Certification for Schedule A Occupations

1. PWDR Required to File Schedule A Applications With INS

Employers would be required to submit the required processing fee, a completed PWDR endorsed by the SWA, and a completed *Application for Alien Employment Certification* form to the appropriate INS office. The current *Application for Alien Employment Certification* form (ETA 750) requires employers to enter the offered rate of pay and to certify that the wage offered equals or exceeds the prevailing wage. Since the application form no longer contains the offered wage, employers would be required to submit a completed and endorsed PWDR as well as the application form in Schedule A cases to the appropriate INS office.

2. Aliens of Exceptional Ability in the Performing Arts

As explained above, the proposed rule would remove aliens of exceptional ability in the performing arts from the special handling procedures and include them on *Schedule A* and the documentation currently required by 20 CFR 656.21a(a)(1)(iv)(A)(*1*) through (a)(1)(iv)(A)(*6*) of the regulations would be required to be submitted to INS by the employer or the alien beneficiary.

G. Labor Certification Applications for Sheepherders

Procedures for filing applications for Sheepherders in the current regulations are in the special handling procedures at § 656.21(a). The new system does not contain a section on special handling procedures, since we will handle all applications submitted to the Department in the same way. Sheepherder applications will continue to be submitted to INS along with the required processing fee. Employers would have to submit to the appropriate INS officer in addition to the processing fee:

- A completed *Application for Alien Employment Certification* form;
- A completed PWDR endorsed by the SWA; and
- A signed letter or letters from all U.S. employers who have employed the alien as a sheepherder during the immediately preceding 36 months, attesting that the alien has been employed in the United States lawfully and continuously as a sheepherder, for at least 33 of the immediately preceding 36 months.

Employers that cannot not meet the requirements to file their applications for sheepherders with INS will be able to file their applications under the revised basic process described below.

H. Basic Process

1. Filing Applications

Employers would be required to file a completed Application for Alien Employment Certification form and a PWDR endorsed by the SWA with a designated ETA application processing center. Supporting documentation that may be requested by the Certifying Officer in an audit letter would not be filed with the application, but the employer would be expected to be able to provide required supporting documentation if its application were selected for audit.

The new system would limit the role of the SWA in the permanent labor certification process to providing PWD's. Prevailing wage determinations are currently made by SWA's after the application has been filed as part of the normal process of reviewing an application and informing the employer of deficiencies therein. In the new process, the employer would still be required to obtain a PWD from the SWA, although the timing would change from a post-filing action to a pre-filing action.

Under the proposed regulations, before filing a permanent application with an ETA application processing center, the employer would submit a PWDR to the SWA. (The ''machine readable'' PWDR would also be used to submit prevailing wage requests for the H–1B and H–2B programs.) The SWA would issue a PWD on the PWDR form and return it to the employer. The fully executed PWDR form would become part of the new application form filed at an ETA application processing center.

2. Processing

Computers would do an initial analysis of the information provided on the ''machine readable'' application form. Applications that could not be accepted for processing because certain information that was requested by the application form was not provided will be returned to the employer. Applications accepted for processing would be screened and would be certified, denied or selected for audit.

Information on the form may trigger a denial of the application or a request for an audit by Federal regional office staff. The application may also be selected for audit on a random basis as a quality control measure. If an application is not denied or selected for audit we anticipate that the application will be certified and returned to the employer within 21 days.

If the application is selected for audit, we will send the employer a letter with instructions to furnish required documentation supporting the information provided on the application form within 21 calendar days of the date of the request. If the requested information is not received in a timely fashion, the application will be denied.

3. Filing Date

Applications accepted for processing will be date stamped. Applications which are not accepted for processing and returned to employer will not be date stamped to minimize the administrative burden, and to discourage employers from filing an application merely to obtain a filing date, which under the regulations of the INS and Department of State becomes the priority date for processing petitions and visa applications, respectively.

Employers will be able to withdraw applications for alien employment certification filed under the current regulations and file an application for the identical job opportunity involved in the withdrawn application under the proposed rule without loss of the filing date.

4. Required Prefiling Recruitment

a. Professional occupations.

Exclusively for the purpose of the permanent labor certification program, the proposed rule defines a professional occupation as an occupation for which the attainment of a bachelor's or higher degree is a usual requirement for the occupation. Employers would be required to adequately test the labor market at prevailing wages and working conditions during the 6-month period preceding the filing of the application. The recruitment steps consist of prescribed mandatory and alternative steps and are designed to reflect what we believe, based on our program experience, are the recruitment methods that are most appropriate to the occupation. The mandatory steps for professional occupations consist of:

- Placement of a job order with the SWA serving the area of intended employment;
- Placement of two advertisements in the Sunday edition of the newspaper of general circulation most appropriate to the occupation and the workers likely to apply for the job opportunity in the area of intended employment; and
- Placement of an advertisement in an appropriate journal in lieu of one Sunday advertisement if the position involves experience and an advanced degree.

Under the current system, the employer may advertise, when a newspaper of general circulation is designated as the appropriate advertising medium, in any newspaper of general circulation. However, our experience has shown that some employers routinely place newspaper advertisements in those newspapers with the lowest circulation and that these publications are often the least likely to be read by qualified U.S. workers. Therefore, in order for the employer's job opening to receive appropriate exposure, the proposed regulation requires that the mandatory advertisements appear in the newspaper of general circulation most appropriate to the occupation and the workers most likely to apply for the job opportunity in the area of intended employment. For example, in a relatively large metropolitan area such as Philadelphia, Pennsylvania or Washington, DC, it would not be appropriate to place an advertisement for a computer professional in a suburban newspaper of general circulation since workers interested in professional jobs consult the metropolitan newspapers in the area of intended employment with the largest circulation rather than the suburban newspapers of general circulation. On the other hand, it would be appropriate to advertise in a suburban newspaper of general circulation for nonprofessional occupations, such as jewelers, houseworkers or drivers.

If the position involves experience and an advanced degree, the proposed regulation requires that the employer place one advertisement in an appropriate professional journal in lieu of one Sunday advertisement. To assure that employers make a current and complete test of the labor market, the mandatory recruitment steps must be conducted at least 30 days, but no more than 180 days, before the application is filed. In addition, the mandatory advertisements must be placed at least 28 days apart.

The employer, as indicated above, would also be required to select three additional pre-filing recruitment steps from among commonly used professional recruitment channels, such as job fairs, job search web sites and private employment agencies. Unlike the mandatory steps, one of the additional recruitment steps may consist solely of activity that takes place within 30 days of the filing of the application.

We are publishing in Appendix A to the preamble a list of occupations for which a bachelor's or higher degree is a usual requirement. The basic list was developed by the Bureau of Labor Statistics (BLS) and was based on its analyses of occupations' usual education and training requirements conducted to produce the *Occupational Outlook Handbook.* The Employment and Training Administration developed a crosswalk to the O*NET, Standard Occupational Classification (SOC) codes. The occupational titles, along with the relevant O*Net-SOC codes and codes which indicate whether the usual degree requirement for the occupation is for a professional degree, doctoral degree, master's degree, work experience plus a bachelor's or higher degree, or a bachelor's degree, are presented in the list we are publishing in Appendix A. We do not plan to codify Appendix A. Additional information about the occupations, including their definitions, can be obtained from O*Net online at *http://online.onetcenter.org.* Commenters are invited to submit comments on the appropriateness of the occupations included on the list published in Appendix A.

b. Nonprofessional Occupations

The proposed rule defines a non-professional occupation as any occupation for which the attainment of a bachelor's or higher degree is not a usual requirement for the occupation. Recruitment for occupations that normally do not require a baccalaureate or higher degree, i.e., non-professional occupations, consists of three mandatory steps: two newspaper advertisements and placement of a job order with the SWA serving the area of intended employment. All three recruitment steps must occur at least 30 days but no more than 180 days, before filing the application. Like recruitment for professional occupations, the advertisements must be placed at least 28 days apart, and must run in the Sunday edition of the newspaper of general circulation most appropriate to the occupation and the workers likely to apply for the job opportunity.

The advertising requirements for both professional and nonprofessional occupations are more extensive than under the current regulations. The difference in advertising requirements between professional and nonprofessional occupations is based on the Department's experience as to how employers advertise for these two broad categories of workers. The Department is interested in receiving comments on the more extensive advertising requirements, and the different advertising requirements for professional and nonprofessional occupations.

5. Newspaper Advertising Requirements

The proposed requirements for the newspaper advertisements are modeled after current regulatory requirements at 20 CFR 656.21(g), except the advertisement must: (1) identify the employer; (2) direct potential job seekers to the employer and not the SWA; and (3) provide a description of the job and its geographical location that is sufficiently detailed to fully inform U.S. workers of the particular job opportunity. Additionally, the wage must equal or exceed the prevailing wage entered on the PWDR by the SWA. Any job requirements listed in the advertisement may not exceed those listed on the PWDR.

6. Recruitment Report

The employer will be required to maintain documentation of the recruitment efforts it has undertaken and the results thereof, including the lawful job-related reasons for rejecting U.S. workers who applied for the job. Recruitment reports may be required in the cases selected for audit and are required in every case in which employers conduct supervised recruitment. Under the current regulations, employers have always had

to report on the lawful job-related reasons why each U.S. worker applying for the job or referred to the employer was not hired. See 20 CFR 656.21(b)(6) in the current regulations. The proposed regulation provides that the employer must prepare a summary report describing the recruitment steps taken and the results, including the number of U.S. applicants, the number of job openings in the job opportunity, the number of applicants hired and, if applicable, the number of U.S. workers rejected summarized by the lawful job reasons for such rejections. The Certifying Officer, however, after reviewing the employer's recruitment report may request the resumes or applications of the U.S. workers who were rejected sorted by the reasons for rejection provided by the employer in its recruitment report.

The proposed rule governing the content of recruitment reports, required for recruitment conducted prior to filing the application by the employer or for supervised recruitment that may be required by the Certifying Officer, would also clarify our position regarding ''qualified'' U.S. workers. We have added the requirements currently found at § 656.24(b)(2)(ii) to the requirements for the recruitment reports required to be submitted by employers on the results of their prefiling and supervised recruitment of U.S. workers. The recruitment requirements thus provide that a U.S. worker may be qualified for the employer's job opportunity even if he/she does not meet every one of the employer's job requirements. The U.S. worker who, by education, training, experience, or a combination thereof, qualifies by being able to perform, in the normally accepted manner, the duties involved in the occupation may not be rejected for failing to meet a specific job requirement. In addition, the U.S. worker is considered qualified, if he/she can acquire during a reasonable period of on-the-job-training, the skills necessary to perform as customarily performed by other U.S. workers similarly employed, the duties involved in the occupation.

7. Job Requirements

a. Business Necessity Standard and Job Duties

The requirement that the employer's job requirements must be those normally required for jobs in the United States would be retained in the new system. Employers, however, would not be able to justify job requirements that exceed those that are normal by use of business necessity. The business necessity standard, currently at 20 CFR 656.21(b), often works to the disadvantage of U.S. workers. This regulation has been difficult to administer and has generated a greater amount of litigation than any other regulatory provision in the current regulations. Since the position for which certification is sought is usually held by an alien worker who is the beneficiary of the application, job requirements tend to be manipulated to favor the selection of the alien. The existing business necessity standard requires the CO to evaluate the unique standards of an employer's business. In highly technical areas this is an extremely difficult undertaking and may be subject to employer manipulation since we are in no position to second guess the employer in such circumstances.

We have concluded that any business necessity standard that may be adopted would present similar problems. Therefore, the proposed rule would not retain a business necessity standard as a justification for employer's job requirements that exceed requirements that are normal to jobs in the United States. However, as discussed below, the case law relating to how the business necessity standard relates to a language requirement is being adopted. Further, any requirements other than those relating to the number of months or years of experience in the occupation or the number of months or years of education or training in the occupation cannot be specified as a job requirement, unless justified in the limited circumstances discussed below.

Accordingly, the proposed rule provides that the job opportunity's requirements cannot exceed the Specific Vocational Preparation level assigned to the occupation as shown in the O*Net Job Zones, except in certain limited circumstances, as explained below.

b. Other Job Requirements

Job requirements other than those relating to the number of months or years of experience in the occupation or the number of months or years of training cannot be used unless justified in certain limited circumstances, discussed below.

(1) Previous Employment of U.S. Workers

Other requirements can be justified if the employer employed a U.S. worker to perform the job opportunity with the duties and requirements specified in the application within 2 years of filing the application. ETA's operating experience indicates that the more recently a job existed and was filled by a U.S. worker before the time an application is filed, the more likely it is to involve a job that is clearly open to U.S. workers. In the event of an audit, the proposed rule provides that previous employment of a U.S. worker in an occupation with requirements other than those relating to experience, education and/or training can be documented by furnishing the name of the former employee, and an appropriate combination of the following: job description, resume, payroll records, letter from previous employee and previous recruitment documentation.

(2) Other Requirements Are Normal to the Occupation

Requirements other than those relating to amount of experience and education could be justified if the requirements were normal to the occupation in order for a person to perform the basic job duties and were routinely required by other employers in the industry. The proposed rule provides that employers can document such requirements by providing copies of state and/or local laws, regulations, ordinances; articles; help-wanted advertisements; or employer surveys. Acceptable examples, depending on the occupation, include but are not limited to, professional trade or business licenses, licensing standards, specified typing speed, and the ability to lift a minimum number of pounds.

(3) Foreign Language Requirement

Preventing employers from artificially tailoring job opportunities to fit the unique skills of the incumbent alien has always been a major issue is the labor certification process. Since 1977, we have addressed this through the use of the ''business necessity'' test. For reasons already discussed, we are not utilizing business necessity in the new system. However, with respect to language requirements, which are often used by employers seeking to artificially restrict the job to the incumbent alien, the use of the business necessity standard produced a well-understood and, generally, well-accepted body of law about when and how language requirements can be utilized. The proposed rule incorporates that legal standard.

Consistent with the majority of BALCA decisions, the proposed rule would require that a foreign language requirement cannot be included merely for the convenience of the employer or because it is a mere preference of the employer, co-workers or customers. Although the proposed rule would eliminate any business necessity standard as a means of justifying a

foreign language requirement, the rule would incorporate the existing standards and criteria developed under BALCA case law. Therefore, a foreign language can be based on the nature of the occupation; e.g., translator, or, for example, the existence of the need to communicate with a large majority of the employer's customers or regular contractors who cannot communicate effectively in English. This can be documented by the employer furnishing the number and proportion of its clients contractors who cannot communicate in English, a detailed explanation of why the duties of the position for which certification is sought require frequent contact with and communication with customers or contractors who cannot communicate in English, and why it is reasonable to believe that the foreign language customers and contractors cannot communicate in English.

(4) Combination Occupations

The revised regulation makes two changes to the provision about combination of duties in the current regulation. First, the proposed regulation uses the term ''combination of occupations'' instead of ''combination of duties'' as most jobs require the incumbent to perform a combination of duties. Second, the ability to document the need for a combination of occupations would be limited to two instead of three alternative forms of documentation that can be furnished by the employer to support a combination of occupations under the current regulations. For the reasons explained above in the discussion on the elimination of a business necessity standard, business necessity would no longer be a basis for justifying a job opportunity involving a combination of occupations. Further, the alternative provided in the current regulations for justifying a combination of duties which allows the employer to document that it has normally employed persons for that combination of duties would be replaced with the standard, discussed above, for justifying requirements other than experience and education that are based on the previous employment of a U.S. worker. Accordingly, the revised regulation limits the alternative forms of documentation the employer can furnish to support a combination of occupations to documentation that it employed a U.S. worker for the same combination of occupations involved in the application within 2 years of filing the application and/or that workers customarily perform the combination of occupations in the area of intended employment.

Consistent with our longstanding policy, combination jobs would be classified and prevailing wages determined in the following order: (1) The highest paying occupation; (2) the highest skilled occupation; or (3) the occupation that requires the largest percentage of the applicant's time. The highest paying occupation is considered first in classifying the job opportunity because the prevailing wage for the highest paying occupation has to be offered by the employer in order to conduct a valid test of the labor market for the highest paying occupation involved in the employer's job opportunity. If two or more occupations have the same high prevailing wage, the job opportunity would be classified according to the one that is the most highly skilled. If two or more occupations require the same high level of skill, the combination occupation would be classified in accordance with the one that would require the largest percentage of the incumbent's time.

8. Actual Minimum Requirements

The proposed rule precludes employers including as a requirement for the job opportunity any experience the alien gained working for the employer in any capacity, including working as a contract employee. Since 1977, we have prohibited using experience gained with the employer to be used as qualifying experience except in cases where the alien gained the experience in dissimilar jobs or in instances where it is no longer feasible for the employer to train a U.S. worker. After over 2 decades of administering this regulation, we have concluded there is no material difference in the need to protect U.S. workers if the alien gained the experience in a similar job or a dissimilar job, or if the employer maintains that it is no longer feasible to train another worker for the job involved in the application.

The need to protect U.S. workers stems in large measure from the same reason we are proposing to eliminate business necessity as a justification for exceeding job requirements that are normal to the job in the United States. In situations where the alien encumbers the job opportunity involved in the employer's application, job requirements tend to be manipulated in favor of the alien incumbent to the disadvantage of U.S. workers.

The question of what employing entity is the employer has also presented considerable confusion. To clarify this issue and to maximize protection to U.S. workers we have concluded, consistent with the BALCA decision *In the Matter of Haden, Inc.* (88–INA–245, August 30, 1988), that the definition of employer should be broadly drawn. Accordingly, we propose to define the term ''employer'' to include predecessor organizations, successors in interest, a parent, branch, subsidiary, or affiliate, whether located in the United States or another country. Although ETA has followed *Haden* in administering the current regulations, the Department seeks comments on the proposed definition of employer for administering the provision pertaining to actual minimum requirement at § 656.17(h).

9. Alternative Experience Requirements

We are proposing to eliminate the use of alternative experience requirements as a means of qualifying for the employer's job opportunity for much the same reasons we are proposing to eliminate business necessity and to preclude the employer from including as a requirement for the job opportunity any experience the alien gained working for the employer in any capacity.

As a practical matter, in virtually all instances involving alternative experience requirements the alien beneficiary has been employed, usually by the employer applicant, in a job requiring less than 2 years of training or experience. The Act only allocates 10,000 visas a year to workers immigrating to work in the employment-based preference provided in the Act for such jobs (see 8 U.S.C. 1153(b)(3)(A)(iii)). The visa category for these unskilled jobs is oversubscribed and there is approximately a 4½ year wait for aliens who are waiting to immigrate to work in jobs requiring less than 2 years of training and experience. The other employment-based preferences requiring labor certification are generally not oversubscribed. The primary objective of the employer in specifying alternative experience requirements is to obtain certification for a job opportunity for which visa numbers are currently available. In these cases, as in the situations where business necessity justifications have been proffered, or in instances where the employer maintains the alien gained the experience in a dissimilar jobs or maintains that it is no longer feasible to train another worker for the job involved in the application, there is a need to protect U.S. workers as the job requirements tend to be manipulated to favor the alien beneficiary.

10. Conditions of Employment

The current regulations do not explicitly address conditions of employment, but we consider conditions of employment, such as a

requirement to live in the employer's household or a requirement to work a split shift, an important element of working conditions. Generally, unusual working conditions can be justified if the employer can document that they are normal to the occupation in the area and industry. The one exception to this rule is for live-in household domestic service workers. Because of the past history of program abuse involving the filing of large numbers of accommodation cases motivated primarily by the desire to obtain permanent resident alien status for the alien beneficiary and not by legitimate employment needs, the proposed rule would incorporate the standards and criteria that have been developed by BALCA case law to determine when a live-in requirement for a household domestic service workers is acceptable.

Therefore, live-in requirements are acceptable for household domestic service workers only if the employer can demonstrate that the requirement is essential to perform in a reasonable manner the job duties as described by the employer, and there are not cost-effective alternatives to a live-in household requirement. Mere employer assertions do not constitute acceptable documentation. For example, a live-in requirement could be supported by documenting two working parents and young children in the household, and/or the existence of erratic work schedules requiring frequent travel and a need to entertain business associates and clients on short notice. Depending upon the situation, acceptable documentation could consist of travel vouchers, written estimates of costs of alternatives such as baby sitters, and/or a detailed listing of the frequency and length of absences of the employer from the home.

The proposed rule would also retain the filing and documentation requirements at 20 CFR 656.21(a) for live-in household domestic service workers that have been in the permanent labor certification regulations since 1977 to minimize program abuse and abuse of the alien, such as the requirement that a signed copy of the contract must be provided to the alien and documentation of the alien having 1 year's prior experience in the occupation and are described below in greater detail.

11. Layoffs

The current regulations do not specifically require employers to consider potentially qualified U.S. workers who may have been laid off within a reasonably contemporaneous period of time of the filing of the labor certification application by the employer. However, it has always been our position that Certifying Officers have the authority to consider the availability of these workers under § 656.24(b)(2)(i) and (iii) of the current regulations. Under § 656.24(b)(2)(i), the Certifying Officer may determine whether there are other appropriate sources of workers from which the employer should recruit or might be able to recruit U.S. workers. Section 656.24(2)(iii) provides that in determining whether U.S. workers are available, the Certifying Officer shall consider as many sources as are appropriate. The proposed rule would provide Certifying Officers with broad authority to designate other sources of recruitment where the employer would be required to recruit for U.S. workers.

Accordingly, the proposed rule would require employers, if there has been a layoff in the area of intended employment within 6 months of the filing of the application, to attest to and document notification and consideration of potentially qualified U.S. workers involved in the layoff and the results of such notification.

12. Alien Influence Over Job Opportunity

When an employer seeks labor certification for an alien who is in a position to unduly influence hiring decisions or who has such a dominant role in, or close personal relationship with the employer and/or employer's business that it is unlikely that the employer would replace the alien with a qualified U.S. applicant, BALCA decisions allow the Certifying Officer to determine that the job opportunity has not been clearly open to any qualified U.S. worker.

The leading BALCA decision, *Modular Container Systems, Inc.* (89–INA–228, July 16, 1991), articulates several factors that should be considered by Certifying Officers to determine whether or not the job opportunity is bona fide or clearly open to U.S. workers. The proposed rule incorporates this requirement. The proposed rule specifies what documentation the employer must be prepared to furnish to enable the Certifying Officer to evaluate the employer's application in light of the factors articulated by BALCA in *Modular Container Systems.* These factors include whether the alien:

- Is in the position to control or influence hiring decisions about the job for which labor certification is sought;
- Is related to the corporate directors, officers or employees;
- Was an incorporator or founder of the company;
- Has an ownership interest in the company;
- Is involved in the management of the company;
- Is one of a small number of employees;
- Has qualifications for the job that are identical to specialized or unusual job duties and requirements stated in the application; and
- Is so inseparable from the sponsoring employer because of his or her pervasive presence and personal attributes that the employer would be unlikely to continue in operations without the alien.

I. Optional Special Recruitment and Documentation Requirements for College and University Teachers

Procedures for filing applications for college and university teachers in the current regulations are in the special handling procedures at 20 CFR 656.21(a). As indicated above, the new system does not provide for any special handling procedures. All applications we receive will be processed in the same way, although there may be some differences depending upon the occupation, in the attestation and documentation requirements. Consequently, procedures for filing applications on behalf of college and university teachers would be in a separate section. The documentation requirements for filing applications for college and university teachers would remain much the same as under the current regulation. The revised regulations, however, would specifically recognize current operating practice that employers that cannot or choose not to satisfy the special recruitment procedures for college and university teachers may avail themselves of the basic process in the new system.

Whether employers file applications on behalf of college and university teachers under the special recruitment procedures or the basic process, they are required to be able to document, if requested by the Certifying Officer, that the alien was found to be more qualified than any U.S. worker who applied for the job opportunity. The Act requires, in the case of members of the teaching profession, that U.S. workers have to be equally qualified with respect to the alien beneficiary to be considered by the employer for the job opportunity for which certification is sought. See 8 U.S.C. 1182(a)(5)(A).

J. Live-in Household Domestic Service Workers

Applications for household domestic service occupations would be filed, as in the current rule, under the revised basic process. Most of the documentation requirements for live-in household domestic service workers are unchanged from the current requirements contained in the current regulation at § 656.21(a)(3)(i) and (ii). However, some of the information that was previously required to be provided in item 20 of Form ETA 750, Part A, Statement for Live-at-Work Job Offers will no longer be collected on the application, but employers will be required to furnish that information if their applications are audited. This information includes a description of the residence, the number of individuals living in the household and their ages in the case of persons under the age of 18, and a statement as to whether or not free board and a private room not shared by another person will be provided to the alien. The employer would be required to attest on the application form that it will maintain all required documentation and, in the event of an audit, the employer will be required to submit this documentation to ETA, as well as the other documentation that is required for all occupations under the basic labor certification process.

K. Audit Letters

Under the current regulations, if a Certifying Officer determines that a certification cannot be issued, a Notice of Findings (NOF) must first be issued to the employer notifying it of the specific reasons for which the Certifying Officer intends to deny the application. Issuing a NOF and analyzing employers responses is probably the most time consuming aspect of the current labor certification system. The proposed rule does away with NOF's.

As indicated above, after an application has been determined to be acceptable for filing, a computer system would review it based upon various selection criteria that would allow applications to be identified for an audit. Additionally, as a quality control measure, the regulations provide that some applications could be randomly selected for audit without regard to the results of the computer analysis. Audit letters would be, for the most part, standardized, computer generated documents, stating the documentation that must be submitted by the employer. The proposed regulation would provide, in virtually all instances where an employer could be required to submit documentation in support of its attestations, the type of documentation the employer would be required to maintain and furnish in the event of an audit. Employers would be expected to have assembled and have a hand in all documentation necessary to support their applications before they are submitted.

If the employer did not mail the requested documentation within 21 days of the date of the audit letter, the application would be denied and the administrative-judicial review procedures provided for in the proposed rule would not be available. We have concluded that 21 days is sufficient time for employers to respond to audit letters because, as indicated above, the regulations indicate what documentation employers will be required to assemble, maintain and submit to respond to an audit letter. Extensions would not be granted to respond to audit letters. Failure to provide required documentation in a timely manner would be deemed a material misrepresentation to dissuade those small number of employers that conceivably may file applications without complying with all the documentation requirements from filing such applications. Further, failure to timely provide documentation would constitute a refusal to exhaust available administrative remedies and the administrative-review procedures would not be available.

If the requested documentation is submitted on time, the Certifying Officer would review the documentation submitted by the employer under the proposed standards in § 656.24 of this part.

As discussed below in the section on labor certification determinations, if the Certifying Officer determines that the employer materially misrepresented documentation requirements due to a failure to provide required documentation pursuant to § 656.21(a)(3)(ii) of this part, or otherwise determines a material misrepresentation was made with respect to the application for any reason, the employer may be required to conduct supervised recruitment pursuant to section 656.21 of this part in future filings of labor certification applications for a period of 2 years. Commenters are invited to suggest items that can be added to the application form that would be helpful in identifying applications that may involve fraud and abuse.

Before making a final determination in accordance with the standards in § 656.24 of this part, the Certifying Officer could request supplemental documentation or require the employer to conduct supervised recruitment. A request for supplemental documentation could include a request for certain limited information not specified in the regulations, but that should be readily available to the employer. For example, if an application under review involves a job opportunity for a specialty chef, the Certifying Officer could request a copy of the restaurant's menu to aid in determining whether there was a *bona fide* job opening available for a specialty chef.

Once the Certifying Officer has reviewed all requested information, the Certifying Officer will issue a final determination granting or denying the application.

L. Supervised Recruitment

1. General

In any case where the Certifying Officer determines it to be appropriate, post-filing supervised recruitment may be ordered. This would include cases selected for audit and cases where serious questions arise about the adequacy of the employer's test of the labor market. It is anticipated, however, that the decision to order supervised recruitment will usually be based on labor market information. Supervised recruitment would operate much like the non-RIR recruitment under the current basic process at § 656.21, except that the recruitment efforts would be directed by the Certifying Officer and not by the SWA, as is the case under the current system.

2. Recruitment Sources

The advertisement requirements would be more detailed and rigorous than for pre-application recruitment. The advertisement would be required to be approved by the Certifying Officer before publication and the Certifying Officer would direct where it would be placed. We anticipate that Certifying Officers would, based on their broad knowledge of the labor market and experience in evaluating recruitment results placed in various newspapers, direct employers where to place advertisements. The advertisement would direct applicants to send resumes or applications to the Certifying Officer and would be required to include a summary of the employer's minimum job requirements. The Certifying Officer, as in the current rule, would have broad authority to designate other sources of workers where the employer should recruit for U.S. workers. The broad authority of the Certifying Officer to determine if there are other appropriate sources of workers where the employer should have recruited or might be able

to recruit U.S. workers would be moved from the determination process at 20 CFR 656.24 in the current regulations, to the section on supervised recruitment in the proposed rule at 20 CFR 656.21.

3. Recruitment Report

At the completion of the supervised recruitment efforts, the employer will be required to document that its efforts were unsuccessful, including documenting the lawful job-related reasons for not hiring any U.S. workers who applied for the position. As explained above, employers have always been required to report on the lawful job-related reasons why each U.S. worker applying for the job or referred to the employer was not hired under the current regulation at 20 CFR 656.21(b)(6). This would be a specific requirement that employers would have to address in the employer report on supervised recruitment. The current regulation at 20 CFR 656.21(j) specifying the content of recruitment reports is potentially confusing in that it does not agree with the current requirement at 20 CFR 656.21(b)(6). In the present regulations employers only have to provide the lawful job related reasons for not hiring each U.S. workers interviewed. The other requirements for the employer's recruitment are much the same as in the current regulations. The employer would be required to report the number of U.S. workers who applied for the position, the number of workers interviewed, the names and addresses of the U.S. workers interviewed for the job opportunity, and the job title of the person who interviewed the workers.

We are taking the same position on who is a qualified U.S. worker in the supervised recruitment process as we took in our discussion of the issue for the prefiling recruitment process. A U.S. worker may be qualified even if he/she does not meet every one of the employer's job requirements. U.S. workers would be considered qualified if the U.S. workers, by education, training, or a combination thereof, qualify by being able to perform, in the normally accepted manner, the duties involved in the occupation. U.S. workers would be considered qualified if they could acquire, during a period of reasonable on-the-job training, the skills necessary to perform as customarily performed by other workers similarly employed, the duties involved in the occupation. Rejection of such workers based solely on lack of familiarity with some particular subsidiary job duty will not be permitted.

M. Labor Certification Determinations

1. Referral of Applications to the National Office for a Determination and Specification of Applications to be Handled in the National Office

The provisions that applications involving special or unique problems may be referred to the National Certifying Officer by the Regional Certifying Officer and that certain types of applications or specific applications be handled in the National Office have been deleted because they are no longer necessary. Under the existing regulations there are specific provisions governing the processing of an individual application through the SWA's and the ETA regional offices. The current regulations specify, depending upon the geographic location of the employer, which applications would be processed and reviewed by the various Certifying Officers. Accordingly, there was a need for provisions in the regulations to provide the authority for regional Certifying Officers to refer applications to the National Office or for the National Office to have the authority to direct that certain types of applications or specific applications be handled in the national office. Under the new system the SWA's will no longer be involved in case processing and the proposed regulations do not specify which applications will be reviewed by the various Certifying Officers, including the National Certifying Officer. Therefore, specific provisions are not required in the regulations to govern referrals by regional Certifying Officers of applications involving unique or special problems to the National Certifying Officer, or for the National Office to direct that certain types of applications or specific applications be handled in the ETA National Office.

2. Designation of Recruitment Sources

The determination process has been revised to reflect that all fact finding will have been completed by the time the Certifying Officer makes a determination. Consequently, the broad authority of the Certifying Officer to designate other appropriate recruitment sources from which the employer should recruit for U.S. workers is deleted from the determination process and included in the section detailing the operation of supervised recruitment in the new system at § 656.21.

3. Qualified U.S. Workers

As indicated above, consistent with the provisions in the regulations governing the content of recruitment reports that must be completed by employers whether they conduct prefiling or supervised recruitment, the section on determinations would be revised to provide that, alternatively, the U.S. worker is qualified if he/she can acquire during a reasonable period of on-the-job training, the skills necessary to perform the duties involved in the occupation, as customarily performed by other U.S. workers similarly employed.

4. Material Misrepresentations

As indicated above, if a Certifying Officer determines that the employer materially misrepresented it had complied with all documentation requirements due to a failure to provide required documentation pursuant to § 656.21(a)(3)(ii) of this part, or otherwise determines a material misrepresentation was made with respect to the application for any reason, the employer may be required to conduct supervised recruitment pursuant to section 656.21 of this part in future filings of labor certification applications for a period of 2 years.

5. Reconsideration

The present regulations are silent with respect to the availability of motions for reconsideration after a Final Determination. Historically, Certifying Officers sometimes honored such motions but generally treated them as requests for review and transmitted the matter to the ALJ.

In order to address this matter, the regulation is amended to specifically provide that while motions for reconsideration before the Certifying Officer may be filed, the Certifying Officer may, in his/her complete discretion, choose to treat the motion as a request for review.

N. Board of Alien Labor Certification Appeals Review, Consideration and Decisions

1. Only Employer Can Request Review

The current regulations provide that if a labor certification is denied, a request for review of the denial may be made to the Board of Alien Labor Certification Appeals, by the employer and by the alien, but in the case of the alien, only if the employer also requests such a review. Only an employer can file *An Application for Alien Employment Certification.* Moreover, the employer can withdraw its application at any time. In view of the primacy of the employer in the labor certification process, we have concluded that it makes little sense to allow an alien to also file an appeal and are proposing to only authorize employer appeals.

2. Time Allowed to File Requests for Review

Consistent with the objective of streamlining and reducing processing time, the proposed rule would reduce the time to file a request for review to 21 calendar days from the 35 days specified in the current regulations. The Department believes that 21 days is sufficient time for an employer to file a request for review.

3. Aliens of Exceptional Ability in the Performing Arts

All references to aliens of exceptional ability in the performing arts would be deleted from the sections in the proposed rule detailing the procedures for filing requests for review and from the procedures to be followed by the Board in considering appeals and issuing decisions, since aliens of exceptional ability in the performing arts would be moved to *Schedule A.* The proposed rule would provide, as does the current rule, that the *Schedule A* determination of INS shall be conclusive and final.

4. Amicus Briefs

The provisions for *amicus briefs* for cases involving college and university teachers and aliens of exceptional ability in the performing arts would also be deleted from the sections of the proposed rule detailing the procedures to be followed in filing requests for review and the procedures to be followed by the Board in considering appeals and issuing decisions. Provisions for *amicus briefs* would no longer be applicable to aliens of exceptional ability in the performing arts, since they would be on *Schedule A* and *Schedule A* determinations of the INS are conclusive and final. Specific provisions for *amicus briefs* are no longer necessary in the case of college and university teachers because BALCA, in practice, accepts such briefs from any party that wishes to file one. The current language implies that BALCA would accept *amicus curiae* briefs only in cases involving college and university teachers and aliens of exceptional ability in the performing arts.

5. Copies of Appeal File

In the interest of providing improved customer service, the revised regulation would provide that the Certifying Officer shall send a copy of the Appeal File to the employer in lieu of only a copy of the index to the Appeal File to the employer. This would obviate the need for the employer to examine the Appeal File at the office of the Certifying Officer. The named alien beneficiary of the labor certification would not receive a copy of the appeal file for much the same reasons he or she would not be allowed to file a request for review as discussed above.

6. Elimination of Remands

The current regulations provide that the Board may remand cases to a Certifying Officer for further consideration or fact-finding and determination. We anticipate that cases processed under the new system would be sufficiently developed by the time they get to the Board that there should be no need to remand a case to a Certifying Officer. The proposed regulation authorizes the BALCA to either affirm or reverse the Certifying Officer's decision, but makes no provision for remands.

O. Validity and Invalidation of Labor Certifications

Substitution of Alien Beneficiaries

We published an interim final rule on October 23, 1991, effective November 22, 1991, which limited the validity of labor certifications to the specific alien named on the labor certification application. (See 56 FR 54925, 54930.) This interim final rule had the effect of eliminating the practice of allowing the substitution of alien beneficiaries on approved labor certifications. On December 1, 1994, the U.S. District Court for the District of Columbia, acting under the mandate of the U.S. Court of Appeals for the District of Columbia in *Kooritzky* v. *Reich*, 17 F.3d 1509 (D.C. Cir. 1994), issued an order invalidating that portion of the interim final rule which eliminated substitution of labor certification beneficiaries. The order had the effect of reinstating the Department's previous practice of allowing substitution of alien beneficiaries on approved labor certifications.

Although the regulation was never conformed to the District Court order, we reinstated the practice of allowing the substitution of alien beneficiaries on approved labor certifications. Subsequently, operational responsibility for substituting alien beneficiaries on approved labor certifications was delegated to INS. INS issued a memorandum on March 7, 1996, Subject: *Substitution of Labor Certification Beneficiaries*, to implement the delegation of the responsibility for substituting labor certification beneficiaries to the Service. On March 22, 1996, ETA issued a Field Memorandum (FM) to its Regional Administrators informing them that all requests for substitution received after the date of the FM were to be returned to the employer with instructions to file the request with INS along with a copy of the I–140 preference petition. The proposed rule would return the regulatory provisions detailing the scope of the certification at 20 CFR 656.30(c)(1) and (2) to read the same as they did before November 22, 1991. As before the Interim Final Rule, the regulation does not mention substitution.

P. Revocation of Approved Labor Certifications

We propose to provide Certifying Officers with limited authority to revoke labor certifications within 1 year of the date the labor certification is granted or before a visa number becomes available to the alien beneficiary, whichever occurs first. The proposed rule lists the steps that may be taken by the Certifying Officer, who issued the certification, or an authorized person acting on his or her behalf, in consultation with the National Certifying Officer, to revoke the certification if the Certifying Officer finds that the certification was improvidently granted.

The proposal also provides that an employer may file an appeal with BALCA if it first files timely rebuttal evidence in response to the Certifying Officer's Notice of Intent to Revoke and the Certifying Officer determines that the certification should be revoked.

Q. Prevailing Wages

1. PWDR

We propose to standardize the PWD process through the use of the PWDR form. Before submitting a labor certification application under the new system, the employer will be required to submit the new PWDR form to the SWA in the State where the work will be performed. The PWDR form would require information from the employer that would allow the SWA to make the required determination of the prevailing wage for the job opportunity for which certification is sought. Specifically, the proposed form would require the employer to indicate the location of the job opportunity in terms of city or county and state, the title of the job and a description of the duties to be performed, the education, training, and/or experience required for the job, including any special requirements.

Upon receipt of a PWDR form, the SWA would review it and would determine the occupational classification and the area of intended employment. The SWA would then enter its determination on the PWDR form and return it with its endorsement

to the employer. The PWDR form may then be submitted in support of a permanent labor certification application. The SWA determination would include a State agency tracking number unique to that particular determination that would be used by ETA for program management purposes. The determination would also include the occupational code assigned to the job, the specific prevailing wage level determined by the SWA and the source of that information, the level of skill of the job in the case of those determinations made using the wage component of the Occupational Employment Statistics (OES) survey, and the date upon which the determination was made. If there is no collective bargaining agreement that would set the prevailing wage for the position, the employer will have the option of submitting an alternative wage survey or other source data for which the employer wishes the SWA to approve as a determinant of the prevailing wage in response to that specific request.

2. Validity Period of PWD

We are proposing that the SWA must specify the validity period of PWD on the PWDR form, which in no event shall be less than 90 days or more than 1 year from the determination date entered on the PWDR. Employers filing LCA's under the H–1B program must file their labor condition application within the validity period. Since employers filing applications for permanent labor certification can begin the required recruitment steps required under the regulations 180 days before filing their applications, they must initiate at least one of the recruitment steps required for a professional or nonprofessional occupation within the validity period of the PWD to rely on the determination issued by the SWA.

3. Collective Bargaining Agreement, Davis Bacon Act and Service Contract Act

Under the current regulations at § 656.40 the first order of inquiry for a SWA in determining the prevailing wage is to determine if the employer's job opportunity is in an occupation which is subject to a wage determination in the area under the Davis Bacon Act (DBA) or the McNamara-O'Hara Service Contract Act (SCA). If there is a prevailing wage under one of those statutes in the area of intended employment it must be used as the prevailing wage whether or not the employer has a Government contract in the area of intended employment. We are proposing to amend the prevailing wage regulation so that the first order of inquiry by the SWA in determining prevailing wages will be to determine whether or not the employer's job opportunity is covered by a union contract which was negotiated at arms length between a union and the employer. If the job opportunity is covered by such a contract it will be the prevailing wage for labor certification purposes.

The BALCA decision in *El Rio Grande on behalf of Galo M. Narea* (1998–INA–133, February 4, 1998; Reconsideration July 28, 2000) has prompted us to review the requirement for use of DBA and SCA wage determinations in making prevailing wage determinations for the permanent alien labor certification program. As explained more fully below, BALCA, in *El Rio Grande*, held that it has jurisdiction to review challenges to PWD's based on an SCA wage determination.

The use of DBA and SCA statutory wage determinations first appeared in the permanent labor certification regulations in 1967 (see 32 FR 10932). The use of DBA and SCA wage determinations in the permanent labor certification was in large measure prompted by concerns for administrative convenience. The SCA and DBA wage determinations were viewed as a convenient source of wage determinations that could be used for labor certification purposes. At that time, wage surveys were not as numerous, comprehensive and well developed as they are now.

On October 31, 1997, ETA in General Administrative Letter No. 2–98; Subject: *Prevailing Wage Policy for Nonagricultural Immigration Programs*, stated it had determined that the most efficient and cost effective way to develop consistently accurate prevailing wage rates is to use the wage component of the Bureau of Labor Statistics' expanded Occupational Employment Statistics (OES) program. The OES is based on the Standard Occupational Classification System (SOC), which will be used by all Federal statistical agencies for reporting occupational data. The OES provides arithmetic means by occupation and relevant geographic area for use in making prevailing wage determinations in the labor certification program.

There are marked differences in the way prevailing wages are determined under the DBA and SCA programs. The first order of inquiry in making SCA and DBA wage determinations is the wage paid to the majority (more than 50 percent) of the workers in a particular classification. See 29 CFR parts 1 and 4. Under SCA, if there is no rate paid to the majority, the median is ordinarily used rather than the mean. The regulations for the SCA program at 29 CFR 4.51(c) also provide that in those instances in which a wage survey for a particular locality may result in insufficient data, the prevailing wage may be established through a ''slotting'' procedure whereby wage rates for an occupational classification are based on a comparison of equivalent or similar job duty and skill characteristics between the classification studied and those for which no survey data is available. Under the OES system, if the data obtained for an occupation are insufficient, larger areas are used in aggregating wage data so that an appropriate arithmetic mean can be determined. Operational difficulties are also encountered in applying DBA and SCA statutory wage determinations because they are based on a different occupational classification system than the SOC. Further, SCA wage determinations frequently do not contain levels within an occupation, while the OES survey data furnished to ETA and the SWA's provides two levels of wages for every occupation.

We have concluded that it makes little sense to make determinations based on different statistical measures arrived at through inconsistent methodologies in determining prevailing wages mandatory for the permanent labor certification program. Accordingly, the proposed rule deletes the provision requiring that DBA and SCA wage determinations must be used in determining prevailing wages. Employers will, however, have the option to use current DBA and SCA wage determinations in addition to using the arithmetic mean provided by the wage component of the Occupational Employment Statistics Survey and employer provided wage information in accordance with the proposed provision at section 656.40(b)(4) of this part.

Surveys used to arrive at DBA wage determinations are not conducted by BLS, but by the Wage and Hour Division. Rather than sample surveys, they are universe surveys and data is sought on all projects in the area for a particular type of construction—ordinarily building construction, heavy construction, highway construction, and residential construction. The prevailing wage is determined based on the rate paid the majority, or if there is no majority, the arithmetic mean, of workers employed in the occupation based on wage data from the peak workweek for each project during the survey period (ordinarily 1 year), thereby allowing duplicated counting of

workers. Since these procedures are significantly different than those set forth in GAL 2–98 cited above, and do not provide an arithmetic mean of all of the workers in the occupation in the appropriate geographic area, we are considering the appropriateness of use of Davis-Bacon surveys in the permanent labor certification program.

We invite comment on the appropriate use of the surveys conducted to arrive at DBA and SCA wage determinations.

Although the proposed rule for determining prevailing wages does not contain a provision about the use of DBA and SCA wage determinations, we are aware that the regulations may be changed after review of the comments. Therefore, as a result of the *El Rio Grande* decision, the proposed rule for the prevailing wage panel review of prevailing wage determinations, discussed below, contains provisions for review of determinations involving DBA or SCA wage determinations.

We are also proposing changes similar to those discussed above to § 655.731 of the regulations under the H–1B program. The INA requires that the wages paid to an H–1B professional worker be the higher of the actual wage paid to workers in the occupation by the employer or the prevailing wage for the occupational classification in the area of employment. The H–1B regulations incorporate the language of 20 CFR 656.40 (as suggested by H.R. Conference Report, No. 101–95, October 26, 1990, page 122) and provide employers filing applications the option of obtaining a PWD from the SWA, using an independent authoritative source, or using another legitimate source as provided by § 655.731(a)(2)(iii)(B) and (C) of the H–1B regulations. See also § 655.731(b)(3). Thus we are proposing changes to the H–1B regulations similar to the ones we are proposing to § 656.40 of the regulations governing the determination of prevailing wages for the permanent labor certification program.

4. Elimination of 5 Percent Variance

We are proposing to eliminate a provision from the existing regulations governing the requirements for paying the prevailing wage for the occupation and area. Under § 656.40(a)(2)(i), the wage set forth in a labor certification application is considered as meeting the prevailing wage standard if it is within 5 percent of the average rate of wages. That is, the employer is considered to meet the prevailing wage requirement as long as it offers to pay 95% of the prevailing wage as determined by the SWA. The rationale for this provision, which has been in the Department's permanent program regulations since 1977, was that it was not always possible to determine an average rate of wages with exact precision. Before January 1, 1998, when we implemented the use of the wage component of the OES survey, SWA's usually obtained prevailing wage information by purchasing available published surveys or by conducting ad hoc telephone surveys of employers in the area of intended employment likely to employ workers in the occupational classification involved in an employer's labor certification application. Since the statistical precision of these methods varied greatly, we believed it was necessary to allow some variance in the rate offered by the employer.

The wage component of the OES survey is conducted by the Bureau of Labor Statistics (BLS) and, with the exception of the decennial Census, is the most comprehensive survey conducted by an agency of the Federal government. The OES program conducts a yearly mail survey designed to produce estimates of employment and wages for specific occupations. The OES program collects data on wage and salary workers in non-farm establishments in order to produce employment and wage estimates for over 750 occupations by geographic area and by industry. Estimates based on geographic areas are available at the National, State, and Metropolitan Area levels. The OES program surveys approximately 400,000 establishments per year, taking three years to fully collect the sample of 1.2 million establishments. This total covers over 70 percent of the employment in the U.S. Due to the comprehensive nature of the survey and the resulting degree of statistical precision with regard to the results thereof, we believe that it is no longer necessary to provide the 5% variance authorized under the existing labor certification regulations at § 656.49(a)(2)(i), and the H–1B regulations at §§ 655.731(a)(2)(iii) and 655.731(d)(4).

5. Employer-Provided Wage Data

The proposed rule directs SWA's to consider the use of employer-provided wage data in the absence of a PWD obtained through a collective bargaining agreement negotiated between the union and the employer.

In all cases where the employer submits a survey or other wage data for which it seeks acceptance, the employer would be required to provide the SWA with enough information about the survey methodology, including such items as the sample frame size and source, sample selection procedures, and survey job descriptions, to allow the SWA to make a determination about the adequacy methodology used to conduct the survey in accordance with guidance issued by the ETA National Office. The function of the SWA in these instances is merely to determine if the employer-provided survey is adequate and acceptable. ETA's National Office will provide guidance to be used in evaluating the statistical methodology used in producing the employer provided survey. The role of the SWA is not to determine whether the employer provided survey is more or less accurate than the prevailing wage information provided by the OES survey. If the employer-provided data is found to be acceptable, the specific wage rate obtained from that source will be determined to be the prevailing wage in responding to that particular request. We will continue our existing policy of not considering the issuance of a PWD based upon the acceptance of employer-provided wage data for a specific job opportunity as superseding the OES wage rate for subsequent requests for PWD's in the same occupation and area, since such determinations are made on a case-by-basis. For example, the job description in the employer provided survey may not be general enough to apply to all employers that employ workers in the occupation for which certification is being sought in a particular instance in the area of intended employment.

The proposed rule would also provide that if the employer-provided data is found not to be acceptable, the SWA's response to the employer must include the specific reasons why it is not acceptable (e.g., the geographic area covered by the survey is broader than that which is necessary to obtain a representative sample), and must provide the employer with the appropriate prevailing wage rate as derived from the OES survey data. Employers will have an opportunity to provide one supplemental filing that must be considered by the SWA. If the SWA finds the survey unacceptable after considering the supplemental information it must provide the employer the reasons why the supplemental information does not make the survey acceptable.

The employer after receiving notification that the survey it provided for the SWA's consideration will be able to file a new request for a prevailing wage determination, or appeal under § 656.41.

6. Use of Median

Another change we are proposing is to permit an additional measure of central tendency to be used in determining prevailing wages. Specifically, we are proposing that employers be allowed to submit alternative sources of wage data that provide a median wage rate for an occupational classification.

Under the current regulations, at § 656.40(a)(2)(i), the prevailing wage is defined as:

(t)he average rate of wages, that is, the rate of wages to be determined, to the extent feasible, by adding the wage paid to workers similarly employed in the area of intended employment and dividing the total by the number of such workers.

This process yields an arithmetic mean rate of wages. We propose to allow employers to submit alternative sources of wage data that provide the median wage rate, but do not provide the arithmetic mean of wages of U.S. workers employed in the area of intended employment. The median of a data set is the middle number when the measurements are arranged in ascending (or descending) order. Allowing the use of alternative sources of wage data that provide median wage rates would also increase the pool of published data available for the employer to use in obtaining valid prevailing wage surveys. Therefore, we propose to allow the use of median wage rates as the basis for determining the applicable prevailing wage under § 656.40 of the permanent labor certification regulations, and under § 655.731(b)(3)(iii).

7. Definition of Similarly Employed

We are proposing an additional change in the H–1B and permanent labor certification regulations to the definition of ''similarly employed'' for purposes of determining the pool of workers to be included in a survey conducted to arrive at the applicable prevailing wage rate. The existing regulations, at § 656.40 (b), provide that ''similarly employed'' means:

Having substantially comparable jobs in the occupational category in the area of intended employment, except that, if no such workers are employed by employers other than the employer applicant in the area of intended employment, ''similarly employed'' shall mean:

(1) Having jobs requiring a substantially similar level of skills within the area of intended employment; or

(2) If there are no substantially comparable jobs in the area of intended employment, ''having substantially comparable jobs with employers outside of the area of intended employment.''

Essentially the same language is also in the H–1B regulations at § 655.731(a)(2)(iv).

Under the current regulations, the survey area should be expanded or similar jobs considered only if there are no other employers of workers with substantially comparable jobs in the area of intended employment other than the employer applicant. The proposed regulatory language would alter this construct to be more in line with the SWA's operational practice of generally expanding the area included in the survey whenever a representative sample of workers with substantially comparable jobs in the area of intended employment cannot be obtained, even if there are, in fact, one or more other employers in area who employ such workers. The original language was promulgated at a time when SWA's generally conducted ad hoc surveys to determine prevailing wages. As a means to conserve resources, SWA's were instructed to expand the geographic scope of the survey only if there were no other employers other than the employer applicant employing workers with substantially comparable jobs in the area. As a means to ensure the confidentiality of the data, BLS will not publish reportable wage data where the sample frame is such that participating employers could readily be identified. It would be much more difficult for BLS to get employers to participate in the survey if an iron-clad guarantee of confidentiality could not be assured. Therefore, reportable wage data are only published and available for alien certification purposes if a representative sample of similarly employed workers in the area of intended employment can be obtained. For these reasons, we are proposing to amend the regulations to provide that the area covered by a survey should be expanded any time it is not possible to obtain a representative sample of similarly employed workers in the area of intended employment.

8. Issues Specific to H–1B Program

a. Transition of H–1B Workers From Inexperienced to Experienced

After further experience with the H–1B program, we have realized that as a result of the 3-year LCA issued under the current regulations, a prevailing wage determination for an employee who is inexperienced and cannot work without close supervision when originally hired may be applicable for 3 years, despite the fact that the employee is likely to begin working independently well before the end of the 3-year period. We therefore propose to amend § 655.731(a)(2) to provide that where a survey that is the basis for a prevailing wage determination contains more than one wage rate for the occupational classification, the employer is required to pay the H–1B workers at least the applicable wage for the work performed. In other words, as an entry-level worker gains experience and is able to work independently, the applicable prevailing wage would be the wage from the same survey for workers who work independently. Since at all times the prevailing wage would be the applicable rate from the survey that was the basis for the initial wage determination, we believe this is consistent with the statutory mandate that the prevailing wage be based on the best information available as of the time of filing the application.

b. Appeals by Employees and Other Interested Parties

We are also considering providing employees and other interested parties the right to appeal determinations of the prevailing wage made by ETA at the request of the Administrator of the Wage and Hour Division under § 655.731(d). Although we consider this to be a procedural matter not requiring notice and comment under the Administrative Procedure Act, we are seeking comments on the advisability of providing such appeal rights and the methodology to be used in administering appeals that may be made by interested parties other than employers. Commenters are invited to submit comments on these issues.

R. ETA Prevailing Wage Panel

Currently, SWA's provide PWD's to employers that wish to file applications to obtain alien workers under the H–1B (professionals in specialty occupations), H–1C (registered nurses at eligible health care facilities), and H–2B (nonagricultural temporary labor) nonimmigrant programs, and the labor certification process for the permanent employment of aliens in the United States. Under GAL 2–98, employers intending file applications under one of the nonimmigrant programs can only challenge the PWD through the Employment Service Complaint System (ESCS). See 20 CFR 658, subpart E. Employers that intend to file applications in the permanent alien labor certification program, on the other hand, may file appeals about SWA PWD's directly with the Certifying Officers. The challenges filed directly with Certifying Officers tend to be resolved more quickly than those filed in the ESCS. The existence of these two different systems of dealing with prevailing wage challenges has proven

to be confusing to employers, needlessly complicated, and time consuming. The resulting confusion on the part of employers is understandable since the prevailing wage methodology to determine prevailing wages for all programs is based on the regulation governing the determination of prevailing wages for the permanent program at 20 CFR 656.40.

The current structure in place for administering the PWD process and handling prevailing wage challenges has caused some inconsistency in the issuance of PWD's and the response to prevailing wage challenges. There are currently 9 Certifying Officers who provide oversight to the SWA's within their jurisdiction over the day-to-day operations involved in the issuance of prevailing wages to employers. Each of the 9 Certifying Officers have responsibility for resolving such challenges submitted by employers wishing to file permanent applications for alien employment certification.

To improve customer service and to enhance consistency in the day-to-day administration of the PWD process and in the resolution of challenges to PWD's, we propose to establish a prevailing wage panel (PWP) to adjudicate all complaints, arising from the PWD process. This would include, in the case of the H–1B program, not only those challenges that may be filed in response to the initial receipt of a PWD by the employer from a SWA, but also those instances when the Administrator of the Wage and Hour Division receives a PWD from ETA in the course of an enforcement action under to 20 CFR 656.731(d)(2). In those instances where the Wage and Hour Administrator obtains a prevailing wage from ETA, we anticipate that the Administrator when he/she informs the employer of the RD's determination, will also inform the employer that it may appeal the determination through the PWP and the procedures for filing such appeals.

By centralizing the review process in a single adjudicative body, we hope to increase the consistency of the decisions and establish clearly defined precedents governing the issuance of PWD's and the standards governing the use of alternative sources of wage data submitted by employers. We anticipate that the PWP will deal primarily with prevailing wage challenges arising from SWA determinations rejecting alternative sources of wage data. We anticipate that such challenges arising from the use of OES prevailing wage data will involve primarily, if not exclusively, questions as to whether the job was coded properly in terms of the occupational classification and the level of skill applied, and on whether the survey was based on the appropriate geographical area.

The size and composition of the PWP will be determined by the Chief, Division of Foreign Labor Certifications, and is subject to change depending upon the volume and complexity of employer challenges to be considered. We propose that the staffing of the panel may include SWA and Federal staff with experience in the prevailing wage determines area, and may also include specialists in survey methodology, PWD's, and occupational analysis and classification.

We are proposing that the employer must request, in writing, review of a PWD by the PWP in writing within 21 calendar days of the date the SWA issued the determination. The appeal must be mailed to the SWA that issued the prevailing wage determination. The appeal must set forth the particular grounds for the request and include copies of any of the materials submitted by the employer to the SWA pertaining to the PWD up until the determination date entered on the PWDR form by the SWA and copies of all the documents received from the SWA concerning the PWD. Failure to file a request for review would constitute a failure to exhaust administrative remedies.

The SWA would then send a copy of the employer's appeal, including any material added by the SWA, to the PWP, and would also send a copy of the appeal file as sent to the PWP to the employer. The employer would be able to furnish or suggest directly to the PWP the addition of any documentation that is not among the materials sent to the PWP by the SWA.

The PWP will review the SWA PWD solely on the basis upon which the PWD was made. The employer would have 21 days after receipt of the decision of the PWP to request a review by BALCA.

As explained above, although the proposed prevailing wage regulation deletes the use of DBA and SCA wage determinations, we seek comments on a proposed procedure providing for review of DBA and SCA wage determinations pending analysis of the comments received on the proposed rule. Accordingly, in the event we conclude that SCA and DBA wage determinations should be retained in the regulation, we propose to handle requests for review of PWD's based on DBA and SCA wage rates under the review procedures established by the Employment Standards Administration (ESA) for interested parties to obtain review of such rates at 29 CFR 1.8 and 7, subpart B in the case of DBA wage determinations and at 29 CFR 4.55, 4.56 and 8, subpart B in the case of SCA wage determinations. This procedure would enhance administrative consistency in the administration of the DBA and SCA, and would provide for administrative review in the agency with expertise. The current labor certification regulations and the proposed rule, in relevant part, contain a provision that reads as follows:

> If the job opportunity is in an occupation which is subject to a wage determination in the area under the Davis-Bacon Act * * * or the McNamara O'HARA Service Contract Act * * *, the prevailing wage shall be at the rate required under the statutory determination. Certifying Officers shall request the assistance of the DOL Employment Standards wage specialists if they need assistance in making this determination.

Before the decision of BALCA in *El Rio Grande,* it had been our position that Certifying Officers did not have the authority to determine whether or not to use an SCA or DBA wage determination in the labor certification context and that BALCA did not have the authority to review challenges to PWD's based on a SCA wage determinations. In *El Rio Grande,* however, BALCA held that:

> The regulatory language * * * places the ultimate responsibility for the SCA wage determination in a labor certification context on the CO, and only places Wage and Hour Division in an advisory role. Morever, the regulatory framework does not provide employers in labor certification proceedings the right to challenge SCA wage determinations through the Wage and Hour appeal procedures at 29 CFR 4.55, 4.56, and 8.2. Accordingly, we conclude that the Board of Alien Labor Certification appeals has jurisdiction, indeed the obligation, to review challenges to SCA wage determinations made by Cos pursuant to 20 CFR 655.40(a)(1).

Although the Board's decision in *El Rio Grande* did not specifically address DBA wage determinations, it would in all probability be equally applicable to DBA wage determinations, since they are used the same way SCA wage determinations are used in the labor certification regulations and the current review procedures established for DBA wage determinations do not provide employers in labor certification proceedings the right to challenge SCA wage determinations through the appeal procedures at 29 CFR 1.8 and 7, subpart B.

Executive Order 12866: We have determined that this proposed rule is not an ''economically significant regulatory action'' within the meaning of Executive Order 12866. The direct incremental costs employers would incur because of this rule, above business practices required by the current rule of employers that are applying for permanent alien workers

will not amount to $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. The Department believes that any potential increase in recruitment and recordkeeping costs associated with the proposed rule would be more than offset by the combination of eliminating the role of the SWA's in the recruitment process and, consequently, eliminating the time employer's currently spend in working with SWA's to meet regulatory requirements. Further, the expected large reduction in average processing time to process applications will lead to a reduction in the resources employers spend on processing applications and will eliminate the need of the Department to periodically institute special, resource intensive efforts to reduce backlogs which have been a recurring problem under the current process. Any cost savings realized, however, will not be greater than $100 million. Public comment is requested on this issue.

While it is not economically significant, the Office of Management and Budget (OMB) reviewed the proposed rule because of the novel legal and policy issues raised by this rulemaking.

Regulatory Flexibility Act: The proposed rule would only affect those employers seeking immigrant workers for permanent employment in the United States. We have notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995: This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996: This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132: This proposed rule will not have a 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. Therefore, in accordance with Executive Order 13132, we have determined that this rule does not have sufficient federalism implications to warrant the preparation of a summary impact statement.

Assessment of Federal Regulations and Policies on Families: The proposed regulation does not affect family well-being.

Paperwork Reduction Act

Summary:. This NPRM contains revised paperwork requirements at sections 655.731, 656.10, 656.14, 656.15, 656.16, 656.17, 656.18, 656.19, 656.21, 656.24 , 656.26, 656.40 and 656.41. The revised paperwork requirements are necessary to implement a streamlined system to process and adjudicate applications for permanent labor certification.

Published at the end of this NPRM are two forms that would be required to implement the streamlined process for the permanent labor certification program. One form is the *Prevailing Wage Determination Request* (PWDR) (ETA Form 9098) and the other is be the *Application for Permanent Labor Certification* (ETA Form 9099). Supporting documentation would not have to be submitted with an application, but employers would be required to assemble and maintain required supporting documentation and be able to produce such documentation in the event of an audit by an ETA Certifying Officer.

Need: The design and implementation of a streamlined permanent labor certification process that will yield a large reduction in the average time required to process labor certification applications requires revised paperwork requirements and the design and implementation of forms that are designed for automated processing.

Respondents and frequency of response: Employers submit applications for permanent labor certification when they wish to employ an immigrant alien worker. ETA estimates, based on its operating experience that in the upcoming year employers will file approximately 121,300 applications for alien employment certification and 121,300 PWDR's'(including an estimated 5,300 applications filed with the INS on behalf of aliens who qualify for *Schedule A* or who are immigrating to work as sheepherders) for a total burden of just over 357,835 hours (121,300 PWDR's × .75 hour + 121,300 applications for permanent labor certification × 2.2 hours = 357,835 hours).

Additionally, the Department estimates that 61,825 H–1B employers will file PWDR's with the SWA's to obtain prevailing wage determinations pursuant to provisions of 20 CFR 656.40 that have been incorporated into the regulations setting the forth H–1B employers' wage obligations at 20 CFR 655.731. This results in an additional annual burden of 46,369 hours (61,825 × .75 hours) or a total annual burden of 137,344 hours for the PWDR. The total annual burden for the PWDR and the Application for Permanent Labor Certification amounts to 404,204 hours.

The Department estimates that the total annual burden for all information collections in the proposed rule amounts to 557,429 hours. Employers filing applications for permanent alien labor certification come from a wide variety of industries. Salaries for employers and/or their employees who perform the reporting and recordkeeping functions required by this regulation may range from several hundred dollars to several hundred thousand dollars where the corporate executive office of a large company performs some or all of these functions themselves. Absent specific wage data regarding such employers and employees, respondent costs were estimated in the proposed rule at $25 an hour. Total annual respondent hour costs for all information collections are estimated at $13,935,725 (557,429 × $25.00).

The Department estimates that the 5000 employers will be required to conduct supervised recruitment. The Department estimates that cost of an advertisement over all types of publications and geographic locations will average $500.00 for a total annual burden of $2,500,000.

Request for comments: The public is invited to provide comments on the revised information collection requirements so that the Department of Labor may:

(1) Evaluate whether the proposed collections of information are 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 estimates of the burdens of the

collections of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including through the use of automated, electronic, mechanical or other technological collection techniques; e.g., permitting electronic submission of responses.

Written comments should be sent to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4318,Washington, DC 20210, Attention: Dale Ziegler, Chief, Division of Foreign Labor Certifications. Comments should be received by July 5, 2002.

The collections of information in this notice of proposed rulemaking contain revised paperwork requirements currently approved under OMB control number 1205–0015 and the revisions have been submitted to OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Copies of the information collection request submitted to OMB may be obtained by contacting Ira Mills, Departmental Clearance Officer. Telephone: (202) 693–4122 (this is not a toll free number), or E-Mail: *Mills-Ira@dol.gov.*

Catalogue of Federal Domestic Assistance Number: This program is listed in the *Catalogue of Federal Domestic Assistance* at Number 17.203, ''Certification for Immigrant Workers.''

List of Subjects in 20 CFR Parts 655 and 656

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Employment and training, Enforcement, Forest and forest products, Fraud, Guam, Health professions, Immigration, Labor, Longshore and harbor work, Migrant labor, Passports and visas, Penalties, Reporting and recordkeeping requirements, Students, Unemployment, Wages, Working conditions.

Appendix A to the Preamble—Education and Training Categories by O*Net-SOC Occupation

Note: Appendix A will not be codified in the Code of Federal Regulations when a final regulation is published.

BILLING CODE 4510–30–P

Education and Training Categories by O*NET-SOC Occupation

Code	Education and training category
1	1st professional degree
2	Doctoral degree
3	Master's degree
4	Work experience plus bachelor's or higher degree
5	Bachelor's degree

O*NET-SOC code	O*NET-SOC title	Education & training category code
21-2011.00	Clergy	1
23-1011.00	Lawyers	1
29-1011.00	Chiropractors	1
29-1021.00	Dentists, General	1
29-1022.00	Oral and Maxillofacial Surgeons	1
29-1023.00	Orthodontists	1
29-1024.00	Prosthodontists	1
29-1041.00	Optometrists	1
29-1051.00	Pharmacists	1
29-1061.00	Anesthesiologists	1
29-1062.00	Family and General Practitioners	1
29-1063.00	Internists, General	1
29-1064.00	Obstetricians and Gynecologists	1
29-1065.00	Pediatricians, General	1
29-1066.00	Psychiatrists	1
29-1067.00	Surgeons	1
29-1081.00	Podiatrists	1
29-1131.00	Veterinarians	1
19-1020.01	Biologists	2
19-1021.01	Biochemists	2
19-1021.02	Biophysicists	2
19-1022.00	Microbiologists	2
19-1023.00	Zoologists and Wildlife Biologists	2
19-1041.00	Epidemiologists	2
19-1042.00	Medical Scientists, Except Epidemiologists	2
19-2011.00	Astronomers	2
19-2012.00	Physicists	2
25-1021.00	Computer Science Teachers, Postsecondary	2
25-1022.00	Mathematical Science Teachers, Postsecondary	2
25-1032.00	Engineering Teachers, Postsecondary	2
25-1041.00	Agricultural Sciences Teachers, Postsecondary	2
25-1042.00	Biological Science Teachers, Postsecondary	2
25-1043.00	Forestry and Conservation Science Teachers, Postsecondary	2

25-1052.00	Chemistry Teachers, Postsecondary	2
25-1054.00	Physics Teachers, Postsecondary	2
25-1071.00	Health Specialties Teachers, Postsecondary	2
25-1121.00	Art, Drama, and Music Teachers, Postsecondary	2
15-2021.00	Mathematicians	3
15-2031.00	Operations Research Analysts	3
15-2041.00	Statisticians	3
19-3031.01	Educational Psychologists	3
19-3031.02	Clinical Psychologists	3
19-3031.03	Counseling Psychologists	3
19-3032.00	Industrial-Organizational Psychologists	3
19-3041.00	Sociologists	3
19-3051.00	Urban and Regional Planners	3
19-3091.01	Anthropologists	3
19-3091.02	Archeologists	3
19-3093.00	Historians	3
19-3094.00	Political Scientists	3
21-1012.00	Educational, Vocational, and School Counselors	3
21-1014.00	Mental Health Counselors	3
21-1022.00	Medical and Public Health Social Workers	3
21-1023.00	Mental Health and Substance Abuse Social Workers	3
25-1072.00	Nursing Instructors and Teachers, Postsecondary	3
25-4011.00	Archivists	3
25-4012.00	Curators	3
25-4021.00	Librarians	3
29-1121.00	Audiologists	3
29-1123.00	Physical Therapists	3
29-1127.00	Speech-Language Pathologists	3
11-1011.01	Government Service Executives	4
11-1011.02	Private Sector Executives	4
11-2011.00	Advertising and Promotions Managers	4
11-2021.00	Marketing Managers	4
11-2022.00	Sales Managers	4
11-3011.00	Administrative Services Managers	4
11-3021.00	Computer and Information Systems Managers	4
11-3031.01	Treasurers, Controllers, and Chief Financial Officers	4
11-3031.02	Financial Managers, Branch or Department	4
11-3040.00	Human Resources Managers	4
11-3041.00	Compensation and Benefits Managers	4
11-3042.00	Training and Development Managers	4
11-3061.00	Purchasing Managers	4
11-3071.01	Transportation Managers	4
11-3071.02	Storage and Distribution Managers	4
11-9031.00	Education Administrators, Preschool and Child Care Center/Program	4
11-9032.00	Education Administrators, Elementary and Secondary School	4
11-9033.00	Education Administrators, Postsecondary	4
11-9041.00	Engineering Managers	4
11-9111.00	Medical and Health Services Managers	4
11-9121.00	Natural Sciences Managers	4

11-9151.00	Social and Community Service Managers	4
13-1111.00	Management Analysts	4
23-1021.00	Administrative Law Judges, Adjudicators, and Hearing Officers	4
23-1022.00	Arbitrators, Mediators, and Conciliators	4
23-1023.00	Judges, Magistrate Judges, and Magistrates	4
27-3021.00	Broadcast News Analysts	4
11-3051.00	Industrial Production Managers	5
11-9021.00	Construction Managers	5
11-9141.00	Property, Real Estate, and Community Association Managers	5
13-1021.00	Purchasing Agents and Buyers, Farm Products	5
13-1022.00	Wholesale and Retail Buyers, Except Farm Products	5
13-1023.00	Purchasing Agents, Except Wholesale, Retail, and Farm Products	5
13-1031.01	Claims Examiners, Property and Casualty Insurance	5
13-1051.00	Cost Estimators	5
13-1071.01	Employment Interviewers, Private or Public Employment Service	5
13-1071.02	Personnel Recruiters	5
13-1072.00	Compensation, Benefits, and Job Analysis Specialists	5
13-1073.00	Training and Development Specialists	5
13-2011.01	Accountants	5
13-2011.02	Auditors	5
13-2021.01	Assessors	5
13-2021.02	Appraisers, Real Estate	5
13-2031.00	Budget Analysts	5
13-2041.00	Credit Analysts	5
13-2051.00	Financial Analysts	5
13-2052.00	Personal Financial Advisors	5
13-2053.00	Insurance Underwriters	5
13-2071.00	Loan Counselors	5
13-2072.00	Loan Officers	5
13-2081.00	Tax Examiners, Collectors, and Revenue Agents	5
15-1021.00	Computer Programmers	5
15-1031.00	Computer Software Engineers, Applications	5
15-1032.00	Computer Software Engineers, Systems Software	5
15-1051.00	Computer Systems Analysts	5
15-1061.00	Database Administrators	5
15-1071.01	Computer Security Specialists	5
15-1081.00	Network Systems and Data Communications Analysts	5
15-2011.00	Actuaries	5
17-1011.00	Architects, Except Landscape and Naval	5
17-1012.00	Landscape Architects	5
17-1021.00	Cartographers and Photogrammetrists	5
17-1022.00	Surveyors	5
17-2011.00	Aerospace Engineers	5
17-2021.00	Agricultural Engineers	5
17-2041.00	Chemical Engineers	5
17-2051.00	Civil Engineers	5
17-2061.00	Computer Hardware Engineers	5
17-2071.00	Electrical Engineers	5
17-2072.00	Electronics Engineers, Except Computer	5

17-2111.01	Industrial Safety and Health Engineers	5
17-2111.02	Fire-Prevention and Protection Engineers	5
17-2111.03	Product Safety Engineers	5
17-2112.00	Industrial Engineers	5
17-2121.01	Marine Engineers	5
17-2121.02	Marine Architects	5
17-2131.00	Materials Engineers	5
17-2141.00	Mechanical Engineers	5
17-2151.00	Mining and Geological Engineers, Including Mining Safety Engineers	5
17-2161.00	Nuclear Engineers	5
17-2171.00	Petroleum Engineers	5
19-1011.00	Animal Scientists	5
19-1012.00	Food Scientists and Technologists	5
19-1013.01	Plant Scientists	5
19-1013.02	Soil Scientists	5
19-1031.01	Soil Conservationists	5
19-1031.02	Range Managers	5
19-1031.03	Park Naturalists	5
19-1032.00	Foresters	5
19-2021.00	Atmospheric and Space Scientists	5
19-2031.00	Chemists	5
19-2032.00	Materials Scientists	5
19-2041.00	Environmental Scientists and Specialists, Including Health	5
19-2042.01	Geologists	5
19-2043.00	Hydrologists	5
19-3011.00	Economists	5
19-3021.00	Market Research Analysts	5
19-3092.00	Geographers	5
21-1021.00	Child, Family, and School Social Workers	5
21-1091.00	Health Educators	5
21-1092.00	Probation Officers and Correctional Treatment Sp	5
21-2021.00	Directors, Religious Activities and Education	5
25-1191.00	Graduate Teaching Assistants	5
25-2011.00	Preschool Teachers, Except Special Education	5
25-2012.00	Kindergarten Teachers, Except Special Education	5
25-2021.00	Elementary School Teachers, Except Special Education	5
25-2022.00	Middle School Teachers, Except Special and Vocational Education	5
25-2023.00	Vocational Education Teachers, Middle School	5
25-2031.00	Secondary School Teachers, Except Special and Vocational Education	5
25-2032.00	Vocational Education Teachers, Secondary School	5
25-2041.00	Special Education Teachers, Preschool, Kindergarten and Elementary	5
25-2042.00	Special Education Teachers, Middle School	5
25-2043.00	Special Education Teachers, Secondary School	5
25-9021.00	Farm and Home Management Advisors	5
25-9031.00	Instructional Coordinators	5
27-1011.00	Art Directors	5
27-1021.00	Commercial and Industrial Designers	5
27-1022.00	Fashion Designers	5
27-1025.00	Interior Designers	5

27-3022.00	Reporters and Correspondents	5
27-3031.00	Public Relations Specialists	5
27-3041.00	Editors	5
27-3042.00	Technical Writers	5
27-3091.00	Interpreters and Translators	5
27-4032.00	Film and Video Editors	5
29-1031.00	Dietitians and Nutritionists	5
29-1071.00	Physician Assistants	5
29-1122.00	Occupational Therapists	5
29-1125.00	Recreational Therapists	5
29-2011.00	Medical and Clinical Laboratory Technologists	5
33-3021.03	Criminal Investigators and Special Agents	5
39-9032.00	Recreation Workers	5
39-9041.00	Residential Advisors	5
41-3021.00	Insurance Sales Agents	5
41-3031.01	Sales Agents, Securities and Commodities	5
41-3031.02	Sales Agents, Financial Services	5
41-9031.00	Sales Engineers	5
53-2011.00	Airline Pilots, Copilots, and Flight Engineers	5
53-2012.00	Commercial Pilots	5

Education & Training Category Code	
1	First professional degree. Completion of the academic program usually requires at least 6 years of full-time equivalent academic study, including college study prior to entering the professional degree program.
2	Doctoral degree. Completion of the degree program usually requires at least 3 years of full-time equivalent academic work beyond the bachelor's degree.
3	Master's degree. Completion of the degree program usually requires 1 or 2 years of full-time equivalent study beyond the bachelor's degree.
4	Work experience, plus a bachelor's or higher degree. Most occupations in this category are managerial occupations that require experience in a related nonmanagerial position.
5	Bachelor's degree. Completion of the degree program generally requires at least 4 years but not more than 5 years of full-time equivalent academic work.

BILLING CODE 4510–30–C

Accordingly, we propose that parts 655 and 656 of Chapter V of Title 20 of the Code of Federal Regulations to be amended as follows:

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

Subpart H—Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas.

1. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1182(m) and (n), 1184, 1188, and 1288(c) and (d); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 323, Pub. L. 103–206, 107 Stat. 2149; Title IV, Pub. L. 105–277,112 Stat. 2681; Pub. L. 106–95, 113 Stat. 1312 (8 U.S.C. 1182 note); and 8 CFR 213.2(h)(4)(i).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; 29 U.S.C. 49 *et seq.*; sec 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note); and Title IV, Pub. L. 105–277, 112 Stat. 2681.

Subparts J and K issued under 29 U.S.C. 49 *et. seq.*; and sec 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*

2. Amend § 655.731 as follows:

a. Revise paragraph (a)(2);

b. Redesignate paragraphs (b)(3)(iii)(B)(*2*) and (*3*) as paragraphs (b)(3)(iii)(B)(*3*) and (*4*), respectively;

c. Add new paragraph (b)(3)(iii)(B)(*2*);

d. Redesignate paragraphs (b)(3)(iii)(C)(*2*) and (*3*) as paragraphs (b)(3)(iii)(C)(*3*) and (*4*), respectively;

e. Add new paragraph (b)(3)(iii)(C)(*2*);

f. Revise paragraph (d)(2); and

g. Remove paragraph (d)(4).

The revisions and additions are to read as follows:

§ 655.731 What is the first LCA requirement, regarding wages?

* * * * *

(a) * * *

(1) * * *

(2) The *prevailing wage* for the occupational classification in the area of intended employment must be determined as of the time of filing the application. The employer shall base the prevailing wage on the best information available as of the time of filing the application. Where the survey which is the basis for the prevailing wage determination contains more than one wage for the occupational classification, the employer shall pay the H–1B nonimmigrant(s) at least the applicable wage from the survey for the work performed. For example, if an H–1B nonimmigrant initially is an inexperienced worker who cannot work independently, and later the H–1B nonimmigrant is able to work independently, the employer, where applicable, shall pay at least the wage for such independent work as set forth in the survey that was the basis for the initial prevailing wage determination. Except as provided in this section, the employer is not required to use any specific methodology to determine the prevailing wage and may utilize a State Employment Security Agency (SESA), an independent authoritative source, or other legitimate sources of wage data. One of the following sources shall be used to establish the prevailing wage:

(i) A collective bargaining agreement which was negotiated at arms-length between a union and the employer which contains a wage rate applicable to the occupation; or

(ii) If the job opportunity is in an occupation which is not covered by paragraph (a)(2)(i) of this section, the prevailing wage shall be the arithmetic mean of the wages of workers similarly employed, except that the prevailing wage shall be the median when provided by paragraphs (a)(2)(ii)(A), (b)(3)(iii)(B)(*2*), and (b)(3)(iii)(C)(*2*) of this section. The prevailing wage rate shall be based on the best information available. The Department believes that the following prevailing wage sources are, in order of priority, the most accurate and reliable:

(A) *SESA determination.* Upon receipt of a written request for a prevailing wage determination, the SESA will determine whether the occupation is covered by a collective bargaining agreement which was negotiated at arms length, and, if not, determine the arithmetic mean of wages of workers similarly employed in the area of intended employment. The wage component of the Bureau of Labor Statistics Occupational Employment Statistics survey shall be used to determine the arithmetic mean, unless the employer provides an acceptable survey. If an acceptable employer-provided wage survey provides a median and does not provide an arithmetic mean, the median shall be the prevailing wage applicable to the employer's job opportunity. In making a prevailing wage determination, the SESA will follow § 656.40 of this chapter and other administrative guidelines or regulations issued by ETA. The SESA shall specify the validity period of the prevailing wage determination which in no event shall be for less than 90 days or more than 1 year from the date of the determination.

(*1*) An employer who chooses to utilize a SESA prevailing wage determination shall file the labor condition application within the validity period of the prevailing wage as specified on the Prevailing Wage Determination Request form (ETA FORM 9088). Any employer desiring review of a SESA prevailing wage determination, including judicial review, shall follow the appeal procedures at § 656.41 of this chapter. Employers which challenge a SESA prevailing wage determination under § 656.41 must obtain a ruling prior to filing an LCA. In any challenge, the Department and the SESA hall not divulge any employer wage data which was collected under the promise of confidentiality. Once an employer obtains a prevailing wage determination from the SESA and files an LCA supported by that prevailing wage determination, the employer is deemed to have accepted the prevailing wage determination (as to the amount of the wage) and thereafter may not contest the legitimacy of the prevailing wage determination by filing an appeal with the Prevailing Wage Panel (see § 656.41 of this chapter), or in an investigation or enforcement action.

(*2*) If the employer is unable to wait for the to produce the requested prevailing wage for the occupation in question, or for the Prevailing Wage Panel and/or the Board of Alien Labor Certification Appeals to issue a decision, the employer may rely on other legitimate sources of available wage information as set forth in paragraphs (a)(2)(ii)(B) and (C) of this section. If the employer later discovers, upon receipt of the prevailing wage determination from the SESA, that the information relied upon produced a wage that was below the prevailing wage for the occupation in the area of intended employment and the employer was paying below the SESA-determined wage, no wage violation will be found if the employer retroactively compensates the H–1B nonimmigrant(s)

for the difference between wage paid and the prevailing wage, within 30 days of the employer's receipt of the prevailing wage determination.

(*3*) In all situations where the employer obtains the prevailing wage determination from the SESA, the Department will accept that prevailing wage determination as correct (as to the amount of the wage) and will not question its validity where the employer has maintained a copy of the SESA prevailing wage determination. A complaint alleging inaccuracy of a SWA prevailing wage determination, in such cases, will not be investigated.

(B) *An independent authoritative source.* The employer may use an independent authoritative wage source in lieu of a SESA prevailing wage determination. The independent authoritative source survey must meet all the criteria set forth in paragraph (b)(3)(iii)(B) of this section.

(C) *Another legitimate source of wage information.* The employer may rely on other legitimate sources of wage data to obtain the prevailing wage. The other legitimate source survey must meet all the criteria set forth in paragraph (b)(3)(iii)(C) of this section. The employer will be required to demonstrate the legitimacy of the wage in the event of an investigation.

(iii) For purposes of this section, ''similarly employed'' means ''having substantially comparable jobs in the occupational classification in the area of intended employment,'' except that if a representative sample of employers in the occupational category cannot be obtained in the area of intended employment, ''similarly employed'' means:

(A) Having jobs requiring a substantially similar level of skills within the area of intended employment; or

(B) If there are no substantially comparable jobs in the area of intended employment, having substantially comparable jobs with employers outside of the area of intended employment.

(iv) A prevailing wage determination for LCA purposes made pursuant to this section shall not permit an employer to pay a wage lower than that required under any other applicable Federal, state or local law.

(v) Where a range of wages is paid by the employer to individuals in an occupational classification or among individuals with similar experience and qualifications for the specific employment in question, a range is considered to meet the prevailing wage requirement so long as the bottom of the wage range is at least the prevailing wage rate.

(vi) The employer shall enter the prevailing wage on the LCA in the form in which the employer will pay the wage (i.e., either a salary or an hourly rate), except that in all cases the prevailing wage must be expressed as an hourly wage if the H–1B nonimmigrant will be employed part-time. Where an employer obtains a prevailing wage determination (from any of the sources identified in paragraph (a)(2)(i) and (ii) of this section) that is expressed as an hourly rate, the employer may convert this determination to a yearly salary by multiplying the hourly rate by 2080. Conversely, where an employer obtains a prevailing wage (from any of these sources) that is expressed as a yearly salary, the employer may convert this determination to an hourly rate by dividing the salary by 2080.

(vii) In computing the prevailing wage for a job opportunity in an occupational classification in an area of intended employment in the case of an employee of an *institution of higher education or an affiliated or related nonprofit entity, a nonprofit research organization, or a Governmental research organization* as these terms are defined in 20 CFR 656.40(e), the prevailing wage level shall only take into account employees at such institutions and organizations in the area of intended employment.

(viii) An employer may file more than one LCA for the same occupational classification in the same area of employment and, in such circumstances, the employer could have H–1B employees in the same occupational classification in the same area of employment, brought into the U.S. (or accorded H–1B status) based on petitions approved pursuant to different LCAs (filed at different times) with different prevailing wage determinations. Employers are advised that the prevailing wage rate as to any particular H–1B nonimmigrant is prescribed by the LCA which supports that nonimmigrant's H–1B petition. The employer is required to obtain the prevailing wage at the time that the LCA is filed (see paragraph (a)(2) of this section). The LCA is valid for the period certified by ETA, and the employer must satisfy all the LCA's requirements (including the required wage which encompasses both prevailing and actual wage rates) for as long as any H–1B nonimmigrants are employed pursuant to that LCA (§ 655.750). Where new nonimmigrants are employed pursuant to a new LCA, that new LCA prescribes the employer's obligations as to those new nonimmigrants. The prevailing wage determination on the later/subsequent LCA does not ''relate back'' to operate as an ''update'' of the prevailing wage for the previously-filed LCA for the same occupational classification in the same area of employment. However, employers are cautioned that the actual wage component to the required wage may, as a practical matter, eliminate any wage-payment differentiation among H–1B employees based on different prevailing wage rates stated in applicable LCAs. Every H–1B nonimmigrant is to be paid in accordance with the employer's actual wage system, and thus to receive any pay increases which that system provides.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(B) * * *

(*2*) Reflect the median wage of workers similarly employed in the area of intended employment if the survey provides such a median and does not provide a weighted average wage of workers similarly employed in the area of intended employment;

* * * * *

(C) * * *

(*2*) Reflect the median wage of workers similarly employed in the area of intended employment if the survey provides such a median and does not provide a weighted average wage of workers similarly employed in the area of intended employment;

* * * * *

(d) * * *

(2) In the event the Administrator obtains a prevailing wage from ETA pursuant to paragraph (d)(1) of this section, and the employer desires review, including judicial review, the employer shall challenge the ETA prevailing wage only by filing a request for review with the Prevailing Wage Panel (PWP) under § 656.41(a) of this chapter within 21 calendar days of the employers receipt of the prevailing wage determination from the Administrator. If the request is timely filed, the decision of ETA shall be inoperative until the PWP issues a determination on the employer's appeal. If the employer desires review, including judicial review, of the decision of the PWP, the employer shall make a request for review of the determination by the Board of Alien Labor Certification Appeals (BALCA) under § 656.41(e) of this chapter within 21 days of the receipt of the decision of the PWP. If a request for review is timely filed with the BALCA, the determination by the PWP shall be inoperative until the BALCA issues a determination on the employer's appeal. In any challenge to the wage determination, neither ETA

nor the SESA shall divulge any employer wage data which was collected under the promise of confidentiality.

* * * * *

3. Part 656 is revised to read as follows:

PART 656—LABOR CERTIFICATION PROCESS FOR PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

Subpart A—Purpose and Scope of Part 656

Sec.

656.1 Purpose and scope of part 656.
656.2 Description of the Immigration and Nationality Act and of the Department of Labor's role thereunder.
656.3 Definitions, for purposes of this part, of terms used in this part.

Subpart B—Occupational Labor Certification Determinations

656.5 Schedule A.

Subpart C—Labor Certification Process

656.10 General instructions.
656.14 Fees.
656.15 Applications for labor certification for *Schedule A* occupations.
656.16 Labor certification applications for sheepherders.
656.17 Basic labor certification process.
656.18 Optional special recruitment and documentation procedures for college and university teachers.
656.19 Live-in household domestic service workers.
656.20 Audit letters.
656.21 Supervised recruitment.
656.24 Labor certification determinations.
656.25 Board of Alien Labor Certification Appeals review of denials of labor certification.
656.26 Board of Alien Labor Consideration Appeals review of denials of labor certification.
656.27 Consideration by and decisions of the Board of Alien Labor Certification Appeals.
656.30 Validity of and invalidation of labor certifications.
656.31 Labor certifications involving fraud or willful misrepresentation.
656.32 Revocation of approved labor certifications.

Subpart D—Determination of Prevailing Wage

656.40 Determination of prevailing wage for labor certification purposes.
656.41 ETA Prevailing Wage Panel review of prevailing wage determinations.

Authority: 8 U.S.C. 1182(a)(5)(A), 1189(p)(1); 29 U.S.C. 49 *et seq.;* section 122, Pub. L. 101–649, 109 Stat. 4978; and Title IV, Pub. L. 105–277, 112 Stat. 2681.

Subpart A—Purpose and Scope of Part 656

§ 656.1 Purpose and scope of part 656.

(a) Under section 212(a)(5)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(5)(A)) certain aliens may not obtain visas for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

(1) There are not sufficient United States workers, who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work, and

(2) The employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

(b) The regulations under this part set forth the procedures through which such immigrant labor certifications may be applied for, and granted or denied.

(c) Correspondence and questions about the regulations in this part should be addressed to: Division of Foreign Labor Certifications, Office of Workforce Security, Department of Labor, Washington, DC 20210.

§ 656.2 Description of the Immigration and Nationality Act and of the Department of Labor's role thereunder.

(a)(1) *Description of the Act.* The Immigration and Nationality Act (Act) (8 U.S.C. 1101 *et seq.*) regulates the admission of aliens into the United States. The Act designates the Attorney General and the Secretary of State as the principal administrators of its provisions.

(2) The Immigration and Naturalization Service (INS) performs most of the Attorney General's functions under the Act. See 8 CFR 2.1.

(3) The consular offices of the Department of State throughout the world are generally the initial contacts for aliens in foreign countries who wish to come to the United States. These offices determine the type of visa for which aliens may be eligible, obtain visa eligibility documentation, and issue visas.

(b) *Burden of Proof Under the Act.* Section 291 of the Act (8 U.S.C. 1361) provides, in pertinent part, that:

> Whenever any person makes application for a visa or any other documentation required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not subject to exclusion under any provision of this Act * * *.

(c)(1) *Role of the Department of Labor.* The role of the Department of Labor under the Act derives from section 212(a)(5)(A) (8 U.S.C. 1182(a)(5)(A)), which provides that any alien who seeks admission or status as an immigrant for the purpose of employment under paragraph (2) or (3) of section 203(b) of the Act must be excluded unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

(i) There are not sufficient United States workers, who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor; and

(ii) The employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(2) This certification is referred to in this part 656 as a ''labor certification.''

(3) We issue labor certifications in two instances: For the permanent employment of aliens; and for temporary employment of aliens in the United States classified under 8 U.S.C. 1101(a)(15)(H)(ii), under the regulations of the Immigration and Naturalization Service at 8 CFR 214.2(h)(6) and sections 101(a)(15)(H)(ii), 214, and 218 of the Act. See 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188. We also administer attestation and labor condition application programs for the admission and/or work authorization of the following nonimmigrants: Specialty occupations and fashion models (H–1B visas), registered nurses (H–1C visas), and crewmembers performing longshore work (D visas), classified under 8 U.S.C. 1101(a), (15)(H)(i)(b), 1101(a)(15)(H)(i)(c), and 1101(a)(15)(D), respectively. See also 8 U.S.C. 1184 (c), (m), and (n), and 1288.

§ 656.3 Definitions, for purposes of this part, of terms used in this part.

Act means the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 *et seq.*

Administrative Law Judge means a Department of Labor official appointed under 5 U.S.C. 305.

Agent means a person who is not an employee of an employer, and who has been designated in writing to act on behalf of an alien or employer in connection with an application for labor certification.

Applicant means a U.S. worker (see definition of U.S. worker below) who is applying for a job opportunity for which an employer has filed an

Application for Permanent Labor Certification (ETA Form 9089).

Application means an *Application for Alien Employment Certification form and Prevailing Wage Determination Request* form submitted by an employer (or its agent) in applying for a labor certification under this part.

Application for Alien Employment Certification Form (ETA Form 9089) means the form, which in addition to the *Prevailing Wage Determination Request* form (see definition below), must be submitted by the employer to an ETA application processing center to apply for a labor certification under this part. The *Application for Alien Employment Certification* form requires the employer to respond to attestations and to provide other information necessary to assess the employer's compliance with program requirements.

Area of intended employment means the area within normal commuting distance of the place (address) of intended employment. There is no rigid measure of distance which constitutes a normal commuting distance or normal commuting area because there may be widely varying factual circumstances among different areas (*e.g.,* normal commuting distances might be 20, 30, or 50 miles). If the place of intended employment is within a Metropolitan Statistical Area (MSA) or a Primary Metropolitan Statistical Area (PMSA), any place within the MSA or PMSA is deemed to be within normal commuting distance of the place of intended employment; however, all locations within a Consolidated Metropolitan Statistical Area (CMSA) will not be deemed automatically to be within normal commuting distance. The borders of MSA's and PMSA's are not controlling in the identification of the normal commuting area; a location outside of an MSA or PMSA (or a CMSA) may be within normal commuting distance of a location that is inside (*e.g.,* near the border of) the MSA or PMSA (or CMSA).

Attorney means any person who is a member in good standing of the bar of the highest court of any State, Possession, Territory, or Commonwealth of the United States, or the District of Columbia, and who is not under any order of any court or of the Board of Immigration Appeals suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law.

Attorney General means the chief official of the U.S. Department of Justice or the designee of the Attorney General.

Board of Alien Labor Certification Appeals (BALCA or Board) means the permanent Board established by this part, chaired by the Chief Administrative Law Judge, and consisting of Administrative Law Judges assigned to the Department of Labor and designated by the Chief Administrative Law Judge to be members of the Board of Alien Labor Certification Appeals. The Board of Alien Labor Certification Appeals is located in Washington, DC, and reviews and decides appeals in Washington, DC.

Certifying Officer means a Department of Labor official who makes determinations about whether or not to grant applications for labor certifications.

Chief Administrative Law Judge means the chief official of the Office of Administrative Law Judges of the Department of Labor.

Division of Foreign Labor Certifications means the organizational component within the Employment and Training Administration (defined below) which provides national leadership and policy guidance and develops regulations and procedures to carry out the responsibilities of the Secretary of Labor under the Immigration and Nationality Act, as amended, concerning alien workers seeking admission to the United States in order to work under to Section 212(a)(5)(A) of the Immigration And Nationality Act, as amended.

Employment means: (1) permanent, full-time work by an employee for an employer other than oneself. For purposes of this definition, an investor is not an employee. In the event of an audit, the employer must be prepared to document the permanent and full-time nature of the position by furnishing position descriptions and payroll records for the job opportunity involved in the *Application for Alien Employment Certification.*

(2) Job opportunities consisting solely of job duties that will be performed totally outside the United States, its territories or possessions cannot be the subject of a permanent application for alien employment certification.

Employment and Training Administration (ETA) means the agency within the Department of Labor (DOL) which includes the Division of Foreign Labor Certifications.

Employer means: (1) A person, association, firm, or a corporation which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a full-time worker at a place within the United States or the authorized representative of such a person, association, firm, or corporation. For purposes of this definition an ''authorized representative'' means an employee of the employer whose position or legal status authorizes the employee to act for the employer in labor certification matters.

(2) Persons who are temporarily in the United States, such as foreign diplomats, intracompany transferees, students, exchange visitors, and representatives of foreign information media cannot be employers for the purpose of obtaining a labor certification for permanent employment.

(3) Job opportunities consisting solely of job duties that will be performed totally outside the United States, its territories or possessions cannot be the subject of a permanent application for alien employment certification.

Immigration and Naturalization Service (INS) means the agency within the U.S. Department of Justice which administers that Department's principal functions under the Act.

Immigration Officer means an official of the Immigration and Naturalization Service (INS) who handles applications for labor certifications under this part.

INS, see ''Immigration and Naturalization Service.''

Job opportunity means a job opening for employment at a place in the United States to which U.S. workers can be referred.

Labor certification means the certification to the Secretary of State and to the Attorney General of the determination by the Secretary of Labor under section 212(a)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)(A)):

(1) That there are not sufficient U.S. workers who are able, willing, qualified, and available at the time of an alien's application for a visa and admission to the United States and at the place where the alien is to perform the work; and

(2) That the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers.

Non-professional occupation means any occupation for which the attainment of a bachelor's or higher degree is not a usual requirement for the occupation.

Non-profit or tax exempt organization for the purposes of § 656.40 means an organization which:

(1) Is defined as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4), or (c)(6) (26 U.S.C. 501(c)(3), (c)(4) or (c)(6)), and

(2) Has been approved as a tax exempt organization for research or educational purposes by the Internal Revenue Service.

*O*Net* means the system developed by the Department of Labor, Employment and Training Administration, to provide to the general public information on skills, abilities, knowledge, work activities, interests and specific vocational preparation levels associated with occupations. O*Net is based on the Standard Occupational Classification system. Further information about O*Net can be found at http://online.onetcenter.org/.

Prevailing Wage Determination means the prevailing wage entered on the *Prevailing Wage Determination Request* form by the State Employment Security Agency.

Prevailing Wage Determination Request (PWDR) Form (ETA Form 9088) means the form that must be submitted to the State Employment Security Agency to obtain a prevailing wage determination.

Professional occupation means an occupation for which the attainment of a bachelor's or higher degree is a usual education requirement for the occupation. A beneficiary of an application for permanent alien employment certification involving a professional occupation need not have a bachelor's or higher degree to qualify for the professional occupation. However, if the employer is willing to accept work experience in lieu of a baccalaureate or higher degree such work experience must be attainable in the U.S. labor market and must be stated on the PWDR form. If the employer is willing to accept an equivalent foreign degree, it must be clearly stated on the PWDR form.

Regional Director, Employment and Training Administration (RD) means the chief official of the Employment and Training Administration (ETA) in a Department of Labor regional office.

Schedule A means the list of occupations set forth in § 656.5 for which we have determined that there are not sufficient United States workers who are able, willing, qualified and available, and that the employment of aliens in such occupations will not adversely affect the wages and working conditions of United States workers similarly employed.

Secretary means the Secretary of Labor, the chief official of the U.S. Department of Labor, or the Secretary's designee.

Secretary of State means the chief official of the U.S. Department of State or the Secretary of State's designee.

Specific Vocational Preparation (SVP) means the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation. Lapsed time is not the same as work time. For example, 30 days is approximately 1 month of lapsed time and not six 5-day work weeks, and 3 months refers to 3 calendar months and not 90 work days. The various levels of specific vocational preparation are provided below.

Level and Time

1—Short demonstration.
2—Anything beyond short demonstration up to and including 30 days.
3—Over 30 days up to and including 3 months.
4—Over 3 months up to and including 6 months.
5—Over 6 months up to and including 1 year.
6—Over 1 year up to and including 2 years.
7—Over 2 years up to and including 4 years.
8—Over 4 years up to and including 10 years.
9—Over 10 years.

State Employment Security Agency (SWA) means the state agency which, under the Wagner-Peyser Act, receives funds to provide prevailing wage determinations to employers, and/or administers the public labor exchange delivered through the state's One-Stop delivery system in accordance with the Wagner-Peyser Act.

United States, when used in a geographic sense, means the fifty States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam.

United States Worker means any worker who:

(1) Is a U.S. citizen;

(2) Is a U.S. national;

(3) Is lawfully admitted for permanent residence;

(4) Is granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C. 1160(a), 1161(a), or 1255a(a)(1);

(5) Is admitted as a refugee under 8 U.S.C. 1157; or

(6) Is granted asylum under 8 U.S.C. 1158.

Subpart B—Occupational Labor Certification Determinations

§ 656.5 Schedule A.

We have determined that there are not sufficient United States workers who are able, willing, qualified, and available for the occupations listed below on *Schedule A* and that the wages and working conditions of United States workers similarly employed will not be adversely affected by the employment of aliens in *Schedule A* occupations. An alien seeking a labor certification for an occupation listed on *Schedule A* may apply for that labor certification under § 656.19

Schedule A

(a) Group I:

(1) Persons who will be employed as physical therapists, and who possess all the qualifications necessary to take the physical therapist licensing examination in the State in which they propose to practice physical therapy.

(2) Aliens who will be employed as professional nurses; and (i) who have passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination; or (ii) who hold a permanent, full and unrestricted license to practice professional nursing in the State of intended employment.

(3) Definitions of Group I occupations:

(i) *Physical therapist* means a person who applies the art and science of physical therapy to the treatment of patients with disabilities, disorders and injuries to relieve pain, develop or restore function, and maintain performance, using physical means, such as exercise, massage, heat, water, light, and electricity, as prescribed by a physician (or surgeon).

(ii) *Professional nurse* means a person who applies the art and science of nursing which reflects comprehension of principles derived from the physical, biological and behavioral sciences. Professional nursing generally includes making clinical judgments involving the observation, care and counsel of persons requiring nursing care; administering of medicines and treatments prescribed by the physician or dentist; and participation in the activities for the promotion of health and prevention of illness in others. A program of study for professional nurses generally includes theory and practice in clinical areas such as obstetrics, surgery, pediatrics, psychiatry, and medicine.

(b) Group II:

(1) *Sciences or arts (except performing arts).* Aliens (except for aliens in the performing arts) of exceptional ability in the sciences or arts including college and university teachers of exceptional ability who have been practicing their science or art during the year prior to application and who intend to practice the same science or art in the United States. For purposes of this group, the term ''science or art'' means any field of knowledge and/or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in the knowledge and/or skill. An alien, however, need not have studied at a college or

university in order to qualify for the Group II occupation.

(2) *Performing arts.* Aliens of exceptional ability in the performing arts whose work during the past 12 months did require and whose intended work in the United States will require exceptional ability.

Subpart C—Labor Certification Process

§ 656.10 General instructions.

(a) *Filing of Applications.* A request for a labor certification on behalf of any alien who is required by the Act to be a beneficiary of a labor certification in order to obtain permanent resident status in the United States may be filed as follows:

(1) Except as provided in paragraphs (a)(2) and (3) of this section, an employer seeking a labor certification must file under this section and § 656.17.

(2) An employer seeking a labor certification for a college or university teacher must apply for a labor certification under this section and may also choose to file under either § 656.17 or § 656.18.

(3) An employer seeking labor certification for an occupation listed on *Schedule A* may apply for a labor certification under this section and § 656.15.

(4) An employer seeking labor certification for a sheepherder must apply for a labor certification under this section and may also choose to file under either § 656.16 or § 656.17.

(b) *Representation.* (1) Employers may have agents or attorneys represent them throughout the labor certification process. If an employer intends to be represented by an agent or attorney, the employer must sign the statement set forth on the *Application for Alien Employment Certification* form: That the attorney or agent is representing the employer and that the employer takes full responsibility for the accuracy of any representations made by the attorney or agent. Whenever, under this part, any notice or other document is required to be sent to the employer, the document must be sent to the attorney or agent who has been authorized to represent the employer on the *Application for Alien Employment Certification* form.

(2)(i) It is contrary to the best interests of U.S. workers to have the alien and/or agents or attorneys for the alien participate in interviewing or considering U.S. workers for the job offered the alien. As the beneficiary of a labor certification application, the alien cannot represent the best interests of U.S. workers in the job opportunity. The alien's agent and/or attorney cannot represent the alien effectively and at the same time truly be seeking U.S. workers for the job opportunity. Therefore, the alien and/or the alien's agent and/or attorney may not interview or consider U.S. workers for the job offered to the alien, unless the agent and/or attorney is the employer's representative, as described in paragraph (b)(2)(ii) of this section.

(ii) The employer's representative who interviews or considers U.S. workers for the job offered to the alien must be the person who normally interviews or considers, on behalf of the employer, applicants for job opportunities such as that offered the alien, but which do not involve labor certifications.

(3) No person under suspension or disbarment from practice before the United States Department of Justice's Executive Office for Immigration Review or the INS under 8 CFR 292.3 is permitted to act as an agent, representative, or attorney for an employer and/or alien under this part.

(c) *Attestations.* The employer must attest to the conditions listed below on the *Application for Alien Employment Certification* form under penalty of perjury under 28 U.S.C. 1746. Failure to attest to any of the conditions listed below results in a denial of the application:

(1) The wage offered equals or exceeds the prevailing wage determined under § 656.40, and the employer will pay the prevailing wage to the alien from the time a petition filed to adjust status under section 245 of the Act is approved, or from the time the alien enters the United States to take up the certified employment after the issuance of a visa by a Consular Officer;

(2) The wage offered is not based on commissions, bonuses or other incentives, unless the employer guarantees a wage paid on a weekly, bi-weekly, or monthly basis;

(3) The job opportunity does not involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship;

(4) The employer's job opportunity is not:

(i) Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute involving a work stoppage; or

(ii) At issue in a labor dispute involving a work stoppage;

(5) The employer's job opportunity's terms, conditions and occupational environment are not contrary to Federal, State or local law; and

(6) The job opportunity has been and is clearly open to any qualified U.S. worker.

(d) *Notice.* (1) In applications filed under §§ 656.15 (*Schedule A*), 656.16 (Sheepherders), 656.17 (Basic Process), 656.18 (College and University Teachers), and 656.21 (Supervised Recruitment), the employer must give notice of the filing of the *Application for Alien Employment Certification* and be able to document that notice was provided, if requested by the Certifying Officer as follows:

(i) To the bargaining representative(s) (if any) of the employer's employees in the occupational classification for which certification of the job opportunity is sought in the employer's location(s) in the area of intended employment. Documentation may consist of a copy of the letter and a copy of the *Application for Alien Employment Certification* form that was sent to the bargaining representative.

(ii) If there is no such bargaining representative, by posted notice to the employer's employees at the facility or location of the employment. The notice must be posted for at least 10 consecutive business days. The notice must be clearly visible and unobstructed while posted and must be posted in conspicuous places, where the employer's U.S. workers can readily read the posted notice on their way to or from their place of employment. Appropriate locations for posting notices of the job opportunity include locations in the immediate vicinity of the wage and hour notices required by 20 CFR 516.4 or occupational safety and health notices required by 20 CFR 1903.2(a). In addition the employer must publish the posting in any and all in-house media, whether electronic or printed, in accordance with the normal procedures used for the recruitment of other positions in the employer's organization. The documentation requirement may be satisfied by providing a copy of the posted notice and stating where it was posted, and by providing copies of the in-house media whether electronic or published that were used to distribute notice of the application in accordance with the procedures used for other positions recruitment within the employer's organization.

(2) In the case of a private household, notice is required under this paragraph (d) only if the household employs one or more U.S. workers at the time the application for labor certification is filed. The documentation requirement may be satisfied by providing a copy of the posted notice to the Certifying Officer.

(3) Any notice of the filing of an *Application for Alien Employment Certification* must:

(i) State that the notice is being provided as a result of the filing of an application for permanent alien labor certification for the relevant job opportunity;

(ii) State that any person may provide documentary evidence bearing on the application to the Certifying Officer of the Department of Labor; and

(iii) Provide the address of the appropriate Certifying Officer.

(4) If an application is filed under § 656.17, the notice must be provided between 45 and 180 days before filing the application, must contain the information required for advertisements by § 656.17(e)(1) through (e)(7), and must contain the information required by paragraph (d)(3) of this section.

(5) If an application is filed on behalf of a college and university teacher selected in a competitive selection and recruitment process, as provided by § 656.18, the notice must include the information required for advertisements by § 656.18(b)(2), and must include the requirements of paragraph (d)(3) of this section.

(6) If an application is filed under the *Schedule A* procedures at § 656.15, or the procedures for sheepherders at § 656.16, the notice must contain a description of the job and rate of pay, and must meet the requirements of paragraphs (d)(3)(i) and (ii) of this section.

(e)(1)(i) *Submission of evidence.* Any person may submit to the Certifying Officer documentary evidence bearing on an application for permanent alien labor certification filed under the basic labor certification process at § 656.17 or an application involving a college and university teacher that may be selected in a competitive recruitment and selection process under § 656.18.

(ii) Documentary evidence submitted under paragraph (e)(1)(i) of this section may include information on available workers, information on wages and working conditions, and information on the employer's failure to meet the terms and conditions for the employment of alien workers and co-workers. The Certifying Officer must consider this information in making his or her determination.

(2)(i) Any person may submit to the appropriate INS office documentary evidence of fraud or willful misrepresentation in a *Schedule A* application filed under § 656.15 sheepherder application filed under § 656.16.

(ii) Documentary evidence submitted under paragraph (e)(2)(i) of this section is limited to information relating to possible fraud or willful misrepresentation. The INS may consider this information under § 656.31.

§ 656.14 Fees.

(a) *Payment of processing fee.* Employers must submit with their application a check or money order drawn on a financial institution in the United States in the amount of $XXXX, payable in U.S. Currency. A charge of $30.00 will be imposed if a check in payment of the fee is not honored by the financial institution on which it is drawn.

(1) Checks for applications filed with the U.S. Department of Labor under §§ 656.17 and 18 must be made payable to the U.S. Department of Labor.

(2) Checks for applications filed with INS under §§ 656.15 and 17, must be made payable to the Immigration and Naturalization Service.

(b) *Returned (''insufficient funds'') checks.* (1) Existence of any outstanding ''insufficient funds'' check that was submitted for processing an application or for payment of the $30.00 charge imposed for a check submitted in payment of the charge imposed for submission of a check that was not honored by the financial institution on which it was drawn, is grounds for returning any application for alien employment certification to the employer as unacceptable for processing.

(2) Receipt of any ''insufficient funds'' check while the application is being processed is grounds for denying the application.

(3) Receipt of any ''insufficient funds'' checks after an application has been certified results in automatic revocation of the certification, if payment in U.S. funds has not been received within 14 calendar days of date of the notification to the employer of the existence of an ''insufficient funds'' check.

(c) *Returned applications.* If an application is returned to the employer because it is incomplete, the employer may request a refund of the fee or resubmit the application.

§ 656.15 Applications for labor certification for Schedule A occupations.

(a) *Filing application.* An employer must apply for a labor certification for a *Schedule A* occupation by filing an application in duplicate with the appropriate Immigration and Naturalization Service office, not with the Department of Labor or a State Workforce Agency office.

(b) *General documentation requirements.* The *Application for Alien Employment Certification* form must include:

(1) An *Application for Alien Employment Certification* form and a completed PWDR form endorsed by the SWA.

(2) Evidence that notice of filing the application for Alien Employment Certification was provided to the bargaining representative or the employer's employees as prescribed in § 656.10(f)(3).

(c) *Group I documentation.* An employer seeking labor certification under Group I of *Schedule A* must file, as part of its labor certification application, documentary evidence of the following:

(1) An employer seeking *Schedule A* labor certification for an alien to be employed as a physical therapist (§ 656.5(a)(1)) must file as part of its labor certification application a letter or statement signed by an authorized State physical therapy licensing official in the State of intended employment, stating that the alien is qualified to take that State's written licensing examination for physical therapists. Application for certification of permanent employment as a physical therapist may be made only under this § 656.15 and not under § 656.17.

(2) An employer seeking a *Schedule A* labor certification as a professional nurse (§ 656.5(a)(2)) must file as part of its labor certification application documentation that the alien has passed the Commission on Graduates of Foreign Nursing Schools (CGFN) Examination; or that the alien holds a full and unrestricted (permanent) license to practice nursing in the State of intended employment. Application for certification of employment as a professional nurse may be made only under this § 656.15 (c), and not under § 656.17.

(d) *Group II documentation.* An employer seeking *Schedule A* labor certification under Group II of *Schedule A* must file as part of its labor certification application, documentary evidence of the following:

(1) An employer seeking labor certification on behalf of an alien to be employed as an alien of exceptional ability in the sciences or arts (excluding those in the performing arts) must file documentary evidence showing the widespread acclaim and international recognition accorded the alien by recognized experts in the alien's field; and documentation showing that the alien's work in that field during the past year did, and the alien's intended work in the United States will, require exceptional ability. In addition, the employer must file documentation

about the alien from at least two of the following seven groups:

(i) Documentation of the alien's receipt of internationally recognized prizes or awards for excellence in the field for which certification is sought;

(ii) Documentation of the alien's membership in international associations, in the field for which certification is sought, which require outstanding achievement of their members, as judged by recognized international experts in their disciplines or fields;

(iii) Published material in professional publications about the alien, about the alien's work in the field for which certification is sought, which shall include the title, date, and author of such published material;

(iv) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which certification is sought;

(v) Evidence of the alien's original scientific or scholarly research contributions of major significance in the field for which certification is sought;

(vi) Evidence of the alien's authorship of published scientific or scholarly articles in the field for which certification is sought, in international professional journals or professional journals with an international circulation; or

(vii) Evidence of the display of the alien's work, in the field for which certification is sought, at artistic exhibitions in more than one country.

(2) An employer seeking labor certification on behalf of an alien of exceptional ability in the performing arts must file documentary evidence that the alien's work experience during the past twelve months did require, and the aliens' intended work in the United States will require, exceptional ability; and must submit documentation to show this exceptional ability, such as:

(i) Documentation attesting to the current widespread acclaim and international recognition accorded to the alien, and receipt of internationally recognized prizes or awards for excellence;

(ii) Published material by or about the alien, such as critical reviews or articles in major newspapers, periodicals, and/or trade journals (the title, date, and author of such material shall be indicated);

(iii) Documentary evidence of earnings commensurate with the claimed level of ability;

(iv) Playbills and star billings;

(v) Documents attesting to the outstanding reputation of theaters, concert halls, night clubs, and other establishments in which the alien has appeared or is scheduled to appear; and/or

(vi) Documents attesting to the outstanding reputation of theaters or repertory companies, ballet troupes, orchestras, or other organizations in which or with which the alien has performed during the past year in a leading or starring capacity.

(e) *Determination.* An Immigration Officer determines whether the employer and alien have met the applicable requirements of § 656.10 and of *Schedule A* (§ 656.5); reviews the application; and determines whether or not the alien is qualified for and intends to pursue the *Schedule A* occupation. The *Schedule A* determination of INS is conclusive and final. The employer, therefore, may not appeal from any such determination under the review procedures at § 656.26.

(f) *Department of Labor copy.* If the alien qualifies for the occupation, the Immigration Officer must indicate the occupation on the *Application for Alien Employment Certification* form. The Immigration Officer then must promptly forward a copy of the *Application for Alien Employment Certification* form, without attachments, to the Director, indicating thereon the occupation, the Immigration Officer who made the *Schedule A* determination, and the date of the determination (see § 656.30 for the significance of this date).

(g) *Refiling after denial.* If an application for a *Schedule A* occupation is denied, the employer, except where the occupation is as a physical therapist or a professional nurse, may at any time file for a labor certification on the alien beneficiary's behalf under § 656.17. Labor certifications for professional nurses and for physical therapists may be considered only under § 656.15.

§ 656.16 Labor certification applications for sheepherders.

(a) *Filing requirements and required documentation.* (1) An employer may apply for a labor certification to employ an alien (who has been employed legally as a nonimmigrant sheepherder in the United States for at least 33 of the preceding 36 months) as a sheepherder by filing an *Application for Alien Employment Certification form* and a completed PWDR form endorsed by the SWA, directly with a District Office of INS, not with an office of DOL.

(2) A signed letter or letters from each U.S. employers who has employed the alien as a sheepherder during the immediately preceding 36 months, attesting that the alien has been employed in the United States lawfully and continuously as a sheepherder for at least 33 of the immediately preceding 36 months must be filed with the application.

(b) *Determination.* An Immigration Officer reviews the application and the letters attesting to the alien's previous employment as a sheepherder in the United States, and determines whether or not the alien and the employer(s) have met the requirements of this section.

(1) The determination of the Immigration Officer under paragraph (b) of this section is conclusive and final. The employer(s) and the alien, therefore, may not make use of the review procedures set forth at §§ 656.26 and 656.27 to appeal such a determination.

(2) If the alien and the employer(s) have met the requirements of this section, the Immigration Officer must indicate on the *Application for Alien Employment* form the occupation, the immigration office which made the determination, and the date of the determination (see § 656.30 for the significance of this date). The Immigration Officer then forwards promptly to the Division of Foreign Labor Certifications copies of the *Application for Alien Employment Certification* form, without the attachments.

(c) *Alternative filing.* If an application for a sheepherder does not meet the requirements of this section, the application may be filed under § 656.17.

§ 656.17 Basic labor certification process.

(a) *Filing applications.* Except as otherwise provided by §§ 656.15, 656.16 and 656.18, an employer who desires to apply for a labor certification on behalf of an alien must file, signed by hand, a completed Department of Labor *Application for Alien Employment Certification* form, a completed PWDR form that has been endorsed by the SWA serving the area where the employer proposes the alien will be employed, and the processing fee of $XXXX in accordance with § 656.14. The application must be filed with the DOL servicing office. Supporting documentation that may be requested by the Certifying Officer in an audit letter should not be filed with the application, but the employer must be prepared to furnish required supporting documentation if its application is selected for audit.

(b) *Processing.* (1) Applications are screened and found to be either incomplete, or are certified, denied, or selected for audit. Applications that

cannot be accepted for processing because certain information that was requested by the application form was not provided are returned to the employers.

(2) Employers will be notified if their applications have been selected for audit by the issuance of an audit letter under § 656.20.

(3) Applications may be selected for audit in accordance with predetermined selection criteria or may be randomly selected.

(c) *Filing Date.* (1) Applications accepted for processing shall be date stamped.

(2) Applications not accepted for filing and returned to employers shall not be date stamped.

(3) Employers that filed applications under the regulations that were in effect prior to _____, 2002, may refile such cases under the current regulations without loss of the filing date by:

(i) Submitting an application on behalf of an identical job opportunity filed under the regulations that were in effect prior to _____, 2002, if the employer has complied with all of the filing and recruiting requirements of the current regulations; and

(ii) Identifying and withdrawing the application involving the identical job opportunity pending under the regulations effective prior to _____, 2002.

(d) *Required prefiling recruitment.* Except for labor certification applications involving college or university teachers selected to by a competitive recruitment and selection process (see § 656.18), *Schedule A* occupations (see §§ 656.5 and 656.15), and sheepherders (see § 656.16), an employer must attest, depending on whether a professional or nonprofessional occupation is involved in the application, to have conducted the following recruitment prior to filing the application:

(1) *Professional Occupations.* If the application is for a professional occupation, the employer must conduct the six recruitment steps within 6 months of filing the application for alien employment certification. The employer must maintain documentation of the recruitment and be prepared to document such recruitment in the event of an audit.

(i) *Mandatory steps.* Two of the steps are mandatory for all applications involving professional occupations, except applications for college or university teachers selected in a competitive selection and recruitment process as provided in § 656.16. The mandatory recruitment steps must be conducted at least 30 days, but no more than 180 days, before the filing of the application.

(A) *Job order.* Placement of a job with the SWA serving the area of intended employment for a period of 30 days. The start and end dates of the job order entered on the application serve as documentation of this step.

(B) *Advertisements in newspaper or professional journals.* (*1*) Placing two advertisements in the Sunday edition of the newspaper of general circulation most appropriate to the occupation and the workers likely to apply for the job opportunity in the area of intended employment. There must be a minimum of three consecutive intervening Sundays between publication of the two advertisements and they must satisfy the requirements of paragraph (f)(1) of this section. Documentation of this step can be satisfied by furnishing copies of the tear sheets of the newspaper pages in which the advertisements appeared or proof of publication furnished by the newspaper.

(*2*) If the job involved in the application requires experience and an advanced degree, the employer must, in lieu of one of the Sunday advertisements, place an advertisement in the professional journal most likely to bring responses from able, willing, qualified and available U.S. workers. Documentation of this step can be satisfied by providing a copy of the page in which the advertisement appeared.

(ii) *Additional recruitment steps.* The employer must select three additional recruitment steps from the alternatives listed below. Only one of the additional steps may consist solely of activity that took place within 30 days of the filing of the application. None of the steps may have taken place more than 180 days prior to filing the application.

(A) *Job fairs.* Recruitment at job fairs for the occupation involved in the application which can be documented by brochures advertising the fair and newspaper advertisements in which the employer is named as a participant in the job fair;

(B) *Employer's web site.* The use of the employer's web site as a recruitment medium for the occupation involved in the application can be documented by providing dated copies of pages from the site which advertise the occupation involved in the application.

(C) *Job search web site other than employer's.* The use of a job search web site other than the employer's can be documented by providing dated copies of pages from one or more web site(s) which advertises the occupation involved in the application. Copies of web pages generated in conjunction with the newspaper advertisements required by paragraph (d)(1)(i)(B) of this section cannot serve as document of the use of a web site other than the employer's.

(D) *On-campus recruiting.* The employer's on-campus recruiting can be documented by providing copies of the notification issued or posted by the college's or university's placement office naming the employer and the date it will be conducting interviews for employment in the occupation.

(E) *Trade or professional organizations.* The use of professional or trade organizations as a recruitment source can be documented by providing copies of pages of newsletters or trade journals containing advertisements for the occupation involved in the application for alien employment certification.

(F) *Private employment firms.* The use of private employment firms or placement agencies can be documented by providing documentation sufficient to demonstrate that recruitment has been conducted by a private firm for the occupation for which certification is sought. For example, documentation might consist of copies of contracts between the employer and the private employment firm and copies of advertisements placed by the private employment firm for the occupation involved in the application.

(2) *Non-professional occupations.* If the application is for a non-professional occupation, the employer must at a minimum, conduct two of the following steps within 6 months of filing the occupation. The steps must be conducted at least 30 days but no more that 180 days before the filing of the application.

(i) *Job Order.* Placing a job order with the SWA serving the area of intended employment for a period of 30 days. The start and end dates of the job order entered on the application serve as documentation of this step.

(ii) *Newspaper advertisements.* Placing of two advertisement in the Sunday edition of the newspaper of general circulation most appropriate to the occupation and the workers likely to apply for the job opportunity in the area of intended employment. There must be a minimum of three consecutive intervening Sundays between publication of the two advertisements and the advertisements must satisfy the requirements of paragraph (f)(1) of this section. Placing the newspaper advertisements can be documented in the same way as provided in paragraph (c)(1)(i)(B) for professional occupations.

(e) *Advertising Requirements.* Advertisements placed in Sunday

editions of newspapers of general circulation or in professional journals before filing the Application *for Alien Employment Certification* must:

(1) Name the employer;

(2) Direct applicants to report or send resumes, as appropriate for the occupation, to the employer;

(3) Provide a description of the vacancy specific enough to apprise the U.S. workers of the job opportunity for which certification is sought;

(4) Describe the geographic area involved in the application with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the job opportunity;

(5) State the rate of pay which must equal or exceed the prevailing wage entered on the PWDR form by the SWA;

(6) Not contain any job requirements which exceed the job requirements listed on the PWDR form; and

(7) Offer wages, terms, and conditions of employment which are no less favorable than those offered to the alien.

(f) *Recruitment report.* (1) The employer must prepare a summary report signed by the employer or the employer's representative described in § 656.10(b)(2)(ii) describing the recruitment steps undertaken and the results achieved, including the number of U.S. workers who applied for the job opportunity, the number of hires, and, if applicable, the number of U.S. workers rejected, summarized by the lawful job related reasons for such rejections. The Certifying Officer, after reviewing the employer's recruitment report, may request the resumes or applications of the U.S. workers sorted by the reasons they were rejected.

(2) Rejecting U.S. workers for lacking skills necessary to perform the duties involved in the occupation, where the U.S. workers are capable of acquiring the skills during a reasonable period of on-the-job training is not a lawful job-related reason for rejection of the U.S. workers. For the purpose of paragraph (e)(2) of this section, a U.S. worker is able and qualified for the job opportunity if the worker can acquire the skills necessary to perform the duties involved in the occupation during a reasonable period of on-the-job training.

(g) *Job Requirements.* (1) The job opportunity's requirements must not exceed the Specific Vocational Preparation level assigned to the occupation as shown in the O*Net Job Zones.

(2) Requirements other than those relating to the number of months or years of experience in the occupation or the number of months or years of education or training in the occupation cannot be used unless justified in the following circumstances:

(i) The employer employed a U.S. worker to perform the job opportunity with the special requirements within 2 years of filing the application. This could be documented by furnishing the name of the former employee and one or more of the following: Job description, resume, letter from previous employee and/or previous recruitment documentation.

(ii) The other requirements are normal to the occupation for a person to perform the basic job duties and are routinely required by other employers in the industry. Acceptable examples, depending on the occupation, include but are not limited to: Professional trade or business licenses, specified typing speed, and ability to lift a minimum number of pounds. Acceptable documentation that other employers in the industry routinely have such a requirement includes state and/or local laws regulations, or ordinances, articles, help-wanted advertisements, or employer surveys.

(iii) A foreign language requirement cannot be included merely for the convenience of the employer or due to the mere preference of the employer, or customers. A foreign language requirement can be based on the nature of the occupation; *e.g.,* translator, or, for example, the need to communicate with a large majority of the employer's customers or contractors who cannot communicate effectively in English. Acceptable documentation includes:

(A) The employer furnishing the number and proportion of its clients, or contractors who cannot communicate in English, and/or a detailed plan to market products or services in a foreign country; and

(B) A detailed explanation of why the duties of the position for which certification is sought require frequent contact and communication with customers, or contractors who cannot communicate in English and why it is reasonable to believe that the allegedly foreign language customers, employees and contractors cannot communicate in English.

(iv) Combination occupations are acceptable only if the employer has employed a U.S. worker in the combination of occupations for the 2 years immediately before the filing of the application and/or workers customarily perform the combination of duties in the area of intended employment. Combination occupations can be documented by position descriptions and relevant payroll records and/or letters from other employers stating that their workers normally perform the combination of occupations in the area of intended employment.

(3) A job requirement for a bachelor's or higher degree does not have to be justified if:

(i) the occupation involved in the employer's application is on a list of occupations issued by ETA for which a bachelor's or higher degree is required; and

(ii) the education and training requirements for the employer's job opportunity is consistent with the education and training required for the occupation involved in the employer's application.

(h) *Actual minimum requirements.* (1) The job requirements, as described, must represent the employer's actual minimum requirements for the job opportunity, and the employer must not have:

(i) Hired workers with less training or experience for jobs similar to that involved in the job opportunity;

(ii) Included as a requirement for the job offer experience which the alien gained working for the employer in any capacity, including working as a contract employee; and

(iii) Paid for any of the alien's education or training necessary to satisfy any of the employer's job requirements.

(2) For purposes of this paragraph (h), the term ''employer'' includes predecessor organizations, successors in interest, a parent, branch, subsidiary, or affiliate, whether located in the United States or another country.

(i) *Conditions of employment.* (1) Working conditions must be normal to the occupation in the area and industry.

(2) Live-in requirements are acceptable for household domestic service workers only if the employer can demonstrate that the requirement is essential to perform in a reasonable manner the job duties as described by the employer and that there are not cost-effective alternatives to a live-in household requirement. Mere employer assertions do not constitute acceptable documentation. For example, a live-in requirement could be supported by documenting two working parents and young children in the household, and/or the existence of erratic work schedules requiring frequent travel and a need to entertain business associates and clients on short notice. Depending upon the situation, acceptable documentation could consist of travel vouchers, written estimates of costs of alternatives such as baby sitters, a detailed listing of the frequency and

length of absences of the employer from the home.

(j) *Layoffs.* (1) If there has been a layoff by the employer applicant in the area of intended employment within 6 months of filing the occupation involving the occupation for which certification is sought or in a related occupation, the employer must document that it has notified and considered all potentially qualified laid off U.S. workers of the job opportunity involved in the application and the results of the notification.

(2) For the purposes of paragraph (i)(1) of this section, a related occupation is any occupation which requires workers to perform a majority of the essential duties involved in the occupation for which certification is sought.

(k) *Alien influence and control over job opportunity.* If the employer is a closely held corporation or partnership in which the alien has an ownership interest, or if there is a familial relationship between the stockholders, corporate officers, incorporators, or partners, and the alien, the employer in the event of an audit must provide the following documentation:

(1) A copy of the articles of incorporation;

(2) A list of all corporate officers and shareholders of the corporation, their titles and positions in the corporate structure, and a description of their relationship to each other and to the alien beneficiary;

(3) The financial history of the corporation, including the total investment in the corporation and the amount of investment of each corporate officer, incorporator and the alien beneficiary; and

(4) The name of the corporate official with primary responsibility for interviewing and hiring applicants for positions within the organization and the name(s) of the corporate official(s) having control or influence over hiring decisions involving the position for which labor certification is sought.

§ 656.18 Optional special recruitment and documentation procedures for college and university teachers.

(a) *Filing requirements.* Applications on behalf of college and university teachers must be filed by submitting a completed *Application for Permanent Employment Certification* form and PWDR form with the appropriate application processing center.

(b) *Recruitment* The employer may recruit for college and university teachers under § 656.17 or be able to document that the alien was selected for the job opportunity in a competitive recruitment and selection process through which the alien was found to be more qualified than any of the United States workers who applied for the job. For purposes of this paragraph (b), documentation of the ''competitive recruitment and selection process'' must include:

(1) A statement, signed by an official who has actual hiring authority from the employer outlining in detail the complete recruitment procedures undertaken; and which must set forth:

(i) The total number of applicants for the job opportunity;

(ii) The specific lawful job-related reasons why the alien is more qualified than each U.S. worker who applied for the job; and

(iii) A final report of the faculty, student, and/or administrative body making the recommendation or selection of the alien, at the completion of the competitive recruitment and selection process.

(2) A copy of at least one advertisement for the job opportunity placed in a national professional journal, giving the name and the date(s) of publication; and which states the job title, duties, and requirements;

(3) Evidence of all other recruitment sources utilized; and

(4) A written statement attesting to the degree of the alien's educational or professional qualifications and academic achievements.

(c) *Time limit for filing.* Applications for permanent alien labor certification for job opportunities as college and university teachers must be filed within 18 months after a selection is made in to a competitive recruitment and selection process.

(d) *Alternative procedure.* An employer that cannot or does not choose to satisfy the special recruitment procedures for a college or university teacher under this section may avail itself of the basic process at § 656.17. An employer that files for college and university teachers under § 656.17 or this section must be able to document, if requested by the Certifying Officer, in accordance with § 656.24(a)(2)(ii), that the alien was found to be more qualified than any U.S. worker who applied for the job opportunity.

§ 656.19 Live-in household domestic service workers.

(a) *Filing requirements.* Applications on behalf of live-in household domestic service workers must be filed by submitting a completed *Application for Alien Employment Certification* form and PWDR form endorsed by the SWA with the appropriate application processing center.

(b) *Required documentation.* Employers filing applications on behalf of live-in household domestic must provide, in event of an audit, the following documentation:

(1) A statement describing the household living accommodations that must include the following:

(i) Whether the residence is a house or apartment;

(ii) The number of rooms in the residence;

(iii) The number of adults and children, and ages of the children residing in the household; and

(iv) Whether or not free board and a private room not shared by any other person will be provided to the alien.

(2) Two copies of the employment contract, each signed and dated by both the employer and the alien (not by their attorneys or agents). The contract must clearly state:

(i) The wages to be paid on an hourly and weekly basis;

(ii) Total hours of employment per week, and exact hours of daily employment;

(iii) That the alien is free to leave the employer's premises during all non-work hours except that the alien may work overtime if paid for the overtime at no less than the legally required hourly rate;

(iv) That the alien will reside on the employer's premises;

(v) Complete details of the duties to be performed by the alien;

(vi) The total amount of any money to be advanced by the employer with details of specific items, and the terms of repayment by the alien of any such advance by the employer;

(vii) That in no event may the alien be required to give more than two weeks' notice of intent to leave the employment contracted for and that the employer must give the alien at least two weeks' notice before terminating employment;

(viii) That a duplicate contract has been furnished to the alien;

(ix) That a private room and board will be provided at no cost to the worker; and

(x) Any other agreement or conditions not specified on the *Application for Alien Employment Certification* form.

§ 656.20 Audit letters.

(a) *Issuance of audit letter.* Review of the labor certification application may lead to an audit of the application. Additionally, certain applications may be selected for audit for quality control purposes. If an application is selected for audit, the Certifying Officer issues an audit letter. The audit letter must:

(1) Contain the date on which the audit letter was issued;

(2) State the documentation that must be submitted by the employer;

(3) Specify a date, 21 calendar days from the date of the audit letter by which the required documentation must be submitted and advise that, if the required documentation has not been mailed by certified mail by the date specified:

(i) The application shall be denied;

(ii) Failure to provide required documentation shall be deemed to be a material misrepresentation of the employer's attestation that it has complied with all documentation requirements;

(iii) Failure to provide documentation in a timely manner constitutes a refusal to exhaust available administrative remedies; and

(iv) The administrative-judicial review procedure provided in § 656.26 is not available.

(4) Certifying Officers may not provide any extensions to the 21 days specified in § 656.20(a)(3).

(b) If documentation is submitted on time, the Certifying Officer reviews that documentation in accordance with the standards in § 656.24.

(c) Before making a final determination in accordance with the standards in § 656.24, the Certifying Officer may:

(1) Request supplemental information and/or documentation; or

(2) Require the employer to conduct recruitment under § 656.21.

§ 656.21 Supervised Recruitment.

(a) *Supervised recruitment.* In a case where the Certifying Officer determines it to be appropriate, including determinations made pursuant to § 656.20(a)(3)(ii), post-filing supervised recruitment may be required of the employer.

(b) *Requirements.* Supervised recruitment consists of advertising for the job opportunity by placing an advertisement in a newspaper, or in a professional, trade, or ethnic publication. If published in a newspaper of general circulation, be published for 3 consecutive days, one of which must be a Sunday, or, if published in a professional, trade, or ethnic publication, be published in the next published edition. The advertisement must be approved by the Certifying Officer before publication and the Certifying Officer will direct where the advertisement is placed. The advertisement must:

(1) Direct applicants to send resumes or applications for the job opportunity to the Certifying Officer for referral to the employer;

(2) Include a regional office identification number and an address designated by the Certifying Officer, but must not identify the employer;

(3) Describe the job opportunity;

(4) State the rate of pay, which must not be below the prevailing wage for the occupation entered on the PWDR form by the SWA;

(5) Summarize the employer's minimum job requirements which cannot exceed any of the requirements entered on the PWDR form by the employer;

(6) Offer training if the job opportunity is the type for which employers normally provide training; and

(7) Offer wages, terms and conditions of employment which are no less favorable than those offered to the alien.

(c) *Additional or substitute recruitment.* The Certifying Officer may designate other appropriate sources of workers where the employer must recruit for U.S. workers in addition to the advertising described in paragraph (b)(1) of this section.

(d) *Recruitment report.* The employer must provide to the Certifying Officer a detailed written report of the employer's supervised recruitment, signed by the employer, or the employer's representative described in § 656.10(b)(2)(ii), within 21 days of the Certifying Officer's request for such a report. The recruitment report results must:

(1) Identify each recruitment source by name and document that each recruitment source named was contacted. This can include, for example, copies of letters to recruitment sources such as unions, trade associations, colleges and universities and any responses received to the employer's inquiries. Documentation of advertisements placed in newspapers, professional, trade, or ethnic publications can be documented by furnishing copies of the tear sheets of the pages of the publication in which the advertisements appeared, proof of publication furnished by the publication, or dated copies of the web pages if the advertisement appeared on the web as well as in the publication in which the advertisement appeared;

(2) State the number of U.S. workers who responded to the employer's recruitment;

(3) State the names, addresses, and provide resumes (if any) of the U.S. workers who applied for the job opportunity, the number of workers interviewed, and the job title of the person who interviewed the workers;

(4) Explain, with specificity, the lawful job-related reason(s) for not hiring each U.S. worker who applied. Rejection of U.S. workers for lacking skills necessary to perform the duties involved in the occupation, where the U.S. workers are capable of acquiring the skills during a reasonable period of on-the-job training is not a lawful job-related reason for rejecting the U.S. workers. For the purpose of this paragraph (d)(4), a U.S. worker is able and qualified for the job opportunity if the worker can acquire the skills necessary to perform the duties involved in the occupation during a reasonable period of on-the-job training.

§ 656.24 Labor certification determinations.

(a) The Certifying Officer makes a determination either to grant or deny the labor certification on the basis of whether or not:

(1) The employer has met the requirements of this part; and

(2) There is in the United States a worker who is able, willing, qualified and available for and at the place of the job opportunity.

(i) The Certifying Officer must consider a U.S. worker able and qualified for the job opportunity if the worker, by education, training, experience, or a combination thereof, is able to perform in the normally accepted manner the duties involved in the occupation as customarily performed by other U.S. workers similarly employed. For the purposes of this paragraph (a)(2)(i), a U.S. worker is able and qualified for the job opportunity if the worker can acquire the skills necessary to perform the duties involved in the occupation during a reasonable period of on-the-job training.

(ii) If the job involves a job opportunity as a college or university teacher, the U.S. worker must be at least as qualified as the alien.

(3) The employment of the alien will not have an adverse effect upon the wages and working conditions of U.S. workers similarly employed. In making this determination the Certifying Officer considers such things as labor market information, the special circumstances of the industry, organization, and/or occupation, the prevailing wage in the area of intended employment, and the prevailing working conditions, such as hours in the occupation.

(b) The Certifying Officer notifies the employer in writing of the labor certification determination.

(c) If a labor certification is granted, except for a labor certifications for an occupation on *Schedule A* (§ 656.5) or for employment as a sheepherder under § 656.16, the Certifying Officer must send the certified application and complete Final Determination form to

the employer, or, if appropriate, to the employer's agent or attorney, indicating that the employer may file all the documents with the appropriate INS office.

(d) If the labor certification is denied, the Final Determination form must:

(1) Contain the date of the determination;

(2) State the reasons for the determination;

(3) Quote the request for review procedures at § 656.26 (a) and (b);

(4) Advise that failure to request review within 21 calendar days, as specified in § 656.26(a), constitutes a failure to exhaust administrative remedies;

(5) Advise that, if a request for review is not made within 21 calendar days, the denial shall become the final determination of the Secretary;

(6) Advise that if an application for a labor certification is denied, and a request for review is not made in accordance with the procedures at § 656.26(a) and (b), a new application may be filed at any time; and

(7) Advise that a new application in the same occupation for the same alien cannot be filed, while a request for review is pending with the Board of Alien Labor Certification Appeals.

(e) If the Certifying Officer determines that the employer made a material misrepresentation that it has complied with all documentation requirements pursuant to § 656.20(a)(ii), or otherwise determines a material misrepresentation was made with respect to the application for any reason, the employer may be required to conduct supervised recruitment pursuant to § 656.21 in future filings of labor certification applications for 2 years.

(f) The employer may request reconsideration at any time within 21 days from the date of insurance of the denial. The Certifying Officer may, in his or her complete discretion, reconsider the determination or treat it as a request for review under § 656.26(a).

§ 656.26 Board of Alien Labor Certification Appeals review of denials of labor certification.

(a) *Request for review.* (1) If a labor certification is denied or revoked, a request for review of the denial or revocation may be made to the Board of Alien Labor Certification Appeals by the employer. Any employer seeking review of a determination issued under § 656.24, including judicial review, must make a request for such an administrative review in accordance with the procedures provided in this paragraph (a). The request for review:

(i) Must be in writing;

(ii) Must be mailed by certified mail to the Certifying Officer who denied the application within 21 calendar days of the date of the determination, that is, by the date specified on the Final Determination form;

(iii) Must clearly identify the particular labor certification determination from which review is sought; must set forth the particular grounds for the request; and

(iv) Must include all the documents which accompanied the Final Determination form.

(2) The request for review, statements, briefs, and other submissions of the parties and amicus curiae must contain only legal argument and only such evidence that was within the record upon which the denial of labor certification was based.

(b) Upon the receipt of a request for review, the Certifying Officer immediately must assemble an indexed Appeal File:

(1) The Appeal File must be in chronological order, must have the index on top followed by the most recent document, and must have consecutively numbered pages. The Appeal File must contain the request for review, the complete application file, and copies of all the written material, such as pertinent parts and pages of surveys and/or reports upon which the denial was based.

(2) The Certifying Officer must send the Appeal File to the Board of Alien Labor Certification Appeals, Office of Administrative Law Judges, 800 K Street, NW., Suite 400, Washington, DC 20001–8002.

(3) The Certifying Officer must send a copy of the Appeal File to the employer. The employer may furnish or suggest directly to the Board of Alien Labor Certification Appeals the addition of any documentation which is not in the Appeal File, but which was submitted before the issuance of the Final Determination form. The employer must submit such documentation in writing, and must send a copy to the Associate Solicitor for Employment and Training Legal Services, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20210.

§ 656.27 Consideration by and decisions of the Board of Alien Labor Certification Appeals.

(a) *Panel Designations.* In considering requests for review before it, the Board of Alien Labor Certification Appeals may sit in panels of three members. The Chief Administrative Law Judge may designate any Board of Alien Labor Certification Appeals member to submit proposed findings and recommendations to the Board of Alien Labor Certification Appeals or to any duly designated panel thereof to consider a particular case.

(b) *Briefs and Statements of Position.* In considering the requests for review before it, the Board of Alien Labor Certification Appeals must afford all parties 21 days to submit or decline to submit any appropriate Statement of Position or legal brief. The Department of Labor is to be represented solely by the Solicitor of Labor or the Solicitor's designated representative.

(c) *Review on the record.* The Board of Alien Labor Certification Appeals must review the denial of labor certification on the basis of the record upon which the denial of labor certification was made, the request for review, and any Statements of Position or legal briefs submitted and must:

(1) Affirm the denial of the labor certification; or

(2) Direct the Certifying Officer to grant the certification; or

(3) Direct that a hearing on the case be held under paragraph (e) of this section.

(d) *Notifications of decisions.* The Board of Alien Labor Certification Appeals must notify the employer, the alien, the Certifying Officer, and the Solicitor of Labor of its decision, and must return the record to the Certifying Officer unless the case has been set for hearing under paragraph (e) of this section.

(e) *Hearings.* (1) *Notification of hearing.* If the case has been set for a hearing, the Board of Alien Labor Certification Appeals must notify the employer, the alien, the Certifying Officer, and the Solicitor of Labor of the date, time, and place of the hearing, and that the hearing may be rescheduled upon written request and for good cause shown.

(2) *Hearing procedure.* (i) The ''Rules of Practice and Procedure For Administrative Hearings Before the Office of Administrative Law Judges'', at 29 CFR part 18, apply to hearings under this paragraph (e).

(ii) For the purposes of this paragraph (e)(2), references in 29 CFR part 18 to: ''administrative law judge'' means the Board of Alien Labor Certification Appeals member or the Board of Alien Labor Certification Appeals panel duly designated to under § 656.27(a); ''Office of Administrative Law Judges'' means the Board of Alien Labor Certification Appeals; and ''Chief Administrative Law Judge'' means the Chief Administrative Law Judge in that official's function of chairing the Board of Alien Labor Certification Appeals.

§ 656.30 Validity of and invalidation of labor certifications.

(a) *Validity of labor certifications.* Except as provided in paragraph (d) of this section, a labor certification is valid indefinitely.

(b) *Validation date.* (1) A labor certification involving a job offer is validated as of the date the servicing office date-stamped the application; and

(2) A labor certification for a *Schedule A* occupation is validated as of the date the application was dated by the Immigration Officer.

(c) *Scope of validity.* (1) A labor certification for a *Schedule A* occupation is valid only for the occupation set forth on the *Application for Alien Employment Certification* form and throughout the United States unless the certification contains a geographic limitation.

(2) A labor certification involving a specific job offer is valid only for the particular job opportunity and for the area of intended employment stated on the *Application for Alien Employment Certification* form.

(d) *Invalidation of labor certifications.* After issuance, a labor certifications is subject to invalidation by the INS or by a Consul of the Department of State upon a determination, made in accordance with those agencies' procedures or by a Court, of fraud or willful misrepresentation of a material fact involving the labor certification application. If evidence of such fraud or willful misrepresentation becomes known to an RD or to the Chief, Division of Foreign Labor Certifications, the RD or the Chief, Division of Foreign Labor Certifications, as appropriate, notifies in writing the INS or State Department, as appropriate. A copy of the notification must be sent to the regional or national office, as appropriate, of the Department of Labor's Office of Inspector General.

(e) *Duplicate labor certifications.* Certifying Officers shall issue duplicate labor certifications only upon the written request of a Consular or Immigration Officer. Certifying Officers shall issue such duplicate certifications only to the Consular or Immigration Officer who submitted the written request. An alien, employer, or an alien's or employer's agent, therefore, may petition an Immigration or Consular Officer to request a duplicate labor certification from a Certifying Officer.

§ 656.31 Labor certification applications involving fraud or willful misrepresentation.

(a) *Possible fraud or willful misrepresentation.* If possible fraud or willful misrepresentation involving a labor certification is discovered before a final labor certification determination, the Certifying Officer must refer the matter to the INS for investigation, must notify the employer in writing, and must send a copy of the notification to the alien, and to the Department of Labor's Office of Inspector General. If 90 days pass without the filing of a criminal indictment or information, or receipt of a notification from INS that an investigation is being conducted, the Certifying Officer must continue to process the application.

(b) *Criminal indictment or information.* If it is learned that an application is the subject of a criminal indictment or information filed in a court, the processing of the application must be halted until the judicial process is completed. The Certifying Officer must notify the employer of this fact in writing and must send a copy of the notification to the alien, and to the Department of Labor's Office of Inspector General.

(c) *Finding of no fraud or willful misrepresentation.* If a court finds that there was no fraud or willful misrepresentation, or if the Department of Justice decides not to prosecute, the Certifying Officer must not deny the labor certification application on the grounds of fraud or willful misrepresentation. The application, of course, may be denied for other reasons under this part.

(d) *Finding of fraud or willful misrepresentation.* If a court, the INS or the Department of State determines that there was fraud or willful misrepresentation involving a labor certification application, the application is automatically invalidated, processing is terminated, a notice of the termination and the reason therefor is sent by the Certifying Officer to the employer, and a copy of the notification is sent by the Certifying Officer to the alien, and to the Department of Labor's Office of Inspector General.

§ 656.32 Revocation of approved labor certifications.

(a) *Basis for DOL Revocation.* Within 1 year of the date a labor certification is granted or before a visa number becomes available to the alien beneficiary, whichever occurs first, the Certifying Officer who issued it, in consultation with the National Certifying Officer, may take steps to revoke a labor certification, if he/she finds that the certification was improvidently granted.

(b) *DOL procedures for revocation.* (1) The Certifying Officer sends to the employer, and a copy to the alien, a *Notice of Intent to Revoke* an approved labor certification.

(2) The *Notice of Intent to Revoke* must contain a detailed statement of the grounds for the revocation and the time period allowed for the employer's rebuttal. The employer may submit evidence in rebuttal within 21 days of receipt of the notice. The Certifying Officer must consider all relevant evidence presented in deciding whether to revoke the labor certification.

(3) The Certifying Officer must inform the employer within 30 days of receiving any rebuttal evidence whether or not the labor certification will be revoked.

(4) The Certifying Officer must send a notice to the employer, with a copy to the alien, informing the employer whether or not the labor certification has been revoked.

(5) If the labor certification is revoked, the Certifying Officer must also send a copy of the notification to the INS.

(6) If rebuttal evidence is not filed by the employer, the Notice of Intent to Revoke becomes the final decision of the Secretary.

(7) If the Employer files rebuttal evidence and the Certifying Officer determines that the certification should be revoked, the employer may file an appeal under § 656.26.

Subpart D—Determination of Prevailing Wage

§ 656.40 Determination of prevailing wage for labor certification purposes.

(a) *Application process.* The employer must complete the appropriate sections of the PWDR form and submit it to the SWA having jurisdiction over the proposed area of intended employment. The SWA must enter its wage determination on the PWDR form and return the form with its endorsement to the employer. Unless the employer chooses to appeal the SWA's prevailing wage determination under § 656.41(a), it submits the PWDR form *and* the *Application for Alien Employment Certification* to the ETA servicing office.

(b) *Determinations.* The SWA determines the prevailing wage as follows:

(1) Except as provided in paragraphs (e) and (f) of this section, if the job opportunity is in an occupation covered by a collective bargaining agreement (CBA) which was negotiated at arms-length between the union and the employer, the wage rate set forth in the CBA agreement is considered as not adversely affecting the wages of U.S. workers similarly employed, that is, it is considered the ''prevailing wage'' for labor certification purposes.

(2) If the job opportunity is in an occupation which is not covered by a

CBA, the prevailing wage for labor certification purposes shall be the arithmetic mean, except as provided in paragraphs (b)(3) of this section, of the wages of workers similarly employed in the area of intended employment. The wage component of the Occupational Employment Statistics Survey shall be used to determine the arithmetic mean, unless the employer provides an acceptable survey under paragraph (g) of this section.

(3) If the employer provides a survey acceptable under paragraph (g) of this section provides a median and does not provide an arithmetic mean, the median shall be the prevailing wage applicable to the employer's job opportunity.

(4) The employer may utilize a current DBA or SCA wage determination in the occupation and the area of intended employment as the prevailing wage.

(c) *Validity Period.* The SWA must specify the validity period of the prevailing wage on the PWDR form, which in no event may be less than 90 days or more than 1 year from the determination date entered on the PWDR. To use a SWA PWD, employers must file their applications or begin the recruitment required by §§ 656.17(c) or 656.21 within the validity period specified by the SWA.

(d) *Similarly employed.* For purposes of this section, except as provided in paragraphs (e) and (f) of this section, ''similarly employed'' means ''having substantially comparable jobs in the occupational category in the area of intended employment,'' except that, if a representative sample of workers in the occupational category cannot be obtained in the area of intended employment, ''similarly employed'' means:

(1) ''Having jobs requiring a substantially similar level of skills within the area of intended employment''; or

(2) If there are no substantially comparable jobs in the area of intended employment, ''Having substantially comparable jobs with employers outside of the area of intended employment''.

(e) *Institutions of higher education and research entities.* In computing the prevailing wage for a job opportunity in an occupational classification in an area of intended employment for an employee of an institution of higher education, or an affiliated or nonprofit entity; a nonprofit research organization; or a Governmental research organization, the prevailing wage level only takes into account the wage levels of employees at such institutions and organizations in the area of intended employment.

(1) The organizations listed in this paragraph (e) are defined as follows:

(i) An *institution of higher education* is defined in section 101(a) of the Higher Education Act of 1965. Section 101(a) of that act, 20 U.S.C. 1001(a) (2000), provides that an ''institution of higher education'' is an educational institution in any State that —

(A) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(B) Is legally authorized within such State to provide a program of education beyond secondary education;

(C) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;

(D) Is a public or other nonprofit institution; and

(E) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of preaccreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(ii) *Affiliated or related nonprofit entity.* A nonprofit entity (including but not limited to a hospital and a medical or research institution) that is connected or associated with an institution of higher education, through shared ownership or control by the same board or federation, operated by an institution of higher education, or attached to an institution of higher education as a member, branch, cooperative, or subsidiary;

(iii) *Nonprofit research organization or Governmental research organization.* A research organization that is either a nonprofit organization or entity that is primarily engaged in basic research and/or applied research, or a United States Government entity whose primary mission is the performance or promotion of basic research and/or applied research. Basic research is general research to gain more comprehensive knowledge or understanding of the subject under study, without specific applications in mind. Basic research is also research that advances scientific knowledge, but does not have specific immediate commercial objectives although it may be in fields of present or commercial interest. It may include research and investigation in the sciences, social sciences, or humanities. Applied research is research to gain knowledge or understanding to determine the means by which a specific, recognized need may be met. Applied research includes investigations oriented to discovering new scientific knowledge that has specific commercial objectives with respect to products, processes, or services. It may include research and investigation in the sciences, social sciences, or humanities.

(2) A *non-profit organization or entity* for the purpose of this paragraph (e) means an organization which is qualified as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4), or (c)(6) (26 U.S.C. 501(c)(3), (c)(4) or (c)(6)), and has received approval as a tax exempt organization from the Internal Revenue Service, as it relates to research or educational purposes.

(f) *Professional athletes.* In computing the prevailing wage for a professional athlete, as defined in section 212(a)(5)(A)(iii)(II) of the Act, when the job opportunity is covered by professional sports league rules or regulations, the wage set forth in those rules or regulations is considered the prevailing wage. Section 212(a)(5)(A)(iii)(II), 8 U.S.C. 1182(a)(5)(A)(iii)(II) (1999), defines a professional athlete as an individual who is employed as an athlete by—

(1) A team that is a member of an association of six or more professional sports teams whose total combined revenues exceed $10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or

(2) Any minor league team that is affiliated with such an association.

(g) *Employer provided wage information.* (1) If the job opportunity is not covered by a CBA, the SWA must consider wage information provided by the employer in making a prevailing wage determination.

(2) In each case where the employer submits a survey or other wage data for which it seeks acceptance, the employer must provide the SWA with enough information about the survey methodology, including such items as sample frame size and source, sample selection procedures, and survey job descriptions, to allow the SWA to make a determination about the adequacy of the data provided and validity of the statistical methodology used in conducting the survey in accordance

with guidance issued by the ETA National Office.

(3) The survey submitted to the SWA must be based upon recently collected data:

(i) A published survey must have been published within 24 months of the date of submission to the SWA, must be the most current edition of the survey, and the data upon which the survey is based must have been collected within 24 months of the publication date of the survey.

(ii) A survey conducted by the employer must be based on data collected within 24 months of the date it is submitted to the SWA.

(4) A prevailing wage determination based upon an employer-provided wage survey is applicable only to the specific action for which the wage determination is issued and does not supersede the prevailing wage rate for an occupation based upon the arithmetic mean provided by the Occupational Employment Statistics program, as applied to other requests for prevailing wage determinations.

(5) If the employer-provided survey is found not to be acceptable, the SWA must inform the employer in writing of the reasons the survey was not accepted.

(6) The employer, after receiving notification that the survey it provided for the SWA's consideration is not acceptable, may file supplemental information as provided in paragraph (h) of this section, file a new request for a prevailing wage determination, or appeal under § 656.41.

(h) *Submittal of supplemental information by employer.* (1) If the employer disagrees with the skill level assigned to its job opportunity, or if the SWA informs the employer that its survey is not acceptable, the employer may submit supplemental information to the SWA concerning the skill level of its job opportunity or the survey it provided for the SWA's consideration.

(2) The SWA must consider one supplemental filing about the employer's survey or the skill level the SWA assigned to the job opportunity. If the SWA does not accept the employer's survey after considering the supplemental information, or affirms its determination concerning the skill level, it must inform the employer of the reasons for its decision.

(3) The employer may then apply for a new wage determination or appeal under § 656.41.

(i) *Wage cannot be lower than required by any other law.* No prevailing wage determination for labor certification purposes made under this section permits an employer to pay a wage lower than the highest wage required by any applicable Federal, State or local law.

(j) *Fees prohibited.* No SWA employee may charge a fee in connection with the filing of a request for a prevailing wage determination, responding to such a request, or responding to a request for a review of a SWA prevailing wage determination under § 656.41.

Alternative One for § 656.41

§ 656.41 ETA Prevailing Wage Panel review of prevailing wage determinations.

(a) *Review of SWA prevailing wage determinations.* Any employer desiring review, including judicial review, of a SWA prevailing wage determination must make a request for such a review to the ETA Prevailing Wage Panel within 21 calendar days of receiving a determination from the SWA. The request for review must be in writing and mailed by certified mail to the SWA that issued the prevailing wage determination (PWD) within 21 calendar days of the date of the PWD; clearly identify the particular prevailing wage determination from which review is sought; set forth the particular grounds for the request; and include all the materials pertaining to the PWD submitted to the SWA up to the date of the PWD received from the SWA, and all the documents the employer received from the SWA concerning the PWD.

(b) *Transmission of request to the panel.* (1) Upon the receipt of a request for review, the SWA must review the employer's request and accompanying documentation and include any material sent to the employer by the SWA up to the date of the PWD that may have been omitted by the employer.

(2) The SWA must send a copy of the employer's appeal, including any material added under paragraph (b)(1) of this section, to the U.S. Department of Labor, ETA Prevailing Wage Panel, Division of Foreign Labor Certifications, 200 Constitution Avenue, NW., Room C–4318 Washington, DC 20210.

(3) The SWA must send a copy of the employer's appeal and any material added by the SWA under paragraph (b)(1) of this section to the employer. The employer may furnish or suggest directly to the ETA Prevailing Wage Panel the addition of any documentation which is not among the materials sent to the ETA Prevailing Wage Panel by the SWA, but which was submitted before the issuance of the prevailing wage determination. The employer must submit such documentation in writing, and shall send a copy to the SWA which issued the PWD.

(c) *Designations.* The size and composition of the ETA Prevailing Wage Panel is determined by the Chief, Division of Foreign Labor Certifications. Staffing of the panel may include both SWA and Federal staff and may include specialists in survey methodology, prevailing wage determinations, and occupational analysis and classification.

(d) *Review on the record.* The ETA Prevailing Wage Panel reviews the SWA prevailing wage determination solely on the basis upon which the prevailing wage determination was made and upon the request for review, and may:

(1) Affirm the prevailing wage determination issued by the SWA;

(2) Modify the prevailing wage determination; or

(3) Remand the matter to the SWA for further action.

(e) *Request for review by BALCA.* Any employer, desiring review, including judicial review, of a determination of the PWP must make a request for review of the determination by the Board of Alien Labor Certification Appeals within 21 calendar days of the receipt of the decision of the ETA Prevailing Wage Panel.

(1) The request for review must be in writing and addressed to the Chairperson of the ETA Prevailing Wage Panel. Upon receipt of a request for review, the Chairperson must immediately assemble an indexed appeal file in chronological order with the index on top followed by the most recent document.

(2) The Chairperson must send the Appeal File to the Office of Administrative Law Judges, Board of Alien Labor Certification Appeals, 800 K Street, Suite 400–N, Washington, DC 20001–8002.

(3) The BALCA handles the appeals under §§ 656.26 and 27 of this part.

Alternative Two for § 656.41

§ 656.41 ETA Prevailing Wage Panel review of prevailing wage determinations.

(a) *Review of SWA prevailing wage determinations.* Any employer desiring review, including judicial review, of a SWA prevailing wage determination must make a request for such a review to the ETA Prevailing Wage Panel within 21 calendar days of receiving a determination from the SWA. The request for review must be in writing and mailed by certified mail to the SWA that issued the prevailing wage determination (PWD) within 21 calendar days of the date of the PWD; clearly identify the particular prevailing wage determination from which review is sought; set forth the particular grounds for the request; and include all

the materials pertaining to the PWD submitted to the SWA up to the date of the PWD received from the SWA, and all the documents the employer received from the SWA concerning the PWD.

(b) *Transmission of request to the panel.* (1) Upon the receipt of a request for review, the SWA must review the employer's request and accompanying documentation and include any material sent to the employer by the SWA up to the date of the PWD that may have been omitted by the employer.

(2) The SWA must send a copy of the employer's appeal, including any material added under paragraph (b)(1) of this section, to the U.S. Department of Labor, ETA Prevailing Wage Panel, Division of Foreign Labor Certifications, 200 Constitution Avenue, NW., Room C–4318 Washington, DC 20210.

(3) The SWA must send a copy of the employer's appeal and any material added by the SWA under paragraph (b)(1) of this section to the employer. The employer may furnish or suggest directly to the ETA Prevailing Wage Panel the addition of any documentation which is not among the materials sent to the ETA Prevailing Wage Panel by the SWA, but which was submitted before the issuance of the prevailing wage determination. The employer must submit such documentation in writing, and must send a copy to the SWA which issued the PWD.

(c) *Designations.* The size and composition of the ETA Prevailing Wage Panel is determined by the Chief, Division of Foreign Labor Certifications. The panel's staff may include both SWA and Federal staff and may include specialists in survey methodology, prevailing wage determinations, and occupational analysis and classification.

(d) *Review on the record.* The ETA Prevailing Wage Panel reviews the SWA prevailing wage determination solely on the basis upon which the prevailing wage determination was made and upon the request for review, and may:

(1) Affirm the prevailing wage determination issued by the SWA;

(2) Modify the prevailing wage determination; or

(3) Remand the matter to the SWA for further action.

(e) *Request for review by BALCA.* Any employer, desiring review, including judicial review, of a determination of the PWP must make a request for review of the determination by the Board of Alien Labor Certification Appeals within 21 calendar days of the receipt of the decision of the ETA Prevailing Wage Panel.

(1) The request for review must be in writing and addressed to the Chairperson of the ETA Prevailing Wage Panel. Upon receipt of a request for review, the Chairperson must immediately assemble an indexed appeal file in chronological order with the index on top followed by the most recent document.

(2) The Chairperson must send the Appeal File to the Office of Administrative Law Judges, Board of Alien Labor Certification Appeals, 800 K Street, Suite 400–N, Washington, DC 20001–8002.

(3) The BALCA handles the appeals under §§ 656.26 and 27 of this chapter.

(f) *Review of Wage Determination Involving the Service Contract Act or Davis-Bacon Act.*

(1) Where an employee seeks to challenge a SWA prevailing wage rate that is based on a wage determination issued under either the McNamara-O'Hara Service Contract Act (SCA) or the Davis-Bacon Act (DBA), the employer must either:

(i) Follow the procedures set forth at 29 CFR 4.56 and 29 CFR Part 8, subpart B, where the challenged rate is based on a wage determination issued under the SCA, or

(ii) Follow the procedures set forth at 29 CFR 1.8, 1.9, and 29 CFR Part 7, subpart B, where the challenged rate is based on a wage determination issued under the DBA.

(2) Limitations contained in the regulations as to who may seek review of a wage determination (e.g., 29 CFR 7.2(b)) or the timeliness of such review with regard to certain procurement actions (e.g., 29 CFR 8.6(b)) do not apply to the review of SWA prevailing wage under this paragraph (f).

Signed at Washington, DC, this 24th day of April, 2002.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[The following two forms will not appear in the Code of Federal Regulations.]

BILLING CODE 4510–30–P

U.S. Department of Labor
Employment and Training Administration

OMB Approval:
Expiration Date:

Application Instructions ETA Form 9088 - Prevailing Wage Determination

IMPORTANT: Please read these instructions carefully before completing Form ETA 9088 (Prevailing Wage Determination Request).

Electronic means (i.e. scanning technology) may be used to capture the information on these forms. To ensure the accuracy of readability and avoid rejections, it is preferred that the forms be completed using the ETA 9088 program available from the U.S. Department of Labor's web site at "http://ows.doleta.gov". If you hand-write the form, print legibly in ink using a medium to thick pen. Print only in CAPITAL LETTERS and avoid contact with the edge of the boxes. If you use a typewriter to complete the form, use a font equivalent to 12 - 14 pt. Center each letter in the box and use only CAPITAL LETTERS. Be sure to sign and date the form.

To knowingly and willingly furnish any false information in the preparation of Form ETA 9088 and/or any supporting documentation, or to aid, abet, or counsel another to do so is a federal offense, punishable by fine or imprisonment up to five years, or both (18 U.S.C. 1001). Other penalties apply as well to fraud or misuse of these documents and to perjury with respect to these forms (18 U.S.C. 1546 and 1621).

Supporting Documents

If either Collective Bargaining Agreement (CBA) or Employer Provided Survey are marked, the appropriate supporting document must be attached when the ETA Form 9088 is submitted. Without these documents the SWA will use OES to make the determination.

When submitting CBAs, please include a note indicting whether the relevant passages of the document are located. Highlighting the table of contents or tabbing the sections is also acceptable.

Employers seeking to utilize the Davis Bacon Act and the Service Contract Act wage determinations should include sufficient documentation to identify the determination relied upon.

Include a copy of all relevant pages for surveys used. Be sure the information includes job descriptions, wages, and the specific area covered by the wages. The information must also provide a description of the methodology used to determine the sample and average stated. Refer to 20 CFR 656.40(g) for the complete requirements.

OMB Notice

Paperwork Reduction Project 1205-0015

Persons are not required to respond to this collection of information unless it displays a current, valid OMB control number. Respondent's obligation to reply to these reporting requirements is mandatory (INA, Section 212 (a) (5) (A)). Public reporting burden for this collection of information is estimated to average 3/4 hour per response, which includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Employment and Training Administration at U.S. Department of Labor * Room C-4318 * 200 Constitution Avenue, NW * Washington, DC * 20210

Examples of how best to fill out Form ETA 9088

A. For optimum accuracy, please print in capital letters and avoid contact with the edge of the box.
The following will serve as an example:

A	B	C	D	E	F	G	H	I	J	K	L	M
N	O	P	Q	R	S	T	U	V	W	X	Y	Z

B. For optimum accuracy, please print carefully and avoid contact with the edges of the box. The following will serve as an example:

1	2	3	4	5	6	7	8	9	0

C. Shade Circles Like This--> ●

Not Like This-->

U.S. Department of Labor
Employment and Training Administration

OMB Approval:
Expiration Date:

Application Instructions ETA Form 9088 - Prevailing Wage Determination

Submission Information

Submit a completed Form ETA 9088 to the State Workforce Agency (SWA) with jurisdiction over the location where the job opportunity is offered. Addresses for the SWA's are available on-line at http://ows.doleta.gov.

Instructions for Section I
Employer's Information

1. **Wage Source Requested**: Enter the source of the wage information from which the employer is requesting a prevailing wage determination. Unless otherwise requested, the state will provide a prevailing wage based on the Occupational Employment Statistics Survey. If an alternative wage source is requested, such as employer provided survey, Service Contract Act, Davis-Bacon Act, or collective bargaining agreement, fill in the appropriate oval. Provide relevant supporting documentation.

2. **Full Legal Name of Employer**: Enter the full legal name of the business, firm, or organization, or, if an individual, enter the name used on legal documents. Some abbreviation may be required for long names.

3. **Federal Employer I.D. Number**: Enter the employer's nine-digit Federal Employer Identification Number (EIN) assigned by the Internal Revenue Service.

4. **Employer's Telephone Number**: Enter the employer's telephone number, area code first. If necessary, enter an extension in the space provided following the slash (/).

5. **Return Fax Number**: ***This question is optional.*** If the technology is available to return the application via facsimile transmission, and you would like the application returned via facsimile, enter the fax number, area code first, to which you want the SWA to send the final determination. This may be the fax number of a person or entity other than the employer (e.g., an attorney or agent). If you want the application mailed, leave the Return Fax Number blank.

6. **Contact/Attorney/Agent's Telephone Number**: ***This question is optional.*** Enter the contact/attorney/agent's telephone number, area code first. If necessary, enter an extension in the space provided following the slash (/). This question MUST be entered if Contact/Attorney/Agent's Name (question 8) is filled in.

7. **Employer's Address**: Enter the address of the employer's principle place of business.

8. **Contact/Attorney/Agent's Name**: Enter the full legal name.

9. **Correspondence Address**: ***This question is optional.*** Enter the address (if different from the Employer's Address initially entered) where correspondence should be sent.

10. **E-mail Address**: ***This question is optional.*** Enter the logon identity portion of the e-mail address on the first line. Enter the ISP provider portion of the e-mail address on the second line. Do not enter the @ symbol. Please note the following example: if an e-mail address is maeve@doleta.gov, the logon identity, maeve, would be entered on the first line while the ISP provider, doleta.gov, would be entered on the second line.

Instructions for Section II
Location of Work

1. **City and State**: Enter the city and state of the physical location where the work will actually be performed.

Instructions for Form ETA 9088 Continued On Next Page...

U.S. Department of Labor
Employment and Training Administration

OMB Approval:
Expiration Date:

Application Instructions ETA Form 9088 - Prevailing Wage Determination

PageLink

Enter a six-digit number. this is used to help keep all pages of your form together. It must be the same on all pages of ETA Form 9088. ***If you are completing the form using the program provided by DOL, the PageLink will be entered automatically. If you are completing this form manually, you must enter this number yourself.*** Please do not use numbers like 111111,222222, or 123456. An example of one way to generate a manual page link is to use the time (a combination of the hours, minutes, and seconds) the form is submitted. For example, a form completed and submitted at 1:55 PM would have a PageLink of 015513.

Instructions for Section III
Job Opportunity

1. **Job Title:** Self-Explanatory

2. **Education or Training:** Indicate the minimum diploma, degree, or training for worker to satisfactorily perform the job description.

3. **Field of Study**: Enter the field of study for the above training or education.

4. **Months of Training**: Enter the minimum number of months of training necessary for the worker to carry out the described duties.

5. **Months of Experience**: Enter the minimum number of months of experience necessary for the worker to carry out the described duties.

6. **Field of Experience**: Enter the type of experience necessary for the worker to carry out the described duties.

7. **Job Duties:** Describe the actual work to be performed. Step by step detail description of the duties (work tasks) which make up the job. Avoid technical terms as much as possible. If they must be used, define them. The description needs to include: equipment that will be used, level of supervision that will be provided, and the provision of tools and equipment. Example for Job Title Bookkeeper Supervisor: "Supervise bookkeepers. Ensure their work meets the company quality standards and that they are trained on all new software. Resolve any personnel issues that may arise.

8. **Specific Skills or Other Requirements:** Enter any job-related specific skill or additional requirements necessary to perform the job. If there is a specific minimum level for the skill, include it here. Examples of specific skills include: licenses or permits that are necessary, ability to type 40 words per minute, ability to lift 40 pounds, ability to live on premises, knowledge of a programming language (such as COBOL, C, Java, etc...), and certifications (such as CPR certified, MCSE certified, CPA certified, etc...)

State Agency Prevailing Wage Determination

Do not make any marks in this area, the appropriate State Workforce Agency (SWA) will complete this section.

Prevailing Wage Determination Request

ETA Form 9088
OMB Approval:
Expiration Date:

U.S. Department of Labor
Employment and Training Administration

I. Employer's Information

(1) Wage Source Requested:
*(see instructions for full details) Fill the **ONE** appropriate circle*

Employer	SCA	DBA	CBA
○	○	○	○

(2) Full Legal Name of Employer (use second line only if necessary, otherwise leave blank.)

(3) Federal Employer I.D. Number (9 digits) (EIN from IRS)

(4) Employer's Telephone Number

(5) Return FAX Number (Optional)

(6) Contact/Attorney/Agent's Telephone Number (Optional)

(7) Employer's Address

Number / Street (use second line only if necessary, otherwise leave blank.)

City State Postal Code

(8) Contact/Attorney/Agent's Name - Family name on the first line, Given name then initial on the second line.

(9) Correspondence Address (only use this area if correspondence should be sent to a location other than the Employer's address above.

Number / Street (use second line only when necessary, otherwise leave blank.)

City State Postal Code

(10) Contact/Attorney/Agent's E-mail Address (Optional)

@

II. Location of Work

City State

OMB Notice

Persons are not required to respond to this collection of information unless it displays a current, valid OMB control number. Respondent's obligation to reply to these reporting requirements is mandatory (INA, Section 212 (a) (5) (A)). Public reporting burden for this collection of information is estimated to average 3/4 hour per response, which includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Employment and Training Administration at U.S. Department of Labor * Room C-4318 * 200 Constitution Avenue, NW * Washington, DC * 20210.

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Prevailing Wage Determination Request

ETA Form 9088
OMB Approval:
Expiration Date:

U.S. Department of Labor
Employment and Training Administration

III. Job Opportunity

(1) Job Title

(2) Education or Training: Highest Level Required

Fill Only ONE Circle

○ None ○ High School ○ Technical ○ Vocational ○ Apprenticeship

○ Associate ○ Bachelor ○ Master ○ Doctorate

(3) Field of Study - Leave blank if None or High School

(4) Months of Training

Leave blank if None, High School, Associate, Bachelor, Master, or Doctorate was selected in Question 2.

(5) Months of Experience

(6) Field of Experience

(7) Job Duties

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***NOTE:* See OMB notice on page 1 of this form.**

Prevailing Wage Determination Request

ETA Form 9088
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U.S. Department of Labor
Employment and Training Administration

III Job Opportunity (Continued...)

(8) Specific Skills or Other Requirements

State Agency Prevailing Wage Determination

State Agency's Case/Tracking Number

Occupational Code

Level

Prevailing Wage

$. /

Year Month 2 Weeks Week Hour

Prevailing Wage Source

SCA DBA CBA OES Employer

Determination Date

M M / D D / Y Y Y Y

Expiration Date

M M / D D / Y Y Y Y

State Agency Endorsement

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***NOTE:* See OMB notice on page 1 of this form.**

U.S. Department of Labor
Employment and Training Administration

OMB Approval:
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Application Instructions ETA Form 9089
Application for Permanent Employment Certification

IMPORTANT: Please read these instructions carefully before completing Form ETA 9089 (Application for Permanent Labor Certification).

These instructions pertain only to applications for Permanent Labor Certification. They are not to be used when filing for Temporary Labor Certifications.

Electronic means (i.e. scanning technology) may be used to capture the information on these forms. To ensure the accuracy of readability and avoid rejections, it is preferred that the forms be completed using the ETA 9089 program available from the U.S. Department of Labor's web site at "http://ows.doleta.gov". If you hand-write the form, print legibly in ink using a medium to thick pen. Print only in CAPITAL LETTERS and avoid contact with the edge of the boxes. If you use a typewriter to complete the form, use a font equivalent to 12 - 14 pt. Center each letter in the box and use only CAPITAL LETTERS. Be sure to sign and date the form.

To knowingly and willingly furnish any false information in the preparation of Form ETA 9089 and/or any supporting documentation, or to aid, abet, or counsel another to do so is a federal offense, punishable by fine or imprisonment up to five years, or both (18 U.S.C. 1001). Other penalties apply as well to fraud or misuse of these documents and to perjury with respect to these forms (18 U.S.C. 1546 and 1621).

OMB Notice Paperwork Reduction Project 1205-0015

Persons are not required to respond to this collection of information unless it displays a current, valid OMB control number. Respondent's obligation to reply to these reporting requirements is mandatory (INA, Section 212 (a) (5) (A)). Public reporting burden for this collection of information is estimated to average 2 1/5 hour per response, which includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Employment and Training Administration at U.S. Department of Labor * Room C-4318 * 200 Constitution Avenue, NW * Washington, DC * 20210

Submission Information

Submit the completed Form ETA 9089 to an ETA Application Processing Center via mail at the following address: Department of Labor * P.O. Box 13640 * Philadelphia, PA * 19101.

Examples of how best to fill out Forms ETA 9098 and 9099

A. For optimum accuracy, please print in capital letters and avoid contact with the edge of the box.
The following will serve as an example:

A	B	C	D	E	F	G	H	I	J	K	L	M
N	O	P	Q	R	S	T	U	V	W	X	Y	Z

B. For optimum accuracy, please print carefully and avoid contact with the edges of the box. The following will serve as an example:

1	2	3	4	5	6	7	8	9	0

C. Shade Circles Like This--> ●
Not Like This-->

U.S. Department of Labor
Employment and Training Administration

OMB Approval:
Expiration Date:

Application Instructions ETA Form 9089
Application for Permanent Employment Certification

Instructions for Section I
Application Information

1. **Is application a conversion request?** If the application is submitted with the intent of converting a previous application with the same job title, job description, and job requirements to the new system select Yes. Otherwise, select No. **Note** - if Yes is selected, a copy of the previously submitted application and documentary proof of the associated priority date (i.e., official notification letter stating the receipt date) must be submitted as an attachment to the application.

Instructions for Section II
Employer's Information

1. **Full Legal Name of Employer**: Enter the full legal name of the business, firm, or organization, or, if an individual, enter the name used on legal documents. Some abbreviation may be required for long names.

2. **Federal Employer I.D. Number**: Enter the employer's nine-digit Federal Employer Identification Number (EIN) assigned by the Internal Revenue Service.

3. **Employer's Telephone Number**: Enter the employer's telephone number, area code first. If necessary, enter an extension in the space provided following the slash (/).

4. **Return Fax Number**: ***This question is optional.*** If the technology is available to return the application via facsimile transmission, and you would like the application returned via facsimile, enter the fax number, are code first, to which you want the SWA to send the final determination. This may be the fax number of a person or entity other than the employer (e.g., an attorney or agent). If you want the application mailed, leave the Return Fax Number blank.

5. **Contact/Attorney/Agent's Telephone Number**: ***This question is optional.*** Enter the contact/attorney/agent's telephone number, area code first. If necessary, enter an extension in the space provided following the slash (/). This question MUST be entered if Contact/Attorney/Agent's Name (question 8) is filled in.

6. **Employer's Address**: Enter the address of the employer's principle place of business.

7. **Contact/Attorney/Agent's Name**: ***This question is optional.*** Enter the full legal name of a contact.

8. **Correspondence Address**: ***This question is optional.*** Enter the address (if different from the Employer's Address initially entered) where correspondence should be sent.

9. **E-mail Address**: ***This question is optional.*** Enter the logon identity portion of the e-mail address on the first line. Enter the ISP provider portion of the e-mail address on the second line. Do not enter the @ symbol. Please note the following example: if an e-mail address is maeve@doleta.gov, the logon identity, maeve, would be entered on the first line while the ISP provider, doleta.gov, would be entered on the second line.

10. Select Yes or No.

Instructions for Section III
Wage Offer Information

1. **State Agency's Case/Tracking Number**: Enter the case/tracking number assigned by the SWA on the supporting ETA Form 9088.

2. **Offered Wage**: Enter the wage rate offered by the employer. Fill the one appropriate circle to indicate whether the offered wage is to be paid in terms of year, month, two-weeks, week, or hour.

Instructions for Form ETA 9089 Continued On Next Page...

U.S. Department of Labor
Employment and Training Administration

OMB Approval:
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Application Instructions ETA Form 9089
Application for Permanent Employment Certification

Instructions for Section III - Continued...
Wage Offer Information

3. Select Yes or NO.

4. Select Yes, NO, or N/A (not applicable). Use N/A if there are no commissions, bonuses, or other incentives included in the offered wage.

PageLink

Enter a six-digit number. this is used to help keep all pages of your form together. It must be the same on all pages of ETA Form 9088. ***If you are completing the form using the program provided by DOL, the PageLink will be entered automatically. If you are completing this form manually, you must enter this number yourself.*** Please do not use numbers like 111111,222222, or 123456. An example of one way to generate a manual page link is to use the time (a combination of the hours, minutes, and seconds) the form is submitted. For example, a form completed and submitted at 1:55 PM would have a PageLink of 015513.

Instructions for Section IV
Recruitment Efforts Information

1. **Occupation Identification:** Select the statement for the required recruiting efforts. See 20 CFR 656.17 and 656.18 for details.

   * If the Occupation Type is Special Recruitment (e.g., College and University instructional position), you need only complete questions 8 to 13 on this page of the application.
   * If the Occupation Type is Non-professional, you must complete questions 2 to 6 and questions 8 to 13 on this page of the application. You do not need to complete question 7.
   * If the Occupation Type is Professional, you must complete all questions on this page of the application.

2. **Start date for the job order in America's Job Bank:** The begin date for the position as listed in America's Job Bank

3. **Newspaper of General Circulation:** The name of the newspaper the help wanted advertisement was circulated in.

4. Enter the date the advertisement was run in the newspaper or professional journal identified in Question 3.

5. Enter the date the advertisement was run in the newspaper of general circulation identified in Question 6.

6. **Newspaper or Professional Journal:** The name of the newspaper or professional journal in which the second help wanted advertisement was circulated.

7. Enter the dates for at least three of the recruiting efforts listed. Use for professional occupations only.

8. Select the appropriate notice statement.

9. **How many U.S. workers:** Enter the number of U.S. workers that applied for the position

10. Select Yes, No, or N/A (not applicable). If no layoffs occurred, use N/A.

11. Select Yes, No, or N/A (not applicable). If no U.S. workers applied, use N/A.

12. Select Yes or No.

13. Select Yes or No.

Instructions for Form ETA 9089 Continued On Next Page...

U.S. Department of Labor
Employment and Training Administration

OMB Approval:
Expiration Date:

Application Instructions ETA Form 9089
Application for Permanent Employment Certification

Instructions for Section V
Designation of Agent/Attorney

1. **Name of Agent or Attorney:** The full name of the agent or attorney. Enter the family (last) name on the first line and the given (first) name and initial on the second line.

2. **Agent's/Attorney's Telephone Number**: A ten-digit telephone number (include the area code). If applicable, use the 4 digits after the slash for the extension.

3. **Agent's/Attorney's Address**: Self-explanatory

4. **E-mail Address**: ***This question is optional.*** Enter the logon identity portion of the e-mail address on the first line. Enter the ISP provider portion of the e-mail address on the second line. Do not enter the @ symbol. Please note the following example: if an e-mail address is maeve@doleta.gov, the logon identity, maeve, would be entered on the first line while the ISP provider, doleta.gov, would be entered on the second line.

5. **Agent's/Attorney's Signature:** The signature of the agent/attorney that is representing the employer. The date the agent's/attorney's signature was affixed to the application should be entered in the space provided. The date should be entered in an MM/DD/YYYY format.

6. **Employer's Signature:** The signature of the employer authorizing the agent/attorney. The date the employer's signature was affixed to the application should be entered in the space provided. The date should be entered in an MM/DD/YYYY format.

Instructions for Section VI
Alien's Information

1. **Full Legal Name of Alien**: The full legal name of the alien for whom the Permanent application is applied.

2. **Country of Alien's Birth**: Enter the country where the alien was born.

3. **Alien's Current Address:** Enter the address where the alien currently resides. If the address is outside the U.S., use the country line.

4. **Current Visa**: Enter the current visa type held by the alien.

5. **Education**: Indicate the highest diploma or degree held by the alien.

6. **Year Obtained**: Enter the year the highest diploma or degree held by the alien was received.

7. **School Where Obtained**: Enter the name of the school at which the field of study was conducted.

8. **Field of Study or Training**: Enter the field of study for the education/training above.

9. **Months of Study or Training**: Enter the number of months of training completed by the alien. Leave this blank if none, high school, associate, bachelor, master, or doctorate was selected for Question 5.

10. **Months of Experience**: If applicable, enter the number of months experience held by the alien in the field of experience identified in Question 11.

11. **Field of Experience:** Enter the alien's field of experience.

12. Select Yes or NO.

13. Select Yes or NO.

Instructions for Form ETA 9089 Continued On Next Page...

U.S. Department of Labor
Employment and Training Administration

OMB Approval:
Expiration Date:

Application Instructions ETA Form 9089
Application for Permanent Employment Certification

Instructions for Section VI - Continued...
Alien's Information

14. Select Yes or NO. If Yes, enter the date the alien started working for the employer in the space provided.

15. Select Yes, NO, or N/A (not applicable). Use N/A if the position is NOT a household service worker.

Instructions for Section VII
Job Opportunity Information

1. ***Foreign Education Equivalent Acceptable:*** Select Yes or No indicating whether a foreign education equivalent is acceptable.

2. Select Yes or No.

3. Select Yes or NO.

4. Select Yes or NO. If Yes is selected, answer Question 5. Otherwise go straight to Question 6.

5. Select Yes or NO. Only answer this question if Question 4 is answered Yes.

6. Select Yes or No.

7. Select Yes or No.

8. Select Yes or No.

9. Select Yes or No.

Instructions for Section VIII
Declaration of Employer

1. **Name of Hiring of Other Designated Official**: The full legal name of the hiring or authorized official.

2. **Title of Hiring or Other Designated Official**: The title of the hiring or authorized official.

3. **Signature**: The signature of the hiring or authorized official. The date the hiring or authorized official's signature was affixed to the application should be entered in the space provided. The date should be entered in an MM/DD/YYYY format.

For U.S. Government Agency Use Only

Do not make any marks in this area.

Application for Permanent Employment Certification

U.S. Department of Labor
Employment and Training Administration

ETA Form 9089
OMB Approval:
Expiration Date:

I. Application Information

Is this application a conversion request from a previous SWA/DOL Case? ◯ Yes ◯ No

If Yes, attach a copy of the previously submitted application and documentary proof of the associated Priority Date.

II. Employer's Information

(1) Full Legal Name of Employer (use second line only when necessary, otherwise leave it blank.)

(2) Federal Employer I.D. Number (9 digits) (EIN from IRS) -

(3) Employer's Telephone Number - /

(4) Return FAX Number (Optional) -

(5) Contact/Attorney/Agent's Telephone Number (Optional) - /

(6) Employer's Address
Number/Street (use second line only when needed, otherwise leave it blank.)

City State Postal Code

(7) Contact/Attorney/Agent's Name - Optional/Family name on the first line, Given name then initial on the second line.

(8) Correspondence Address - Optional/Only use if correspondence should be sent to a location other than the Employer's or Agent's/Attorney's address.
Number / Street (use second line only when needed, otherwise leave it blank.)

City State Postal Code

(9) Contact/Attorney/Agent's E-mail Address (Optional)

@

(10) Yes ◯ No ◯ Is the employer a closely held corporation or a partnership in which the alien has an ownership interest, or is there a familial relationship between the stockholders, partners, corporate officers, incorporators, and the alien?

III. Wage Offer Information

NOTE- if the offered wage is less than the Prevailing Wage (from the supporting ETA-9088), this application will be denied.

(1) State Agency's Case/Tracking Number

(2) Offered Wage $. **PER** ◯ Hour ◯ Month ◯ Week ◯ Year ◯ Bi-Weekly

Fill the ***one*** appropriate circle for each of thefollowing:

	Yes	No	N/A	
(3)	◯	◯		Do you promise to pay the alien the prevailing wage?
(4)	◯	◯	◯	If the offered wage is based upon commissions, bonuses, or other incentives, do you guarantee to pay the offered wage on a weekly, bi-weekly, or monthly basis?

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***NOTE:* See OMB notice on page 3 of this form.**

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Application for Permanent Employment Certification

U.S. Department of Labor
Employment and Training Administration

ETA Form 9089
OMB Approval:
Expiration Date:

IV. Recruitment Efforts Information

(1) Occupation Identification

○ The application is for an occupation which has been identified for **special recruitment processes**.

○ This application is for **non-professional occupations** (those for which a Bachelor's Degree or higher is not normally required) for which, in the 6-month period preceding the filing of the application, the Employer has placed a job order with SWA; two advertisements in the Sunday edition of a newspaper of general circulation in two different months.

○ This application is for **professional occupations** (those for which at least a Bachelor's Degree is normally required) for which the employer has taken the following additional recruitment steps in the 6-month period preceding the filing of the application: a job order placed with SWA; two advertisements in the Sunday edition of a newspaper of general circulation in two different months OR an advertisement in an appropriate professional Journal; at least three of the below.

* If the Occupation Type is Special Recruitment, you need only complete questions 8 to 13 on this page of the application.
* If the Occupation Type is Non-professional, you must complete questions 2 to 6 and questions 8 to 13 on this page of the application. You do not need to complete question 7.
* If the Occupation Type is Professional, you must complete all questions on this page of the application.

(2) Start date for the job order with SWA M M / D D / Y Y Y Y End date for the job order with SWA M M / D D / Y Y Y Y

(3) Name of Newspaper of General Circulation Advertisement Placed With

(4) Date of advertisement identified in Question 3 / /

(5) Date of advertisement identified in Question 6 / /

(6) Name of Newspaper or Professional Journal Advertisement Placed With

(7) For Professional Occupations ONLY, fill in the date, using MM/DD/YYYY format, the job opportunity was advertised through three of the advertising mediums listed below:

Job Fair	/ /	On Campus Recuiting	/ /
Own Web Site Posting	/ /	Trade or Professional Organization	/ /
Job Search Web Site	/ /	Private Employment Firm	/ /

(8) Which of the following is true:

○ There is no bargaining representative, therefore, a notice of this filing has been posted for 10 days in a conspicuous location at the place of employment.

○ Notice of this filing has been provided to the bargaining representative of workers in the occupation in which the alien beneficiary will be

(9) How many U.S. workers applied for the job?

Fill the one appropriate circle for each of the following:

	Yes	No	N/A	
(10)	○	○	○	If a layoff occurred within 6 months immediately preceding the filing of the application, were the U.S workers who performed the majority of the essential duties involved in the job opportunity, who were able, willing, qualified and available for work, offered the job?
(11)	○	○	○	If U.S. workers applied for the job opportunity, were they rejected for lawful, job related reasons?
(12)	○	○		On the date the application was signed or submitted was there a strike, lockout, or work stoppage in the course of a labor dispute in the occupation in which the alien beneficiary would be employed at the place of employment?
(13)	○	○		Has the job opportunity been and is still clearly open to any qualified U.S. worker?

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***NOTE:* See OMB notice on page 3 of this form.**

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Application for Permanent Employment Certification

U.S. Department of Labor
Employment and Training Administration

ETA Form 9089
OMB Approval:
Expiration Date:

V. Designation of Agent/Attorney

(1) Name of Agent or Attorney (Family name on the first line, Given name then initial on the second line)

(2) Agent's/Attorney's Telephone Number

(3) Agent's/Attorney's Address
Number / Street (use second line only if necessary, otherwise leave blank.)

City | State | Postal Code

(4) E-mail Address (Optional)

@

I hereby agree to act as the agent/attorney for the applicant listed on page 1 of this application.

(5) Agent's/Attorney's Signature -- DO NOT let signature extend beyond the box.

Date Signed: M M / D D / Y Y Y Y

I hereby designate the above as my agent/attorney.

(6) Employer's Signature -- DO NOT let signature extend beyond the box.

Date Signed: M M / D D / Y Y Y Y

OMB Notice

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondents obligation to reply to these reporting requirements are mandatory (INA Act, Section 212 (a) (5) (A)). Public reporting burden for this collection of information is estimated to average 2 1/5 hour per response, which includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the following address:

Employment and Training Administration, Department of Labor, Room C-4318, 200 Constitution Avenue, NW., Washington, DC 20210. (Paperwork Reduction Project 1205-0015).

DO NOT SEND THE COMPLETED FORM TO THIS OFFICE.

Application for Permanent Employment Certification

U.S. Department of Labor
Employment and Training Administration

ETA Form 9089
OMB Approval:
Expiration Date:

VI. Alien's Information

(1) Full Legal Name of Alien - Optional/Family name on the first line, Given name then initial on the second line.

(2) Country of Alien's birth

(3) Alien's Current Address

Number/Street (use second line only when needed, otherwise leave it blank.)

City | State | Postal Code

Country (Leave blank if in the United States)

(4) Current Visa (If Applicable)

(5) Education or Training: Highest Level Achieved

Fill Only ONE Circle

○ None ○ High School ○ Associate
○ Bachelor ○ Master ○ Doctorate
○ Technical ○ Vocational ○ Apprenticeship

(6) Year Obtained

(7) School Where Obtained

(8) Field of Study or Training - If None or High School leave blank.

(9) Months of Study or Training

Leave blank if None, High School, Associate, Bachelor, Master, or Doctorate was selected in Question 2.

(10) Months of Experience

(11) Field of Experience

Fill the one appropriate circle for each of the following:

	Yes	No	
(12)	○	○	Did the alien beneficiary gain any of the qualifying experience with the employer?
(13)	○	○	Did the employer pay for any of the alien's education or training necessary to satisfy any of the employer's job requirements?
(14)	○	○	Is the alien currently employed by the petitioning employer? If so, please note the start date in the box to the right. → Start Date M M / D D / Y Y Y Y

	Yes	No	N/A	
(15)	○	○	○	If the application is for a live-in household domestic service worker, have the employer and alien executed the required employment contract, and has the employer provided a copy to the alien?

PageLink

PageLink must be the same on all five (5) pages, including the last page

Draft

NOTE: **See OMB notice on page 3 of this form.**

Application for Permanent Employment Certification

U.S. Department of Labor
Employment and Training Administration

ETA Form 9089
OMB Approval:
Expiration Date:

VII. Job Opportunity Information

The specifics of the job opportunity are exactly the same as the Prevailing Wage Determination (ETA Form 9088) used to support this application. The State Agency Tracking number is required in the Wage Offer Section. That Prevailing Wage Determination becomes a part of this application.

Fill the one appropriate circle for each of the following:

	Yes	No	
(1)	◯	◯	Is a foreign educational equivalent acceptable?
(2)	◯	◯	Does the job require the employee to live on the employer's premises?
(3)	◯	◯	Does the job require split-shifts?
(4)	◯	◯	Does your job offer contain any requirements other than those relating to the number of months or years of experience in the occupation or alternative job, or the number of months or years of education or training required?

If YES to Number 4, answer question 5. Otherwise go straight to question 6.

	Yes	No	
(5)	◯	◯	Did you employ a U.S. worker to perform the job opportunity with the same combination of experience, education, skills, abilities, and special requirements as presently required within 2 years of filing the application?
	◯	◯	Is the combination of required experience, education, skills, abilities and special requirements normal to the occupation?
(6)	◯	◯	Is the job offer for full-time, year-round employment?
(7)	◯	◯	Is knowledge of a foreign language required to perform the job duties?
(8)	◯	◯	Does the job opportunity involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship?
(9)	◯	◯	Are the job opportunity's terms, conditions and occupational environment contrary to Federal, State or local law?

To knowingly and willingly furnish any false information in the preparation of Forms ETA 9098 and 9099 and/or any supporting documentation, or to aid, abet, or counsel another to do so is a federal offense, punishable by fine or imprisonment up to fiver years, or both (18 U.S.C. 1001). Other penalties apply as well to fraud or misuse of these documents and to perjury with respect to these forms (18 U.S.C. 1546 and 1621).

VIII. Declaration Of Employer

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury the foregoing is true and correct.

(1) Name of Hiring or Other Designated Official - Optional/Family name on the first line, Given name then initial on the second line.

(2) Title of Hiring or Other Designated Official

(3)

Signature – DO NOT let signature extend beyond the box.

Date Signed: M M / D D / Y Y Y Y

FOR U.S. GOVERNMENT AGENCY USE ONLY:

Certification Stamp

U.S. Department of Labor Case No.

Dateof Certification

Date of Receipt by U.S. Department of Labor

PageLink

PageLink must be the same on all five (5) pages, including this page

Page - 5 of 5

***NOTE:* See OMB notice on page 3 of this form.**

Draft

[FR Doc. 02–10570 Filed 5–3–02; 8:45 am]

BILLING CODE 4510–30–C

Federal Register

Monday,
May 6, 2002

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 63, and 65 Relief for Participants in Operation Enduring Freedom; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, and 65

[Docket No. FAA–2002–12199; Special Federal Aviation Regulation No. 96]

RIN 2120–AH58

Relief for Participants in Operation Enduring Freedom

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a Special Federal Aviation Regulation (SFAR) that allows Flight Standards District Offices (FSDO) to accept expired flight instructor certificates and inspection authorizations for renewals from civilian and military personnel who serve in Operation Enduring Freedom. Additionally, this SFAR allows FSDOs to accept expired airman written test reports from civilian and military personnel who serve in Operation Enduring Freedom. This action is necessary to avoid penalizing airmen who are unable to meet the regulatory time limits of their flight instructor certificate, inspection authorization, or airmen written test report solely because of their service in Operation Enduring Freedom. The effect of this action is to give these airmen extra time to meet certain eligibility requirements in the current rules.

DATES: This SFAR is effective May 6, 2002. We must receive comments on or before June 5, 2002. This SFAR expires May 6, 2004.

ADDRESSES: Mail your comments to the Public Docket Office, Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590–0001. Or, send your comments through the Internet to *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: John Lynch, Certification Branch, AFS–840, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3844.

SUPPLEMENTARY INFORMATION:

Your Comments Are Welcome

Under 14 CFR part 11, the FAA may issue a final rule with request for comments, which is a rule issued in final (with an effective date) that invites public comment on the rule. Although this action is a final rule and was not preceded by a notice of proposed rulemaking we invite your comments on this SFAR. The most useful comments are those that are specific and related to issues raised by the SFAR, and that explain the reason for any recommended change. We specifically invite comments on the economic, environmental, energy, federalism, international trade, energy, and overall regulatory aspects of the SFAR that might suggest a need to modify it. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

To ensure consideration, you must identify the Rules Docket number in your comments, and you must submit comments to one of the addresses specified under the **ADDRESSES** section of this preamble. We will consider all communications received on or before the closing date for comments, and we may amend or withdraw this SFAR in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. We will file in the Rules Docket a report that summarizes each public contact related to the substance of this rule.

You may review the public docket containing comments on this SFAR in person in the Docket Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the address specified in the **ADDRESSES** section. Also, you may review the public docket on the Internet at *http://dms.dot.gov.*

If you want us to acknowledge receipt of your comments submitted in response to this rule, you must include with your comments a self-addressed, stamped postcard on which you identify the Rules Docket number of this rulemaking. We will date stamp the postcard and return it to you.

Availability of Rulemaking Documents

You can get an electronic copy of this SFAR using the Internet through FAA's Web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or through the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can get a paper copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity. If your organization is a small entity and you have a question, contact your local FAA official. If you don't know how to contact your local FAA official, you may contact the FAA Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, telephone (888) 551–1594. Internet users can find additional information on SBREFA in the FAA's Web page at *http://www.faa.gov/avr/arm/sbrefa.html.* You may send inquiries to the following Internet address: *9–AWA–SBREFA@faa.gov.*

Background

As a result of the events of September 11, 2001, many U.S. military and civilian personnel are serving and will serve in Operation Enduring Freedom. Some of these personnel are serving or will serve in locations outside the United States. Due to the length of these assignments, flight instructor certificates, inspection authorizations, and airman written test reports held by these individuals may expire before they return home. If so, these individuals would then have to undergo the process of reestablishing their qualifications. The FAA believes that it would be unfair to penalize in this way the men and women who are serving their country in Operation Enduring Freedom.

The FAA has recently taken similar action in response to the terrorist acts of September 11. On October 12, 2001, we issued a final rule that extends the time allowed for 14 CFR part 121 and part 135 check airmen (simulator), part 121 and part 135 flight instructors (simulator), part 121 aircraft dispatchers, and part 142 training center instructors, to meet certain qualification requirements, in-flight line observation programs, or operating familiarization as part of their periodic qualifications (*See* 66 FR 52278).

The purpose of this SFAR is to respond to the needs of civilian and military personnel who are serving overseas in support of Operation Enduring Freedom. Most of these

airmen will be located at military bases that are away from their normal training or work environment. There will be no FAA aviation safety inspectors, designed examiners, or FAA facilities readily available in the areas where these airmen are assigned. The FAA has determined that we should provide relief to those people who are unable to comply with the regulatory time constraints of their flight instructor certificate, inspection authorization, or airman written test report as a result of their assignment in support of Operation Enduring Freedom. Under similar circumstances in the past, the FAA has taken similar action. During Operation Desert Shield/Desert Storm, the FAA issued SFAR No. 63 for this same purpose (*See* FR 27160, June 12, 1991).

As described below, the SFAR we are adopting today is narrowly focused on providing a reasonable amount of regulatory relief to a specific class of individuals while avoiding, to the extent possible and foreseeable, unintended adverse impacts on safety. For example, although the SFAR gives additional time for renewing a flight instructor certificate, the person will still have to meet the proficiency or experience requirements of 14 CFR 61.197.

Who Is Affected by This SFAR?

To be eligible for the relief provided by this SFAR, a person must meet two criteria, one relating to the person's assignment and one to the expiration of the person's certificate, authorization, or test report.

Assignment

The person must have served in a civilian or military capacity in support of Operation Enduring Freedom outside the United States some time between September 11, 2001 and May 6, 2004. The term ''United States'' is defined under 14 CFR 1.1 and means ''the States, the District of Columbia, Puerto Rico, and the possessions, including the territorial waters and the airspace of those areas.'' The person must be able to show that he or she had the assignment by providing certain kinds of documents (described below).

Expiration

The person's flight instructor certificate, inspection authorization, or airman written test report must have expired some time between September 11, 2001 and 6 calendar months after returning to the United States, or by May 6, 2004.

Renewing a Flight Instructor Certificate

The FAA regulations governing flight instructor certificates provide that they expire 24 calendar months after the month of issuance. The regulations also provide that a flight instructor may renew his or her certificate before it expires, but if it expires, the flight instructor must get a new certificate. If you are interested in the details of how to get or renew a flight instructor certificate, please see 14 CFR 61.197 and 199.

This SFAR changes the existing regulations for a certain class of individuals by allowing FAA Flight Standards District Offices to accept for a limited amount of time an *expired* flight instructor certificate for the purpose of renewing the certificate. Therefore, a person who can show the kind of evidence required by this SFAR (described below) could apply for renewal of a flight instructor certificate under 14 CFR 61.197. A person must not exercise the privileges of a flight instructor certificate if it has expired, but the person can renew the flight instructor certificate under the limited circumstances described in this SFAR.

Airman Written Test Reports of Parts 61, 63, and 65

Generally, FAA regulations give airmen a limited amount of time to take a practical test after passing a knowledge test. For example, 14 CFR 61.39(a)(1) gives a person 24 calendar months. This SFAR permits an extension of the expiration date of the airman written test reports of parts 61, 63, and 65. The extension can be for up to 6 calendar months after returning to the United States or May 6, 2004 whichever date is earlier.

Renewing an Inspection Authorization

Under 14 CFR 65.92, an inspection authorization expires on March 31 of each year. Under 14 CFR 65.93, a person can renew an inspection authorization for an additional 12 calendar months by presenting certain evidence to the FAA during the month of March. This SFAR changes the existing regulations for individuals eligible under this SFAR by allowing FAA Flight Standards District Offices to accept for a limit amount of time an expired inspection authorization for the purpose of renewing the authorization. Therefore, a person who can show the kind of evidence required by this SFAR (described below) can apply for renewal of an inspection authorization under 14 CFR 65.93. If an inspection authorization expires while a person is assigned to Operation Enduring Freedom, the person must not exercise the privileges of the authorization until that person renews the authorization. In this case, to meet the renewal requirements the person must attend a refresher course [*See* § 65.93(a)(4)] or submit to an oral test [*See* § 65.93(a)(5)] within 6 months after returning from Operation enduring Freedom.

Evidence of Participation in Operation Enduring Freedom

Under this SFAR, a person must show one of the following kinds of evidence to establish that the person is eligible for the relief provided by this SFAR:

1. An official U.S. Government notification of personnel action, or equivalent document, showing the person was a civilian on official duty for the U.S. Government in support of Operation Enduring Freedom outside the United States some time between September 11, 2001, and May 6, 2004;
2. Military orders showing the person was assigned to duty outside the United States in support of Operation Enduring Freedom some time between September 11, 2001, and May 6, 2004; or
3. A letter from the person's unit commander or supervisor providing the dates during which the person served outside the United States in support of Operation Enduring Freedom some time between September 11, 2001, and May 6, 2004.

Justification for Final Rule With Request for Comments

Under the Administrative Procedure Act, 5 U.S.C. 553, agencies generally must publish regulations for public comment and give the public at least 30 days notice before adopting regulations. There is an exception to these requirement if the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. When we invoke the ''good cause'' exception, we have to publish a statement of our finding and the reasons for it.

Under our regulations at 14 CFR part 11, we are issuing this SFAR as a final rule with request for comment. We have determined that issuing a notice of proposed rulemaking (NPRM) is unnecessary. An NPRM is unnecessary because we don't anticipate any substantive comments. When we issued SFAR No. 63 for Operation Desert Shield/Desert Storm, we received only two comments, both of which were favorable (*See* 56 FR 27160, June 12, 1991). We will consider any comments that we receive on or before the closing date for comments, and we may amend or withdraw this SFAR in light of the comments we receive. We also find

good cause to make this SFAR effective immediately upon publication. To make this SFAR effective 30 days after publication in the **Federal Register** would be contrary to the public interest. A delayed effective date could adversely affect the ability of airmen to get renewals in a timely fashion.

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 relate to this SFAR.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), the FAA has determined that there are no new requirements for information collection associated with this SFAR.

Economic Evaluation

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review, directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more, in any one year (adjusted for inflation).

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the regulation doesn't warrant a full evaluation, a statement to the effect and the basis for it is included in the preamble. The FAA has determined that the expected economic impact of this SFAR is so minimal that it doesn't warrant a full regulatory evaluation. This action imposes no costs on operators subject to this rule; however, it does provide some unquantifiable benefits to some who would avoid the costs of having to reestablish expired credentials. Since benefits exceed costs, the FAA has determined that this SFAR is consistent with the objectives of Executive Order 12866.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

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

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

This action imposes no costs on any small entities subject to this rule; however, it does provide some unquantifiable benefits to some of them. consequently, the FAA certifies that the rule won't have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, aren't considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule to be minimal and therefore has determined that this rule won't result in an impact on international trade by companies doing business in or with the United States.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 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 UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed for 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 doesn't contain such a mandate. Therefore, the requirements of Title II of UMRA don't apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action won't have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule doesn't have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j) this rulemaking action qualifies for a categorical exclusion.

Energy Impact

We have assessed the energy impact of this SFAR in accord with the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, as amended (42 U.S.C. 6362), and FAA Order 1053.1. We have determined that this SFAR isn't a major

regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 61

Aircraft, Aircraft pilots, Airmen, Airplanes, Air safety, Air transportation, Aviation safety, Balloons, Helicopters, Rotorcraft, Students.

14 CFR Part 63

Air safety, Air transportation, Airman, Aviation safety, Safety, Transportation.

14 CFR Part 65

Airman, Aviation safety, Air transportation, Aircraft.

The Rule

In consideration of the foregoing, the Federal Aviation Administration amends parts 61, 63, and 65 of Title 14 of the Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTIONS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

2. Add Special Federal Aviation Regulation (SFAR) No. 96 to read as follows:

SFAR No. 96—Relief for Participants in Operation Enduring Freedom

1. *Applicability.* Flight Standards District Offices are authorized to accept from an eligible person, as described in paragraph 2 of this SFAR, the following:

(a) An expired flight instructor certificate to show eligibility for renewal of a flight instructor certificate under § 61.197, or an expired written test report to show eligibility under part 61 to take a practical test;

(b) An expired written test report to show eligibility under §§ 63.33 and 63.57 to take a practical test; and

(c) An expired written test report to show eligibility to take a practical test required under part 65 or an expired authorization to show eligibility for renewal under § 65.93.

2. *Eligibility.* A person is eligible for the relief described in paragraph 1 of this SFAR if:

(a) The person served in a civilian or military capacity in support of Operation Enduring Freedom outside the United States during some period of time from September, 11, 2001, to May 6, 2004;

(b) The person's flight instructor certificate, airman written test report, or inspection authorization expired some time between September 11, 2001, and 6 calendar months after returning to the United States, or May 6, 2004, whichever is earlier; and

(c) The person complies with § 61.197 or § 65.93 of this chapter, as appropriate, or completes the appropriate practical test within 6 calendar months after returning to the United States, or May 6, 2004, whichever is earlier.

3. *Required documents.* The person must present in person the Airman Certificate and/or Rating Application (FAA Form 8710–1) to the appropriate Flight Standards District Office. The person must include with the application one of the following documents, which must show the date of assignment outside the United States and the date of return to the United States.

(a) An official U.S. Government notification of personnel action, or equivalent document, showing the person was a civilian on official duty for the U.S. Government in support of Operation Enduring Freedom outside the United States some time between September 11, 2001, and May 6, 2004;

(6) Military orders showing the person was assigned to duty outside the United States in support of Operation Enduring Freedom some time between September 11, 2001, and May 6, 2004;

(c) A letter from the person's unit commander or supervisor providing the dates during which the person served outside the United States in support of Operation Enduring Freedom some time between September 11, 2001, and May 6, 2004.

4. *Expiration date.* This Special Federal Aviation Regulation No. 96 expires May 6, 2004, unless sooner superseded or rescinded.

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

3. The authority citation for part 63 continues to read as follow:

Authority: 49 U.S.C. app. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

4. Add Special Federal Aviation Regulation (SFAR) No. 96 by reference as follows:

Special Federal Aviation Regulations

* * * * *

Special Federal Aviation Regulation No. 96—Relief for Participants in Operation Enduring Freedom

PART 65—CERTIFICATION: AIRMAN OTHER THAN FLIGHT

5. The authority citation for part 65 continues to read as follows;

Authority: 49 U.S.C. 106(g) 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

6. Add Special Federal Aviation Regulation (SFAR) No. 96 by reference as follows:

Special Federal Aviation Regulation No. 96—Relief for Participants in Operation Enduring Freedom

Issued in Washington, DC, on April 29, 2002.

Jane F. Garvey,

Administrator.

[FR Doc. 02–10944 Filed 5–3–02; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Monday,
May 6, 2002

Part VII

Department of Education

National Institute on Disability and Rehabilitation Research; Notice of Proposed Priority

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Proposed Priority

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes funding a priority on Disability in Rural Communities under the Rehabilitation Research and Training Center (RRTC) Program for the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years (FY) 2002–2004. The Assistant Secretary takes this action to focus research attention on an identified national need. We intend this priority to improve the rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 5, 2002.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov*

You must include the term *Disability in Rural Communities* in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov*

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing the regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed priority in room 3412, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does*not* preclude us from proposing or funding an additional priority, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational.

The proposed priority refers to President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The proposed priority also refers to NIDRR's Long-Range Plan (the Plan). The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Description of the Rehabilitation Research and Training Centers (RRTC) Program.

The RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge, to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disabling conditions, or promote maximum social and economic independence for persons with disabilities. RRTCs operate in collaboration with institutions of higher education or providers of rehabilitation or other appropriate services. Additional information on the RRTC program can be found at: *http://www.ed.gov/offices/OSERS/NIDRR/Programs/res_program.html#RRTC.*

General Requirements

The RRTC must:

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers for national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Priority

Background

Individuals living in rural areas experience a disproportionately higher rate of disability compared to individuals living in metropolitan areas (National Health Interview Survey, Washington, DC: Department of Health and Human Services, 1992). In addition to the high rate of disability in rural America, individuals with disabilities residing in these areas are impacted by other salient and challenging issues such as employment, economic and community development, and health-related concerns.

Rural areas continue to lag behind urban areas in economic and community development, including employment opportunities, (Johnson S., *Focusing on Differences: A New Approach for Rural Policy? The Main Street Economist,* Center for the Study of Rural America, Federal Reserve Bank of Kansas City, July 2001). Job opportunities and economic development are inextricably associated with economic policy initiatives. Historically, rural policy and economic development endeavors have been more attentive to specific economic sectors such as agriculture and manufacturing and have not adequately addressed attention to community and individual needs (Johnson, 2001).

Research will help in understanding the impact of rural policy and economic

development initiatives on systems providing services for individuals with disabilities and their influence on employment outcomes for individuals with disabilities. Further, research can assist with development and examination of effective policies and strategies for addressing existing and emerging problems in rural populations.

Emerging disabilities and health-related issues, such as secondary conditions, are a critical challenge for rural healthcare providers and individuals with disabilities living in rural communities. There have only been limited studies to address the unique needs of individuals with disabilities within a wellness and health promotion context.

Traditionally, individuals with disabilities are viewed from an illness perspective. More specifically, the medical model orientation to disability has led to an inadequate emphasis on health promotion and disease prevention activities, as well as contributed to the frequency to which secondary conditions are experienced by persons with primary disabilities living in rural areas (U.S. Department of Health and Human Services, *Healthy People 2010: With Understanding and Improving Health and Objectives,* 2nd ed, Washington, DC: U.S. Government Printing Office, Nov. 2000; *http://www.health.gov/healthypeople).*

Research will help to illuminate the impact of inadequate health promotion and prevention activities on the health status of individuals with disabilities, including secondary disabling conditions. Further, research will assist with identifying effective intervention strategies for improving health outcomes, and enhance understanding of the healthcare needs of individuals with disabilities in rural communities, secondary conditions, and the needs of healthcare providers.

While healthcare issues present critical challenges, transportation issues also have adverse consequences for individuals with disabilities and service providers in rural communities. Participation in the community is often limited for individuals with disabilities in rural communities because transportation services are either not available or inadequate to meet community needs. Current research cites insufficient transportation as one of the more serious problems for individuals with disabilities living in rural areas (O'Day B., *Issues in Rural Independence: Revisited,* Independent Living Research Utilization at TIRR, 2001; *http://www.ilru.org/ilnet/files/bookshelf/rural/revisited).*

The President's New Freedom Initiative (NFI) also cites the lack of adequate transportation as a primary barrier for individuals with disabilities. The NFI identifies the need to test new transportation ideas and to increase access to alternate means of transportation, such as vans with specialty lifts, modified automobiles, and ride-share programs for those who cannot access buses or other forms of mass transportation (The President's New Freedom Initiative, 2001) *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

In conclusion, individuals with disabilities living in rural areas face a unique challenge, that impact their lives as a result of living in these communities. To address these challenges and find viable solutions, NIDRR is interested in research activities that include individuals with disabilities, particularly as researchers. Inclusion of individuals with disabilities provides the opportunity for consumers to influence research direction and policy. Participatory research has the potential of enhancing the relevance and applicability of research results, particularly, when individuals with disabilities are participants at every stage of the research process (Olkin R., *What Psychotherapists Should Know About Disability,* Guilford, 1999), including planning, development, and evaluation of research activities, and especially when the role of consumers is not limited to the role of research subject.

Proposed Priority

The Assistant Secretary proposes to establish an RRTC on Disability in Rural Communities. The purpose of the absolute priority is to generate new knowledge through research and development activities that improves the effectiveness of rehabilitation services. The RRTC project must propose research and development activities that are focused on each of the three areas of inquiry: (1) Rural Employment, and Community and Economic Development Policy; (2) Rural Health and Disability; and (3) Rural Community Transportation, as follows:

(1) Rural Employment, and Community and Economic Development Policy: (a) Identify economic and community development policies and evaluate their impact on the employment status of individuals with disabilities living in rural areas, public and private service delivery systems, and service providers;

(b) Investigate the effectiveness of policies and strategies for addressing existing and emerging problems for individuals with disabilities in rural communities.

(c) Identify and evaluate employment policies and employment strategies, including those used in State vocational rehabilitation systems, and investigate the impact on employment outcomes for individuals with disabilities.

(2) Rural Health and Disability:

(a) Identify and investigate the needs of healthcare providers and health care needs of individuals with disabilities in rural communities and factors contributing to secondary conditions.

(b) Investigate the impact of inadequate health promotion, wellness, and prevention activities on the health status and disability outcomes for individuals with disabilities, including secondary disabling conditions.

(c) Develop and evaluate health promotion intervention strategies or identify and evaluate effective health promotion strategies for improving health outcomes for individuals with disabilities in rural communities, including an emphasis on prevention of secondary conditions. Investigate the impact of inadequate wellness and health promotion on healthcare service systems in rural communities.

(d) Develop and test training materials for healthcare providers and consumers to enhance knowledge of disability, secondary conditions, and effective wellness and health promotion intervention strategies.

(3) Rural Community Transportation:

(a) Identify or develop and test new transportation ideas and investigate their effectiveness to increase access for individuals with disabilities, and assess whether they are cost effective.

(b) Investigate the impact of alternate means of transportation on disability outcomes, especially employment and health outcomes, and

(c) Identify and investigate the impact of transportation policies, programs, and resource allocations on access and community integration for individuals with disabilities; In carrying out the purposes of the priority, the RRTC shall:

- Disseminate information about disability issues in rural communities;
- Use advances in telecommunications and web-based technologies, where appropriate, to ensure broad access to research results and their practical application; and
- Involve individuals with disabilities, their family members, and consumers, as appropriate, in all stages of the research process and related activities.

Applicable Program Regulations: 34 CFR part 350.

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(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Center)

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: April 29, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and, Rehabilitative Services.

[FR Doc. 02–11203 Filed 5–3–02; 8:45 am]

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17 Parts:			
1–199	(869–044–00048–2)	45.00	Apr. 1, 2001
200–239	(869–044–00049–1)	51.00	Apr. 1, 2001
240–End	(869–044–00050–4)	55.00	Apr. 1, 2001
18 Parts:			
1–399	(869–044–00051–2)	56.00	Apr. 1, 2001
400–End	(869–044–00052–1)	23.00	Apr. 1, 2001
19 Parts:			
1–140	(869–044–00053–9)	54.00	Apr. 1, 2001
141–199	(869–044–00054–7)	53.00	Apr. 1, 2001
200–End	(869–044–00055–5)	20.00	[5] Apr. 1, 2001
20 Parts:			
1–399	(869–044–00056–3)	45.00	Apr. 1, 2001
400–499	(869–044–00057–1)	57.00	Apr. 1, 2001
500–End	(869–044–00058–0)	57.00	Apr. 1, 2001
21 Parts:			
1–99	(869–044–00059–8)	37.00	Apr. 1, 2001
100–169	(869–044–00060–1)	44.00	Apr. 1, 2001
170–199	(869–044–00061–0)	45.00	Apr. 1, 2001
200–299	(869–044–00062–8)	16.00	Apr. 1, 2001
300–499	(869–044–00063–6)	27.00	Apr. 1, 2001
500–599	(869–044–00064–4)	44.00	Apr. 1, 2001
600–799	(869–044–00065–2)	15.00	Apr. 1, 2001
800–1299	(869–044–00066–1)	52.00	Apr. 1, 2001
1300–End	(869–044–00067–9)	20.00	Apr. 1, 2001
22 Parts:			
1–299	(869–044–00068–7)	56.00	Apr. 1, 2001
300–End	(869–044–00069–5)	42.00	Apr. 1, 2001
23	(869–044–00070–9)	40.00	Apr. 1, 2001
24 Parts:			
0–199	(869–044–00071–7)	53.00	Apr. 1, 2001
200–499	(869–044–00072–5)	45.00	Apr. 1, 2001
500–699	(869–044–00073–3)	27.00	Apr. 1, 2001
700–1699	(869–044–00074–1)	55.00	Apr. 1, 2001
1700–End	(869–044–00075–0)	28.00	Apr. 1, 2001
25	(869–044–00076–8)	57.00	Apr. 1, 2001
26 Parts:			
§§ 1.0-1–1.60	(869–044–00077–6)	43.00	Apr. 1, 2001
§§ 1.61–1.169	(869–044–00078–4)	57.00	Apr. 1, 2001
§§ 1.170–1.300	(869–044–00079–2)	52.00	Apr. 1, 2001
§§ 1.301–1.400	(869–044–00080–6)	41.00	Apr. 1, 2001
§§ 1.401–1.440	(869–044–00081–4)	58.00	Apr. 1, 2001
§§ 1.441-1.500	(869-044-00082-2)	45.00	Apr. 1, 2001
§§ 1.501–1.640	(869–044–00083–1)	44.00	Apr. 1, 2001
§§ 1.641–1.850	(869–044–00084–9)	53.00	Apr. 1, 2001
§§ 1.851–1.907	(869–044–00085–7)	54.00	Apr. 1, 2001
§§ 1.908–1.1000	(869–044–00086–5)	53.00	Apr. 1, 2001
§§ 1.1001–1.1400	(869–044–00087–3)	55.00	Apr. 1, 2001
§§ 1.1401–End	(869–044–00088–1)	58.00	Apr. 1, 2001
2–29	(869–044–00089–0)	54.00	Apr. 1, 2001
30–39	(869–044–00090–3)	37.00	Apr. 1, 2001
40–49	(869–044–00091–1)	25.00	Apr. 1, 2001
50–299	(869–044–00092–0)	23.00	Apr. 1, 2001
300–499	(869–044–00093–8)	54.00	Apr. 1, 2001
500–599	(869–044–00094–6)	12.00	[5] Apr. 1, 2001
600–End	(869–044–00095–4)	15.00	Apr. 1, 2001
27 Parts:			
1–199	(869–044–00096–2)	57.00	Apr. 1, 2001

Title	Stock Number	Price	Revision Date
200–End	(869–044–00097–1)	26.00	Apr. 1, 2001
28 Parts:			
0-42	(869–044–00098–9)	55.00	July 1, 2001
43-end	(869-044-00099-7)	50.00	July 1, 2001
29 Parts:			
0–99	(869–044–00100–4)	45.00	July 1, 2001
100–499	(869–044–00101–2)	14.00	[6]July 1, 2001
500–899	(869–044–00102–1)	47.00	[6]July 1, 2001
900–1899	(869–044–00103–9)	33.00	July 1, 2001
1900–1910 (§§ 1900 to 1910.999)	(869–044–00104–7)	55.00	July 1, 2001
1910 (§§ 1910.1000 to end)	(869–044–00105–5)	42.00	July 1, 2001
1911–1925	(869–044–00106–3)	20.00	[6]July 1, 2001
1926	(869–044–00107–1)	45.00	July 1, 2001
1927–End	(869–044–00108–0)	55.00	July 1, 2001
30 Parts:			
1–199	(869–044–00109–8)	52.00	July 1, 2001
200–699	(869–044–00110–1)	45.00	July 1, 2001
700–End	(869–044–00111–7)	53.00	July 1, 2001
31 Parts:			
0–199	(869–044–00112–8)	32.00	July 1, 2001
200–End	(869–044–00113–6)	56.00	July 1, 2001
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–044–00114–4)	51.00	[6]July 1, 2001
191–399	(869–044–00115–2)	57.00	July 1, 2001
400–629	(869–044–00116–8)	35.00	[6]July 1, 2001
630–699	(869–044–00117–9)	34.00	July 1, 2001
700–799	(869–044–00118–7)	42.00	July 1, 2001
800–End	(869–044–00119–5)	44.00	July 1, 2001
33 Parts:			
1–124	(869–044–00120–9)	45.00	July 1, 2001
125–199	(869–044–00121–7)	55.00	July 1, 2001
200–End	(869–044–00122–5)	45.00	July 1, 2001
34 Parts:			
1–299	(869–044–00123–3)	43.00	July 1, 2001
300–399	(869–044–00124–1)	40.00	July 1, 2001
400–End	(869–044–00125–0)	56.00	July 1, 2001
35	(869–044–00126–8)	10.00	[6]July 1, 2001
36 Parts			
1–199	(869–044–00127–6)	34.00	July 1, 2001
200–299	(869–044–00128–4)	33.00	July 1, 2001
300–End	(869–044–00129–2)	55.00	July 1, 2001
37	(869–044–00130–6)	45.00	July 1, 2001
38 Parts:			
0–17	(869–044–00131–4)	53.00	July 1, 2001
18–End	(869–044–00132–2)	55.00	July 1, 2001
39	(869–044–00133–1)	37.00	July 1, 2001
40 Parts:			
1–49	(869–044–00134–9)	54.00	July 1, 2001
50–51	(869–044–00135–7)	38.00	July 1, 2001
52 (52.01–52.1018)	(869–044–00136–5)	50.00	July 1, 2001
52 (52.1019–End)	(869–044–00137–3)	55.00	July 1, 2001
53–59	(869–044–00138–1)	28.00	July 1, 2001
60 (60.1–End)	(869–044–00139–0)	53.00	July 1, 2001
60 (Apps)	(869–044–00140–3)	51.00	July 1, 2001
61–62	(869–044–00141–1)	35.00	July 1, 2001
63 (63.1–63.599)	(869–044–00142–0)	53.00	July 1, 2001
63 (63.600–63.1199)	(869–044–00143–8)	44.00	July 1, 2001
63 (63.1200-End)	(869–044–00144–6)	56.00	July 1, 2001
64–71	(869–044–00145–4)	26.00	July 1, 2001
72–80	(869–044–00146–2)	55.00	July 1, 2001
81–85	(869–044–00147–1)	45.00	July 1, 2001
86 (86.1–86.599–99)	(869–044–00148–9)	52.00	July 1, 2001
86 (86.600–1–End)	(869–044–00149–7)	45.00	July 1, 2001
87–99	(869–044–00150–1)	54.00	July 1, 2001
100–135	(869–044–00151–9)	38.00	July 1, 2001
136–149	(869–044–00152–7)	55.00	July 1, 2001
150–189	(869–044–00153–5)	52.00	July 1, 2001
190–259	(869–044–00154–3)	34.00	July 1, 2001
260–265	(869–044–00155–1)	45.00	July 1, 2001
266–299	(869–044–00156–0)	45.00	July 1, 2001
300–399	(869–044–00157–8)	41.00	July 1, 2001
400–424	(869–044–00158–6)	51.00	July 1, 2001
425–699	(869–044–00159–4)	55.00	July 1, 2001
700–789	(869–044–00160–8)	55.00	July 1, 2001
790–End	(869–044–00161–6)	44.00	July 1, 2001
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–044–00162–4)	22.00	July 1, 2001
101	(869–044–00163–2)	45.00	July 1, 2001
102–200	(869–044–00164–1)	33.00	July 1, 2001
201–End	(869–044–00165–9)	24.00	July 1, 2001
42 Parts:			
1–399	(869–044–00166–7)	51.00	Oct. 1, 2001
400–429	(869–044–00167–5)	59.00	Oct. 1, 2001
430–End	(869–044–00168–3)	58.00	Oct. 1, 2001
43 Parts:			
1–999	(869–044–00169–1)	45.00	Oct. 1, 2001
1000–end	(869–044–00170–5)	56.00	Oct. 1, 2001
44	(869–044–00171–3)	45.00	Oct. 1, 2001
45 Parts:			
1–199	(869–044–00172–1)	53.00	Oct. 1, 2001
200–499	(869–044–00173–0)	31.00	Oct. 1, 2001
500–1199	(869–044–00174–8)	45.00	Oct. 1, 2001
1200–End	(869–044–00175–6)	55.00	Oct. 1, 2001
46 Parts:			
1–40	(869–044–00176–4)	43.00	Oct. 1, 2001
41–69	(869–044–00177–2)	35.00	Oct. 1, 2001
70–89	(869–044–00178–1)	13.00	Oct. 1, 2001
90–139	(869–044–00179–9)	41.00	Oct. 1, 2001
140–155	(869–044–00180–2)	24.00	Oct. 1, 2001
156–165	(869–044–00181–1)	31.00	Oct. 1, 2001
166–199	(869–044–00182–9)	42.00	Oct. 1, 2001
200–499	(869–044–00183–7)	36.00	Oct. 1, 2001
500–End	(869–044–00184–5)	23.00	Oct. 1, 2001
47 Parts:			
0–19	(869–044–00185–3)	55.00	Oct. 1, 2001
20–39	(869–044–00186–1)	43.00	Oct. 1, 2001
40–69	(869–044–00187–0)	36.00	Oct. 1, 2001
70–79	(869–044–00188–8)	58.00	Oct. 1, 2001
80–End	(869–044–00189–6)	55.00	Oct. 1, 2001
48 Chapters:			
1 (Parts 1–51)	(869–044–00190–0)	60.00	Oct. 1, 2001
1 (Parts 52–99)	(869–044–00191–8)	45.00	Oct. 1, 2001
2 (Parts 201–299)	(869–044–00192–6)	53.00	Oct. 1, 2001
3–6	(869–044–00193–4)	31.00	Oct. 1, 2001
7–14	(869–044–00194–2)	51.00	Oct. 1, 2001
15–28	(869–044–00195–1)	53.00	Oct. 1, 2001
29–End	(869–044–00196–9)	38.00	Oct. 1, 2001
49 Parts:			
1–99	(869–044–00197–7)	55.00	Oct. 1, 2001
100–185	(869–044–00198–5)	60.00	Oct. 1, 2001
186–199	(869–044–00199–3)	18.00	Oct. 1, 2001
200–399	(869–044–00200–1)	60.00	Oct. 1, 2001
400–999	(869–044–00201–9)	58.00	Oct. 1, 2001
1000–1199	(869–044–00202–7)	26.00	Oct. 1, 2001

Title	Stock Number	Price	Revision Date
1200–End	(869–044–00203–5)	21.00	Oct. 1, 2001
50 Parts:			
1–199	(869–044–00204–3)	63.00	Oct. 1, 2001
200–599	(869–044–00205–1)	36.00	Oct. 1, 2001
600–End	(869–044–00206–0)	55.00	Oct. 1, 2001
CFR Index and Findings Aids	(869–044–00047–4)	56.00	Jan. 1, 2001
Complete 2001 CFR set		1,195.00	2001
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Subscription (mailed as issued)		298.00	2000
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Complete set (one-time mailing)		247.00	1999

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.