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Presidential Documents

Title 3—

The President

Executive Order 13265 of June 6, 2002

President's Council on Physical Fitness and Sports

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to expand the executive branch's program for physical fitness and sports and establish the President's Council on Physical Fitness and Sports (the ''Council''), it is hereby ordered as follows:

Section 1. *Purpose.* The Secretary of Health and Human Services (Secretary) shall, in carrying out his responsibilities for public health and human services, develop and coordinate a national program to enhance physical activity and sports participation. Through this program, the Secretary shall seek to:

(a) expand national interest in and awareness of the benefits of regular physical activity and active sports participation;

(b) stimulate and enhance coordination of programs within and among the private and public sectors that promote participation in, and safe and easy access to, physical activity and sports;

(c) expand availability of quality information and guidance regarding physical activity and sports participation;

(d) integrate physical activity into a broader health-promotion and disease-prevention effort through Federal agencies and the private sector; and

(e) target all Americans, with particular emphasis on children and adolescents, as well as populations or communities in which specific risks or disparities in participation in, access to, or knowledge about the benefits of physical activity have been identified.

Sec. 2. *The President's Council on Physical Fitness and Sports.*

(a) There is hereby established the President's Council on Physical Fitness and Sports.

(b) The Council shall be composed of up to 20 members appointed by the President. The President may designate one or more members to be Chair or Vice Chair. Each member shall serve for a term of 2 years and may continue to serve after the expiration of that term until a successor is appointed.

Sec. 3. *Functions of the Council.*

(a) The Council shall advise the President, through the Secretary, concerning progress made in carrying out the provisions of this order and shall recommend to the President, through the Secretary, actions to accelerate progress.

(b) The Council shall advise the Secretary on ways to enhance opportunities for participation in physical fitness and sports. Recommendations may address, but are not necessarily limited to, public awareness campaigns, Federal, State, and local physical activity initiatives, and partnership opportunities between public- and private-sector health-promotion entities.

(c) The Council shall function as a liaison to relevant State, local, and private entities in order to advise the Secretary regarding opportunities to extend and improve physical activity programs and services at both the local and national levels.

(d) The Council shall monitor the need for the enhancement of programs and educational and promotional materials sponsored, overseen, or disseminated by the Council, and shall advise the Secretary as necessary concerning such need.

Sec. 4. *Administration.*

(a) Each Federal agency shall, to the extent permitted by law and subject to available funds, furnish such information and assistance to the Secretary and the Council as they may request.

(b) The members of the Council shall serve without compensation for their work on the Council. Members of the Council may, however, receive travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government (5 U.S.C. 5701–5707).

(c) To the extent permitted by law, the Secretary shall furnish the Council with necessary staff, supplies, facilities, and other administrative services. The expenses of the Council shall be paid from funds available to the Secretary.

(d) The Secretary shall appoint an Executive Director of the Council who shall serve as a liaison to the Secretary and the White House on matters and activities pertaining to the Council.

(e) The Council may establish subcommittees as appropriate to aid in its work. Such subcommittees shall meet on a voluntary basis and be defined by objectives established in coordination with and agreed upon by the Secretary and the President.

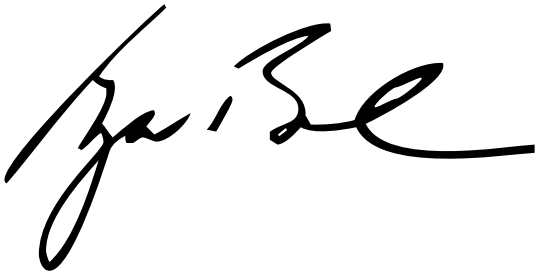
(f) The seal prescribed by Executive Order 10830 of July 24, 1959, as amended, shall be the seal of the President's Council on Physical Fitness and Sports established by this order.

Sec. 5. *General Provisions.*

(a) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (Act), may apply to the Administration of any portion of this order, any functions of the President under the Act, except that of reporting to the Congress, shall be performed by the Secretary in accordance with the guidelines and procedures issued by the Administrator of General Services.

(b) In accordance with the Act, the Council shall terminate 2 years from the date of this order, unless extended by the President.

(c) Executive Order 12345 of February 2, 1982, as amended, is revoked.



THE WHITE HOUSE,

June 6, 2002.

[FR Doc. 02–14807

Filed 6–10–02; 8:45 am]

Billing code 3195–01–P

Rules and Regulations

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–151–AD; Amendment 39–12773; AD 2002–12–01]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes, that requires a functional test of the shortening mechanism of the nose landing gear for free movement of the capsule in the upper and lower bearings, and corrective action, if necessary. This action is necessary to prevent damage to the capsule, which could result in inability to extend the nose landing gear in normal or emergency situations, and consequent injury to passengers and flight crew. This action is intended to address the identified unsafe condition.

DATES: Effective July 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 16, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes was published in the **Federal Register** on September 25, 2001 (66 FR 48987). That action proposed to require a functional test of the shortening mechanism of the nose landing gear for free movement of the capsule in the upper and lower bearings, and corrective action, if necessary.

Comments

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

Revise Civil Aviation Authority (CAA) Classification

The commenter requests that the FAA revise the proposed AD to remove this statement: ''The Civil Aviation Authority, which is the airworthiness authority for the United Kingdom, classified (BAE Systems (Operations) Limited (Jetstream) Service Bulletin J41–32–075, dated April 18, 2001) as ''Mandatory.''' (The proposed AD identifies that service bulletin as an appropriate source of service information for certain proposed actions.)

The commenter points out that, since the issuance of the proposed AD, the airplane manufacturer has issued BAE Systems (Operations) Limited (Jetstream) Service Bulletin J41–32–075, Revision 1, dated May 18, 2001. The actions described in Revision 1 of the service bulletin are identical to those in the original issue. However, Revision 1 revises the classification made by the CAA from ''Mandatory'' to ''Optional Highly Recommended.'' The commenter states that the CAA categorizes failure of the nose landing gear to extend as a ''Major Event,'' and the CAA does not consider it necessary to classify service bulletins addressing such events as ''Mandatory.''

The FAA acknowledges the commenter's request. The statement to which the commenter refers is not restated in this final rule, so no change to the final rule is necessary in that regard.

After considering the CAA's decision to change the classification of the referenced service bulletin, the FAA has determined that it is necessary to proceed with this final rule in order to mandate the actions specified in BAE Systems (Operations) Limited (Jetstream) Service Bulletin J41–32–075. While the CAA may not consider that mandatory action is necessary to correct failure of the nose landing gear to extend, the fact remains that this condition could result in injury to passengers and flight crew. The FAA also finds it appropriate to cite Revision 1 of the referenced service bulletin, in addition to the original issue, as an appropriate source of service information for certain actions in this final rule. We have revised paragraph (a)(2) of this AD accordingly.

Conclusion

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

Cost Impact

The FAA estimates that 59 Model 4101 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required functional test, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the functional test required by this AD on U.S. operators is estimated to be $7,080, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact

figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–12–01 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft):

Amendment 39–12773. Docket 2001–NM–151–AD.

Applicability: Model Jetstream 4101 airplanes, as listed in BAE Systems (Operations) Limited (Jetstream) Service Bulletin J41–32–075, dated April 18, 2001, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the capsule in the upper and lower bearings of the shortening mechanism of the nose landing gear, which could result in inability to extend the nose landing gear in normal or emergency situations, and consequent injury to passengers and flight crew, accomplish the following:

Functional Test/Corrective Action

(a) Within 300 flight hours or 60 days after the effective date of this AD, whichever comes first: Do a functional test of the shortening mechanism of the nose landing gear for free movement of the capsule in the upper and lower bearings, according to APPH Precision Hydraulics Service Bulletin AIR83586–32–16, dated February 2001. If the capsule does not move freely, before further flight, do the actions specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. If the capsule moves freely, no further action is required by this paragraph.

(1) Rework according to APPH Precision Hydraulics Service Bulletin AIR83586–32–16, dated February 2001.

(2) If the rework is not done, before further flight, do a full functional test of the extension/retraction system of the nose landing gear according to BAE Systems (Operations) Limited (Jetstream) Service Bulletin J41–32–075, dated April 18, 2001, or Revision 1, dated May 18, 2001; and do the actions specified in paragraph (a)(1)(i) or (a)(2)(ii) of this AD, as applicable.

(i) If the nose landing gear extends and retracts correctly, repeat the full functional test every 50 flight hours according to the service bulletin. Within 300 flight hours after the initial test, do the requirements in paragraph (a)(1) of this AD, which ends the repetitive testing specified in this paragraph.

(ii) If the nose landing gear does not extend and retract correctly, before further flight, replace the nose landing gear with new landing gear according to the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with APPH Precision Hydraulics Service Bulletin AIR83586–32–16, dated February 2001; and BAE Systems (Operations) Limited (Jetstream) Service Bulletin J41–32–075, dated April 18, 2001; or BAE Systems (Operations) Limited (Jetstream) Service Bulletin J41–32–075, Revision 1, dated May 18, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on July 16, 2002.

Issued in Renton, Washington, on June 3, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–14410 Filed 6–10–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–54–AD; Amendment 39–12770; AD 2002–11–09]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC)

Model 407 helicopters that requires visually inspecting the forward hanger bearing bracket (bracket) for a crack. This amendment is prompted by reports of cracks in the bracket. The actions specified by this AD are intended to detect a crack in the bracket, to prevent loss of tail rotor drive or control and subsequent loss of control of the helicopter.

DATES: Effective July 16, 2002.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for BHTC Model 407 helicopters was published in the **Federal Register** on January 16, 2002 (67 FR 2146). That action proposed initial and repetitive inspections for a crack in certain brackets and removing any bracket found with a crack before further flight.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require adopting the rule as proposed.

The FAA estimates that 442 helicopters of U.S. registry will be affected by this AD, that it will take approximately ¼ work hour per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6630 assuming no crack is detected in a bracket.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–11–09 Bell Helicopter Textron Canada: Amendment 39–12770. Docket No. 2001–SW–54–AD.

Applicability: Model 407 helicopters, serial number 53000 through 53442, with flywheel, part number (P/N) 407–040–316–101, installed, certificated in any category.

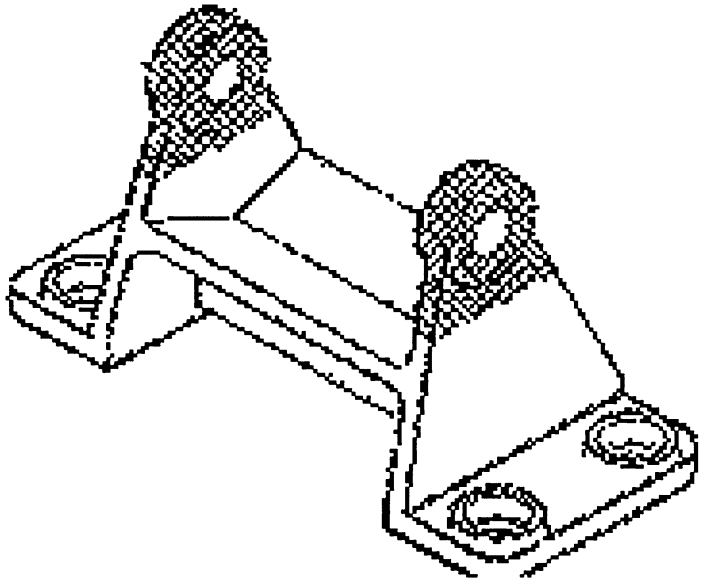
Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance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

Compliance: Required as indicated, unless accomplished previously.

To detect a crack in the forward bearing hanger bracket (bracket) and to prevent loss of tail rotor drive or tail rotor control and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS) and thereafter at intervals not to exceed 25 hours TIS, visually inspect each bracket, P/N 407–040–321–101 or -103, for a crack in the shaded area shown in Figure 1 of this AD. Remove any cracked bracket from service.

Note 2: Dismantling of the bearing hanger and the support is not required to accomplish the requirements of this AD.



Bracket P/N 407-040-321-101/-103

Figure 1

Note 3: Bell Helicopter Textron Canada Alert Service Bulletin No. 407–01–39, Revision A, dated May 30, 2001, pertains to the subject of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on July 16, 2002.

Note 5: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–2001–32, dated August 13, 2001.

Issued in Fort Worth, Texas, on May 28, 2002.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–14566 Filed 6–10–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Houston Galveston–02–012]

RIN 2115–AA97

Security Zones; Ports of Houston and Galveston, TX

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending the effective period for the Ports of Houston and Galveston security zones published May 1, 2002. This change will extend the effective period for the established security zones until October 15, 2002, allowing adequate time for a proposed permanent rule to be developed through informal rulemaking. We are also amending this section to make it clear that persons and not just vessels are prohibited from entry into these security zones. This temporary rule establishes temporary moving security zones around cruise ships entering and departing the Ports of Houston and Galveston.

DATES: The amendments to § 165.T08–035 are effective on June 11, 2002. Section 165.T08–035, added at 67 FR 21578, May 1, 2002, effective April 8, 2002, until June 15, 2002 is extended and will remain in effect through 8 a.m. on October 15, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Houston-Galveston, 9640 Clinton Drive, Galena Park, TX, 77547 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) George Tobey, Marine Safety Office Houston-Galveston, Texas, Port Waterways Management, at (713) 671–5100.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 1, 2002, we published a temporary final rule entitled ''Security Zones; Ports of Houston and Galveston, TX'' in the **Federal Register** (67 FR 21576). The effective period for this rule was from April 8, 2002 until June 15, 2002.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b) (B), the Coast Guard finds that good cause exists for not publishing an NPRM. The original temporary final rule was immediately required to respond to the security concerns associated with cruise ship transits. It was anticipated that we would assess the security environment at the end of the effective period to determine whether continuing security measures were required. We have determined that the need for a continued security zone exists and elsewhere in today's issue of the **Federal Register**, we have published a

NPRM, entitled ''Security Zones; Ports of Houston and Galveston, TX'' for a proposed permanent rule (docket number COTP Houston-Galveston-02–010). The Coast Guard will, during the extended effective period of this temporary final rule, complete notice and comment rulemaking to develop permanent regulations tailored to the present and foreseeable security environment.

Under 5 U.S.C. 553 (d) (3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. There is no indication that the present temporary final rule has been burdensome on the public. We are amending this section to make it clear that both persons and vessels are prohibited from entering the zone. Delaying the effective date of the rule would be contrary to public interest since action is needed to continue to respond to existing security risks.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. National security and intelligence officials have warned that future terrorist attacks against civilian targets may be anticipated.

In response to these terrorist acts and warnings, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary. Due to the increased safety and security concerns surrounding the transit of cruise ships, the Captain of the Port, Houston-Galveston established temporary security zones around these vessels.

The temporary security zone was to expire on June 15, 2002. In order to provide continuous protection while a permanent zone is being promulgated through notice and comment rulemaking, the Coast Guard is extending the effective date of this zone until October 15, 2002.

In addition we are amending this section to remove any ambiguity about its effect on persons. No person or vessel is permitted to enter within 100 yards of a cruise ship unless expressly authorized.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The impacts on routine navigation are expected to be minimal as the zones will only impact navigation for a short period of time and the size of the zones allows for the transit of most vessels with minimal delay.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities for the reasons enumerated under the Regulatory Evaluation above. If you are a small business entity and are significantly affected by this regulation please contact LTJG George Tobey, Marine Safety Office Houston-Galveston, Texas, Port Waterways Management, at (713) 671–5100.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effect

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Revise temporary § 165.T08–035 paragraphs (b) and (d) to read as follows:

§ 165.T08–035 Security Zones; Ports of Houston and Galveston, Texas.

* * * * *

(b) *Effective dates.* This section is effective from 12 a.m. (noon) on April 8, 2002 through 8 a.m. on October 15, 2002.

* * * * *

(d) *Regulations.* (1) Entry of persons or vessels into this zone is prohibited unless authorized as follows.

(i) Vessels may enter within 500 yards but not closer than 100 yards of a cruise ship provided they operate at the minimum speed necessary to maintain a safe course.

(ii) No person or vessel may enter within 100 yards of a cruise ship unless expressly authorized by the Coast Guard Captain of the Port Houston-Galveston. Where the Houston Ship Channel narrows to 400 feet or less between Houston Ship Channel Entrance Lighted Bell Buoy ''18'', light list no. 34385 at approximately 29°21′06″ N, 94°47′00″ W [NAD 83] and Barbours Cut, the Captain of the Port Houston-Galveston may permit vessels that must transit the navigable channel between these points to enter within 100 yards of a cruise ship.

(iii) Moored vessels or vessels anchored in a designated anchorage area are permitted to remain within 100 yards of a cruise ship while it is in transit.

(2) Vessels requiring entry within 500 yards of a cruise ship that cannot slow to the minimum speed necessary to maintain a safe course must request express permission to proceed from the Captain of the Port Houston-Galveston, or his designated representative.

(3) For the purpose of this section the term ''cruise ship'' is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours, any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories.

(4) The Captain of the Port Houston-Galveston will inform the public of the moving security zones around cruise ships via Marine Safety Information Broadcasts.

(5) To request permission as required by this section contact ''Houston Traffic'' via VHF Channels 11/12 or via phone at (713) 671–5103.

(6) All persons and vessels within the moving security zone shall comply with the instructions of the Captain of the Port Houston-Galveston and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

* * * * *

Dated: May 29, 2002.

Kevin S. Cook,

Captain, U.S. Coast Guard, Captain of the Port Houston Galveston.

[FR Doc. 02–14561 Filed 6–10–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–130]

RIN 2115–AA97

Security Zone; Lake Erie, Perry, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is revising the effective period for a temporary security zone in the Captain of the Port Cleveland zone for the Perry Nuclear Power Plant. This security zone is necessary to protect the Perry Nuclear Power Plant from possible sabotage or other subversive acts, accidents, or possible acts of terrorism. This security zone is intended to restrict vessel traffic from a portion of Lake Erie.

DATES: The revision of § 165.T09–111(b) is effective June 11, 2002. Section 165.T09–111, added at 66 FR 52043, October 12, 2001, effective October 12, 2001, until June 15, 2002, is extended in effect through August 1, 2002.

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

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 12, 2001, we published a temporary final rule entitled Security Zone: Lake Erie, Perry, Ohio in the **Federal Register** (66 FR 52043). The temporary final rule established a temporary security zone in the Captain of the Port Cleveland zone for the Perry Nuclear Power Plant. This security zone is necessary to protect this nuclear power plant from possible sabotage or other subversive acts, accidents, or possible acts of terrorism.

We are extending the effective period of the temporary final rule so that we can complete a rulemaking CGD09–02–006 Security Zone; Lake Erie, Perry, OH (67 FR 36554, May 24, 2002) to establish a permanent security zone for Perry

Nuclear Power Plant. Extending the effective date until August 1, 2002 should provide us enough time to complete the rulemaking.

We did not publish a notice of proposed rulemaking (NPRM) for this rule and it is being made effective less than 30 days after publication in the **Federal Register**. When we promulgated the October 1, 2001 rule, we intended to either allow it to expire on June 15, 2002, or to cancel it if we made permanent changes before that date. We published an NPRM on May 24, 2001 to make permanent changes to the temporary final rule (67 FR 36554). That rulemaking will follow normal notice and comment procedures, and a final rule should be published before August 1, 2002. Continuing the temporary final rule in effect while the permanent rulemaking is in progress will help ensure the safety of critical infrastructure that may be the subject of subversive activity. Nuclear power plants are an important means of electrical energy in the region. In addition, they could be a source of severe radiological contamination throughout the region. Therefore, the Coast Guard finds good cause under 5 U.S.C. 553 (b)(B) and (d)(3) for why a notice of proposed rulemaking and opportunity for comment is not required and why this rule will be made effective fewer than 30 days after publication in the **Federal Register**.

Background and Purpose

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

Regulatory Evaluation

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

Small Entities

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

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

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions

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

Environment

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

List of Subject in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. In § 165.T09–111, paragraph (b) is revised to read as follows:

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

* * * * *

(b) *Effective time and date.* This section is effective from October 1, 2001, through August 1, 2002.

* * * * *

Dated: May 31, 2002.

R.J. Perry,

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

[FR Doc. 02–14555 Filed 6–10–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Houston–Galveston-02–011]

RIN 2115–AA97

Security Zones; Captain of the Port Houston-Galveston Zone

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Captain of the Port Houston-Galveston is establishing security zones within the ports of Houston, Bayport, Texas City and Freeport, Texas. These zones are being established to protect waterfront facilities, persons, and vessels from subversive or terrorist acts. Entry into these zones is prohibited except for vessels described in this rule or vessels that have obtained the express permission of the Captain of the Port Houston-Galveston or his designated representative.

DATES: This rule is effective from 6 a.m. on May 20, 2002 through 6 a.m. on October 15, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Houston-Galveston-02–011] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Houston-Galveston, 9640 Clinton Dr, Galena Park, TX 77547 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG George Tobey, Port Waterways Management, Marine Safety Office Houston-Galveston, TX at (713) 671–5100.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

The catastrophic nature of, and resulting devastation from, the September 11, 2001 attacks on the World Trade Center towers in New York City and the Pentagon in Washington, DC, makes this rulemaking necessary for the protection of national security interests. National security and intelligence officials warn that future terrorist attacks against United States interests are likely. Any delay in making this regulation effective would be contrary to the public interest because immediate action is necessary to protect against the possible loss of life, injury, or damage to property. The Coast Guard will, during the effective period of this temporary final rule, complete notice and comment rulemaking for a proposed permanent regulation. Elsewhere in today's issue of the **Federal Register**, we have published a NPRM, entitled ''Security Zones; Captain of the Port Houston-Galveston Zone'' (docket number COTP Houston-Galveston-02–009).

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. In response to these terrorist acts, heightened awareness and security of our ports and harbors is necessary. To enhance security the Captain of the Port Houston-Galveston is establishing security zones.

This rule establishes distinct security zones within the ports of Houston, Bayport, Texas City and Freeport, TX. These zones are being established to protect waterfront facilities, persons, and vessels from subversive or terrorist acts. Vessels operating within the Captain of the Port Houston-Galveston Zone are potential targets of terrorist attacks, or platforms from which terrorist attacks may be launched upon other vessels, waterfront facilities and adjacent population centers.

These zones are being established around areas concentrated with commercial facilities considered critical to national security. This rule is designed to restrict access to vessels engaged, or assisting in commerce with waterfront facilities within the security zones, vessels operated by port authorities, vessels operated by waterfront facilities within the security zones, and vessels operated by federal, state, county or municipal agencies. By limiting access to these areas the Coast Guard is reducing potential methods of attack on vessels, waterfront facilities, and adjacent population centers located within the zones. Vessels having a need to enter these zones but prohibited from doing so under this rule, must obtain express permission from the Captain of the Port Houston-Galveston or his designated representative prior to entry.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs

and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. Vessels engaged or assisting, in commerce with facilities located within the zones or having the express permission of the Captain of the Port Houston-Galveston, are authorized entry under this rule.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This security zone will not have an impact on a substantial number of small entities because this rule will not obstruct the regular flow of commercial vessel traffic conducting business within the zones. Other vessels may seek permission for entry into the zone from the Captain of the Port Houston-Galveston. If you are a small business entity and are significantly affected by the regulation please contact LTJG George Tobey at U.S. Coast Guard Marine Safety Office Houston-Galveston, TX at (713) 671–5100.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary § 165.T08–050 is added to read as follows:

§ 165.T08–050 Security Zones; Captain of the Port Houston-Galveston Zone.

(a) *Location.* The following areas are designated as security zones:

(1) *Freeport, TX.* (i) The *Dow Barge Canal* containing all waters bounded by its junction with the Intracoastal Waterway, by a line drawn between the eastern point at latitude 28°56′27″ N, 95°18′12″ W, and the western point at 28°56′22″ N, 95°18′20″ W (NAD 1983).

(ii) The *Brazos Harbor* containing all waters west of a line drawn between the northern point at 28°56′15″ N, 95°20′03″ W, and the southern point 28°56′02″ N, 95°20′03″ W (NAD 1927) at its junction with the Old Brazos River Cut.

(2) *Texas City, TX.* The Port of Texas City Channel, Turning Basin and Industrial Canal containing all waters bounded by the area south and west of a line drawn between Cut B Inner Range Rear Light (LLNR 24770), and Texas City Channel Light 19 (LLNR 24810).

(3) *Bayport, TX.* The Port of Bayport, Bayport Ship and Bayport Turning Basin containing all waters south of a line drawn from Bayport Ship Channel Light 9 (LLNR–23295) and a western point at 29°36′26″ N, 95°01′17″ W (NAD 1983).

(4) *Houston, TX.* The Houston Ship Channel and all associated turning basins, bounded by a line drawn between Houston Ship Channel Light 132 (LLNR–24445) and Houston Ship Channel Light 133 (LLNR–24450) west to the T & N Rail Road Swing Bridge at the entrance to Buffalo Bayou, including all waters adjacent to the ship channel from shoreline to shoreline and the first 200 yards of connecting waterways.

(b) *Effective dates.* This rule is effective from 6 a.m. on May 20, 2002 through 6 a.m. on October 15, 2002.

(c) *Regulations.* (1) Entry into these zones is prohibited except for the following:

(i) Commercial vessels operating at waterfront facilities within these zones;

(ii) Commercial vessels transiting directly to or from waterfront facilities within these zones;

(iii) Vessels providing direct operational/logistic support to commercial vessels within these zones;

(iv) Vessels operated by the appropriate port authority or by facilities located within these zones; and

(v) Vessels operated by federal, state, county, or municipal agencies.

(2) Other persons or vessels requiring entry into a zone described in this section must request express permission to enter from the Captain of the Port Houston-Galveston, or his designated representative.

(3) To request permission as required by these regulations contact ''Houston Traffic'' via VHF Channels 11/12 or via phone at (713) 671–5103.

(4) All persons and vessels shall comply with the instructions of the Captain of the Port Houston-Galveston and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: May 20, 2002.

K.S. Cook,

Captain, U.S. Coast Guard, Captain of the Port Houston-Galveston.

[FR Doc. 02–14559 Filed 6–10–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP New Orleans–02–004]

RIN 2115–AA97

Security Zones; Lower Mississippi River, Southwest Pass Sea Buoy to Mile Marker 96.0, New Orleans, LA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary moving security zones around cruise ships entering and departing the Lower Mississippi River (LMR) from Southwest Pass sea buoy to mile marker 96.0. These security zones are needed for the safety and security of these vessels. Entry into these zones is prohibited, unless authorized by the Captain of the Port New Orleans or his designated representative.

DATES: This rule is effective from 8 a.m. on May 29, 2002, through 8 a.m. on October 15, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP New Orleans-02–004] and are available for inspection or copying at Marine Safety Office New Orleans, 1615 Poydras Street, New Orleans, LA 70112 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Ricardo Alonso, Marine Safety Office New Orleans, Port Waterways Management, at (504) 589–4222.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Publishing a NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to the security concerns which are associated with the transit of these passenger vessels. The Coast Guard will, during the effective period of this temporary final rule, complete notice and comment rulemaking for permanent regulations. Elsewhere in today's issue of the **Federal Register**, we have published a NPRM, entitled ''Security Zones; Lower Mississippi River, Southwest Pass Sea Buoy to Mile Marker 96.0, New Orleans, Louisiana'' for a proposed permanent rule (docket number COTP New Orleans–02–005).

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. National security and intelligence officials have warned that future terrorist attacks against civilian targets may be anticipated. In response to these terrorist acts and warnings, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary. Due to the increased safety and security concerns surrounding the transit of cruise ships, the Captain of the Port, New Orleans is establishing temporary security zones around these vessels.

For the purpose of this rule the term ''cruise ship'' is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories. This definition covers passenger vessels that must comply with 33 CFR parts 120 and 128.

The moving security zones will commence when a cruise ship passes the Southwest Pass Entrance Lighted Buoy ''SW'' inbound and continues through its transit, mooring, and return transit until it passes the sea buoy outbound. The establishment of moving security zones described in this rule will be announced to mariners via Marine Safety Information Broadcast. No vessel may operate within 500 yards of a cruise ship unless operating at the minimum safe speed required to maintain a safe course. Except as described in this rule, no person or vessel is permitted to enter within 100 yards of a cruise ship unless expressly authorized by the Captain of the Port, New Orleans. Moored vessels or vessels anchored in a designated anchorage area are permitted to remain within 100 yards of a cruise ship while it is in transit.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6 (a) (3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10 (e) of the regulatory policies and procedures of DOT is unnecessary. The impacts on routine navigation are expected to be minimal as the zones will only impact navigation for a short period of time and the size of the zones allows for the transit of most vessels with minimal delay.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit Southwest Pass and the Lower Mississippi River to mile marker 96.0. These security zones will not have a significant economic impact on a substantial number of small entities. The size of the security zones allow for vessels to safely transit around or through the zones with minimal interference.

If you are a small business entity and are significantly affected by this regulation please contact LT Ricardo Alonso, Marine Safety Office New Orleans, Louisiana, Port Waterways Management at (504) 589–4222.

Assistance for Small Entities

Under section 213 (a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the proposed rule so they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Ricardo Alonso, Marine Safety Office New Orleans, Port Waterways Management, at (504) 589–4222.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary § 165.T08–049 is added to read as follows:

§ 165.T08–049 Security Zones; Lower Mississippi River, Southwest Pass Sea Buoy to Mile Marker 96.0, New Orleans, Louisiana.

(a) *Location.* Within the Lower Mississippi River and Southwest Pass, temporary moving security zones are established around all cruise ships between the Southwest Pass Entrance Lighted Buoy ''SW'', at approximate position 28°52′42″ N, 89°25′54″ W [NAD 83] and Lower Mississippi River mile marker 96.0 in New Orleans, Louisiana. These temporary moving security zones encompass all waters within 500 yards of a cruise ship. These zones remain in effect during the entire transit of the vessel and continue while the cruise ship is moored or anchored.

(b) *Effective period.* This section is effective from 8 a.m. on May 29, 2002, through 8 a.m. on October 15, 2002.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

(d) *Regulations.* (1) Entry of persons and vessels into these zones is prohibited unless authorized as follows.

(i) Vessels may enter within 500 yards but not closer than 100 yards of a cruise ship provided they operate at the minimum speed necessary to maintain a safe course.

(ii) No person or vessel may enter within 100 yards of a cruise ship unless expressly authorized by the Coast Guard Captain of the Port New Orleans.

(iii) Moored vessels or vessels anchored in a designated anchorage area are permitted to remain within 100 yards of a cruise ship while it is in transit.

(2) Vessels requiring entry within 500 yards of a cruise ship that cannot slow to the minimum speed necessary to maintain a safe course must request express permission to proceed from the Captain of the Port New Orleans or his designated representative.

(3) For the purpose of this section the term ''cruise ship'' is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours, any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories.

(4) The Captain of the Port New Orleans will inform the public of the moving security zones around cruise ships via Marine Safety Information Broadcasts.

(5) To request permission as required by these regulations contact ''New Orleans Traffic'' via VHF Channels 13/67 or via phone at (504) 589–2780 or (504) 589–6261.

(6) All persons and vessels within the moving security zones shall comply with the instructions of the Captain of the Port New Orleans and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: May 29, 2002.

R.W. Branch,

Captain, U.S. Coast Guard, Captain of the Port New Orleans.

[FR Doc. 02–14558 Filed 6–10–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA159–4189a; FRL–7211–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revisions to the Air Resource Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Pennsylvania State Implementation Plan (SIP) submitted by the Pennsylvania Department of Environmental Protection (PADEP). The revisions are changes to Pennsylvania's air resource regulations. The changes will make Pennsylvania's regulations consistent with Federal requirements, delete obsolete and unnecessary provisions, and apply Pennsylvania's monitoring requirements in a consistent fashion for all affected sources. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on August 12, 2002, without further notice, unless EPA receives adverse written comment by July 11, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

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

FOR FURTHER INFORMATION CONTACT: Rose Quinto at (215) 814–2182, the EPA Region III address above or by e-mail at *quinto.rose@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On March 6, 2000, PADEP submitted a formal revision to the Pennsylvania State Implementation Plan (SIP). The SIP revision consists of changes to Pennsylvania's air resource regulations.

II. Summary of SIP Revision

The changes to Chapter 121, section 121.1, relating to definitions, modifies the definitions of coke oven battery, coke oven gas collector main, and door area. In each case, the changes make the definitions consistent with Federal definitions of these terms promulgated under the CAA. The amendments to Chapter 123, section 123.44, relating to the standards for contaminants of visible emissions, make the regulation consistent with the maximum achievable control technology (MACT) for coke ovens promulgated by EPA under the CAA.

The amendments to Chapter 137, section 137.4, relating to air pollution episodes, change the provisions for standby plans to address air pollution episodes. Specifically, subsection (b) is revised by classifying each county as an area requiring a standby plan based on monitored exceedances of any national ambient air quality standard (NAAQS). The existing regulation lists each pollutant along with its ambient concentration. The PADEP references NAAQS as a reference point for determining counties subject to the standby plan requirements. In addition, subsection (c) requires sources located in area requiring standby plans to submit such plans upon request. This provision will conform to section 137.4 to the existing requirements in section 127.411(a)(8). Finally, subsection (f) clarifies that standby plan shall be provided by the individual responsible for the operation of the entire facility.

Chapter 139 is being revised in five ways. First, section 139.12, relating to emissions of particulate matter, deletes a portion of the sampling requirement, which make the provisions for particulate matter testing and monitoring of coke oven emissions consistent with Federal requirements. Second, section 139.61, relating to monitoring requirements, is being deleted. This provision has been superceded by the promulgation of the coke oven MACT standard by EPA. This change will make the regulation consistent with the Federal requirements. Third, section 139.101, relating to general requirements, changes the requirements related to data availability for data captured by a continuous emission monitor (CEM). A general data availability requirement in section 139.101 was adopted in 1990, and CEMs covered in section 139.104, relating to sulfur dioxide and nitrogen oxides monitoring requirements for combustion sources, were grandfathered. With the deletion of section 139.104, the general data availability standard in section 139.101 applies. CEMs would be required to do the following minimum data availability requirements: (1) In each calendar month, at least 90 percent of the time periods for which an emission standard or an operational parameter applies shall be valid; or (2) in each calendar quarter, at least 95 percent of the hours during which the monitored source is operating shall be valid. Fourth, the requirements of section 139.104 have been deleted and monitoring requirements have been established under the general provisions of section 139.101. Finally, the changes to section 139.111, relating to waste incinerator monitoring requirements, establish consistent data availability requirements for all continuous emission monitoring provisions applicable to municipal waste incinerators to hospital waste incinerators. These incinerators, generally, are similar in nature and the monitoring requirements are applicable to both.

III. Final Action

EPA is approving the revisions to the Commonwealth of Pennsylvania's air resource regulations submitted by PADEP on March 6, 2000. The revisions amend Chapter 121, General Provisions, section 121.1, Definitions; Chapter 123, section 123.44, Visible Emissions; Chapter 137, section 137.4, Standby Plans; Chapter 139, section 139.12, Emissions of Particulate Matter; and Chapter 139, section 139.111, Waste Incinerator Monitoring Requirements. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on August 12, 2002, without further notice unless EPA receives adverse comment by July 11, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 12, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving the revisions to the Pennsylvania's air resource regulations may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 8, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(189) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(189) Revisions to the Commonwealth of Pennsylvania Regulations pertaining to the Pennsylvania's air resource regulations submitted on March 6, 2000 by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of March 6, 2000 from the Pennsylvania Department of Environmental Protection transmitting revisions to the Commonwealth's Regulations pertaining to the Pennsylvania's air resource regulations.

(B) Revisions to 25 PA Code, Part I, Subpart C, Article III, effective December 27, 1997.

(*1*) Revisions to Chapter 121, General Provisions, section 121.1, revised definitions for coke oven battery, coke oven gas collector main, and door area.

(*2*) Revisions to Chapter 123, section 123.44, Visible Emissions—Limitations of fugitive air contaminants from operation of any coke oven battery, paragraphs (a) and (a)(1).

(*3*) Revisions to Chapter 137, section 137.4, Standby Plans, paragraphs (b), (c) and (f).

(*4*) Revisions to Chapter 139, section 139.12, Emissions of Particulate Matter, paragraphs (1) and (5).

(*5*) Revisions to Chapter 139, section 139.111, Waste Incinerator Monitoring Requirements, introductory paragraph, and paragraphs (1)(i), (2) and (3).

(*6*) Deletion of Chapter 139, section 139.61.

(*7*) Deletion of Chapter 139, section 139.104. In its place, the provisions of Chapter 139.101 will now apply.

(C) Revisions to 25 PA Code, Part I, Subpart C, Article III, effective May 7, 1998.

(*1*) Revisions to Chapter 139, section 139.12, Emissions of Particulate Matter, paragraph (2).

(*2*) Revisions to Chapter 139, section 139.101, General Requirements, paragraph (12)(ii).

(ii) Additional Material.—Remainder of the State submittal(s) pertaining to the revisions listed in paragraph (c)(189)(i) of this section.

[FR Doc. 02–14478 Filed 6–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD062–3087a; FRL–7220–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Visible Emissions and Open Fire Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the Maryland State Implementation Plan (SIP). These revisions establish the exemption of certain intermittent visible emissions (VE) at Federal facilities, amend open burning distance limitations, and establish specific requirements for safety determinations at Federal facilities. EPA is fully approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on August 12, 2002 without further notice, unless EPA receives adverse written comment by July 11, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

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

FOR FURTHER INFORMATION CONTACT: Betty Harris, (215) 814–2168, or by e-mail at harris.betty@epa.gov. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On February 6, 1998, the State of Maryland submitted formal revisions to its State Implementation Plan (SIP). These revisions submitted by the Maryland Department of the Environment (MDE) establish an exemption of certain intermittent visible emissions (VE) at Federal facilities, amend open burning distance limitations, and establish specific requirements for safety determinations at Federal facilities.

II. Summary of SIP Revision

COMAR 26.11.06.02 exempts certain intermittent visible emissions at Federal facilities, COMAR 26.11.07 establishes specific requirements that apply to safety determinations at Federal facilities, and COMAR 26.11.07.03 (B) amends the distance limitations associated with open burning activities.

The primary purpose of COMAR 26.11.06.02 is to exempt certain intermittent visible emissions at Federal facilities from the general visible emission requirements of the SIP. The function of some Federal facilities and other sources under contract with the Federal government is to test and perform demonstrations on weapons, munitions and other devices and to prepare safety procedures for proper handling and transportation. Under

these general provisions, the tests and demonstrations are short term where the visible emission is the result.

The amendments under COMAR 26.11.07 establish specific requirements as it relates to safety determinations at Federal facilities. Safety determinations at Federal facilities include testing, training, or demonstrations with explosives, propellants, incendiaries, or military devices involving an open flame.

The amendments under COMAR 26.11.07.03 (B) reinstate the previous open burning distance limitations which were inadvertently changed for Calvert, Cecil, Charles and Frederick counties.

III. Final Action

EPA is approving the SIP revisions submitted by MDE on February 6, 1998 to exempt certain intermittent visible emissions at Federal facilities, amend open burning distance limitations for Calvert, Cecil, Charles and Frederick counties, and establish specific requirements for safety determinations at Federal facilities. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on August 12, 2002 without further notice unless EPA receives adverse comment by July 11, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 12, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to Maryland SIP amending visible emission and open burning requirements may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 21, 2002.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(173) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(173) Revisions to the Maryland State Implementation Plan submitted on February 6, 1998 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) A letter dated February 6, 1998 from the Maryland Department of the Environment transmitting additions to Maryland's State Implementation Plan, concerning exemption of certain intermittent visible emissions requirements at Federal facilities, establishment of specific requirements for safety determinations at Federal facilities, and amendment to open burning distance limitations under the ''open fire'' rule.

(B) The following additions and revisions to the Code of Maryland Administrative Regulations (COMAR), effective August 11, 1997:

(*1*) COMAR 26.11.06.02A(1)—introductory text of paragraph (1) [revised], 26.11.06.02A(1)(i) [revised] and 26.11.06.02A(1)(j) [added].

(*2*) COMAR 26.11.07.01B(5) [added], 26.11.07.03B(1)(c) [revised], and 26.11.07.06 [added].

(ii) Additional Materials—Remainder of the February 6, 1998 submitted by the Maryland Department of the Environment pertaining to the amendments in paragraph (c)(173)(i) (B) of this section.

[FR Doc. 02–14491 Filed 6–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL207–2; FRL–7228–4]

Approval and Promulgation of Implementation Plans; Illinois; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, the EPA is withdrawing the direct final rule approving new emissions tests averaging provisions for the State of Illinois. In the direct final rule published on April 15, 2002 (67 FR 18115), EPA stated that if EPA receives adverse comment by May 15, 2002, the rule would be withdrawn and not take effect. EPA subsequently received adverse comment. EPA will address the comment received in a subsequent final action based upon the proposed action also published on April 15, 2002 (67 FR 18149). EPA will not institute a second comment period on this action.

DATES: The direct final rule is withdrawn as of June 11, 2002.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Particulate matter, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Recordkeeping and reporting requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 30, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

Accordingly, the direct final rule adding 40 CFR 52.720(c)(164), published at 67 FR 18115, is withdrawn as of June 11, 2002.

[FR Doc. 02–14624 Filed 6–10–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 503, 515, 520, 530, 535, 540, 550, 551, 555, and 560

[Docket No. 02–05]

Update of Existing and Addition of New Filing and Service Fees

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (''Commission'') is revising its existing fees for filing petitions and complaints; various public information services, such as record searches, document copying, and admissions to practice; filing ocean transportation intermediary applications; applications for special permission; service contracts; agreements; and passenger vessel performance and casualty certificate applications. These revised fees reflect current costs to the Commission. In addition, the Commission is adding a new fee for the provision of a database report on effective carrier agreements, is making nomenclature changes in certain CFR units with respect to Commission bureau designations, and is making section reference changes in certain CFR units to reflect numbering changes made in a previous rulemaking. The Commission also is republishing a fee requirement that was previously inadvertently omitted.

DATES: Effective on July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5725. E-mail: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION: On March 21, 2002, the Commission published in the **Federal Register** a notice of proposed rulemaking (''Proposed Rule''), 67 FR 13118, in Docket No. 02–05, *Update of Existing and Addition of New Filing and Service Fees*. No comments were received.

This rule updates the Commission's current filing and service fees which have been in effect since 1998, and are no longer representative of the Commission's actual costs for providing such services. Fee increases primarily reflect increases in salary and indirect (overhead) costs. For some services, the increase in processing or review time accounts in part for the increase in the level of fees. For other services, fees are lower due to overall reduced costs to provide those services.

The Commission is instituting a new user fee for provision of a database report on effective carrier agreements. Also, in promulgating new rules governing the filing of service contracts to implement the Ocean Shipping Reform Act of 1998, Pub. L. 105–158, 112 Stat. 1902, in Docket No. 99–12, *Termination of Dial-Up Service Contract Filing System*, 64 FR 41041 (July 29, 1999), we inadvertently failed to carry over § 514.7 into part 530. That section was a permission process to correct clerical or administrative errors in the essential terms of a filed service contract, and included an attendant user fee. We are therefore republishing it.

The Commission intends to update its fees biennially in keeping with OMB guidance. In updating its fees, the Commission will incorporate changes in the salaries of its employees into direct labor costs associated with its services, and recalculate its indirect costs (overhead) based on current level of costs.

This regulatory action was not subject to OMB review under Executive Order 12866, dated September 30, 1993. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chairman of the Federal Maritime Commission has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant economic impact on a substantial number of small entities. In its Notice of Proposed Rulemaking, the Commission stated its intention to certify the rule because the impact on

small business was expected to be de minimis, the agency is required to collect fees to recover its cost for providing certain services, and a waiver of fees is available for hardship cases (46 CFR 503.41). No comments disputed the Commission's intention to certify. The certification is, therefore, continued.

This Rule also makes nomenclature changes in certain CFR units to reflect a change in a relevant Commission bureau name since these CFR units were last revised. In the Proposed Rule, some nomenclature changes incorrectly referred to the Bureau of Consumer Complaints and Licensing when they should have referred to the Bureau of Trade Analysis, and we are making that correction in this Rule. Additionally, this Rule makes section reference changes in certain CFR units to reflect numbering changes made in a previous rulemaking.

This regulatory action is not a ''major rule'' under 5 U.S.C. 804(2). This rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Therefore, OMB review is not required.

List of Subjects

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 503

Classified information, Freedom of information, Privacy, Sunshine Act.

46 CFR Part 515

Exports, Freight forwarders, Non-vessel-operating common carriers, Ocean transportation intermediaries, Licensing requirements, Financial responsibility requirements, Reporting and recordkeeping requirements.

46 CFR Part 520

Common carrier, Freight, Intermodal transportation, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 530

Freight, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 535

Administrative practice and procedure, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

46 CFR Part 550

Administrative practice and procedure, Maritime carriers.

46 CFR Part 551

Administrative practice and procedure, Maritime carriers.

46 CFR Part 555

Administrative practice and procedure, Investigations, Maritime carriers.

46 CFR Part 560

Administrative practice and procedure, Maritime carriers.

For the reasons set forth above, the Federal Maritime Commission amends 46 CFR parts 502, 503, 515, 520, 530, 535, 540, 550, 551, 555, and 560 as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 5 U.S.C. 571–584; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. app. 817d, 817e, 1114(b), 1705, 1707–1711, 1713–1716; E.O. 11222 of May 8, 1965, 30 FR 6469, 3 CFR, 1964–1965 Comp. P. 306; 21 U.S.C. 853a; Pub. L. 105–258, 112 Stat. 1902.

Subpart D—Rulemaking

2. The fourth sentence of § 502.51(a) is revised to read as follows:

§ 502.51 Initiation of procedure to issue, amend, or repeal a rule.

(a) * * * Petitions shall be accompanied by remittance of a $228 filing fee.* * *

* * * * *

Subpart E—Proceedings; Pleadings; Motions; Replies

3. Section 502.62(g) is revised to read as follows:

§ 502.62 Complaints and fee.

* * * * *

(g) The complaint shall be accompanied by remittance of a $209 filing fee.

* * * * *

4. Section 502.68(a)(3) is revised to read as follows:

§ 502.68 Declaratory orders and fee.

(a) * * *

(3) Petitions shall be accompanied by remittance of a $228 filing fee.

* * * * *

5. Section 502.69(b) is revised to read as follows:

§ 502.69 Petitions—General and fee.

* * * * *

(b) Petitions shall be accompanied by remittance of a $228 filing fee. [Rule 69.]

Subpart K—Shortened Procedure

6. The last sentence of § 502.182 is revised to read as follows:

§ 502.182 Complaint and memorandum of facts and arguments and filing fee.

* * * The complaint shall be accompanied by remittance of a $209 filing fee. [Rule 182.]

Subpart Q—Refund or Waiver of Freight Charges

7. § 502.271(d)(5) is revised to read as follows:

§ 502.271 Special docket application for permission to refund or waive freight charges.

* * * * *

(d) * * *

(5) Applications must be accompanied by remittance of a $81 filing fee.

* * * * *

Subpart S—Informal Procedure for Adjudication of Small Claims

8. The last sentence of § 502.304(b) is revised to read as follows:

§ 502.304 Procedure and filing fee.

* * * * *

(b) * * * Such claims shall be accompanied by remittance of a $63 filing fee.

* * * * *

PART 503—PUBLIC INFORMATION

9. The authority citation for Part 503 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, 553; 31 U.S.C. 9701; E.O. 12958 of April 20, 1995 (60 FR 19825), sections 5.2(a) and (b).

Subpart E—Fees

10. In § 503.43, paragraphs (c)(1) (i) and (ii), the first sentence of paragraph (c)(2), paragraph (c)(3)(ii) and (iii), paragraph (c)(4), paragraph (d) and paragraph (e) are revised to read as follows:

§ 503.43 Fees for services.

* * * * *

(c) * * *

(1) * * *

(i) Search will be performed by clerical/administrative personnel at a rate of $20.00 per hour and by professional/executive personnel at a rate of $40.00 per hour.

(ii) Minimum charge for record search is $20.00.

(2) Charges for review of records to determine whether they are exempt from disclosure under § 503.35 shall be assessed to recover full costs at the rate of $75.00 per hour. * * *

(3) * * *

(ii) By Commission personnel, at the rate of five cents per page (one side) plus $20.00 per hour.

(iii) Minimum charge for copying is $5.00.

* * * * *

(4) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $86.00 for each certification.

(d) To have one's name and address placed on the mailing list of a specific docket as an interested party to receive all issuances pertaining to that docket: $10 per proceeding.

(e) Applications for admission to practice before the Commission for persons not attorneys at law must be accompanied by a fee of $95 pursuant to § 502.27 of this chapter.

Subpart G—Access to Any Record of Identifiable Personal Information

11. In § 503.69, paragraph (b)(2) is revised to read as follows:

§ 503.69 Fees.

* * * * *

(b) * * *

(2) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $86 for each certification.

* * * * *

PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

12. The authority citation for Part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718; Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

Subpart A—General

13. In § 515.5, paragraphs (a), (b)(1), (b)(2), and (b)(3) are revised to read as follows:

§ 515.5 Forms and Fees.

(a) *Forms.* License form FMC–18 Rev., and financial responsibility forms FMC–48, FMC–67, FMC–68, FMC–69 may be obtained from the Commission's website at *http://www.fmc.gov,* the Director, Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, Washington, D.C. 20573, or from any of the Commission's area representatives.

(b) * * *

(1) Application for license as required by § 515.12(a): $799;

(2) Application for status change or license transfer as required by §§ 515.18(a) and 515.18(b): $506; and

(3) Supplementary investigations required by § 515.25(a): $225.

Subpart D—Duties and Responsibilities of Ocean Transportation Intermediaries; Reports to Commission

14. The second sentence of § 515.34 is revised to read as follows:

§ 515.34 Regulated Persons Index.

* * * The database may be purchased for $103 by contacting the Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, Washington, DC 20573. * * *

§ 515.12, 515.18, 515.22, 515.25, Appendix A to Subpart C, Appendix B to Subpart C, Appendix D to Subpart C (Amended)

15. In addition to the amendments set forth above, in 46 CFR part 515 remove the words ''Bureau of Tariffs, Certification and Licensing'' and add, in their place, the words ''Bureau of Consumer Complaints and Licensing'' in the following places:

a. Section 515.12(a)(1);
b. Section 515.18(a);
c. Section 515.22(e);
d. Section 515.25(a);
e. Appendix A to Subpart C;
f. Appendix B to Subpart C; and
g. Appendix D to Subpart C.

PART 520—CARRIER AUTOMATED TARIFFS

16. The authority citation for Part 520 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1702, 1707–1709, 1712, 1716; and sec. 424 of Pub. L. 105–383, 112 Stat. 3411.

Subpart B—Filing Requirements

17. The last sentence of § 520.14(c)(1) is revised to read as follows:

§ 520.14 Special permission.

(c) * * *

(1) * * * Every such application shall be submitted to the Bureau of Trade Analysis and be accompanied by a filing fee of $172.

* * * * *

§§ 520.2, 520.3, 520.7 [Amended]

18. In addition to the amendments set forth above, in 46 CFR part 520 remove the words ''Bureau of Tariffs, Certification and Licensing'' and add, in their place, the words ''Bureau of Trade Analysis'' and remove the acronym ''BTCL'' and add, in its place, the acronym ''BTA'' in the following places:

a. Section 520.2;
b. Section 520.3(d); and
c. Section 520.7(b).

PART 530—SERVICE CONTRACTS

19. The authority citation for Part 530 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. App. 1704, 1705, 1707, 1716.

Subpart B—Filing Requirements

20. Section 530.10(c), introductory text, is revised to read as follows:

§ 530.10 Amendment, correction, and cancellation.

* * * * *

(c) * * * Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within forty-five (45) days of the contract's filing with the Commission, accompanied by remittance of a $276 service fee, and shall include:

* * * * *

PART 535—AGREEMENTS BY OCEAN COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT OF 1984

21. The authority citation for Part 535 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1718; Pub. L. 105–383, 112 Stat. 3411.

Subpart D—Filing of Agreements

22–23. In § 535.401, paragraph (f) is revised and paragraph (g) is added to read as follows:

§ 535.401 General requirements.

* * * * *

(f) *Fees.* The filing fee is $1,834 for new class A/B agreements requiring Commission review and action; $931 for class A/B agreement modifications requiring Commission review and action; $442 for agreements processed under delegated authority (for types of agreements that can be processed under delegated authority, see § 501.26(e) of this chapter); and $145 for carrier and terminal exempt agreements.

(g) The fee for the Commission's agreement database report is $32.

PART 540—PASSENGER VESSEL FINANCIAL RESPONSIBILITY

24. The authority citation for Part 540 continues to read as follows:

Authority: 5 U.S.C. 552, 553; 31 U.S.C. 9701; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358; 46 U.S.C. app. 817e, 817d; 46 U.S.C. 1716.

Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

25. The last two sentences in § 540.4(b) are revised to read as follows:

§ 540.4 Procedure for establishing financial responsibility.

* * * * *

(b) * * * An application for a Certificate (Performance), excluding an application for the addition or substitution of a vessel to the applicant's fleet, shall be accompanied by a filing fee remittance of $2,549. An application for a Certificate (Performance) for the addition or substitution of a vessel to the applicant's fleet shall be accompanied by a filing fee remittance of $1,276.

* * * * *

Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

26. The last two sentences in § 540.23(b) are revised to read as follows:

§ 540.23 Procedure for establishing financial responsibility.

* * * * *

(b) * * * An application for a Certificate (Casualty), excluding an application for the addition or substitution of a vessel to the applicant's fleet, shall be accompanied by a filing fee remittance of $1,111. An application for a Certificate (Casualty) for the addition or substitution of a vessel to the applicant's fleet shall be accompanied by a filing fee remittance of $557.

* * * * *

PART 550—REGULATIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES

27. The authority citation for Part 550 continues to read as follows:

Authority: 5 U.S.C. 553; sec. 19(a)(2), (e), (f), (g), (h), (i), (j), (k) and (l) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(a)(2), (e), (f), (g), (h), (i), (j), (k) and (l), as amended by Pub. L. 105–258; Reorganization Plan No. 7 of 1961, 75 Stat. 840; and sec. 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a.

Subpart B—Production of Information

28. Section 550.203(b) is revised to read as follows:

§ 550.203 Failure to provide information.

* * * * *

(b) The Commission may, when there is a failure to produce any information ordered produced under § 550.201, make appropriate findings of fact and inferences, including the inference that conditions unfavorable to shipping in the foreign trade of the United States do exist.

Subpart D—Petitions for Section 19 Relief

29. Section 550.402 is revised to read as follows:

§ 550.402 Filing of petitions.

All requests for relief from conditions unfavorable to shipping in the foreign trade shall be by written petition. An original and fifteen copies of a petition for relief under the provisions of this part shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition shall be accompanied by remittance of a $228 filing fee.

Subpart F—Corrective Actions

30. Section 550.601(d) is revised to read as follows:

§ 550.601 Actions to correct unfavorable conditions.

* * * * *

(d) Suspend, in whole or in part, an ocean common carrier's right to operate under an agreement, including any agreement authorizing preferential treatment at terminals or preferential terminal leases, whether filed with the Commission or not filed with the Commission pursuant to the exemptions granted in 46 CFR Part 535; or any agreement filed with the Commission authorizing space chartering, or pooling of cargo or revenues with other ocean common carriers;

* * * * *

PART 551—ACTION TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE U.S. FOREIGN TRADE

31. The authority citation for Part 551 continues to read as follows:

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app 876 (5) through (12); 46 CFR part 550; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

32. Section 551.1 is revised to read as follows:

§ 551.1 Actions to adjust or meet conditions unfavorable to shipping in specific trades.

Whenever the Commission determines that conditions unfavorable to shipping exist in the United States foreign trade with any nation and issues rules to adjust or meet such conditions, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) and 46 CFR part 551, such rules shall be published in the **Federal Register** and added to this part.

PART 555—ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING U.S.-FLAG CARRIERS THAT DO NOT EXIST FOR FOREIGN CARRIERS IN THE UNITED STATES

33. The authority citation for Part 555 continues to read as follows:

Authority: 5 U.S.C. 553; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a), as amended by Pub. L. 105–258.

34. In § 555.4, paragraphs (a) and (b)(9) are revised to read as follows:

§ 555.4 Petitions.

(a) A petition for investigation to determine the existence of adverse conditions as described in § 555.3 may be submitted by any person, including any common carrier, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States. Petitions for relief under this part shall be in writing, and filed in the form of an original and fifteen copies with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition shall be accompanied by remittance of a $228 filing fee.

(b) * * *

(9) A recommended action, including any of those enumerated in § 555.8, the result of which will, in the view of the

petitioner, address the conditions complained of.

* * * * *

35. In § 555.5, the first sentence of paragraph (a) and the last sentence of § 555.5(c) are revised to read as follows:

§ 555.5 Investigations.

(a) An investigation to determine the existence of adverse conditions as described in § 555.3 may be initiated by the Commission on its own motion or on the petition of any person pursuant to § 555.4. * * *

* * * * *

(c) * * * Persons who receive information requests from the Commission pursuant to § 555.6 of this part are not precluded from filing additional voluntary submissions in accordance with this paragraph.

* * * * *

36. The first sentence of § 555.6(c) is revised to read as follows:

§ 555.6 Information demands and subpoenas.

* * * * *

(c) The Commission may, in its discretion, determine that any information submitted to it in response to a request (including a subpoena) under this section, or accompanying a petition under § 555.4, or voluntarily submitted by any person pursuant to § 555.5(c), shall not be disclosed to the public. * * *

37. The first sentence of § 555.7 is revised to read as follows:

§ 555.7 Notification to Secretary of State.

Upon publication of a petition in the **Federal Register**, or on its own motion should it determine to initiate an investigation pursuant to § 555.5, the Commission will notify the Secretary of State of same, and may request action to seek resolution of the matter through diplomatic channels. * * *

§§ 555.5, 555.8 [Amended]

38. In addition to the amendments set forth above, in 46 CFR part 555 remove the references to the term ''§ 588.3'' and add, in its place, the term ''§ 555.3'' in the following places:

(a) Section 555.5 (b);

(b) Section 555.8 (a); and

(c) Section 555.8 (a) (7).

PART 560—ACTIONS TO ADDRESS CONDITIONS UNDULY IMPAIRING ACCESS OF U.S.-FLAG VESSELS TO OCEAN TRADE BETWEEN FOREIGN PORTS

39. The authority citation for Part 560 continues to read as follows:

Authority: 5 U.S.C. 553; secs. 13(b)(6), 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(6), 1714 and 1716, as amended by Pub. L. 105–258; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a), as amended by Pub. L. 105–258.

40. Section 560.3(a)(2) is revised to read as follows:

§ 560.3 Petitions for relief.

(a) * * *

(2) An original and fifteen copies of such a petition including any supporting documents shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition shall be accompanied by remittance of a $228 filing fee.

* * * * *

41. In § 560.4, paragraphs (a) and (b)(2) are revised to read as follows:

§ 560.4 Proceeding.

(a) Upon the Commission's own motion or upon the filing of a petition which meets the requirements of § 560.3, when there are indications that conditions unduly impairing the access of a U.S. flag vessel to trade between foreign ports may exist, the Commission will institute a proceeding pursuant to this part.

(b) * * *

(2) Interested or adversely affected persons will be allowed a period of time to reply to the petition by the submission of written data, views or legal arguments pursuant to § 560.5 of this part. Factual submissions shall be in affidavit form.

* * * * *

42. Section 560.7(b)(6) is revised to read as follows:

§ 560.7 Decision; sanctions; effective date.

* * * * *

(b) * * *

(6) A request to the collector of customs at any port or place of destination in the United States to refuse the clearance required by section 4197 of the Revised Statutes, 46 U.S.C. app. 91, to any vessel of a foreign carrier which is or whose government is identified as contributing to the conditions described in § 560.2 of this part;

* * * * *

43. Section 560.8 is revised to read as follows:

§ 560.8 Submission of decision to the President.

Concurrently with the submission of any decision imposing sanctions to the **Federal Register** pursuant to § 560.7(d)(1), the Commission shall transmit that decision to the President of the United States who may, within ten days after receiving the decision, disapprove it if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

44. Section 560.9(b) is revised to read as follows:

§ 560.9 Postponement, discontinuance, or suspension of action.

* * * * *

(b) The Commission shall postpone, discontinue or suspend any action provided for in its final decision if so directed by the President for reasons of national defense or foreign policy of the United States as provided in § 560.8.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–14477 Filed 6–10–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 25 and 87

[ET Docket No. 98–142; FCC 02–23]

Mobile-Satellite Service Above 1 GHz; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On April 10, 2002 (67 FR 17288), the Commission published final rules in the Report and Order, which revised the rules governing Mobile-Satellite Service. This document contains a correction to that rule.

DATES: Effective May 10, 2002.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 418–2450, TTY (202) 418–2989, e-mail: *tmooring@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document amending part 25 in the **Federal Register** of April 10, 2002 (67 FR 17288). This document corrects the **Federal Register** as it appeared. In rule FR Doc. 02–8345 published on April 10, 2002 (67 FR 17288) the Commission makes the following correction to § 25.202 of the rules.

§ 25.202 [Corrected]

1. On page 17299, in the third column correct the amendatory language to § 25.202 to read as follows:

''5. Section 25.202(a)(1) is amended by revising the table, and by adding footnotes 14 and 15 to the table to read as follows:''

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–14654 Filed 6–10–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–67; FCC 02–121]

Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification.

SUMMARY: This document clarifies that Internet protocol relay services (IP Relay) fall within the definition of Telecommunications Relay Services (TRS). Because there is no automatic method for determining if a call placed over IP Relay is intrastate or interstate, we authorize IP Relay providers to recover their costs from the Interstate TRS Fund on an interim basis, until such time as we decide whether and how a methodology can be devised to allocate cost recovery between the Interstate TRS Fund and the states. This document also waives certain TRS minimum standards for IP Relay, and directs the National Exchange Carriers Association, which is the current administrator of the Interstate TRS Fund, to begin paying cost recovery to eligible providers of Internet-based TRS, upon release of this *Declaratory Ruling* by the Commission.

DATES: Effective April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Sean O'More, of the Consumer and Governmental Affairs Bureau at (202) 418–2453 (voice), (202) 418–7870 (TTY), or e-mail *scomore@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Declaratory Ruling,* adopted April 18, 2002, and released April 22, 2002. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.* Copies of this document in other alternative formats (computer diskette, large print, and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau at (202) 418–7426 (voice), (202) 418–7365 (TTY), or e-mail *bmillin@fcc.gov.* This *Declaratory Ruling* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro.*

Synopsis

In this *Declaratory Ruling,* the Commission responds to a *Petition for Clarification* filed by WorldCom, Inc., requesting that we clarify that WorldCom's IP Relay is TRS, and is therefore eligible for recovery of its costs of providing TRS. We find that because IP Relay and other Internet-based TRS ''provide[s] the ability for an individual who has a hearing impairment or a speech impairment to engage in communication by wire or radio with a hearing individual,'' 47 U.S.C. 225(a)(3), such service is TRS, and are eligible for cost recovery. Ordinarily, ''costs caused by interstate [TRS] shall be recovered from all subscribers for every interstate service and costs caused by intrastate [TRS] shall be recovered from the intrastate jurisdiction.'' 47 U.S.C. 225(d)(3)(B). There is, however, no automatic means of determining the origination of IP Relay calls. In the absence of this information, TRS providers cannot determine, or report to the TRS Fund Administrator, whether a call is interstate or intrastate. Therefore, as an interim measure, we authorize providers of IP Relay to recover costs from the Interstate TRS Fund. We also waive certain TRS minimum standards, *see* 47 CFR 64.604.

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law No. 104–121, Title II, 110 Stat. 857 (1996). 5 U.S.C. 605(b). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

This *Declaratory Ruling* addresses a Petition for Clarification (*Petition*) filed by WorldCom, Inc. (WorldCom) in December of 2000. WorldCom, Petition for Clarification, CC Docket No. 90–571, *Telecommunications Services for Individuals with Hearing and Speech Disabilities,* Dec. 22, 2000. This *Petition* requests that the Federal Communications Commission (Commission) clarify that Internet Protocol (IP) telecommunications relay services (TRS) are eligible for reimbursement from the Interstate Telecommunications Relay Service Fund. The Commission sought comments on the WorldCom Petition in a Public Notice. Consumer Information Bureau Seeks Additional Comment on the Provision of Improved Telecommunications Relay Service, DA 01–1555, *Public Notice,* 16 FCC Rcd 13100, Jun. 29, 2001; published at 66 FR 37631, Jul. 19, 2001. As a result of the WorldCom *Petition* and filed public comments, the Commission is issuing this *Declaratory Ruling* which will allow WorldCom to recover such costs.

As noted in paragraph 59 of the *Declaratory Ruling,* this item imposes a regulatory burden on the Interstate TRS Fund Administrator, requiring it to pay qualified providers of IP telecommunications relay services (TRS) for their costs caused by their TRS. The Interstate TRS Fund is a not-for-profit organization, and therefore is a ''small organization.'' A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). Nationwide, as of 1992, there were approximately 275,801 small

organizations. U.S. Department of Commerce, Bureau of the Census, 1992, Table 6 (special Tabulation of data under contract of the Office of Advocacy of the U.S. Small Business Administration). Because the Interstate TRS Fund is the only entity affected by the *Declaratory Ruling,* we conclude that a ''substantial number'' of small entities will not be affected by the *Declaratory Ruling.*

Therefore, we certify that the requirements of this *Declaratory Ruling* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Declaratory Ruling,* including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A). In addition, the *Declaratory Ruling* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**. *See* 5.U.S.C. 605(b).

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1,2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152 and 225, this *Declaratory Ruling is adopted.*

It is further ordered that WorldCom's *Petition for Clarification is granted* to the extent indicated herein.

It is further ordered that the waivers requested by WorldCom in its *Petition for Clarification,* regarding certain of the minimum standards for TRS contained in 47 CFR 64.604, *ARE GRANTED,* to the extent indicated herein.

It is further ordered that the Administrator of the Interstate Fund, the National Exchange Carriers Association, *shall* upon release of this *Declaratory Ruling* by the Commission, pay eligible providers of IP Relay the costs of providing IP Relay using the PSTN-based TRS formula rate per minute.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Declaratory Ruling,* including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–14677 Filed 6–10–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1153; MM Docket No. 00–245; RM–9971, 10185, 10186]

Radio Broadcasting Services; Alberta and Dinwiddie, VA and Whitakers and Garysburg, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 65 FR 79327 (December 19, 2000), this document allots Channel 276A to Garysburg, North Carolina as its first local aural transmission service, substitutes Channel 299A for Channel 276A at Alberta, Virginia, and modifies Station WSMY–FM's authorization accordingly. This document denies a request by Dinwiddie Radio Company that Channel 299A be allotted to Dinwiddie, Virginia and that Channel 276A be retained at Alberta. This document also denies a request by Station WSMY–FM to substitute Channel. 276C3 for Channel 276A at Alberta, Virginia, and to reallot Channel 276C3 from Alberta, Virginia to Whitakers, North Carolina. The coordinates for Channel 276A at Garysburg, North Carolina are 36–26–30 North Latitude and 77–35–00 West Longitude.

DATES: Effective July 8, 2002.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–245, adopted May 8, 2002, and released May 17, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail: *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 reads as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Garysburg, Channel 276A.

3. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by adding Channel 299A at Alberta and removing Channel 276A at Alberta.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau.

[FR Doc. 02–14653 Filed 6–10–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1249; MM Docket No. 01–69; RM–10081]

Radio Broadcasting Services; Parker, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 66 FR 17843 (April 4, 2001), this document allots Channel 247C3 to Parker, Arizona, and provides Parker with its fourth local aural transmission service. The coordinates for Channel 247C3 at Parker are 34–03—11 North Latitude and 114–17–18 West Longitude.

DATES: Effective July 8, 2002.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–69, adopted May 8, 2002, and released May 17, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202 863–2893. facsimile 202 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 reads as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Channel 247C3 at Parker.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau.

[FR Doc. 02–14672 Filed 6–10–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN 1018–AE34

Injurious Wildlife Species; Brushtail (*Trichosurus vulpecula*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service adds the brushtail possum (***Trichosurus vulpecula***) to the list of injurious live mammals. By this action, the Service prohibits the importation into or transportation between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States of any live brushtail possum. The best available information indicates that this action is necessary to protect the interests of forestry, human health and safety, and wildlife and wildlife resources from adverse effects that may result from purposeful or accidental introduction and subsequent establishment of the brushtail possum populations in the ecosystems of the United States. Live brushtail possums can only be imported by permit for scientific, medical, educational, or zoological purposes, or without a permit by Federal agencies solely for their own use; permits will also be required for the interstate transportation of live brushtail possums currently held in the United States for scientific, medical, educational, or zoological purposes. However, this action prohibits interstate transportation of live brushtail possums currently held in the United States for purposes not listed above.

DATES: This rule is effective July 11, 2002.

FOR FURTHER INFORMATION CONTACT: Kari Duncan, Division of Environmental Quality, Branch of Invasive Species at (703) 358–2464 or kari_duncan@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

Summary of Actions Taken and Comments

The Service published a request for information in the January 24, 1996 (61 FR 1893), **Federal Register** as the result of a letter that we received from the Texas Animal Health Commission requesting that the Service prohibit the importation of *T. vulpecula* into the United States. The request for information included the entire *Trichosurus* genus, to ensure that all members of the genus that might pose a threat were covered. We received 11 responses, all indicating the extreme injurious nature of *T. vulpecula.* However, due to limited data on the injurious nature of the other species in the genus, we developed a proposed rule for the brushtail possum only. The proposed rule (64 FR 59149, November 2, 1999) invited comments for 60 days ending January 3, 2000. The Humane Society of the United States (HSUS) submitted the only comment received during this period. The HSUS supported the proposed rule but did not submit additional information as to why brushtail possums should be listed as injurious. Consequently, our decision to develop this final rule is based on the scientific information that we used for the proposed rule.

Description of the Final Rule

The regulations contained in 50 CFR part 16 implement the Lacey Act (18 U.S.C. 42) as amended. Under the terms of that law, the Secretary of the Interior is authorized to prescribe by regulation those nonindigenous wild animals or viable eggs thereof, that are deemed to be injurious or potentially injurious to the health and welfare of human beings, the interests of agriculture, forestry, and horticulture, or the welfare of and survival of wildlife or wildlife resources of the United States. The lists of injurious wildlife species are at 50 CFR 16.11–15. By adding brushtail possums to the list of injurious wild mammals, their importation into and transportation between, States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States by any means whatsoever is prohibited, except by permit for zoological, educational, medical, or scientific purposes, or by Federal agencies without a permit solely for their own use upon filing a written declaration with the District Director of Customs and the U.S. Fish and Wildlife Service Inspector at the port of entry. No live brushtail possums or progeny thereof, imported or transported under a permit may be sold, donated, traded, loaned, or transferred to any person or institution unless such person or institution has a permit issued by the Director of the Service. The interstate transportation of any live brushtail possum or viable gametes thereof currently held in the United States for any purpose not permitted is prohibited.

Biology

Brushtail possums *(Trichosurus vulpecula)* belong to the Order Diprotodonta, superfamily Phalangeroidea, and family Phalangeridae. They are also known as the common brushtail possum, silver-grey possum, and phalanger. Native to Australia, the brushtail possum is the most familiar and abundant of the Australian possums, frequently cohabiting with humans. Head and body length range from 350 to 550 mm; tail length ranges from 250 to 400 mm. Females weigh between 1,500 and 3,500 grams, and males between 2,000 and 4,500 grams. They are generally silver-grey above, white to pale grey below. They have long, oval ears (50–60 mm); the tail is bushy with a naked area under the tip.

The brushtail possum occurs in most areas of Australia where there are trees, especially open forests and woodlands. A nocturnal animal, it spends the day in a den in a hollow dead branch, tree trunk, fallen log, or even on the ground. In urban areas, almost any dark recess may be utilized, the space between a ceiling and a roof being commonly favored. Although it travels extensively on the ground, it is an arboreal (tree-dwelling) animal, climbing by means of its sharp claws, the opposable first toe of the hindfoot, and a moderately prehensile (grasping) tail. Although their diet consists mainly of vegetation such as leaves, bark, fruits, buds, flowers, fungi, and tree sprouts, brushtail possums may eat some insects, eggs, and small animals (Grzimek's Animal Encyclopedia).

Communication is by sound and scent. Deep guttural coughs and sharp

hisses are frequent, particularly in the breeding season, and extensive use is made of glands under the chin, on the chest and near the anus, to mark areas and define occupancy. Brushtail possums usually live less than 11 years, but a record exists of an individual that lived for 11 years.

Most populations have a major autumn and a minor spring breeding season, but births have been recorded in all months of the year. Females usually begin to reproduce when about 1 year old. Over 90 percent of females breed annually, and in some populations 50 percent may breed in both seasons. A single young is born 17–18 days after copulation, spends 4–5 months in the well-developed pouch attached to one of the two teats and develops rapidly. A further 1–2 months are spent suckling and riding on the mother's back before weaning is completed.

According to the Australian Nature Conservation Agency, brushtail possum meat and fur has been used as a food and clothing source by Australian Aboriginals and more recently, the products have been in high demand in Asian countries (China, Hong Kong, Japan, etc.). Because of their pleasant disposition, brushtail possums have been imported into the United States as pets.

On June 6, 1994, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) published an interim rule (59 FR 29186) prohibiting the importation of brushtail possums and hedgehogs from New Zealand to prevent the introduction of tuberculous infected animals into the United States. The intended effect was to protect domestic livestock from tuberculosis. APHIS published a final rule affirming the interim rule on January 23, 1995 (60 FR 4372). The tuberculosis issue is discussed in more detail below.

This rule adds to the restrictions found in the APHIS regulations (found at 9 CFR 93.701) by expanding the prohibition on the importation of brushtail possums from all countries. It also prohibits interstate movement of these animals.

Factors That Contribute to Injuriousness

Although few cases of brushtail possum ownership in the United States are known, the likelihood of escape, survival, establishment, and spread after escape is high. Between 1837 and 1930, about 200 brushtail possums were released in New Zealand to establish a fur industry. Since that time, they have spread across 95% of New Zealand and the population is around 70 million (Department of Conservation National Possum Plan). Brushtail possums have become ubiquitous, adapting to numerous habitats and elevations, including tree lines, pastures, orchards, and cities, and can be found from sea level to above the snow line in mountains (The Ecological Effects of Possums on the New Zealand Environment). According to *PawPrintOnline.com*, a breeder of brushtail possums, ''In most areas of the United States, brushies can be housed outdoors year-round.'' Brushtail possums have few natural enemies, and although their reproductive rate is low, their populations increase rapidly because they become sexually mature at a young age (Grzimek's Animal Encyclopedia).

Although the diet of brushtail possums consists mostly of leaves from trees and shrubs, they also eat buds, flowers, fruit, ferns, bark, fungi, some insects, eggs, and small mammals (Department of Conservation National Possum Control Plan). Brushtail possums compete with native New Zealand birds for foliage and fruit. By eating the flowers of at least 20 species of forest plants, they rob nectar and berries from several species of birds and other pollinators (bats, insects, *etc.*). Where den sites are available, they compete with hole-nesting birds for cover. Diet requirements and feeding habits are expected to be the same in the United States indicating a high likelihood that brushtail possums will compete with native wildlife for food and habitats.

The likelihood that brushtail possums would have adverse impacts on native wildlife, wildlife resources, and ecosystem balance through habitat degradation and/or destruction is high. They have dramatically altered native plant communities in New Zealand by eating native forests. Tall forests can be turned into scrub and bare ground. Brushtail possums attack the canopy, subcanopy, shrub layer, and ground. They weaken canopies and make them more susceptible to climate extremes, and infection from bacteria, fungi, and insects. Beneath the canopy and along the forest edge, they kill or suppress smaller trees and shrubs (Department of Conservation National Possum Control Plan).

According to P.E. Cowan, possums have colonized virtually all of New Zealand's indigenous forests. Brushtail possums have caused modification and threatened major mortality to broadleaved hardwood forests and have severely damaged pine forests. ''Possums cause four major kinds of damage to pine trees: browsing of terminal shoots of newly planted seedlings, barkstripping and chewing of cambial tissue, breakage of the leader and top whorl of laterals, and cone loss from seed stands after trees mature.'' In New Zealand, damage has been reported on at least eight species of *Pinus* that are native to the United States: *P. ponderosa, P. palustris, P. muricata, P. taeda, P. echinata, P. contorta, P. radiata*, and *P. elliottii* (The Ecological Effects of Possums on the New Zealand Environment).

The likelihood that brushtail possums will have adverse impacts on native wildlife through predation is high. Brushtail possums threaten animal species by preying on them, competing for food, or interfering with nesting sites (Department of Conservation National Possum Control Plan). In New Zealand, brushtail possums have been found to prey on the eggs and chicks of several rare native birds, such as kiwis, kokakos, parakeets, saddlebacks, and pigeons. Ground-dwelling birds in the United States would be particularly vulnerable to predation by brushtail possums.

The likelihood that brushtail possums will have adverse impacts on native wildlife, wildlife resources, and ecosystem balance through the transfer of pathogens is high. Bovine tuberculosis (*Mycobacterium bovis*) is one of New Zealand's more serious health problems (70 Million Reasons for Concerted Action Against Possums). Brushtail possums are vectors for bovine tuberculosis and play a major role in keeping it in the environment. *M. bovis* can survive in open fields for days, in protected areas such as possum dens for 3 weeks, and in possum carcasses for 6 weeks (Annual Report from the Possum/Bovine Tuberculosis Control National Science Strategy Committee). Bovine tuberculosis usually concentrates in the lungs, thus making disease transmission through respiration a concern. *M. bovis* can also spread through urine, feces, mucus, and sinus drainage, making areas containing diseased possums highly contaminated (New Zealand Brushtailed Possums May Spread Bovine Tuberculosis, U.S. Department of Agriculture News, Report No. 0344.94). Bovine tuberculosis can be contracted through breathing respiratory excretions from infected animals or eating or drinking contaminated items. Animals susceptible to bovine tuberculosis include cattle, deer, elk, pigs, goats, sheep, cats, dogs, rabbits, ferrets, stoats, and hedgehogs (National Tb Strategy, Animal Health Board, and National Pest Management Strategy for Bovine Tb). The consequences of bovine tuberculosis in the United States would probably be more devastating than in

New Zealand because of the richer mammalian fauna thus resulting in a wider distribution of the pathogen (Director, Madison Wildlife Health Lab, USGS–BRD).

The likelihood of impacts on human beings, agriculture, and forestry is high. Historically bovine tuberculosis has been a significant human health problem. Humans are able to contract the disease by consumption of unpasteurized milk or by direct contact with infected animals or carcasses (National Pest Management Strategy for Bovine TB). In New Zealand, bovine tuberculosis spread by brushtail possums threatens the agricultural trade, especially exports of meat and dairy products (Attacking the Possum Plague). In the United States, cattle and deer farmers and industries based on beef, dairy, or venison products would be affected. Brushtail possums also pose a risk to the forestry resources of the United States. As stated earlier, brushtail possums have dramatically altered forests in New Zealand. Eight species of pine trees native to the United States are particularly vulnerable to damage from brushtail possums.

Factors That Reduce or Remove Injuriousness

Few options are currently available for controlling brushtail possum populations. Eradication efforts in New Zealand have failed, so efforts have focused on managing established populations and controlling the spread to new locations. Several control methods are available in New Zealand: aerially sown compound 1080 poison (sodium monofluoroacetate), ground hunting (commercial hunters, bounties paid for skins, baiting), and trapping. The main advantages of aerially spread 1080 poison baits are that the method can be used over very large areas, its costs are little affected by the terrain, and all possums are put at risk simultaneously over a short period. Its main disadvantages are that wet weather may put the program at risk, and that 1080 poses a high risk of secondary poisoning to canids and may kill other non-target animals such as small birds, insects, and invertebrates (Department of Conservation National Possum Control Plan). Additionally, although 95% of the possums that eat the bait die, their sense of smell allows them to detect the poison and shy away from it. The use of compound 1080 in the United States is restricted to very controlled conditions. Biological control methods (sterility, possum-specific viruses) are being investigated, but to date, none have proven to be effective (Attacking the Possum Plague).

According to APHIS Wildlife Services, shooting and trapping are the only methods available for controlling *Didelphis virginiana*, the Virginia opossum (Jackson, 1994). There are no registered repellants, toxicants, or fumigants available in the United States. Since the brushtail possum has been compared to the Virginia opossum, trapping and shooting would likely be the only methods available for controlling the brushtail possum.

The ability to prevent and control the spread of pathogens is dependent upon controlling the spread of the vectors. In New Zealand, endemic *M. bovis* infection in feral populations of Australian brushtail possums is considered an important reservoir for repeated episodes of tuberculosis infection in cattle. As mentioned above, efforts to eradicate brushtail possums in New Zealand have failed. It has gradually been accepted by New Zealand disease control authorities that in areas where possum tuberculosis is endemic, eradication of tuberculosis is not possible. The consequences of bovine tuberculosis in this country would probably be more devastating than in New Zealand because of the richer mammalian fauna.

Because brushtail possums may transmit pathogens to humans, livestock, and wildlife; damage or destroy native forests; prey upon, compete for food, or displace native wildlife; and because control methods are limited, the Service has determined that the brushtail possum is potentially injurious to human beings, forestry and agriculture interests, and the wildlife and wildlife resources of the United States.

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget has determined that this rule is not a significant regulatory action.

(a) It will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A cost-benefit and economic analysis is not required. The Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture has developed and implemented regulations prohibiting the importation of brushtail possums from New Zealand because they carry bovine tuberculosis. This rule increases restrictions over and above the Department of Agriculture regulations (9 CFR 93.701) by expanding this prohibition to all countries. Consequently, economic analysis is restricted to the effect that these additional importation restrictions will have on the American economy.

The brushtail possum is abundant in Australia, including Tasmania. They have been hunted in Tasmania since the 1920's for fur. The fur market has declined in recent years, and the possum industry has been selling skins and meat to Taiwan and China. World trade in brushtail possums mainly focuses on meat mostly going to Asian markets. Between January 1, 1999, and December 31, 2001, only two live brushtail possums were imported into the United States at a declared value of $972 and one live brushtail possum was exported at a declared value of $200. Therefore, this rule should have little, if any, measurable economic effect on the U.S. economy and will not have an annual effect equaling $100 million or more for a significant rulemaking action.

A major, though not quantified, effect of this rule is the reduced risk of substantial agricultural and environmental damage in the United States including the spread of *M. bovis*, that could occur if brushtail possums escape from captivity. Risk reduction is a benefit of this rule that cannot be quantified with existing data. However, the damage caused by brushtail possums in New Zealand is well documented.

(b) This rule does not create inconsistencies with other agencies' actions. It will expand the prohibition established by APHIS for importation from New Zealand to importation from all countries because of the potential of brushtail possums carrying *M. bovis* and the damage they could inflict on native ecosystems.

(c) This rule does not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients and does not affect entitlement programs.

(d) It does not raise novel legal or policy issues. No previous listings of wildlife as injurious in the past have raised legal or policy concerns. Because only two live brushtail possums were imported and only one live brushtail possum was exported between 1996 and 2001, this rule is not expected to raise legal, policy, or any other issues.

This rule does not have a significant economic effect on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) Neither a Regulatory Flexibility Analysis nor a Small Entity Compliance Guide is required. Only two live animals were imported and only one live animal was exported over a five-year period; therefore, no small industry within the United States will be significantly affected if importation and

interstate movement of brushtail possum is not allowed.

This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It does not have an annual effect on the economy of $100 million or more. Two brushtail possum breeders advertise on the Internet. USDA–APHIS records indicate that there may be as many as 20 breeders in the United States. Only two live brushtail possums were imported into the United States between 1996 and 2001 at a declared value of $972 and only one live brushtail possum was exported during that same period. The Service believes that a market for live brushtail possums has not been established in the United States. Consequently, there are no measurable economic effects on small businesses.

This rule will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It does not have significant adverse effects on competition, employment, investment productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. The low number of brushtail possums imported into the United States indicates that listing the brushtail possum as injurious would not have significant adverse effects.

The rule does not significantly or uniquely affect small governments, and a Small Government Agency Plan is not required. The rule will not impose a cost of $100 million or more in any given year on local or State government or private entities.

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule will impose few requirements or limitations on private property use. While interstate transport of brushtail possums already within the United States will be prohibited, continued possession of these animals is not restricted.

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on States, in the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In accordance with Executive Order 13132, this rule does not have sufficient Federalism implications to warrant the preparation of a Federal Assessment.

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 Executive Order. This rule has been reviewed to eliminate drafting errors and ambiguity, was written to minimize litigation, provides a clear legal standard for affected conduct rather than a general standard, and promotes simplification and burden reduction.

This rule contains information collection activity for special use permits. The Fish and Wildlife Service has OMB approval for the collection under OMB Control Number 1018–0012. The Service 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.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement is not required. The action is categorically excluded under the Departmental NEPA procedures (516 DM 2, Appendix 1.10), which apply to policies, directives, regulations, and guidelines of an administrative, legal, technical, or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case.

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

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is intended to prevent the accidental or intentional introduction of brushtail possums and the possible subsequent establishment of populations of these animals in the wild, it is not a significant regulatory action under Executive Order 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rule is available upon request from the Division of Environmental Quality (*see* **FOR FURTHER INFORMATION CONTACT** section).

Authority

The Service is issuing this final rule under the authority of the Lacey Act (18 U.S.C. 42).

List of Subjects in 50 CFR Part 16

Fish, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons discussed in the preamble, we amend Part 16 Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations as set forth below.

PART 16—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 18 U.S.C. 42.

2. Amend § 16.11 by revising paragraph (a) to read as follows:

§ 16.11 Importation of live wild mammals.

(a) The importation, transportation, or acquisition is prohibited of live specimens of: (1) Any species of so-called ''flying fox'' or fruit bat of the genus *Pteropus*; (2) any species of mongoose or meerkat of the genera *Atilax, Cynictis, Helogale, Herpestes, Ichneumia, Mungos*, and *Suricata*; (3) any species of European rabbit of the genus *Oryctolagus*; (4) any species of Indian wild dog, red dog, or dhole of the genus *Cuon*; (5) any species of multimammate rat or mouse of the genus *Mastomys*; (6) any raccoon dog, *Nyctereutes procyonoides*; and (7) any brushtail possum, *Trichosurus vulpecula*: Provided, that the Director shall issue permits authorizing the importation, transportation, and possession of such mammals under the terms and conditions set forth in § 16.22.

* * * * *

Dated: May 22, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–14608 Filed 6–10–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 053102B]

Atlantic Highly Migratory Species; Bluefin Tuna Recreational Fishery

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

ACTION: Retention limit adjustments.

SUMMARY: NMFS adjusts the daily retention limit for the recreational fisheries for Atlantic bluefin tuna (BFT) for the fishing year that began June 1, 2002, and ends May 31, 2003. Vessels permitted in the Atlantic Tunas Angling and the Atlantic Highly Migratory Species (HMS) Charter/Headboat categories are eligible to land BFT under the BFT Angling category quotas. The seasonal adjustments to the daily retention limit for each BFT size class is specified in the **DATES** and **SUPPLEMENTARY INFORMATION** section of this document. This action is being taken to provide increased fishing opportunities in all areas without risking overharvest in this category.

DATES: Effective June 15 through October 31, 2002, the daily retention limit in all areas for all vessels fishing under the Angling category quota is adjusted to four BFT per vessel, which may be from the school, large school, or small medium size classes.

Effective November 1, 2002, through May 31, 2003, the daily retention limit in all areas is adjusted to one large school, or small medium BFT for all vessels fishing under the Angling category quota.

FOR FURTHER INFORMATION CONTACT: Brad McHale, (978) 281–9260.

SUPPLEMENTARY INFORMATION:

Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635.

Implementing regulations for the Atlantic tuna fisheries at § 635.23 set the daily retention limits for BFT and allow for adjustments to the daily retention limits in order to provide for maximum utilization of the quota over the longest possible period of time. NMFS may increase or reduce the per angler retention limit for any size class BFT or may change the per angler limit to a per boat limit or the per boat limit to a per angler limit. Size class categories of BFT are defined as follows: school size BFT measure 27 to less than 47 inches (69 to less than 119 cm) curved fork length (CFL); large school BFT measure 47 to less than 59 inches (119 to less than 150 cm) CFL; small medium BFT measure 59 to less than 73 inches (150 to less than 185 cm) CFL; large medium BFT measure 73 to less than 81 inches (185 to less than 206 cm) CFL; and giant BFT measure 81 inches or greater (206 cm or greater) CFL.

A recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) requires that NMFS limit the catch of school BFT to no more than eight percent by weight of the total domestic landings quota over each four-consecutive-year period. NMFS is implementing this ICCAT recommendation through annual and inseason adjustments to the school BFT retention limits, as necessary, and through the establishment of a school BFT reserve (64 FR 29090, May 28, 1999; 64 FR 29806, June 3, 1999).

The ICCAT recommendation allows for interannual adjustments for overharvests and underharvests, provided that the eight percent landings limit is met over the applicable four-consecutive-year period. The 2002 fishing year is the fourth year in the current accounting period. This multi-year block quota approach provides NMFS with the flexibility to enhance fishing opportunities and to collect information on a broad range of BFT size classes.

Regulations at 50 CFR 635.23(b) restrict vessels fishing under the BFT Angling category quota to one BFT per vessel per day, which may be from the school, large school, or small medium category and, in addition, one large medium or giant BFT per vessel per year. This retention limit is subject to adjustment to provide for maximum utilization of the quota and enhanced fishing opportunities over the range of the recreational fisheries. NMFS has received comment from BFT fishermen that the implementation of an increased daily retention limit over a date-certain period is preferable to a longer season with a lower daily retention limit as it facilitates the scheduling of fishing trips, particularly charter trips.

In 2001, NMFS increased the Angling category daily retention limit to four school, large school, or small medium BFT from June 15 through October 31, and then reduced it to one large school, or small medium BFT for November 1, 2001 through May 31, 2002 (66 FR 31844, June 13, 2001).

Since June 1, 2002, the default Angling category daily retention limit at 50 CFR 635.23(b) has been in effect, and will apply until the effective date of this catch limit adjustment. Effective June 15 through October 31, 2002, NMFS adjusts the daily retention limit for all areas to four BFT in any combination of the school, large school, or small medium size classes. This limit applies to all vessels permitted in the Atlantic Tunas Angling category and to vessels permitted in the Atlantic HMS Charter/Headboat category.

From November 1, 2002, through May 31, 2003, the daily retention limit for all vessels fishing under the Angling category quota will revert back to the default limit of one school, large school, or small medium BFT per vessel. Regardless of the length of the trip, no more than a single day's allowable catch may be possessed or retained.

NMFS selected the daily retention limit and the duration of the daily retention limit adjustment after examining past catch and effort rates and the available quota for 2002. NMFS will continue to monitor the Angling category fishery closely through the Automated Landings Reporting System, the state harvest tagging programs in North Carolina and Maryland, and the Large Pelagics Survey. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that an interim closure or an additional retention limit adjustment is necessary to enhance scientific data collection from, and fishing opportunities in, all geographic areas. Additionally, NMFS may determine that an allocation from the school BFT reserve is warranted to further fishery management objectives.

Closures or subsequent adjustments to the daily retention limit, if any, will be announced through publication in the **Federal Register**. In addition, anglers may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9305 for updates on quota monitoring and retention limit adjustments. Anglers aboard Atlantic HMS Charter/Headboat category vessels, when engaged in recreational fishing for school, large school, and small medium BFT, are subject to the same rules as anglers aboard Angling category vessels. All BFT landed under the Angling category quota must be reported within 24 hours of landing to the NMFS Automated Landings Reporting System via toll-free phone at (888)872–8862; or the Internet (www.nmfspermits.com); or, if landed in the states of North Carolina or Maryland, to a reporting station prior to offloading. Information about these state

harvest tagging programs, including reporting station locations, can be obtained in North Carolina by calling (800) 338–7804, and in Maryland by calling (410) 213–1531.

In addition, anglers aboard permitted vessels may continue to tag and release BFT of all sizes under a tag-and-release program, provided the angler tags all BFT so caught, regardless of whether previously tagged, with conventional tags issued or approved by NMFS, returns such fish to the sea immediately after tagging with a minimum of injury, and reports the tagging, and, if the BFT was previously tagged, the information on the previous tag (50 CFR 635.26).

Classification

This action is taken under 50 CFR 635.23(b)(3). This action is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.*and 16 U.S.C. 1801 *et seq*.

Dated: June 5, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–14666 Filed 6–10–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 112
Tuesday, June 11, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1033

[Docket No. AO–361–A35; DA–01–04]

Milk in the Mideast Marketing Area; Tentative Decision on Proposed Amendments and Opportunity To File Written Exceptions to Tentative Marketing Agreement and To Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This tentative decision adopts, on an interim final and emergency basis, provisions that amend certain features of the pooling standards of the Mideast Federal milk order. Specifically, this tentative decision adopts amendments to the *Pool plant* provisions by eliminating automatic pool plant status for the 6-month period of March through August, eliminating milk shipments to a distributing plant regulated by another Federal milk order as pool-qualifying shipments under the Mideast order, eliminating the ''split plant'' feature, eliminate including diversions made by a pool supply plant located outside the marketing area to a second pool plant, and establishing a ''net shipments'' provision. For the *Producer milk* provisions, this tentative decision adopts, on an interim basis, amendments that would seasonally adjust and increase the number of days that the milk of a producer needs to be delivered to a pool plant and establishes year-round diversion limits, adjusted seasonally, for producer milk for distributing plants pooled under the Mideast order. Public comments on these actions and the other pooling and payment issues not adopted by this tentative decision are requested. Additionally, this decision requires determining if producers approve the issuance of the amended order on an interim basis.

DATES: Comments are due on or before August 9, 2002.

ADDRESSES: Comments (6 copies) should be filed with the Hearing Clerk, Room 1081, South Building, U.S. Department of Agriculture, 14th & Independence Avenue, SW., Washington DC 20250.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2968, 1400 Independence Avenue, SW STOP 0231, Washington, DC 20090–6456, (202) 690–1366, e-mail address *gino.tosi@usda.gov.*

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

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a small business if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a small business if it has fewer than 500 employees. For the purposes of determining which dairy farms are small businesses, the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most small dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500 employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. In October 2001, there were 11,120 producers pooled on and 40 handlers regulated by the Mideast order. Based on these criteria, the vast majority of the producers and handlers would be considered small businesses. The adoption of the amended pooling standards serve to revise and establish criteria that ensure the pooling of producers, producer milk, and plants that have a reasonable association with, and are consistently serving, the fluid milk needs of the Mideast milk marketing area. Criteria for pooling milk are established on the basis of performance standards that are considered adequate to meet the Class I fluid needs of the market, and determine those that are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The criteria established are applied in an equal fashion to both large and small businesses. Therefore, the Department has determined that proposed amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that

these proposed amendments would have little or no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This tentative decision does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information, which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

No other burdens are expected to fall on the dairy industry as a result of overlapping Federal rules. This rulemaking proceeding does not duplicate, overlap, or conflict with any existing Federal rules.

Prior Documents in This Proceeding

Notice of Hearing: Issued September 21, 2001; published September 28, 2001 (66 FR 49571).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this tentative final decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Mideast marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, Room 1081, South Building, U.S. Department of Agriculture, 14th & Independence Avenue, SW., Washington DC 20250, by the 60th day after publication of this decision in the **Federal Register**. Four (4) copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. While no evidence was received that specifically addressed these issues, some of the evidence encompassed entities of various sizes.

The amendments set forth below are based on the record of a public hearing held at Wadsworth, Ohio, on October 23–24, 2001, pursuant to a notice of hearing issued September 21, 2001, and published September 28, 2001 (66 FR 49571).

The material issues on the record of the hearing relate to:

1. Pooling standards of the marketing order.

a. Standards for pool plants.

b. Standards applicable for producer milk.

2. Rate of partial payments to producers by handlers.

3. Conforming changes to the order.

4. Determining whether emergency marketing conditions exist that would warrant the omission of a recommended decision and the opportunity to file written exceptions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pooling Standards of the Order

a. Standards for Pool Plants

Distributing Plants

A proposal seeking to increase one of the distributing plant pooling standards and providing for the seasonal adjustment of the standard should not be adopted. Published in the hearing notice as Proposal 1, this proposal specifically sought to raise the minimum amount of the total quantity of fluid milk products physically received by a distributing plant and disposed of as route disposition, or transferred in the form of packaged fluid milk products, by 5 percentage points (from 30 to 35 percent) for the months of May through July, and by 10 percentage points (from 30 to 40 percent) for the months of August through April.

Supply Plants

Several amendments to the supply plant pooling provisions of the Mideast order should be adopted immediately. Certain inadequacies of the supply plant pooling provisions, together with unneeded features contained in the current provision, are resulting in disorderly marketing conditions and unwarranted erosion of the blend price received by those producers who are providing milk to satisfy the fluid milk demands of the Mideast marketing area. Specifically, the following amendments to the supply plant pooling standards should be adopted immediately: (1) Eliminate automatic pool plant status during the 6-month period of March through August for certain supply plants; (2) eliminate the volume of milk shipments made by supply plants to distributing plants regulated by another Federal milk marketing order as a qualifying shipment for the purpose of meeting the Mideast supply plant shipping standard; (3) eliminate the feature of providing for a ''split plant''; (4) exclude from receipts diversions made by a pool plant to a second pool plant from the calculation of the diversion limitation established for pool plants; and (5) provide a ''net shipment'' standard for supply plant (and supply plants operated by a cooperative association) deliveries to the order's distributing plants for the purpose of meeting the Mideast supply plant shipping standard. These amendments to the pool plant pooling standards were largely represented by, and in testimony related to, Proposal 2 and Proposal 5.

A proposal that would, in part, establish a 6-month re-pooling delay, Proposal 8, whenever a pool supply plant elects not to meet the supply plant pooling standards for the month should not be adopted. However, this decision adopts that portion of the proposal that would have August as the beginning month for meeting the pool supply plant shipping standard. The adoption of this feature of Proposal 8 makes it identical to the adoption of the same feature in Proposal 2.

Four proposals seeking to modify the pooling standards for pool plants of the Mideast order were considered in this proceeding. The record evidence makes clear that the proponents of these four proposals, described and discussed further below, are of the opinion that the current pooling provisions of the order are not accurately identifying those producers and the milk of those producers consistently serving the fluid needs of the marketing area. Part of the pooling standards of the Mideast order are contained in the *Pool plant* provision of the order. Published in the hearing notice as Proposals 1, 2, 5, and 8, these proposals offered various changes to specific components of the current pooling standards for supply plants and distributing plants.

Proposals 1, 2, and 5 were proposed by Dairy Farmers of America (DFA), Continental Farms Cooperative, Inc., Michigan Milk Producers, Inc., and Prairie Farms Cooperative, Inc.

Hereinafter, this decision will refer collectively to these proponents as the ''Cooperatives.'' These organizations are cooperatives owned by dairy-farmer members that supply a significant portion of the milk needs of the Mideast marketing area and whose milk is pooled on the Mideast order.

Proposal 8 was proposed by Dean Dairy Products Company, Schneider's Dairy Inc., Turner Dairy Farms, Inc., Marburger Farm Dairy, Inc., Fike's Dairy, Inc., United Dairy, Inc., Carl Colteryahn Dairy, Inc., Smith Dairy Products Company, Superior Dairy, Goshen Dairy, and Reiter Dairy. Hereinafter, this decision will refer collectively to these organizations as the ''Handlers.'' These organizations receive milk from dairy farmers and cooperatives and distribute fluid milk and other dairy products within the marketing area. They are regulated under the terms of the order.

Proposal 1, offered by the Cooperatives, seeks to amend the pool plant definition by increasing the minimum amount of milk that would, in part, cause a distributing plant to become pooled on the Mideast order. Proposal 1 would provide that 35 percent or more of the total quantity of fluid milk products physically received at a distributing plant be disposed of as route disposition or transferred in the form of packaged fluid milk products to other distributing plants for the months of May through July. Proposal 1 would also increase this same minimum standard to 40 percent for the months of August through April. The order currently provides a minimum standard of 30 percent and, unlike the proposal, makes no seasonal adjustments. Proposal 1 does not seek to change this provision's current exclusion of concentrated milk received from another plant for other than Class I use.

Proposal 2, offered by the Cooperatives, seeks to amend three features of the supply plant provision of the order as follows: change certain details that currently provide for the automatic pooling of supply plants; not consider milk shipments from a Mideast supply plant to a distributing plant regulated by another Federal milk order as a qualifying shipment in meeting the performance standards for becoming a pool plant on the Mideast order; and count on a ''net receipts'' basis all supply plant shipments, including milk that is transferred or diverted and physically received by distributing plants regulated by the order. The ''net receipts'' criteria would exclude from a supply plant's qualifying shipment any transfer or diversions of bulk fluid milk products made by a distributing plant receiving a qualifying shipment. In this regard, the concept of a ''net receipt'' is similar to what is also commonly referred to as a ''net shipment.'' The difference between the two terms is that a ''net receipt,'' as presented in this proceeding, applies to distributing plants receiving milk. The term ''net shipment,'' as referred to in the record of this proceeding, applies to supply plants shipping milk to distributing plants. The intended use of these terms is clear, and herein after, this tentative final decision will refer to this feature of Proposal 2 as ''net shipments'' because the proposed change would amend how the order applies pooling performance standards to supply plants shipping milk to distributing plants. The Mideast order currently has no ''net shipment'' provision.

The order currently provides automatic pool plant status during the months of March through August, provided the supply plant met the applicable performance standards for pool supply plants during each of the immediately preceding months of September through February. Additionally, the order currently considers shipments of milk to a distributing plant regulated by another Federal order as qualifying shipments in meeting the performance standards of the Mideast order.

Proposal 8, offered by the Handlers, seeks to change the months in which the pool plant standard is applicable for supply plant shipments to distributing plants from September through February to August through February. In this regard, Proposal 8 is similar to Proposal 2. However, Proposal 8 also seeks to provide that in the event a supply plant opts not to be a pool plant during the month, the plant will not be eligible to regain pool plant status for a period of six months.

Proposal 5, offered by the Cooperatives, seeks to eliminate what is often referred to as the ''split plant'' provision. This provision provides for designating a portion of a pool plant as a nonpool plant, provided that the nonpool portion of the plant is physically separate and operated separately from the regulated or pool side of the plant.

A DFA witness, representing the Cooperatives, testified that two primary benefits of the Federal order program are allowing producers to benefit from the orderly marketing of milk and the marketwide distribution of revenue that results mostly from Class I milk sales. Orderly marketing influences milk to move to the highest value use when needed, and for milk to clear the market when not used in Class I, said the Cooperatives. The witness noted that marketwide pooling allows qualified producers to equitably share in the returns from the market and in a manner that provides incentives for supplying the market in the most efficient manner. The witness insisted that the pooling of milk which does not service the Class I market is inconsistent with Federal order policy.

The Cooperatives' witness was of the opinion that the new Class I pricing structure, implemented under Federal order reform, together with the pooling provisions found in each order, resulted in changes in the marketplace for milk pooled on Federal milk orders, including the Mideast order. The link between performance and pooling, said the witness, was altered by these reforms and needs review. The Cooperatives noted that many entities, including DFA, moved quickly to take advantage of these changes in order rules. The witness indicated that as a participant in a competitive dairy economy, one must make pooling decisions that aim to increase returns or risk their competitive position.

The Cooperatives' witness was of the opinion that the principles underlying the economic models that formulated the Class I price surface established during Federal order reform assumed that supplies of milk associated with a demand point were aggregated into a single market and were actually shipped from the counties that were located in the population centers where demand points were fixed. There were no provisions in the mathematical equations for those models allowing for milk to be associated with a market if it did not actually ship to or supply the market, said the witness. The current pooling practices, say the Cooperatives, clearly exploit the price surface, and if we are to retain it, pooling standards need to be restructured to parallel the model.

Pooling standards are universal in their intention, stressed the Cooperatives, requiring a measure of commitment to a market marked by the ability and willingness to supply the Class I fluid needs of that market. The witness noted that pooling standards are individualized in their application and each market requires standards that work for the conditions that apply in that individual market. The witness quoted the Final Decision of milk order reform: ''The pooling provisions for the consolidated orders provide a reasonable balance between encouraging handlers to supply milk for fluid use and ensuring orderly marketing by providing a reasonable means for producers with a common marketing

area to establish an association within the fluid market.''

The Cooperatives' witness also relied on, and drew heavily from, the order reform Final Decision detailing the primary criteria used to form the boundaries of the consolidated orders, including the consolidated Mideast order. The Cooperatives' witness emphasized the first and most important criteria of Federal order consolidation as the area of overlapping route distribution of Class I milk. Also taken from the Final Decision, the Cooperatives' witness noted that, ''The pooling of milk produced within the same procurement area under the same order facilitates the uniform pricing of producer milk,'' concluding that milk procurement areas were also considered as a criteria in establishing the consolidated marketing area boundaries. The witness also noted other criteria used, including the number of handlers within a market, naturally occurring boundaries, cooperative association service areas, features or regulatory provisions common to existing orders, and milk utilization in common dairy products.

The Cooperatives' witness continued to rely on, and drew heavily from, the Final Decision of milk order reform by relating the decision's geographical description of the Mideast order and how the aforementioned criteria were applied to form the boundaries of the Mideast marketing area. In this regard, the witness indicated that the consolidated Mideast marketing area was the result of combining the pre-reform orders of the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan, and Indiana Federal milk orders, plus Zone 2 of the Michigan Upper Peninsula Federal milk order, and most of the then unregulated counties in Michigan, Indiana, and Ohio. The witness stressed that the order reform Final Decision concluded that nearly all milk produced within the area would be pooled on the consolidated Mideast order.

The Cooperatives' witness was of the opinion that ''open pooling'' is not appropriate for the Mideast order. When milk shares in a pool's proceeds but does not service the Class I needs of the market or help to balance the market, the witness indicated, there is cause for concern. The witness emphasized that the cost of providing service to the Class I market always falls back on the local milk supply. To allow the pooling of milk which does not provide such services to the Class I needs of the market only lowers returns of those dairy farmers whose milk is actually supplying the local Class I market, concluded the witness.

The Cooperatives' witness presented evidence which reviewed the various Federal order performance standards, concluding that while all the standards differ, they nevertheless address the importance of performance to the market by serving the Class I needs of the market as a condition for milk to be pooled and receive the order's blend price.

According to the Cooperatives' witness, a new phenomenon is occurring in the area of performance standards. Several entities have solicited milk located in the marketing area in order to pool milk located outside of the marketing area, said the witness. Their deliveries of this local supply to distributing plants, said the Cooperatives' witness, provide the opportunity to pool much more milk located outside the marketing area. This practice, the Cooperatives' witness said, does not bring any new milk to be actually received at pool plants, and the milk located outside of the marketing area is not available and does not demonstrate any consistent or actual service to meeting the fluid milk needs of the market.

This practice of pooling milk located far outside the Mideast marketing area, said the Cooperatives' witness, is accomplished through a feature of current pool plant performance standards which allows a supply plant to use direct deliveries from farms to satisfy up to 90 percent of its performance standard by diversions. This standard, said the witness, is a good standard for milk located inside the marketing area, but is not an appropriate standard for milk supplies located outside of the area.

The use of direct deliveries from inside the marketing area to qualify supply plants and milk supplies located far outside the marketing area should be greatly limited if allowed at all, said the Cooperatives' witness. The witness stated that allowing direct shipped milk from the farm to qualify a supply plant was intended to provide economic efficiency in moving milk, for example, thereby saving the reload in and pump-over costs for the sole purpose of meeting a pooling standard. However, this feature is now being used to qualify milk supplies physically located far outside of the Mideast. This, emphasized the witness, runs counter to the initial intent of the provision and has resulted in disorderly marketing conditions.

The Cooperatives' witness provided evidence indicating that the Mideast order has the second largest volume of Class I use in the Federal Order system. According to the witness, the performance standards for the Mideast order should assure meeting this demand by specifying a performance standard that results in actual serving of the market's Class I needs as a condition to receive the order's blend price.

Along this theme, the Cooperatives' witness relied on data showing that the volume of Class I and II milk used in the Mideast changed little in the (then) 21 months since implementation of Federal order reform. However, noted the witness, the amount of reserve milk, represented by Class III and IV use, had grown dramatically. The witness concluded from the data that it is difficult to justify the need to have pooling standards which have allowed pooling some 250 percent of additional milk on the Mideast order when that milk does not service the Class I needs of the market. The witness indicated that additional milk pooled on the order was produced in states far from the marketing area, including the States of Illinois, Iowa, Kansas, Minnesota, New York, North Dakota, South Dakota, and Wisconsin.

The witness also faulted the Mideast order's lack of having a performance standard for pool supply plants during the months of March through August as another way to pool milk on the Mideast order from other marketing areas that have lower blend prices. The evidence for this observation, said the Cooperatives' witness, is exhibited by data indicating that producers located in Wisconsin and South Dakota began pooling large volumes of their milk beginning in March 2000. The Cooperatives' witness, relying on the same statistics, observed that the volume of milk pooled on the order during this 21-month time period, but produced on farms located far outside the marketing area, increased by 395.66 percent, or by 430,222,762 pounds.

A witness appearing on behalf of Land O'Lakes (LOL) expressed support for Proposal 1 because it seeks to promote pooling standards that are based on performance. The LOL witness was of the strong opinion that pooling standards should not be based on the physical location of milk alone, stressing that standards should be ''performance oriented'' rather than ''location oriented.''

Additional support for Proposals 1 and 2 was offered by Prairie Farms Dairy, Inc. (Prairie Farms). Prairie Farms operates three pool distributing plants regulated by the Mideast order. Their milk is supplied by their 176 producer members located in Indiana, Michigan, and Ohio.

The Prairie Farms witness stated that certain provisions of the Mideast order have made it too easy to pool milk without the milk actually servicing the Class I needs of the market. Federal orders should not be written so restrictive that pooling any milk supplies beyond normal basic Class I needs is impossible, said the Prairie Farms witness. However, continued the witness, orders should not be written so liberally that pooling milk becomes an end unto itself rather than a standard that assures milk is actually serving the fluid needs of the market. As the Mideast milk order regulations are currently written, added the witness, the pooling of milk far beyond the day-to-day needs of the market can and does occur.

According to the Prairie Farms witness, Class I use by Mideast order distributing plants has been relatively stable since implementation of order reform, but the amount of Class III and Class IV milk pooled on the order has increased markedly. The witness indicated the additional quantities of milk pooled on the order only lower the returns to its members and others who actually do serve the Class I needs of the market every day.

A witness from Foremost Farms who appeared on behalf of the Mideast Milk Marketing Agency (MEMA), testified in support of Proposals 1 and 2. The MEMA is an new organization resulting from the union of three previous milk marketing agencies that served milk processors by arranging for milk supplies in the pre-reform milk orders consolidated to form the current Mideast milk marketing area. The MEMA witness indicated that the needs of their customers and variations in production cause them to have an occasional need to secure additional volumes of milk, citing the opening of schools as an example of when additional milk supplies are needed. The witness also indicated that the supply and demand situation in spring months shows increased production and decreased Class I demands that generally begin in late April and continue through mid-July. During this time of the year, the MEMA witness indicated, they assume responsibility to sell milk not required by their customers. Most often these sales are to manufacturing plants located in the marketing area and to plants located as far away as Wisconsin and Minnesota, the witness said. Often, noted the witness, such sales are below the minimum class prices of the order and the costs of disposing of surplus milk are borne by MEMA members.

The MEMA witness noted that sufficient raw milk is secured through its member cooperatives and other suppliers within the marketing area to service its customers on a year-round basis, with the fall months being the only exception. In light of this supply and demand situation, the witness could find no reason why the Mideast marketing order should provide for the pooling of two to three times the milk supply actually needed to serve the Class I needs of the market.

A witness appearing on behalf of the Michigan Milk Producers Association (MMPA) also testified in support of Proposals 1 and 2. MMPA is a dairy farmer owned-and-operated cooperative engaged exclusively in the marketing of milk and dairy products on behalf of 2,600 of their member dairy farmers in Michigan, Ohio, northern Indiana, and northeast Wisconsin.

The MMPA witness testified that each of the five predecessor orders merged into the consolidated Mideast order had more demanding pool plant qualification standards. The witness stressed that pooling provisions are not intended to create barriers to pooling. However, the witness indicated, it is reasonable to expect that a market with a fluid demand as large as the Mideast warrants a higher level of performance than in markets with lower Class I use.

The MMPA witness stated that adequate supplies of milk exist within the order to satisfy the requirements of at least the Michigan portion of the marketing area. The witness noted that during the past 24 months, Class I sales in Michigan had declined 7 percent. Also, the witness noted that milk production in Michigan has been increasing and indicated that local supplies have increased 7 percent since 1998. The MMPA witness was of the opinion that with declining fluid sales and increasing milk production, pooling standards that result in pooling additional quantities of milk supplies cannot be justified.

The MMPA witness noted that nearly all of the increased volume of milk pooled on the Mideast order since order reform was used at Class III or IV manufacturing plants, which the witness concluded has only served to lower producer pay prices. In their opinion, this occurred because the current performance standards required for pool qualification are too lenient. These performance standards have resulted in an inequitable distribution of proceeds from this market's pool, stressed MMPA, while the proceeds from the fluid market were improperly shared with producers who did not service the Class I needs of the market. The MMPA witness was of the strong opinion that this situation should be treated as an emergency by the Department and a Recommended Decision should therefore be omitted.

In addition to supporting the testimony given by the DFA witness on behalf of the Cooperatives regarding Proposal 2, the MMPA witness offered a modification to Proposal 2. The MMPA modification would specifically limit the practice of using pooled milk located inside of the marketing area to qualify milk of a plant located outside of the marketing area for pooling its milk receipts on the order. According to the witness, a one-time delivery of the milk of a producer located outside the marketing area qualifies a ''distant'' producer as a producer under the Mideast order and, in turn, qualifies the milk of a ''distant'' producer to thereafter be diverted to nonpool plants. Most often, stressed the witness, these plants are also located at a great distance from the marketing area and this milk need never meet the order's performance standards. The MMPA witness concluded that the pooling standards should not allow such milk to be part of the Mideast pool. The witness stressed that eliminating the ability to pool milk in this manner would not affect the efficiencies afforded by direct-shipped milk from farms located within the marketing area. The MMPA witness added it would also prohibit an abuse of pooling principles that never intended to qualify milk for pooling under the order without an actual relationship to the order's supply plants in supplying the Class I needs of the market.

A witness from Dean Foods (Dean) testified in support of a portion of Proposal 2. They supported eliminating the feature of the current pool supply provision which does not establish a performance standard during the months of March through August. They were also in agreement with other witnesses that the Department should treat this proceeding on an emergency basis. The Dean witness reasoned that the economic damage to the producers whose milk actually serves the Class I needs of the market should be resolved as soon as possible.

A witness appeared on behalf of Suiza Foods (Suiza) in general support of Proposals 1 and 2. The witness reasoned that once performance becomes a monthly requirement to pool milk, both processors and producers will be better able to plan deliveries based upon the need for milk during the fall months when milk supplies are generally less plentiful. The witness also stated that August should be the initial month

when higher performance standards should apply because of increased demand caused by the opening of schools occurring at the same time as generally declining overall milk supplies.

The Suiza witness also was of the opinion that the adoption of a net shipment provision for supply plants should also be applicable for plants operated by a cooperative association—another type of pool plant provided for in the Mideast order. In their post-hearing brief, Suiza emphasized that in the interest of fairness and equitable regulatory treatment, providing a net shipment provision applicable to this type of pool plant would be appropriate. According to Suiza, not providing for a net shipment feature for supply plants operated by a cooperative association would merely change the incentives for cooperatives that operate supply plants to become a pool plant under this provision applicable for cooperative associations. Although not a part of the direct testimony by the proponents of Proposal 2, or its supporters, all parties agreed that a net shipment provision should also be provided for plants operated by cooperative associations.

A witness representing Scioto County Cooperative Milk Producers Association (Scioto) testified in support of Proposals 1 and 2. Scioto has dairy farmer members in southern Ohio and northern Kentucky whose milk is pooled on the Mideast order.

The Scioto witness noted that during the period of 2000–2001, the amount of producer milk pooled on the Mideast market increased by nearly 42 percent. Virtually all of this increase can be attributed to producers in States not included as part of the Mideast marketing area, while the amount of the Class I use in the Mideast order remained relatively constant, maintained the witness. In light of the increased amount of milk pooled on the Mideast order, Scioto indicated their support for proposals which would establish higher pooling standards. Scioto indicated this would also ensure that the revenue generated by Class I sales are properly shared with those producers and pool plants which actually perform service to the Class I market.

The Scioto witness also indicated support for the addition of August as a month when additional shipments should be made to distributing plants. However, Scioto opposed establishing performance standards for the remaining months which currently have none. The witness concurred that the hot days of August have a significant impact on milk production and noted more schools are starting as early as middle August. Scioto said that this combined effect makes it more difficult to meet the fluid needs of the market and concluded that supply plant standards should be established to assure those needs.

Opposition to a part of Proposal 2 was offered by Scioto. The feature of specifying ''net shipments'' for supply plant deliveries to pool distributing plants should be not adopted, testified Scioto. The witness was of the opinion that performance standards should only require supply plants to ship milk when needed by the market and that performance standards should provide the flexibility to retain milk at local supply plants during the flush season when milk supplies are more plentiful.

Opposition to a portion of Proposal 2 by LOL was provided in their post-hearing brief. LOL indicated they do not support establishing a ''net shipments'' provision because it would effectively raise the supply plant shipping standards above the indicated pool supply plant performance standard. The LOL brief indicated that virtually all distributing plants have some transfers or diversions resulting from decreased demand on weekends and holidays for Class I milk. According to LOL, this should be considered so that supply plants are not penalized by being viewed as not performing in supplying the fluid market during such situations.

Proposal 8, offered by the Handlers, seeks, in part, to change the months during which pool supply plant shipping standards would be applicable—to begin in August and continue through to February. Proposal 8 also seeks to establish a 6-month re-pooling delay whenever a pool supply plant elects to not meet the pool plant standards for the month. According to the Handlers, a 6-month delay in being able to return to the order as a pool plant would eliminate the ability of handlers to participate in the pool only when it was advantageous and to not participate in the pool when it was not.

A witness from Dean Foods, appearing on behalf of the Handlers, testified that the current pool supply plant provisions permitting handlers to pool and de-pool milk causes market instability. The witness noted the occurrence of a class-price inversion (when the blend price is lower than the Class III price) as an example of when supply plants have the economic incentive to opt out of pooling their milk supplies. Nevertheless, the Dean witness was of the opinion that a 6-month re-pooling delay would serve to assure consistent and reliable association of milk with the marketing area and in meeting the market's Class I demands.

Opposition to Proposal 8 was raised by DFA. DFA was of the opinion that class-price inversions are a function of the order providing advanced pricing to handlers for Class I and II milk. The witness indicated advanced pricing is a needed and good provision of Federal milk marketing orders. However, if the Class I sector of the market were not provided advanced pricing, reasoned the DFA witness, depooling might never occur. Nevertheless, noted the DFA witness, there should be no reason why Class III and IV handlers should ever have to equalize class-use values with the blend price by paying this difference into the pool for the benefit of Class I handlers simply because of price inversion. Imposing a 6-month re-pooling delay may cause Class III and IV handlers to pay into the pool only to retain pool status, but doing so can result in causing financial damage to the reserve and balancing sectors of the market, maintained the DFA witness.

Proposal 5, offered by the Cooperatives, seeks to eliminate what is commonly referred to as the ''split plant'' provision from the Mideast order. A split plant designates a portion of the plant as the ''pool'' side and another portion of the plant as the ''nonpool'' side.

According to the Cooperatives, this provision was initially used to accommodate a plant's use of both Grade A and Grade B milk while providing for diversion from the pool plant side of the plant to the nonpool side for use in manufactured products. This designation was provided, said the witness, for orders with lower Class I differentials and low Class I use. However, the witness noted that its purpose seems to have been broadened to also afford a supply plant to gain economic efficiencies by avoiding incurring costs for transporting milk solely to meet pool standards.

The Cooperatives' witness argued that the split plant provision continues to have validity in low Class I use and low Class I differential orders, but does not have a legitimate role to play in a higher differential, higher utilization order like the Mideast. This provision, said the witness, serves no purpose for the Mideast order, stressing that none of the Mideast's predecessor orders provided for it and that no plant located within the Mideast marketing area makes use of the provision. Rather, it has only become a tool to pool distant milk on the market which is not serving the Class I milk needs of the market, maintained the witness.

Citing data provided by the Mideast Market Administrator, the Cooperatives observed that increasing volumes of milk pooled from distant areas began in June 2000. The amount of distant milk pooled then was about 16 million pounds and grew dramatically to some 480.5 million pounds by June 2001. The total pounds of milk pooled through split plants ranged from 69 to 179 million pounds for the months of January through August 2001, noted the witness. The witness indicated that this statistic represents a significant percentage of the total milk pooled on the order. Diversions of distant milk by pool distributing plants, added the witness, were similarly significant. However, the witness stressed that actual physical deliveries used to qualify the additional volumes of milk pooled through split plants were as little as 50,000 pounds. These statistics, said the Cooperatives' witness, clearly prove that the current pooling standards are allowing milk to be pooled without demonstrating reasonable relationship, or providing actual service, to the market's fluid needs. According to the witness, using split plants to pool milk in this way can only be viewed as an abuse of an accommodation not intended when originally adopted for the Mideast order.

Scenarios were presented by the Cooperatives' witness as examples for illustrating the harm being caused by the split plant provision. One example depicted how milk currently being pooled on the order, but located far from the marketing area, would not likely seek to be on the Mideast order without a split plant provision. According to the Cooperatives' witness, this is because the cost of transportation would exceed the gain of receiving the Mideast's blend price. Another example demonstrated the negative impacts of split plants to the Mideast market because of the lack of diversion limits.

According to the Cooperatives' witness, the pool side of the split plant is being used to establish an ''outpost'' that serves no other purpose than to qualify milk for pooling from other marketing areas where blend prices are lower. By meeting the minimal one-day delivery standard for becoming a producer on the order, the milk of producers located far from the marketing area, but whose milk is actually delivered to an ''outpost'' pool plant nearer their farms, may qualify milk for pooling on the Mideast order. Further, stressed the witness, the milk of these producers can thereafter be diverted to manufacturing plants nearer their farms without ever again being delivered to pool plants located in marketing area. This milk can hardly be viewed as servicing the market, the Cooperatives' witness asserted. Additionally, concluded the witness, the daily, weekly, and seasonal supplying of fluid milk, and meeting the balancing needs of the market are consistently being borne by the local producers who are only having their blend price diluted from the pooling of milk that does not consistently provide these services.

A witness representing Suiza testified in support of Proposal 5. This witness stressed that the split plant provision did not exist in all marketing orders prior to order reform and is not used today for the purpose for which it was originally intended. The Suiza witness concluded that the split plant provision is clearly not needed nor justifiable under the Mideast order.

MMPA also testified in support of Proposal 5. The witness similarly observed that pooling milk through the split plant provision only serves to depress prices for producers who actually supply the market. The witness maintained that a principle responsibility of the Federal milk order program is to preserve the proceeds from the fluid market for those producers who demonstrate an ability and willingness to serve that market. Since the split plant provision does not serve this end, concluded the witness, it should be eliminated from the order.

The witness representing Scioto expressed doubt that adopting Proposal 5 would solve the pooling problem presented by split plants. In this regard, the witness proposed a limit on the maximum amount of producer milk that could be associated with a pool supply plant during the months when no performance standard is applicable. The witness offered that 110 percent of the daily average producer receipts, pooled during the months specifying a performance standard, is a reasonable alternative performance standard for such months. According to the Scioto witness, amending the split plant feature in this way would recognize normally higher production levels during the spring and summer months as compared to generally lower production levels during the fall and winter months. It would still allow supply plants from outside the marketing area to participate in the Class I returns of the market for the entire year, noted the witness, but would prevent plants from abusing the market by only pooling milk during the spring and summer months with milk that does not service the market.

Post-hearing briefs submitted by LOL expressed opposition to the adoption of Proposal 5. The split plant provision, indicated LOL, has historically recognized commingled Grade A and Grade B milk in procurement areas and has provided a way for Grade A milk to be diverted to the non-pool plant for manufacturing uses. Removing this pooling feature, concluded LOL in their brief, would result in the need for full plant accountability, including determining milk shrinkage and overage, in the manufacturing (nonpool) portion of a plant. LOL is of the opinion that this would be very burdensome and would result in the need for costly record keeping by both handlers and the Market Administrator's office, while providing no benefit to producers or handlers.

The record contains testimony clearly indicating general support for increasing and seasonally adjusting the distributing plant pooling standard offered by Proposal 1. The proposal would increase minimum standards for triggering pool plant status for a distributing plant and therefore become regulated under the terms of the Mideast milk marketing order. Beyond statements indicating general support for the adoption of Proposal 1, the record contains little, if any, evidence that indicates why this pooling standard should be increased. To the extent that excess milk is being pooled on the order through distributing plants, this decision attributes the pooling of excess milk to inadequacies in other pooling standards of the order. Specifically, the record reveals that the lack of diversion limits during certain times of the year provides the ability for distributing plants to pool milk on the Mideast order (the issue of diversions and diversion limits are discussed later in this decision) far beyond the legitimate reserve supply of milk for the plant. Therefore, in the absence of other evidence, the record does not support a finding that distributing plants should meet a higher standard by increasing the amount of milk receipts disposed of as route disposition, or transferred in the form of packaged fluid milk products, as a condition for designation as a pool plant.

The record of this proceeding strongly supports concluding that the various features of the Mideast order's supply plant pooling standards are either inadequate or unnecessary. Because the order currently contains inadequate pooling standards for supply plants, much more milk is able to be pooled on the order than can be considered properly associated with the Mideast market. This milk does not demonstrate a reasonable level of performance necessary to conclude that it provides a

regular and reliable service in satisfying the Class I milk demands of the Mideast marketing area. Therefore such milk should not be pooled on the order.

The pooling standards of all milk marketing orders, including the Mideast order, are intended to ensure that an adequate supply of milk is supplied to meet the Class I needs of the market and to provide the criteria for identifying those who are reasonably associated with the market for sharing in the Class I proceeds. Pooling standards of the Mideast order are represented in the *Pool Plant*, *Producer*, and the *Producer milk* definitions of the order. Taken as a whole, these definitions set forth the criteria for pooling. The pooling standards for the Mideast order are based on performance, specifying standards that, if met, qualify a producer, the milk of a producer, or a plant to enjoy the benefits arising from the classified pricing of milk.

Pooling standards that are performance based provide the only viable method for determining those eligible to share in the marketwide pool. It is primarily the Class I use of milk that adds additional revenue, and it is reasonable to expect that only those producers who consistently supply the market's fluid needs should be the ones to share in the distribution of pool proceeds. Pool plant standards, specifically standards that provide for the pooling of milk through supply plants, also need to be reflective of the supply and demand conditions of the marketing area. This is important because pooling this milk ensures the receipt of the market's blend price.

Similarly, supply plant pooling standards should provide for those features and accommodations that are reflective of the needs of proprietary handlers and cooperatives in providing the market with milk and dairy products. When a pooling feature's use deviates from its intended purpose, and its use results in pooling milk that is not serving the fluid needs of the market, it is appropriate to re-examine the need for continuing to provide for that feature as a necessary component of the pooling standards of the order. One of the objectives of pooling standards is to ensure an adequate supply of fluid milk for the marketing area. A feature which results in pooling milk on the order that does not provide such service should be considered as unnecessary for that marketing area. Similarly, another objective of pooling standards is for the proper identification of the milk of those producers who are providing service in meeting the Class I needs of the market. If a pooling provision does not reasonably accomplish this end, the proceeds that accrue to the marketwide pool from fluid milk sales are not properly shared with the appropriate producers. The result is the lowering of returns to those producers whose milk is serving the fluid market.

The record provides sufficient evidence to conclude that several features of the supply plant definition are not being used for the reasons they were originally intended. Other shortcomings of the Mideast order's pooling standards, specifically as they relate to producer milk, also contribute to inappropriately pooling the milk of producers who are not a legitimate part of the Mideast marketing area. Here too, the impact is an unwarranted association of milk on the order. Milk is classed at lower prices—a decrease in the relative Class I utilization of the market—which results in a lower blend price to those producers who do supply the Class I needs of the market.

This decision finds that the milk of some producers is benefitting from the blend price of the Mideast order while not reasonably demonstrating a service to the Class I needs of the Mideast marketing area. This finding is attributable to faulty pooling standards. The pooling provisions provided in the Final Decision of milk order reform, implemented on January 1, 2000, established pooling standards and pooling features that envisioned the needs of the market participants resulting from the consolidation of those pre-reform orders. The reform Final Decision, as it related to the Mideast marketing area, did not intend or envision that the pooling standards adopted would result in the sharing of Class I revenues with those persons, or the milk of those persons, who do not provide a reasonable measure of service in providing the Class I needs of the market. The reform Final Decision examined and discussed the various pooling standards and features of the pre-reform orders for their applicability in a new, larger, consolidated milk order. The pooling standards and features adopted for the Mideast order were designed to reflect and retain those standards and features of the pre-reform orders so as to not cause a significant change, and indeed to provide for, the continued pooling of milk that had been pooled by those market participants. The record of this proceeding reveals that the combination of the standards and features adopted for pool plants, especially those that apply to pool supply plants, are not the appropriate or reasonable standards for a much larger milk marketing area.

Accordingly, this decision finds basic agreement in the evidence presented by the proponents of Proposal 2 and Proposal 5, and those entities who expressed their support for adopting these proposals, that certain pool plant provisions should be eliminated from the Mideast order. These include: (1) The provision of the order that currently provides for automatic pool plant status during the 6-month period of March through August for certain pool supply plants; (2) the provision that currently counts supply plant shipments to distributing plants regulated by another Federal milk marketing order as a qualifying shipment for meeting supply plant performance standards of the Mideast order; and (3) the provision of the order that provides for ''split plant'' recognition.

Supply plant deliveries of milk to a distributing plant regulated by another Federal milk marketing order should no longer be considered as a qualifying shipment for meeting the supply plant performance standards of the Mideast order. While such milk is providing some servicing of the fluid needs of another marketing area, such milk provides no service to the Class I needs of the Mideast order. Pooling standards for the Mideast marketing area, in part, provide for determining those producers and the milk of those producers who are serving the Class I needs of the Mideast marketing area and thereby receive the blend price of the Mideast order. It is reasonable, in light of this objective, to conclude that serving the fluid needs of another market provides no service to the Mideast market. Accordingly, such milk should not be considered as a qualifying shipment for meeting the supply plant performance standard of the Mideast order.

The modification of Proposal 2, offered by MMPA, intended to provide a pooling standard that assists in the proper identification of the milk of those producers who actually provide a service to the order's Class I market, should also be adopted immediately. However, the proposed amendatory language has been modified by the Department and is presented below. Safeguards are added to the supply plant provision allowing that up to 90 percent of a supply plant's qualifying shipments to distributing plants be directly from farms of producers by diversion. The intent of this pooling feature for supply plants was to provide flexibility and offer efficiency in transporting milk, and thereby be less burdensome, for those market participants of the pre-reform orders who would continue to be pooled on the larger consolidated Mideast order. This feature was not intended to be used as a mechanism to pool milk on the order

that was not providing a reasonable measure of service in supplying the Class I needs of the Mideast marketing area.

The intent of the modification of Proposal 2 by MMPA sought reasonable safeguards so that milk pooled by handlers from sources distant from the marketing area, resulting from the pooling of milk from within the marketing area, would end. The reasons for modifying Proposal 2 are well supported by evidence contained in the record of this proceeding. Currently, plants located far from the marketing area can use diversion of near-in milk for up to 90 percent of the distant plant's qualifying deliveries. Supply plants qualified in this manner do not provide milk to the marketing area that can be shown to be a service in meeting the Class I needs of the Mideast marketing area. Therefore, there is no reasonable basis to conclude that such milk should be pooled on the order and thereby receive the order's blend price. This modification would establish that supplemental milk supplies actually perform a reasonable measure of service in supplying the fluid needs of the Mideast marketing area.

Finally, the evidence of this proceeding supports adopting a ''net shipment'' provision, a feature of Proposal 2. As intended by the proponents, a net shipment feature would not include transfers or diversions of bulk fluid milk products of a supply plant's qualifying shipments to a distributing plant by any amount of bulk milk transfers or diversions made from the distributing plant. Providing such a feature for the pooling standards for the Mideast order supply plants is reasonable, notwithstanding the objections to its adoption by Scioto and LOL. It is true that distributing plants have some transfers and diversions resulting from variations in demand stemming from weekend days and holidays. However, the current supply plant performance standard is below the Mideast market's Class I use of milk, even with the pooling of milk inappropriately associated with the market due to faulty pooling standards. This decision finds it unlikely that transfers and diversions by distributing plants on such occasions would involve a sufficient volume of milk to cause a supply plant to lose pool status. Additionally, given other changes to the order's pooling standards adopted in this decision (discussed below), placing a limit on diversions that can be made by any pool plant to a nonpool plant should provide the necessary safeguards that would make it even more unlikely that a supply plant would lose its pool status. This decision finds that adoption of a net shipment feature in the pooling standards for Mideast supply plants will aid in properly identifying the milk of those producers who actually supply milk to meet the fluid needs of the market.

A brief submitted by Suiza emphasized the need for providing a net shipment provision for a supply plant operated by a cooperative association. The brief indicated that it would provide for fair and equitable regulatory treatment of two similar types of supply plants. This decision agrees with the need to apply the same net shipment provision to supply plants operated by a cooperative association. Both supply plant and cooperative supply plant performance standards are, for all intents and purposes, identical. Therefore it is reasonable to adopt the same standard in considering the actual, or net, shipments made to distributing plants by a plant operated by a cooperative association.

Providing a 6-month re-pooling delay whenever a supply plant opts not to meet the pooling standards for the month would not tend to provide for orderly marketing conditions in the Mideast marketing area. The record indicates that handler interests seek every assurance for a steady and reliable milk supply as the order can reasonably provide. Providing pooling standards that may cause a supply plant to consider the longer-term implications of dropping off the pool may also tend to ensure the desired outcome of assuring reliable deliveries of milk to fluid handlers. However, the need for a provision which denies a supply plant the ability to rejoin the pool through proper performance after a 6-month delay is not supported by the record.

Milk marketing orders are instruments for promoting stability in the marketing relationship between producers and handlers. In this regard, and considering the marketing conditions of the Mideast marketing area, promoting stability in this manner is not appropriate or needed. The record indicates that fluid milk handlers have not had significant difficulties in securing milk supplies since the implementation of milk order reform. To the extent that handlers fear the potential disruption to the market that may arise from depooling, that fear to date is only speculative.

The most important evidence provided on the record that provides any justification for adopting a 6-month re-pooling delay rests on the possible occurrence of a class-price inversion. Handlers see the issue of opting off-and-on the pool as rushing to join the pool to secure the advantages of price protection and dropping from the pool when prices for Class III and IV milk are higher than the order's blend price. Further, handlers worry that during such times, their ability to obtain needed milk supplies is diminished. The DFA witness is of the opinion that penalizing supply plants, often cooperative owned, may cause financial damage to be borne by the manufacturing sectors of the market. Additionally, DFA does not endorse the notion that producers should incur any penalty because of price outcomes which, they conclude, are the result of the order program providing for the advance pricing of Class I and II milk that serves the interest of handlers.

This decision makes no finding on whether advance pricing is a cause or contributor to class-price inversions. Neither does this decision make any findings regarding the damage that may result to cooperatively owned manufacturers by being prevented from rejoining the pool. These are both far beyond the scope of this proceeding. However, this decision does find that the amendments to the pooling standards adopted by this decision, taken as a whole, strengthen the effectiveness of the order for the benefit of both producers and handlers and will restore orderly marketing conditions and a consistent supply of milk to Class I handlers.

b. Standards for Producer Milk

Minimum Deliveries to Pool Plants—The Touch Base Standard

The proposal seeking to change certain standards and features of the *Producer milk* provision of the order should be adopted immediately. The following amendments include:

(1) Increasing the number of days of milk production of a producer to be delivered to a pool plant before the milk of the producer is eligible for diversion during each of the months of August through November, or ''touch base'' is increased to 2-days' milk production. In this regard, August is an addition to the touch base period. Additionally, the amended touch base provision establishes a 2-day touch base standard for new producers coming on the Mideast market during each of the months of December through July. The 2-days' milk production touch base standard will be applicable only if the producer has not been part of the Mideast market during each of the previous months of August through November. Adoption of a 2-day touch base standard therefore concludes that the higher standards of either 3 or 4

days, supported by handlers and Scioto, is not adopted.

(2) Establishing diversion limits for all pool handlers in each month of the year. Additionally, diversion limits will be seasonally adjusted. For each of the months of August through February, the diversion limit shall be 60 percent. For each of the months of March through July, the diversion limit shall be 70 percent.

(3) Eliminating the ability of a pool plant to increase diversions to nonpool plants by diverting milk to a second pool plant.

Proposal 7, which sought to add the months of August and March to the current diversion limit standard of 60 percent for each of the months of September through February, should not be adopted.

Proposals 3, 7, and 9 seek to modify the order's standards for determining the eligibility to pool the milk of a producer on the order. The standards for determining this are described in the *Producer milk* provision of the order. These three proposals are similar in the changes proposed and the specific details of each proposal are discussed in greater detail below. As explained earlier in this decision, the collective references of the proponents as the ''Cooperatives'' and ''Handlers'' continues. Proposal 3 was offered by the Cooperatives, Proposal 9 by the Handlers, and Proposal 7 by the Independent Dairy Producers of Akron (IDPA), an association of dairy farmers whose milk is pooled on the Mideast order.

A proposal, published in the hearing notice as Proposal 6, did not receive testimony at the hearing and is considered by this decision to be abandoned. This proposal called for providing year-round diversion limits as did Proposal 3, but offered slightly differing seasonal adjustments. No further reference will be made in this proceeding to Proposal 6.

Published in the hearing notice as Proposal 3, the Cooperatives seek changes in the number of days the milk of a dairy farmer must be physically received at a pool plant, and in what months the standards should apply (commonly referred to as a ''touch base'' provision), before being eligible for diversion to nonpool plants. Additionally, Proposal 3 would establish diversion limits for producer milk in months where no limit is currently provided by the order and would seasonally adjust these limits.

(1) *Touch base.* Proposal 3 would change the touch base feature of the *Producer milk* provision by raising the current standard from one day's milk production to two days' milk production of a producer in each of the months of August through November. Additionally, Proposal 3 also includes a proviso that, in the event a handler did not cause at least two days' milk production of a producer to touch base during each of the months of August through November, at least two days' production would need to touch base in each of the months of December through July before milk is eligible for diversion to nonpool plants. Proposal 7, proposed by the IDPA, seeks a 4-day touch base provision only for each of the months of August through March.

(2) *Diversion limits.* Proposals 3 and 9 seek diversion limits that would be applicable year round but differ on the level proposed for the spring and summer months. Under Proposal 3, a 60 percent limit would be applicable in each of the months of August through February, and a 70 percent limit would be applicable in each of the months of March through July. Alternatively, Proposal 9 would specify a 60 percent limit in each of the months of August through February, but an 80 percent limit for each of the months of March through July. Proposal 7 seeks only to change the months in which a diversion limit would be provided from the current 60 percent during each of the months September through February and have the 60 percent limit be applicable during each of the months of March through August.

The witness representing the Cooperatives testified that the current provisions of the Mideast order do not adequately define the potential amount of milk that can be pooled on the order and attributed this shortcoming, in part, to the lack of adequate diversion limits. The witness also indicated that establishing a limit on the amount of producer milk that a pool plant can divert to a nonpool plant where none are now specified would correct these deficiencies of the order's pooling standards. The witness also cited the current touch base standard as contributing to the improper pooling of the milk of producers not actually serving the Class I needs of the market. The new 2-day touch base standard offered by Proposal 3, indicated the witness, would need to be met before additional milk would be eligible for diversion to nonpool plants.

Continental Dairy Products (Continental), a cooperative of dairy farmers with members whose milk is marketed and pooled on the Mideast order, indicated their support for amending the touch base standard as well as providing year-round diversion limits on producer milk. They noted that producer blend prices in the Mideast marketing area have been reduced by as much as $8 million in a single month because of inappropriate pooling standards. The pooling standards in the Mideast order do not currently require a physical and economic association with the marketing area, noted the witness, and therefore an enormous amount of milk has been pooled on the Mideast order.

A witness from Prairie Farms, representing the positions of the Cooperatives, testified in support of Proposal 3. The witness testified that increasing the touch base provision would ensure that enough milk would be available to cover the day-to-day fluid needs of the market along with providing for adequate milk reserves. At the same time, said the witness, the proposal would reduce the ability to pool milk on the order that is not serving the markets fluid needs. The witness noted that their dairy farmer members have been financially harmed by the unwarranted additional supplies of milk being pooled on the order. The Cooperatives' witness stressed that pooling additional volumes of milk only serves to lower returns to Mideast producers and supplemental suppliers who are actually serving the fluid needs of the market every day.

A witness appearing on behalf of MEMA also testified in support of Proposal 3.The MEMA witness related that in responding to changes in customer needs, in addition to variations in production, their need to secure additional volumes of milk for the fall months actually begins in August and continues through November. This, noted the witness, is because as schools return to session the demand for milk tends to increase.

A witness appearing on behalf of MMPA testified in support of Proposal 3. The MMPA witness offered that increasing the touch base standard to 2-days' production better reflects the higher fluid needs of the market that exist during specific months of the year. The increase in demand for fluid milk attributed to school openings was also offered by the witness as an example of such increased demand beginning in August.

MMPA also indicated support for the proviso in Proposal 3 that would establish a two-day touch base standard for each of the months of December through July for producer milk which did not meet the touch base standard in the preceding months of August through November. According to the witness, this feature of the touch base standard supports the concept that pooling standards be performance oriented and

more accurately identify the milk of those producers which actually service the fluid needs of the market.

A witness from Dean also testified in general support of Proposal 3. However, Dean offered a modification to Proposal 3 by endorsing a 3-day touch base standard for producer milk. The witness provided an analysis on the effects of ''non-historic'' milk pooled on the Mideast order over the period of January 2001 through August 2001. This analysis concluded that the Mideast's Producer Price Differential (PPD) had been reduced by an average of 55 cents per hundredweight during this 8-month time period. The witness stressed that this loss of revenue is being borne by the producers who actually and regularly supply the fluid needs of the market. Accordingly, indicated the Dean witness, the pooling provision standards regarding producer milk need changing.

A witness appearing on behalf of Suiza expressed similar general support for Proposal 3 and endorsed the Dean modification calling for a 3-day touch base standard. Suiza was of the opinion that without a meaningful touch base standard, individual producer-suppliers do not actually have to perform by physically delivering milk to the Mideast market as a condition for pooling. Meaningful touch base provisions, noted Suiza, also provide handlers with reasonable assurance of performance while simultaneously ensuring that the milk of dairy farmers that actually serves the market is protected against lower returns caused by pooling unneeded milk. Additionally, the Suiza witness testified in support of specifying August as a month when lower diversion limits should be applicable. The witness also cited the opening of schools and the stresses on production from summer as reflections of increasing demand for Class I milk occurring during a time of generally lower milk production.

A witness representing Scioto expressed general support for Proposal 3 but offered a 4-day touch base standard for each of the months of August through November and a 2-day touch base standard for each of the months of December and January.

Testifying in support of Proposal 7, the IDPA witness stressed that increasing the touch base standard to 4 days' production should be applicable for each of the months of August through March and providing a 60 percent diversion limit for each of these same months would be beneficial to Mideast producers. The witness indicated that a physical delivery of milk to the order's pool plants is a key indicator of milk being a legitimate part of the market. The witness expressed support of the need for an emergency decision because their returns are being lowered by pooling milk that should not be considered as part of the Mideast market.

Proposal 9, offered by the Handlers, seeks to limit the amount of milk that could be diverted from a pool plant to a nonpool plant. The proposal would set a 60 percent limit during each of the months of August through February and an 80 percent limit during each of the months of March through July. This proposal was abandoned by its proponents. Instead, the proponents agreed to support Proposal 3 offered by the Cooperatives. While the Handlers indicated support for Proposal 3, they were of the opinion that adopting a 3-day touch base standard instead of a 2-day touch base standard would be best. They indicated a 3-day touch base standard would contribute to a more accurate identification of the milk of producers that actually supply the fluid milk needs of the Mideast marketing area.

The witness representing Scioto testified in support of Proposal 9. Proposal 9 limits diversions to a percentage of the milk physically received at a plant, noted the witness. The concept of allowing diversions based on milk physically received is logical, said the witness, and is preferred by most of the dairy industry. The witness was also of the opinion that August should be included as a month that provides for a lower level of diversions to nonpool plants. The combination of schools opening in the middle of August together with the typically hot days of the summer season, cited the witness, has negative impact on milk production and therefore the order should have lower limits on the amount of milk that can divert to nonpool plants. Diversion limits of 60 percent during each of the months of August through February and 80 percent during each of the months of March through July would also assure consumers and fluid milk processing plants that their needs will be met, concluded the Scioto witness.

All milk marketing orders, including the Mideast, provide some standard for identifying those producers who supply the market with milk. To qualify as a producer on most orders, including the Mideast, a producer can be associated with a market by making a delivery to a market's pool plant. Additionally, other standards need to be met before the milk of that producer is eligible to be diverted to a nonpool plant and have that diverted milk pooled and priced under the terms of the order. Currently, the Mideast order's standard is that one day's production of milk of a producer be delivered to a pool plant before that plant can divert the milk of the producer to a nonpool plant.

The touch base standard of an order establishes an initial association by the producer and the milk of the producer with the market. Markets that exhibit a higher percentage of milk in fluid use generally have touch base standards specifying more frequent physical milk deliveries to pool plants. In this way, the touch base provision serves to maintain the integrity of the order's performance standards. When a touch base standard is too low, the potential for disorderly marketing conditions arises on two fronts. First, pool plants are less assured of milk supplies. Second, and most important for the Mideast marketing area, an inadequate touch base standard provides the means for the milk of producers, not providing a service in meeting the fluid needs of the market, to be pooled on the order. This reduces the order's blend price paid to producers who are providing service to the Class I market.

The record of this proceeding indicated various opinions about what the proper touch base standard for the Mideast order should be and when it should be applicable. These opinions ranged from 2 days' to as much as 4 days' milk production of a producer. All agree that August would be a more appropriate beginning month for its applicability. The more compelling observation is that all participants in this proceeding recognized the need for, and supported increasing, the touch base standard. The issue for the Department is reduced to deciding which standard best serves the needs of the Mideast order.

On the basis of the evidence, this decision supports adopting a 2-day touch base standard and having this standard be applicable beginning in August. While a higher standard would tend to further maintain the integrity of the order's performance standards, adopting a higher touch base standard may result in the uneconomic movement of milk solely for the milk of producers to meet a pooling standard. Additionally, the Mideast order currently provides that the Market Administrator may adjust the touch base standard in the same way the order provides for the Market Administrator to adjust the performance standards for supply plants and the diversion limits for all pool plants. Other changes adopted in this decision will also serve to more accurately identify the milk of producers who should be pooled on the order. Together with the Market

Administrator's authority to administratively change the touch base standard, sufficient safeguards are provided to accomplish both needs.

Provisions for diverting milk are a desirable and needed feature of an order because they facilitate the orderly and efficient disposition of the market's milk not used for fluid use. When producer milk is not needed by the market for Class I use, its movement to nonpool plants for manufacturing, without loss of producer milk status, should be provided for. Preventing or minimizing the inefficient movement of milk solely for pooling purposes need also be reasonably accommodated. However, it is just as necessary to safeguard against excessive milk supplies becoming associated with the market through the diversion process.

A diversion limit establishes the amount of producer milk that may be associated with the integral milk supply of a pool plant. With regard to the pooling issues of the Mideast order, it is the lack of diversion limits to nonpool plants that significantly contributes to the pooling of milk on the order that does not provide service to the Class I market. Such milk is not a legitimate part of the reserve supply of the plant.

Milk diverted to nonpool plants is milk not physically received at a pool plant. However, it is included as a part of the total producer milk receipts of the diverting plant. While diverted milk is not physically received at the diverting plant, it is nevertheless an integral part of the milk supply of that plant. If such milk is not part of the integral supply of the diverting plant, then that milk should not be associated with the diverting plant. Therefore, such milk should not be pooled.

Associating more milk than is actually part of the legitimate reserve supply of the diverting plant unnecessarily reduces the potential blend price paid to dairy farmers. Additionally, pooling milk far in excess of reasonable needs of the market due to the lack of diversion limits only provides for the association of milk with the market by what is often described as ''paper-pooling'' and not by actual service in meeting the Class I needs of the market. Without a diversion limit, the order's ability to provide for effective performance standards and orderly marketing is weakened.

The lack of a diversion limit standard applicable to pool plants opens the door for pooling much more milk and, in theory, an infinite amount of milk on the market. While the potential size of the pool should be established by the order's pooling standards, the lack of diversion limits renders the potential size of the pool as undefined. With respect to the marketing conditions of the Mideast marketing area evidenced by the record, this decision finds that the lack of year-round diversion limits on producer milk has caused more milk to be pooled on the order than can reasonably be considered as properly associated with the market.

The lack of a diversion limit standard applicable for diversions to nonpool plants has also resulted in the pooling of milk that does not provide a service in meeting the Class I needs of the Mideast marketing area. Proposal 7 offers reasonable diversion limit standards that would be adjusted seasonally to reflect the changing supply and demand conditions of the Mideast marketing area. Therefore, a 60 percent diversion limit standard for each of the months of August through February and a 70 percent diversion limit standard for each of the months of March through July should be adopted immediately. To the extent that these diversion limit standards may warrant adjustments, the order already provides the Market Administrator with authority to consider and act to adjust these diversion standards as marketing conditions may warrant by the Market Administrator.

As mentioned above, the Mideast order currently provides for the diversion of milk from a pool plant to a second pool plant. However, the order does not consider such diversions in the total diversion limit established for pool plants. It is through this shortcoming of the order's pooling standards that the intent to only pool the milk of producers who are consistently serving the Class I demands of the market are circumvented. In this regard, a pool plant is able to increase its milk diversions to a nonpool plant through diversions to a second pool plant. The amendment provided below in the *Producer milk* definition of the order provides the necessary technical correction that will include diversions to other pool plants in the manner no differently than diversions to nonpool plants.

Several changes to the pooling standards contained in the *Producer milk* definition of the order are needed to maintain the integrity of the other amendments made in this decision affecting the performance standards for supply plants. As indicated earlier, the record indicates that certain pooling provisions of the Mideast order are either inadequate or unnecessary. With respect to the pooling standards of the order as they are contained in the *Producer milk* provision, this decision finds that certain features of the provision are inadequate. These include:

(1) The touch base standard currently requiring one-days' milk production of a producer be delivered to a pool plant is not providing a sufficient standard in identifying those producers and the milk of those producers who are serving the fluid needs of the market.

(2) The lack of year-round diversion limits for all pool plants has resulted in the ability to pool far more milk than can be reasonably part of the reserve supply of the plants pooling such milk. The lack of a diversion limit for each and every month of the year has left the potential size of the marketwide pool undefined. This inadequacy of the Mideast order has resulted, too, in pooling the milk of producers who are not providing a service to the Class I needs of the market. This inadequacy contributes to the unnecessary erosion of the order's blend price caused by pooling additional volumes of milk used in lower priced classes which, in turn, reduces the market's Class I utilization percentage of milk.

(3) The lack of limiting the ability of a pool plant to divert milk to a second pool plant in the same manner as diverted milk to a nonpool plant contributes and magnifies the impact of pooling the milk of producers who provide no service to the Class I needs of the market. The receipt of a lower blend price to those producers who are serving the Class I needs of the market is found to be unwarranted and contributes to disorderly marketing conditions in the Mideast marketing area.

2. Rate of Partial Payment

Proposal 4, seeking to increase the rate of partial payment for milk, should not be adopted. This proposal, offered by DFA, would increase the rate of partial payment to producers and cooperative associations for milk delivered during the first 15 days of a month to 110 percent of the previous month's lowest class price.

The intent of this proposal, according to the DFA witness, is to improve the cash flow of dairy farmers pooled on the Mideast order. According to DFA, a partial payment that more closely equals the final payment for milk would more accurately reflect the true value of the milk delivered to handlers during the first 15 days of the month. The DFA witness testified that the partial payment rate, as a share of the total payment for milk, has widened since the formation of the consolidated Mideast marketing area. The witness stressed that producers need a more consistent cash flow than they are

currently experiencing and adopting a higher partial payment rate would meet this need.

The DFA witness provided data and an analysis they maintain indicates that since the implementation of order reform on January 1, 2000, the amount of the partial payment received by producers relative to the total payment for milk each month has been reduced when compared to the pre-reform orders. The analysis consisted of approximating a weighted average blend price as a proxy for a comparable order from the pre-reform orders' information. The witness indicated that data for a 36-month period, from January 1997 through December 1999, was compared to the current Mideast order data of 17 months—the number of months then available for which data existed.

Since the current Mideast order provides 4 classes of milk use, the DFA witness indicated they used the pre-reform order's Class III–A price as a proxy for the lowest class price so that a comparison could be made between the pre-reform and post-reform partial payment relationships to the total price for the month. The result of this analysis, concluded the DFA witness, clearly indicates that by using the lowest class price of the previous month as the rate of partial payment, the relationship between the partial and total payment for milk during the month has widened since the implementation of order reform.

Three other witnesses testified in support of amending the partial payment provision. These witnesses included an Ohio dairy farmer, a representative of MMPA, and Scioto. All three witnesses testified that their cash flow, or the cash flow of their members, has deteriorated since the implementation of order reform.

Opposition by handler interests for increasing the rate of partial payment was significant. However, handler interests did not counter the expressed need for improvement in producers' cash flow positions. Rather, handler interests focused on presenting the impact to milk processors if a higher partial payment rate was adopted.

A representative of Leprino Foods (Leprino), a national cheese-processing firm which purchases and pools milk on the Mideast order, testified that disparity between the partial and final payments is a combination of a failure to blend the pool's higher use values into the partial payment and using the lowest class price of the previous month. The witness argued that increasing the rate of partial payment would merely transfer the burden of producers' cash flow concerns to processors. The Leprino witness was also of the opinion that increasing the rate of partial payment would violate minimum pricing principles used by Federal milk orders. In this regard, the witness noted that Class III and IV products compete for sales in a national market, unlike milk used in Class I products. The witness maintained that the resulting differences in the rate of partial payment between orders would cause disparate economic positions for handlers competing for sales in areas where the rate of partial payment is lower.

A witness representing the Handlers also testified in opposition to increasing the rate of partial payment. The witness provided an analysis that evaluated the financial impact on handlers based on the economic principle of the time value of money. In the analysis, the Handlers' witness presented the financial impacts to handlers that would likely result by advancing or delaying the partial payment. Notwithstanding the desire or need of producers to improve their cash flow positions, the witness was of the opinion that the cash flow problem of producers would better be addressed through adoption of other proposals under consideration in this proceeding.

Because of initial confusion in the data presented at the hearing regarding appropriate historical prices and the months for which they were applicable, the Department reconstructed noticed data that recreated the intended analysis presented by witnesses. The Department's reconstruction relied, in part, on the partial payment provisions of the pre-reform orders. The Department used the previous month's Class III price of the pre-reform orders as the lowest class price because the Class III price was used then to set the rate of partial payment. In this regard, comparing partial payment relationship outcomes using actual historical provisions provided for comparing pre- and post-reform partial payment relationships as to the total payment for milk in a month.

Even with the limited amount of data available since the implementation of order reform, the Department's comparison of pre- and post-reform partial payment relationships to total payments does appear to support the observations made by the DFA witness. However, this initial observation alone is not sufficient basis for changing the rate of the partial payment. Some significant differences in certain key assumptions were made by the proponents of Proposal 4 from those assumptions used by the Department in comparing pre- and post-reform time periods.

Also of concern is the limitations inherent in comparing a 36-month period to one of only 17 months. Additionally, the 36-month time period shows price trends rising and falling, while the 17-month time shows a period of generally an upward trend in prices. This may suggest that there has not yet been a sufficient period of elapsed time to infer the impact of downward trends in prices and the possible effect on the relationship between the partial and final payments to producers.

With regard to Leprino's concern about uniformity of partial payment rates between orders, the current milk orders have a variety of partial payment rates. Several orders use a partial payment rate based on a percent of the previous month's blend price, and the Florida order, for example, provides for two partial payments. Additionally, the Western and Arizona-Las Vegas orders, both of which pool significant volumes of milk used in cheese, provide for partial payment rates of 120 and 130 percent, respectively, of the previous month's lowest class price.

There may be times when the rate of partial payment exceeds the balance due for the month. In this regard, handler interests point to this outcome as requiring them to pay more for milk for part of the month than its actual value for the month. It is appropriate to note that this exact outcome occurred several times during the pre-reform 36-month period used by DFA. Thus, it is determined that the concerns of handlers in this regard are unpersuasive.

The DFA witness noted that deductions authorized by producers are normally made in the final payments for milk. There could be times when the amount deducted from the final payment exceeds the amount of the final payment. If the deductions are high enough for this to happen, it would be reasonable to conclude that producers desiring to even out their cash flow would opt to allow a portion of their deductions to be made with receipt of the partial payment, as the order allows.

The partial payment provision in Federal orders is a minimum requirement placed on handlers to pay producers for milk delivered. It is important to note that cooperatives and handlers are not restricted to paying only one partial payment at the rate specified in the order; partial payments for milk can be made more often. Additionally, cooperatives and handlers are also at liberty to negotiate agreements for more frequent billings for milk and in payments for milk above the minimum established by the order. As made evident by the record, more

flexible partial payment options are available to both producers and handlers than relying solely on changing the minimum payment provision.

As the Leprino witness noted, DFA's proposal does not incorporate or blend the higher-valued uses of milk in their analysis. In response to this observation, the Department compared the relationships between the partial and total payment using 90 percent of the previous month's Mideast blend price. Interestingly, if the desired objective is to more closely approximate the partial payment rate using the 36-month period before order reform, a 90 percent rate of the previous month's blend price seems to accomplish this. Nevertheless, the same limitations and concerns mentioned above prevent a finding that the Mideast order's rate for partial payment should be increased.

This decision finds general agreement with the Handlers' opinion that the cash flow concerns of producers would be better served by the adoption of other proposals considered in this proceeding. Other amendments adopted in this decision affecting the pooling of milk in the Mideast order will likely end the unnecessary erosion in the blend price received by Mideast producers. Higher expected blend prices will result from more accurately identifying those producers and the milk of those producers who actually serve the Class I needs of the market. Similarly, the relationship between the partial payment and the total price received by producers may change by the adoption of these pooling standard amendments. Accordingly, a finding that the rate of partial payment to producers by handlers should be increased is not supported by the evidence contained in the record of this proceeding.

3. Conforming Changes

One conforming change is made to the pool plant definition of the order. Words to implement the consolidated order were needed when the order first became effective on January 1, 2000. Since the order has become effective such wording is no longer needed to effectuate the implementation of the order. The removal of the wording presented below is self explanatory.

4. Emergency Marketing Conditions

Evidence presented at the hearing establishes that the pooling standards of the Mideast order are inadequate and result in the erosion of the blend price received by producers who are serving the Class I needs of the market and should be changed on an emergency basis. The unwarranted erosion of such producers' blend price stems from improper performance standards as they relate to pool supply plants and the lack of diversion limits for pool plant diversions to pool and nonpool plants. These shortcomings of the pooling provisions have allowed milk to be pooled on the order that does not provide a reasonable or consistent service to meeting the needs of the Class I market as a standard for enjoying the pricing benefits arising from Class I sales in the Mideast marketing area. Consequently, it is determined that emergency marketing conditions exist and the issuance of a recommended decision is therefore being omitted. The record clearly establishes a basis as noted above for amending the order on an interim basis and the opportunity to file written exceptions to the proposed amended order remains.

In view of this situation, an interim final rule amending the order will be issued as soon as the procedures are completed to determine the approval of producers.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Mideast order was first issued. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

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

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the interim marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The interim marketing agreement and the interim order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

Interim Marketing Agreement and Interim Order Amending the Order

Annexed hereto and made a part hereof are two documents, an Interim Marketing Agreement regulating the handling of milk, and an Interim Order amending the order regulating the handling of milk in the Mideast marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire tentative decision and the interim order and the interim marketing agreement annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

The month of October, 2001 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Mideast marketing area is approved or favored by producers, as defined under the terms of the order as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Mideast marketing area is approved by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be October, 2001.

The agent of the Department to conduct such referendum is hereby

designated to be David Z. Walker, Market Administrator.

List of Subjects in 7 CFR Part 1033

Milk marketing orders.

Dated: June 4, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

Interim Order Amending the Order Regulating the Handling of Milk in the Mideast Marketing Area

This interim order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Mideast marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

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

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

(2) The parity prices of milk, as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Mideast marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The authority citation for 7 CFR part 1033 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

1. Section 1033.7 is amended by revising ''; and'' at the end of paragraph (c)(1)(iii) to read ''.'', removing paragraph (c)(1)(iv), revising paragraphs (c)(2), (c)(4), and (d)(2), removing the words ''or its predecessor orders'' in paragraph (e) introductory text, and removing paragraph (h)(7) to read as follows:

§ 1033.7 Pool plant.

* * * * *

(c) * * *

(2) The operator of a supply plant located within the marketing area may include deliveries to pool distributing plants directly from farms of producers pursuant to § 1033.13(c) as up to 90 percent of the supply plant's qualifying shipments. Handlers may not use shipments pursuant to § 1033.13(c) to qualify plants located outside the marketing area.

* * * * *

(4) Shipments used in determining qualifying percentages shall be milk transferred or diverted and physically received by pool distributing plants, less any transfers or diversions of bulk fluid milk products from such pool distributing plants.

* * * * *

(d) * * *

(2) The 30 percent delivery requirement may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month. Shipments used in determining qualifying shipments in meeting this 30 percent delivery requirement shall be milk transferred or diverted and physically received by pool distributing plants, less any transfers or diversions of bulk fluid milk products from such pool distributing plants.

* * * * *

2. Section 1033.13 is amended by revising paragraph (d)(2), re-designating paragraphs (d)(3) through (d)(6) as paragraphs (d)(4) through (d)(7), adding a new paragraph (d)(3), and revising newly redesignated paragraph (d)(4) to read as follows:

§ 1033.13 Producer milk.

* * * * *

(d) * * *

(2) The equivalent of at least two days' milk production is caused by the handler to be physically received at a pool plant in each of the months of August through November;

(3) The equivalent of at least two days' milk production is caused by the handler to be physically received at a pool plant in each of the months of December through July if the requirement of paragraph (d)(2) of this section in each of the prior months of August through November are not met, except in the case of a dairy farmer who marketed no Grade A milk during each of the prior months of August through November.

(4) Of the total quantity of producer milk received during the month (including diversions but excluding the quantity of producer milk received from a handler described in § 1000.9(c) or which is diverted to another pool plant), the handler diverted to nonpool plants not more than 60 percent in each of the months of August through February and 70 percent in each of the months of March through July.

* * * * *

Marketing Agreement Regulating the Handling of Milk in the Mideast Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1033.1 to 1033.86 all inclusive, of the order regulating the handling of milk in the Mideast marketing area (7 CFR 1033 which is annexed hereto); and

II. The following provisions: Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of October, 2001, _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Department in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest

[FR Doc. 02–14455 Filed 6–10–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 550 and 551

[No. 2002–22]

RIN 1550–AB49

Recordkeeping and Confirmation Requirements for Securities Transactions; Fiduciary Powers of Savings Associations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing new regulations specifying the recordkeeping and confirmation requirements for savings associations that effect securities transactions. Under a recent rule issued by the Securities and Exchange Commission (SEC), savings associations may perform certain broker-dealer activities without registering with the SEC. Today's proposal affords savings association customers the same protections and disclosures provided to bank customers; ensures that examiners will be able to evaluate a savings association's compliance with securities laws and to assess whether savings associations effect securities transactions safely and soundly; and provides savings associations with formal guidance for effecting securities transactions.

OTS also is proposing to amend its regulations governing the fiduciary powers of federal savings associations. The proposed amendments codify a series of OTS legal opinions regarding the fiduciary powers of federal savings associations. This action is consistent with the Office of the Comptroller of the Currency's (OCC) recent codification of a similar series of legal opinions regarding the fiduciary powers of national banks. The rule would also streamline application procedures, clarify when a federal savings association may act in a fiduciary capacity without obtaining fiduciary powers from OTS, and make other minor or technical changes to OTS's fiduciary powers regulations.

DATES: Comments must be received on or before August 12, 2002.

ADDRESSES: *Mail:* Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: Docket No. 2002–22. Commenters should be aware that there have been some unpredictable and lengthy delays in postal deliveries to the Washington, DC area in recent weeks and may prefer to make their comments via facsimile, e-mail, or hand delivery.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Docket No. 2002–22.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906–6518, Attention: Docket No. 2002–22.

E-Mail: Send e-mails to *regs.comments@ots.treas.gov*, Attention: Docket No. 2002–22, and include your name and telephone number.

Availability of comments: OTS will post comments and the related index on the OTS Internet Site at www.ots.treas.gov. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Please identify the materials you would like to inspect to assist us in serving you.) We schedule appointments on business days between 10:00 a.m. and 4:00 p.m. In most cases, appointments will be available the business day after the date we receive a request.

FOR FURTHER INFORMATION CONTACT: Timothy P. Leary, Counsel (Banking & Finance), (202) 906–7170, Regulations and Legislation Division, or Kevin Corcoran, Assistant Chief Counsel, (202) 906–6962, Business Transactions Division, Office of the Chief Counsel; or Judith McCormick, Trust Specialist, (202) 906–5636, Examination Policy Division, Office of Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Recordkeeping and Confirmation Requirements for Securities Transactions

Until recently, savings associations could not effect securities transactions for customers directly unless they registered with the SEC as a broker-dealer. Under an interim final rule issued by the SEC, savings associations are now treated as banks under the definitions of ''broker'' and ''dealer'' in sections 3(a)(4) and (a)(5) of the Securities Exchange Act of 1934 (Exchange Act). 66 FR 27760 (May 18, 2001).[1] As a result, a savings association may perform certain broker-dealer activities without registering with the SEC as broker-dealers.

The OCC, Federal Deposit Insurance Corporation (FDIC), and Federal Reserve Board (FRB) regulations include recordkeeping and confirmation requirements for securities transactions effected by banks. Until the recent SEC rule, OTS did not need similar requirements. Today's proposal affords savings association customers the same protections and disclosures provided to bank customers. Proposed part 551 establishes recordkeeping and confirmation requirements for a savings association that effects securities transactions. Proposed part 551 is based on the recordkeeping and confirmation requirements of the other federal banking agencies.[2] Where appropriate, however, OTS has modified the proposed requirements to reflect SEC regulatory requirements for registered broker-dealers. A section-by-section description of the proposed recordkeeping and confirmation regulations follows.

What Does This Part Do? (Proposed § 551.10)

Proposed § 551.10 states that part 551 establishes recordkeeping and confirmation requirements for a savings association that effects securities transactions for customers. The new part would apply to all savings associations.

Must I Comply With This Part? (Proposed § 551.20)

Proposed § 551.20 sets out the scope of part 551. Generally, any savings

[1] The SEC recently extended until May 12, 2003 the savings association exemption from the definition of ''broker'' under the Exchange Act, and extended until November 12, 2002 the savings association exemption from the definition of ''dealer'' under the Exchange Act. SEC Release No. 34–45897 (May 8, 2002); see also SEC Release No. 34–44570 (July 18, 2001).

[2] See 12 CFR part 12 (2001) (OCC); 12 CFR 208.24 (2001) (FRB); 12 CFR part 344 (2001) (FDIC).

association effecting a securities transaction for a customer must comply with part 551, unless the transaction is specifically excepted.

Proposed § 551.20(b) contains five exceptions to this general rule. Four of the five proposed exceptions—for an institution that effects a small number of securities transactions,[3] for certain government securities transactions, for certain municipal securities transactions, and for transactions conducted at a foreign branch of a savings association—are found in all of the other federal banking regulators' requirements. The OCC and FDIC regulations also include a fifth exception for a transaction effected for a bank by an SEC-registered broker-dealer who provides a confirmation directly to the customer. OTS agrees this is an appropriate exception and has included it in the proposed rule.

This last exception would apply to transactions effected by a savings association employee who also acts as an employee of an SEC-registered broker-dealer (dual employee), if the dual employee works for and is under the control of a registered broker-dealer when he or she effects the transaction. However, if the dual employee works for and is under the control of the savings association when he or she effects the transaction, the proposed exception would not apply.

A savings association may enter into various arrangements with a registered broker-dealer that permit the broker-dealer to operate on the association's premises. As noted above, proposed part 551 generally would not apply to securities transactions executed by these registered broker-dealers for their customers. As registered broker-dealers, they already are subject to the SEC's recordkeeping and confirmation rules. However, if the savings association effects a securities transaction for a customer, but uses the registered broker-dealer to perform purely administrative functions (e.g., clearing the transaction), proposed part 551 would apply because the savings association has executed the transactions.

OTS invites comment on these exceptions and whether they are appropriate in the context of the day-to-day operations of a savings association.

[3] The number in the proposed rule, 500 transactions, is based on the de minimis exception found in § 201 of the Gramm-Leach-Bliley Act, amending the definition of ''broker'' in § 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(xi)). The other banking agencies' regulations contain a de minimis transaction limit of 250 that predates GLBA.

What Requirements Apply To All Transactions? (Proposed § 551.30)

Proposed § 551.30 states that a savings association must effect all transactions, including excepted transactions, safely and soundly. Specifically, the savings association must maintain effective systems of records and controls that clearly and accurately reflect all appropriate information and provide an adequate basis for an audit. The other federal banking regulators have similar provisions.

What Definitions Apply to This Part? (Proposed § 551.40).

Proposed § 551.30 contains the definitions of terms used in part 551. The proposed definitions of ''asset-backed security,'' ''completion of the transaction,'' ''customer,'' ''debt security,'' ''government security,'' ''municipal security,'' and ''security'' track definitions in the OCC, FDIC, and FRB regulations.

OTS's proposed rule cross-references the definition of ''investment discretion'' in its fiduciary powers rule at 12 CFR 550.40. By contrast, OCC established separate definitions of investment discretion for its recordkeeping and confirmation rule and its fiduciary rule. Although they are phrased slightly differently, the definitions of ''investment discretion'' in OCC's two rules are substantially similar.[4] In OTS's view, the two concepts are identical. As such, OTS has elected to use the same definition for both rules.

The proposed rule also defines ''investment company plan.'' This definition comes from SEC Rule 10b–10, the SEC's rule for confirmation of transactions by registered broker-dealers. See 17 CFR 240.10b–10(d)(6).

OTS, like FDIC, would define ''sweep account'' separately from ''periodic plan.'' Many sweep accounts differ from typical periodic plans such as dividend reinvestment plans and automatic investment plans. Accordingly, proposed § 551.30 includes a definition of ''sweep account'' based on the FDIC's regulation. See 12 CFR 344.3(c). The proposed definition of ''periodic plan'' is based on SEC Rule 10b–10. See 17 CFR 240.10b–10(d)(5). Finally, OTS has included a definition of ''common or collective investment fund,'' which cross-references applicable OTS and OCC rules.

[4] Compare 12 CFR 9.2(i) (which is similar to OTS's definition at 12 CFR 550.40) with 12 CFR 12.2(h) (which is similar to the definitions in the other federal banking regulators' recordkeeping and confirmation regulations).

Subpart A—Recordkeeping Requirements

What Records Must I Maintain for Securities Transactions? (Proposed § 551.50)

Proposed § 551.50 describes the records a savings association must maintain for securities transactions. A savings association effecting securities transactions for customers must maintain, for at least three years, chronological records containing an itemized daily record of each purchase and sale of securities; account records for each customer; the memorandum (order ticket) of each order or any other instruction given or received for the purchase or sale of securities; and a record of all registered broker-dealers the association selected to effect transactions and the commissions paid or allotted to each registered broker-dealer during each calendar year. The savings association must also maintain copies of the written notice required under proposed subpart B, which is discussed below.

How Must I Maintain My Records? (Proposed § 551.60)

Proposed § 551.60(a) states that a savings association may maintain required records in any manner, form, or format, as long as the records clearly and accurately reflect the required information and provide an adequate basis for auditing the information.

Proposed § 551.60(b) is patterned after a recent SEC rule governing recordkeeping requirements by investment companies and investment advisers.[5] Under the proposed rule, a savings association or the person that maintains and preserves records for the association must arrange and index the records in a way that permits easy access and retrieval, separately store a duplicate copy of the records, and promptly provide, upon an examiner's or the association director's request, copies of the record in the medium in which the record is stored, a printout of the record, and means to access, view, and print the record.

Proposed paragraph (b) also addresses electronic records. A savings association would be required to establish procedures to maintain and preserve electronic records in a way that reasonably safeguards the records from loss, alteration, or destruction; to limit access to the records to authorized personnel, the association's directors, and OTS examiners; and to reasonably ensure that electronic copies of the non-

[5] See 17 CFR 270.31a–2(f) and 275.204–2(g).

electronic originals are complete, true, and legible.

Finally, proposed § 551.60(c) states that a savings association may contract with third party service providers to maintain records.

Subpart B—Content and Timing of Notice

What Type of Notice Must I Provide When I Effect a Securities Transaction for a Customer? (Proposed § 551.70)

Under proposed § 551.70, whenever a savings association effects a securities transaction for a customer, the association must notify the customer by providing the customer with: (1) The registered broker-dealer confirmation; (2) a written notice; or (3) an alternate notice for certain types of transactions. These three types of notices are described in proposed §§ 551.80–100.

How Do I Provide a Registered Broker-dealer Confirmation? (Proposed § 551.80)

Under proposed § 551.80, a savings association may elect to provide the customer with a copy of the registered broker-dealer's confirmation. The registered broker-dealer may send the confirmation directly to the customer, or the savings association may send the customer a copy of the confirmation within one day of receiving it from the registered broker-dealer. If the registered broker-dealer sends the confirmation directly to the customer, the savings association would remain responsible for the timely delivery of confirmations and the accurate disclosure of the required information. Proposed § 551.80(b) requires additional disclosures if the association receives remuneration in connection with the transaction. In such a case, the association must provide the customer a statement of the source and amount of any remuneration. This information is generally required in a registered broker-dealer confirmation under SEC Rule 10b–10(a).[6]

How Do I Provide a Written Notice? (Proposed § 551.90)

Under proposed § 551.90, the association may elect to provide a written confirmation disclosing certain information. These informational requirements are based on the SEC's rule on confirmation of transactions by registered broker-dealers, SEC Rule 10b–10.[7] Under proposed § 551.90(a) through (e), the written confirmation must indicate: (1) The savings association's and customer's name; (2) the capacity in which the savings association acted; (3) the date and time the transaction was executed (or a statement that the association will furnish this information upon written request), and the identity, price, and number of shares or units purchased or sold; (4) the person from whom the association purchased or to whom the association sold the security (or a statement that the association will furnish this information upon request); and (5) the amount and source of remuneration the association has received in connection with the transaction. Under proposed § 551.90(g), the association also must include a statement that the association is not a member of the Securities Investor Protection Corporation, if that is the case, unless the transaction involved shares of a registered open-end investment company or unit investment trust. Subparagraphs (f) and (g) are drawn from SEC Rule 10b–10, see 17 CFR 240.10b–10(a)(2)(i)(D) and (a)(9).

Paragraph (h) of proposed § 551.90 imposes additional disclosure requirements on certain transactions in debt securities. These additional requirements, which generally involve disclosing price and yield information about particular types of debt securities, are consistent with the recordkeeping requirements of the other federal banking regulators and SEC Rule 10b–10.[8] OTS has put these additional disclosure requirements in the form of a chart. If a transaction falls within more than one of the types of transactions listed in paragraphs (h)(1) through (5), the savings association must provide the information required for each type.

What Are the Alternate Notice Requirements? (Proposed § 551.100)

Under proposed § 551.100, a savings association may elect to provide alternate notices for certain types of transactions. These include transactions effected: (1) For or with the account of a customer under a periodic plan, sweep account, or investment company plan; (2) for or with the account of a customer in shares in certain open-ended management companies registered under the Investment Company Act of 1940 that hold themselves out as a money market fund and attempt to maintain a stable net asset value per share; (3) for an account for which the savings association does not exercise investment discretion and the customer has agreed in writing to an arrangement concerning the time and content of the notice; (4) for an account, other than common or collective investment funds, for which the savings association exercises investment discretion in other than an agency capacity; (5) for an account for which the savings association exercises investment discretion in an agency capacity; and (6) for a common or collective investment fund.

These categories are based on the alternate notice options provided by the other federal banking regulators and the SEC.[9] Most of the information requirements for all these accounts are based on the other federal banking agencies' rules. The information requirements for periodic plans and sweep accounts, however, are drawn from SEC Rule 10b–10(b), and the requirements for collective or common investment funds are drawn from FDIC regulation 12 CFR 344.6(e). OTS has set out the alternate notice requirements in a chart.

May I Provide a Notice Electronically? (Proposed § 551.110)

Proposed § 551.110 provides that a savings association may satisfy the written notice requirements in subpart B electronically. Proposed § 551.110 is based on a similar regulation in the OCC's rules at 12 CFR 12.102. A savings association may use electronic communications if the parties agree, the parties are able to print or download the notice, the system cannot automatically delete the notice, and both parties are able to receive electronic messages.

May I Charge a Fee for a Notice? (Proposed § 551.120)

OTS has included a provision addressing whether a savings association may charge a fee for a required notice. Proposed § 551.120, which is based on a related OCC provision,[10] states that a savings association may not charge a fee for providing a notice required under proposed subpart B, except in three instances. A savings association may charge a reasonable fee for providing notice under proposed § 551.100(a) (notice for periodic plans, sweep accounts, or investment company plans), (d) (notice for fiduciary accounts), and (e) (notice for agency accounts).

[6] 17 CFR 240.10b–10(a)(2)(i)(C) and (D) (2001).

[7] 17 CFR 240.10b–10(a) (2001).

[8] See, e.g., 12 CFR 12.4(a)(12) (2001); 17 CFR 240.1b–10(a)(4)—(a)(7) (2001).

[9] See 12 CFR 12.5 (OCC); 12 CFR 208.24(d) (FRB); 12 CFR 344.5 (FDIC); 17 CFR 240.10b–10(b) (SEC).

[10] 12 CFR 12.6 (2001).

Subpart C—Settlement of Securities Transactions

When Must I Settle a Securities Transaction? (Proposed § 551.130)

Proposed § 551.130 establishes a settlement period of three days after the date of the transaction (''T+3'') for savings associations effecting securities transactions. This time frame is consistent with that of the other federal banking regulators and mirrors the SEC's T+3 settlement time frame. See SEC Rule 15c6–1, 17 CFR 240.15c6–1 (2001). The proposal also provides that the parties may expressly agree to another time frame at the time of the transaction, or use some other time period as the SEC may specify by rule.

OTS considered incorporating settlement rules by cross-referencing the SEC rule. However, many small institutions may not have access to SEC rules. As a result, OTS has concluded that the better practice is to set forth a settlement rule tracking the SEC rule. This is consistent with the OCC and FDIC rules.

Subpart D—Securities Trading Policies and Procedures

What Policies and Procedures Must I Maintain and Follow for Securities Transactions? (Proposed § 551.140)

Proposed § 551.140 requires a savings association that effects securities transactions to maintain and follow written policies and procedures addressing several areas of operation. This section is based on similar provisions in the other banking regulators' recordkeeping regulations.

Under the proposed rule, the association's policies and procedures must:

- Assign responsibility for the supervision of officers and employees engaged in various aspects of the trading process;
- Provide for the fair and equitable allocation of securities and prices to accounts when the savings association receives orders for the same security at approximately the same time and it places orders individually or in combination;
- Provide for the crossing of buy and sell orders on a fair and equitable basis; and
- Require certain officers and employees to make quarterly reports containing specific information on personal securities transactions.

Proposed § 551.140(d) describes who must file the quarterly reports and is similar to the reporting requirements of the other regulators. Under that paragraph, an officer or employee must file a report if he or she makes investment recommendations or decisions for the accounts of customers, participates in the determination of these recommendations or decisions, or, in connection with his or her duties, obtains information concerning which securities the savings association intends to purchase, sell, or recommend for purchase or sale. OTS has also relied on the SEC's reporting requirements for investment company personnel who engage in personal investment activities found at 17 CFR 270.17j–1(d).

How Do My Officers and Employees File Reports of Personal Securities Trading Transactions? (Proposed § 551.150)

Proposed § 551.150(a) details the contents of the quarterly report. For each transaction, an officer or employee described in proposed § 551.140(d) would be required to report: (1) The date of the transaction, the title and number of shares, the interest rate and maturity date (if applicable), and the principal amount of each security; (2) the nature of the transaction (i.e., purchase, sale, or other type of acquisition or disposition); (3) the price at which the transaction was effected; (4) the name of the broker, dealer, or other intermediary effecting the transaction; and (5) the date the officer or employee submitted the report. The report is due within ten days after the close of the calendar quarter.

The officer or employee would not be required to report: (1) A transaction if he or she has no direct or indirect influence or control over the account or over the securities held in the account; (2) a transaction in shares issued by an open-end investment company registered under the Investment Company Act of 1940; (3) a transaction in direct obligations of the United States government; or (4) a transaction in bankers' acceptances, bank certificates of deposit, commercial paper and high quality short term debt instruments, including repurchase agreements. In addition, the officer or employee would not be required to file a report if the aggregate amount of his or her purchases and sales is $10,000 or less during the calendar quarter.

When a savings association acts as an investment advisor to an investment company, paragraph (c) would permit an officer or employee to fulfill the filing requirement by filing the report required by SEC Rule 17j–1(d), 17 CFR 270.17j–1(d). SEC Rule 17j–1 applies whenever a savings association acts as an investment adviser to an investment company. Proposed part 551, by contrast, applies more broadly to the investment advisory activities of a savings association, whether the association provides the advice to an investment company or to any other customer. Savings associations should be aware when they may be conducting advisory activities that would subject them to both SEC and OTS reporting requirements. OTS specifically requests comment whether the rule should specifically address this point.

B. Fiduciary Powers of Federal Savings Associations (Part 550)

OTS also proposes amendments to its regulations governing the fiduciary powers of federal savings associations at 12 CFR part 550. The proposed rules codify a series of OTS legal opinions regarding the fiduciary powers of federal savings associations. This action also is consistent with the OCC's recent codification of a similar series of legal opinions regarding the fiduciary powers of national banks.[11] The rule would also streamline application procedures, clarify when a federal savings association may act in a fiduciary capacity without obtaining fiduciary powers from OTS, and make other minor or technical changes. These changes are discussed below.

1. Fiduciary Operations (Proposed §§ 550.130 and 550.135)

a. Scope of Fiduciary Powers (Proposed § 550.135(a))

A federal savings association's authority to exercise fiduciary powers derives from section 5(n) of the Home Owners' Loan Act (HOLA) (12 U.S.C. 1464(n)). Section 5(n)(1) of the HOLA states that OTS may authorize a federal savings association:

> To act as trustee, executor, administrator, guardian, or in any other fiduciary capacity in which State banks, trust companies, or other corporations that compete with Federal savings associations are permitted to act under the laws of the State in which the Federal savings association is located.

Thus, under the HOLA, the scope of a federal savings association's fiduciary powers is expressly tied to the laws of the state in which the federal association is ''located.'' That location determines which state laws define the permissible scope of a federal savings association's fiduciary powers.

There is no case law specifically discussing the meaning of ''located'' in section 5(n). However, OTS has provided guidance regarding this term in a series of legal opinions.[12] OTS has opined that a federal savings association

[11] See 66 FR 34792 (July 2, 2001).

[12] See, e.g., OTS Op. Chief Counsel (June 13, 1994); OTS Op. Chief Counsel (June 21, 1996); and OTS Op. Chief Counsel (August 8, 1996).

will be located for trust purposes in those states where it has an office in which it conducts fiduciary activities. OTS has indicated that a trust office may be in the form of a brick and mortar office or a fiduciary presence in the state that is the functional equivalent of operating a brick and mortar trust office—a so-called de facto trust office. To determine whether an association is operating an actual or de facto trust office in a particular state, OTS has looked at the nature of activities performed in the state. OTS has distinguished between fiduciary activities (such as executing documents, providing investment advice, making investments, and approving new accounts), which would establish location for trust purposes, and mere marketing activities, which would not. For example, OTS has concluded that a federal savings association is not located where its only activities are marketing its fiduciary services and performing specified incidental duties pursuant to its appointment as testamentary trustee or trustee holding real estate.

OTS has incorporated these interpretations in today's proposed rule. For the purposes of section 5(n), the proposed rule interprets ''location'' as the state in which a federal savings association ''conducts fiduciary activities.'' Specifically, proposed § 550.135(a) provides that the state laws that apply to federal savings associations under section 5(n) of the HOLA are the laws of the state in which the association conducts fiduciary activities.[13] For each individual state, the proposed rule would state that a federal savings association may conduct fiduciary activities in the four fiduciary capacities specifically authorized by the HOLA (trustee, executor, administrator, or guardian), and in any other fiduciary capacity the state permits for state banks, trust companies, or other corporations that compete with federal savings associations in that state. Consistent with OTS opinions, the proposed rule indicates that a federal savings association conducts fiduciary activities where it accepts a fiduciary appointment, executes documents accepting a fiduciary appointment, provides investment advice regarding fiduciary assets, or makes discretionary decisions regarding investment or distribution of fiduciary assets. See proposed § 550.60.

The proposed rule also provides that for each fiduciary relationship, the state referred to in section 5(n) of the HOLA is the state(s) in which the federal savings association conducts fiduciary activities for that relationship. We have not included a provision similar to that of the OCC, providing that if the federal savings association acts in a fiduciary capacity for a particular relationship in more than one state, the association may designate in which state the association is acting in a fiduciary capacity.[14] Many commenters on the OCC's rule expressed concern that the provision might implicate state choice of law issues. We invite specific comment on whether such a provision is necessary and within the scope of section 5(n) of the HOLA.

b. Multi-State Operations (Proposed § 550.130)

OTS legal interpretations have also analyzed the extent to which a federal savings association may conduct multi-state fiduciary activities, market services to customers in multiple states, and establish offices in multiple states. These opinions have concluded that the HOLA places no geographic limitation on the ability of a federal savings association to exercise fiduciary authority on a multi-state basis.[15] Proposed § 550.130(a) codifies these opinions and provides that a federal savings association may conduct fiduciary activities in any state.[16]

As noted above, OTS has determined that a federal savings association is not located for trust purposes in a state where it only conducts activities ancillary to its fiduciary business.[17] Accordingly, proposed § 550.130(b) clarifies that when a federal savings association conducts fiduciary activities in one state, it may market its fiduciary services to, and act as a fiduciary for, customers located in any state, and may act as a fiduciary for relationships that include property located in other states, or as a testamentary trustee for a testator located in another state. In conducting these ancillary activities, the federal savings association must generally comply with the laws of the state in which it is located.[18]

The proposed rule further provides that a federal savings association may establish or utilize an office in another state to provide ancillary services.[19] Proposed § 550.60 describes examples of ancillary activities drawn from recent interpretive opinions. These activities would include advertising, marketing, soliciting fiduciary business, answering questions and providing information to customers related to their accounts, acting as liaison between the association and the customer (such as forwarding requests for distribution, changes in investment objectives, forms, or funds received from the customer), and inspecting or maintaining custody of fiduciary assets or holding title to real property.[20] If a federal savings association, however, also conducts fiduciary activities in a state, it would be located in that state.

c. Impact of Federal Law (Proposed § 550.135(b))

The fiduciary operations of federal savings associations are subject to a complex interplay between federal and state law. As noted above, section 5(n) of the HOLA indicates that OTS must look to state law to determine the scope of the fiduciary powers that may be granted to a federal savings association.[21] The HOLA, however, also grants OTS plenary authority to regulate all aspects of the operations of federal savings associations, including fiduciary operations (12 U.S.C. 1464(a)), and expressly confers upon OTS the power to authorize federal savings associations to exercise fiduciary powers (12 U.S.C. 1464(n)).

OTS has issued a number of opinions addressing the interaction of these provisions. Specifically, OTS has opined that a federal savings association with OTS-authorized fiduciary powers does not need to obtain a license or permission from a state in order to conduct fiduciary activities in that state.[22] Further, consistent with its role as exclusive regulator of federal savings

[13] As a related technical change, the proposed rule deletes the second sentence of current § 550.20. That sentence provides that the scope of permissible fiduciary powers for federal savings associations depends on the powers that the state in which the association is located grants to competing fiduciaries in that state. OTS believes that this sentence is unnecessary in light of proposed § 550.135(a).

[14] See 12 CFR 9.7(d). In all other respects, proposed §§ 550.130 and 550.135 are consistent with the OCC rule at 12 CFR 9.7.

[15] OTS Op. Chief Counsel (March 28, 1996).

[16] A federal savings association would be required to comply with the applicable application and notice procedures described at section I.B.3 of this preamble.

[17] OTS Op. Chief Counsel (June 13, 1994); and OTS Op. Chief Counsel (June 21, 1996).

[18] See proposed § 550.135(b).

[19] OTS Op. Chief Counsel (May 5, 1995) at n.13.

[20] OTS Op. Chief Counsel (June 13, 1994); OTS Op. Chief Counsel (June 21, 1996); OTS Chief Counsel (August 8, 1996); and OTS Op. Chief Counsel (July 1, 1998).

[21] Section 5(n) of the HOLA also specifically incorporates certain other state laws. For example, OTS may not grant fiduciary powers to a federal savings association if it has less capital than state law requires for state chartered fiduciaries. 12 U.S.C. 1464(n)(8). Moreover, a federal savings association must comply with any state law requiring a deposit of securities or an oath or affidavit from fiduciaries. 12 U.S.C. 1464(n)(5) and (n)(6).

[22] See, e.g., OTS Op. Chief Counsel (March 28, 1996).

associations, OTS has issued detailed fiduciary regulations at part 550.

Other than with respect to those state laws specifically referenced in HOLA § 5(n), the fiduciary activities of federal savings associations are governed solely by federal law and OTS. This position is consistent with the oft-stated principle that OTS totally occupies the field of the regulation of federal savings associations.[23] Under this approach, a state law purporting, for example, to restrict the advertising or affect the recordkeeping practices of a federal savings association's fiduciary operations, would not apply to the association.

Accordingly, proposed § 550.135(b) states that, except for those particular state laws that apply to a federal savings association by virtue of section 5(n) of the HOLA, state laws that purport to regulate any other aspect of a federal savings association's fiduciary activities do not apply to a federal savings association's fiduciary operations.

2. Application and Notice Requirements (Proposed §§ 550.70 and 550.125)

In this rulemaking, OTS also proposes to revise the application and notice requirements applicable to fiduciary operations. Under existing rules, a federal savings association must obtain prior approval from the OTS before exercising fiduciary powers, unless its activities are exempt under subpart E. 12 CFR 550.70. Under current § 550.130, a federal savings association may exercise only those fiduciary powers specified in the OTS approval. In addition, unless otherwise provided in the approval, a federal savings association may exercise fiduciary powers only from those offices listed in the application.[24] As a result, if a federal savings association wishes to exercise fiduciary powers that are not specified in the OTS approval or exercise fiduciary powers from a new office, the federal savings association must generally seek additional OTS review.

When OTS reviews an initial application for fiduciary powers, it analyzes a number of factors including, among others, the federal savings association's financial and managerial resources, its history of regulatory compliance, and level of fiduciary expertise. See 12 CFR 550.100. In light of this initial review, OTS believes that a new application is not always necessary to ensure safe and sound fiduciary operations when a federal savings association with existing trust powers expands its operations.

Application and notice requirements under the proposed rule would distinguish between new activities that materially differ from previously approved fiduciary activities and other types of activities. A federal savings association would engage in materially different activities, for example, if the business plan supporting the approved trust application contemplated only personal trust services and the savings association proposed to expand its activities to manage employee benefit accounts.

When a federal savings association conducts fiduciary activities that differ materially from previously approved fiduciary activities, OTS believes that its review of a complete trust application is necessary to ensure that the proposed operations are consistent with the association's experience, resources, and expertise. Accordingly, the proposed rule would require a federal savings association with previously approved trust powers to submit a complete trust application and obtain prior OTS approval before it may conduct fiduciary activities that are materially different from activities approved in the initial trust application.

OTS does not believe that a federal savings association engages in materially different activities when it merely expands the geographic scope of previously approved activities. Accordingly, the proposed rule would not require a new application before the federal savings association commences such activities. However, to ensure that OTS is adequately informed when an association expands the geographic scope of its activities into a new jurisdiction, the proposed rule would require a federal savings association to notify the OTS within ten days after commencing such fiduciary activities in a new state.[25] A federal savings association would *not* be required to notify OTS, however, to move previously approved activities within a state. Similarly, no notice is required if the activities in a new state will consist only of activities ancillary to the exercise of the association's fiduciary business.

OTS has incorporated the application and notice requirements in a chart at proposed § 550.70. OTS would also make other technical revisions to existing part 550 to reflect the described changes.

3. Deposit of Fiduciary Funds Awaiting Investment or Distribution (Proposed § 550.310)

Existing § 550.300 permits a federal savings association to deposit funds of a fiduciary account that are awaiting investment or distribution in self-deposits or in deposits with an affiliate. If the FDIC does not insure the entire amount of the self-deposit or the affiliate deposit, the association must set aside collateral as security. 12 CFR 550.310.

OCC has a similar rule at 12 CFR 9.10. OCC's rule, however, states that if the FDIC does not insure the funds deposited with the institution, the bank must set aside collateral as security for a self-deposit, but may set aside collateral for the deposit with an affiliate. The OCC has interpreted this section to mean that the collateral for fiduciary funds deposited with an affiliate may come from either the bank or its affiliate.[26]

When it revised § 550.310 in 1997, OTS clearly expressed its intent to conform the substance of its rules to the OCC's rules. *See* 62 FR 39477 (July 23, 1997). Accordingly, OTS proposes to amend its rules to state that if FDIC does not insure the entire amount of an affiliate deposit, either the savings association or the affiliate must set aside collateral as security.

4. Activities Exempt From Part 550 (Proposed § 550.580)

Existing § 550.580 describes when a federal savings association may conduct fiduciary activities without obtaining fiduciary powers from OTS. The purpose of this section is to exempt those fiduciary relationships authorized in section 5(l) of the HOLA, 12 U.S.C. 1464(l). Section 5(l) states:

A Federal savings association is authorized to act as trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan which qualifies or qualified for specific tax treatment under section 401(d) of [the Internal Revenue Code], and as trustee

[23] See, e.g., 12 CFR 560.2 (2002); see also Fidelity Federal Savings and Loan Ass'n v. de la Cuesta, 458 U.S. 141 (1982).

[24] When OTS adopted this provision in 1997, it noted that a federal savings association did not need to file a new application every time it opens a new office. For example, OTS approval of an application to obtain fiduciary powers could establish a procedure for expansion into new states under a notice process. See 62 FR at 67699.

[25] Proposed § 550.125 sets out the requirements for this notice. Specifically, the savings association would be required to identify each new state, describe the fiduciary activities the association is or will be conducting in each new state, and provide sufficient information to support a conclusion that the activities are permissible in each new state. Sufficient information to support a conclusion that the activities are permissible in the new state will depend on the specific circumstances of each case. Where state law is clear and the proposed activities are straightforward, a more limited discussion may suffice. A complicated business plan in a state with unclear law may require an opinion of counsel.

[26] OCC Interpretive Letter # 699, dated November 6, 1995.

or custodian of an individual retirement account within the meaning of section 408 of [the Internal Revenue Code] if the funds of such trust or account are invested only in savings accounts or deposits in such Federal savings association or in obligations or securities issued by such Federal savings association.

These types of accounts are addressed under existing §§ 550.580(a) and (b).

Existing § 550.580(c), however, also exempts a federal savings association when it acts as trustee of a fiduciary account that involves no active fiduciary duties, provided that applicable law authorizes the savings association to act in that capacity. Several associations have attempted to rely on paragraph (c) to argue they do not need to obtain fiduciary powers when acting as a directed trustee for non-IRA accounts. Since these activities are beyond the scope of section 5(l) of the HOLA, OTS is proposing to delete § 550.580(c).

OTS also proposes to amend § 550.580 to clarify that a federal savings association conducting fiduciary activities in an exempt capacity may only invest the funds in the trust or account in the investments described in § 550.600. Finally, the proposal includes additional clarifying amendments to this section and § 550.600.

II. Solicitation of Comments Regarding the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. OTS invites your comments on how to make this proposed rule easier to understand. For example:

Did we organize the material to suit your needs? For example, several of the proposed rules set out requirements in a chart, rather than in standard regulation text. See proposed §§ 550.70, 551.90 and 551.100. OTS specifically requests comment whether these charts are clearer and more helpful. If not, how could the material be better organized?

Do we clearly state the requirements in the rule? If not, how could the rule be more clearly stated?

Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?

Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

Would more (but shorter) sections be better? If so, what sections should be changed?

What else could we do to make the rule easier to understand?

III. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' which will ''describe the impact of the proposed rule on small entities.'' 5 U.S.C. 603(a). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

OTS has prepared an IRFA for part 551 but not for part 550. Most of the proposed changes to part 550 merely codify OTS existing regulatory interpretations regarding the scope of fiduciary powers, multi-state operations, and the impact of federal law. To the extent that proposed part 550 modifies existing requirements, the proposed rule would reduce burden by eliminating application requirements under certain circumstances, by substituting notices for applications in other circumstances, and by providing greater flexibility regarding the collateralization of deposits of fiduciary funds. The rule would also clarify the scope of activities that are exempt from part 550 under section 5(*l*) of the HOLA. While the proposed rule would eliminate § 550.580(c), which exempts federal savings associations that act as trustees of fiduciary accounts that involve no active fiduciary duties, OTS is not aware of any small federal savings associations that rely on this provision. Accordingly, OTS certifies to the Chief Counsel of Advocacy of the Small Business Administration that the proposed changes to part 550 will not have a significant economic impact on a substantial number of small entities.

Because the recordkeeping and confirmation requirements are new for savings associations, OTS cannot determine whether the proposed addition of part 551 will have a significant impact on a substantial number of small entities. However, we have consulted supporting statements filed by the OCC for substantially identical requirements in connection with a 1999 submission under the Paperwork Reduction Act. Because savings associations are now considered ''banks'' for purposes of the broker-dealer registration requirements and because OTS has modeled the proposed rule on the OCC's recordkeeping and confirmation rules, OTS believes that OCC's estimated annual paperwork cost of complying with the regulations provides a reasonable starting point for OTS's analysis of the cost to small business entities to comply with the proposed rule. These estimates are discussed under section B—Requirements of the proposed rule.

A description of the reasons why OTS is considering this action, and a statement of the objectives of, and legal basis for, proposed part 551 are included in the supplementary material above.

A. Small Entities to Which the Proposed Rule Would Apply

Proposed part 551 would apply to savings associations that effect securities transactions for customers. OTS calculates that as of April 26, 2002, it regulates approximately 1,009 savings associations. Of these savings associations approximately 557 savings associations hold assets under $150 million. Small depository institutions are generally defined, for RFA purposes, as those with assets under $150 million.

In all likelihood, however, this number substantially overstates the number of small savings associations that may be effected by the rule. No savings associations are currently registered with the SEC as broker-dealers, although some provide such services to their customers through arrangements with a third party broker-dealer. Because the new SEC rule permitting savings associations to perform broker-dealer activities without registering is so recent, OTS has no information concerning how many of its savings associations, large or small, have commenced or are contemplating commencing these operations. Accordingly, OTS specifically seeks comment on the number and size of small savings associations that may be affected by this rule.

B. Requirements of the Proposed Rule

As described more fully in the supplementary information section, the proposed rule would require savings associations to retain records of securities transactions, send confirmation of the transactions to customers, settle securities transactions within certain timeframes, and establish and maintain specific written policies and procedures regarding securities transactions.

Subpart A of the proposed rule establishes the minimum recordkeeping requirements for savings associations concerning securities transactions with their customers. This provision requires that the savings association maintain essential records necessary to track securities transactions. This type of recordkeeping is a usual and customary

process for a savings association. Consequently, most savings associations should be partially or fully prepared to meet the recordkeeping requirements. While we believe that this requirement should not impose significant burdens, savings associations may incur additional personnel (managerial, computer, and support staff), data storage, and other costs to the extent that existing resources are insufficient.

Subpart B would establish requirements for confirmation notices and subpart C would address the timing of settlement for securities transactions. To the extent that existing practices and available resources are insufficient, savings associations may need the assistance of legal and securities professionals and other personnel (managerial, computer, and support staff) to ensure that notices meet the content requirements and are provided within the time frames set forth in the regulation, and to ensure that securities transactions close within the times specified in the rule.

Finally, subpart D would require the savings association to establish and follow various policies and procedures to govern securities transactions. Savings associations commonly develop and implement policies and procedures in many of the areas addressed by the proposed rules (for example, the assignment of responsibility for the oversight of personnel). Accordingly, most savings associations should be partially prepared to meet these requirements. However, the development of policies and procedures on matters specific to securities transactions may require the assistance of legal and securities professionals. Compliance with these policies and procedures may require additional personal, training, and other costs.

Based on OCC estimates, OTS calculates that this rule will impose at least $264 in additional costs on small savings associations that begin to effect securities transactions on behalf of customers.[27] The development of policies and procedures, however, may require the assistance of legal or securities professionals which were not included in OCC's estimate. Accordingly, OTS has included additional costs of $305 to $403 to reflect the efforts of these professionals.[28] Accordingly, OTS estimates that the total cost of complying with this rule will be $569 to $667 per small institution. OTS notes that these costs will drop in subsequent years because thrifts will not be required to develop, and will only be required to update, policies and procedures on effecting securities transactions.

OTS solicits comment on its estimates of the costs of the potential burdens and on ways to minimize burden.

C. Significant Alternatives

Section 603(c) of the RFA requires OTS to describe any significant alternatives to the proposed rule that accomplish the stated objectives of the rule while minimizing any significant economic impact of the rule on small entities. Section 603(c) lists several examples of significant alternatives, including: (1) Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying compliance and reporting requirements for small entities; (3) using performance standards rather than design standards; and (4) excepting small entities from coverage of the rule or a part of the rule.

OTS considered recommending, rather than requiring, recordkeeping and confirmation provisions regarding securities transactions conducted by savings associations, but decided that such an approach was inappropriate. The SEC and the other federal banking regulators have created a regulatory scheme designed to protect investors through adequate disclosure of information and to discourage and detect fraudulent securities practices through prudent recordkeeping requirements. OTS believes that similar provisions are necessary to bring the savings association industry into conformity with the standards of the securities and banking industries for effecting securities transactions.

OTS, however, has attempted to minimize the economic impact of the proposed rules on savings associations, including small savings associations, while still achieving the overall objectives of the regulation. OTS has included several exemptions to the rule that may be available to small savings associations. For example, proposed § 551.20(b)(1) exempts savings associations from certain recordkeeping and policy and procedure requirements if the institution conducts fewer than 500 securities transactions for customers (excluding transactions in government securities). Similarly, proposed § 551.20(b)(2) exempts savings associations who conduct fewer than 500 government securities transactions from certain recordkeeping requirements. OTS believes that many small associations will take advantage of these exemptions. Moreover, OTS continues to have the ability under 12 CFR 500.30(a) to waive any recordkeeping or confirmation requirements upon a finding of good cause. This provision permits OTS to minimize any significant economic impact of a provision on a specific institution on a case-by-case basis.

Finally, OTS has included a substantial amount of flexibility in the rule. For example, a savings association may maintain required records in any manner, form, or format that it deems appropriate. Further, the rules would specifically permit the use of electronic storage media and the provision of notices through electronic means. *See* proposed §§ 551.60 and 551.110. In addition, several provisions permit a savings association, through the agreement with the customer, to modify the requirements of the part.

OTS requests comment on the burdens associated with the proposed rule and whether any further exceptions for small institutions would be appropriate.

D. Other Matters

There are no federal rules or statutes that duplicate, overlap, or conflict with the proposed rule. However, as noted above, the SEC and the other banking regulators have adopted substantially similar recordkeeping and confirmation requirements for broker-dealers and other depository institutions.

OTS invites comments on the burdens associated with the proposed rule that affect small savings associations, and whether any modifications or exemptions from the rules for small savings associations would be appropriate.

IV. Paperwork Reduction Act

OTS has a continuing interest in the public's opinion of our collections of information. OTS welcomes any comments on the collection requirements in the proposal. OTS specifically invites comment on:

(1) Whether the proposed collection of information contained in this notice

[27] OCC estimated that banks would incur 11 hours of additional burden in their first year and an additional 4 hours thereafter. It further estimated that 80 percent of the burden would be clerical at a cost of $20 per hour and that 20 percent of the burden would be managerial at $40 per hour. Thus, the average annual cost of each hour is $24.

[28] The average billing rate for a partner in a United States law firm with less than nine lawyers is $183 per hour. The average billing rate for an associate in such a firm is $139 per hour. 1999 Survey of Law Firm Economics, Altman Weil Pensa Publications, Inc., reported at *www.lawyers.com*. Using OCC's estimate that the rule imposes a maximum of 2.2 managerial burden hours, OTS estimates that these costs will be between $305 and $403.

of proposed rulemaking is necessary for the proper performance of the agency's functions, including whether the information has practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) 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.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number. The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Send comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Alexander T. Hunt, Washington, DC 20503, or e-mail to *ahunt@omb.eop.gov*, with copies to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, or e-mail to *infocollection.comments@ots.treas.gov.*

The collection of information requirements regarding fiduciary activities in this proposed rule are found in § 550.125. OTS requires the information called for under § 550.125 in order to know when a federal savings association is acting in a fiduciary capacity in a new state or conducting fiduciary activities that differ from those that OTS has already approved. Under a paperwork submission OTS filed in 2001 (OMB Control No. 1550–0037), OTS has estimated that 10 respondents file trust powers applications annually and spend approximately 9 hours compiling the application. Although the number of respondents should not change under the proposal, the hours needed to file the streamlined notice required in § 550.125 should be significantly less than the time needed to file a complete trust powers application. Substituting the notice requirement for a complete application should decrease the burden hours from 9 to approximately 3, resulting in a decrease in burden hours from 90 to 30.

OTS requires the information called for under §§ 551.50, 551.70–.100, 551.140, and 551.150 of the proposal to establish an audit trail. OTS uses this audit trail in its regulatory examinations as a tool to evaluate a savings association's compliance with banking and securities laws and regulations, such as the anti-fraud provisions of the federal securities laws. Further, the records provide a basis for adequate disclosure to customers who effect securities transactions through savings associations.

Under 12 U.S.C. 1464(n), OTS has supervisory responsibility for the fiduciary powers of federal savings associations. Further, under 12 U.S.C. 1463(a) and 12 U.S.C. 1464(a), the Director of OTS may prescribe rules and regulations to carry out its responsibility to provide for the operation and regulation of savings associations. The proposed recordkeeping and confirmation rules are necessary for OTS to effectively carry out its statutory responsibilities.

In estimating the potential number of respondents, OTS has used the number of OTS-supervised savings associations as of April 26, 2002. That number is 1009. Our estimate of the burden hours for respondents is based on the OCC's and FDIC's paperwork discussions in their final rules published in 1995 and 1996, respectively, as well as those agencies' updates of their paperwork analyses in 1999.

The recordkeepers/respondents are federal and state savings associations.

Estimated number of recordkeepers and/or respondents: 1009.

Estimated average annual burden hours per recordkeeper/respondent: 11.

Estimated total annual recordkeeping burden: 11,099 hours.

As noted, many savings associations contract with third-party registered broker-dealers to effect securities transactions. Moreover, at the request of OTS trust examiners, many federal savings associations with trust departments have been keeping records similar to those required by the proposal on recordkeeping and confirmation requirements. Accordingly, OTS anticipates that the start up costs to savings associations of the recordkeeping and confirmation requirements will be minimal. Records under part 551 are to be maintained for at least three years.

V. Unfunded Mandates Act

OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VI. Executive Order 12866

OTS has determined that the proposed rule does not constitute a ''significant regulatory action'' for purposes of Executive Order 12866.

List of Subjects

12 CFR Part 550

Accounting, Reporting and recordkeeping requirements, Savings associations, Trusts and trustees.

12 CFR Part 551

Reporting and recordkeeping requirements, Savings associations, Securities, Trusts and trustees.

Accordingly, OTS amends chapter V, title 12, Code of Federal Regulations as set forth below:

PART 550—[AMENDED]

1. The authority citation for part 550 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464.

2. Section 550.20 is revised to read as follows:

§ 550.20 What are fiduciary powers?

Fiduciary powers are the authority that the OTS permits you to exercise under 12 U.S.C. 1464(n).

3. Section 550.60 is amended by adding definitions of the phrases ''activities ancillary to your fiduciary business'' and ''fiduciary activities'' in alphabetical order, to read as follows:

§ 550.60 What other definitions apply to this part?

Activities ancillary to your fiduciary business include advertising, marketing, or soliciting fiduciary business, contacting existing or potential customers, answering questions and providing information to customers related to their accounts, acting as liaison between you and your customer (for example, forwarding requests for distribution, changes in investment objectives, forms, or funds received from the customer), and inspecting or maintaining custody of fiduciary assets or holding title to real property.

* * * * *

Fiduciary activities include accepting a fiduciary appointment, executing fiduciary-related documents, providing investment advice for a fee regarding fiduciary assets, or making discretionary decisions regarding investment or distribution of assets.

* * * * *

4. Section 550.70 is revised to read as follows:

§ 550.70 Must I obtain OTS approval or file a notice before I exercise fiduciary powers?

You should refer to the following chart to determine if you must obtain OTS approval or file a notice with OTS before you exercise fiduciary powers. This chart does not apply to activities that are exempt under subpart E of this part.

If you will conduct. . .	Then. . .
(a) Fiduciary activities for the first time	You must obtain prior approval from OTS under §§ 550.80–550.120 before you conduct the activities.
(b) Fiduciary activities that are materially different from the activities that OTS has previously approved for you.	You must obtain prior approval from OTS under §§ 550.80–550.120 before you conduct the activities.
(c) Fiduciary activities that are not materially different from the activities that OTS has previously approved for you.	You must file a written notice described at § 550.125 if you commence the activities in a new State. You do not need to file a written notice if you commence the activities at a new location in a State where you already conduct these activities.
(d) Activities that are ancillary to your fiduciary business	You do not have to obtain prior OTS approval or file a notice with OTS.

5. A new section 550.125 is added to subpart A to read as follows.

§ 550.125 How do I file the notice under § 550.70(c)?

(a) If you are required to file a notice under § 550.70(c), within ten days after you commence the fiduciary activities in a new State, you must file a written notice that identifies each new State in which you conduct or will conduct fiduciary activities, describe the fiduciary activities that you conduct or will conduct in each new State, and provide sufficient information supporting a conclusion that the activities are permissible in the State.

(b) You must file the notice with the appropriate OTS Regional Office at the address in § 516.40(a) of this chapter.

6. Section 550.130 is revised to read as follows:

§ 550.130 How may I conduct multi-state operations?

(a) Conducting fiduciary activities in more than one State. You may conduct fiduciary activities in any State, subject to the application and notice requirements in subpart A of this part.

(b) Serving customers in more than one State. When you conduct fiduciary activities in a State:

(1) You may market your fiduciary services to, and act as a fiduciary for, customers located in any State, may act as a fiduciary for relationships that include property located in other States, and may act as a testamentary trustee for a testator located in other States.

(2) You may establish or utilize an office in any State to perform activities that are ancillary to your fiduciary business.

7. Section 550.135 is added to read as follows:

§ 550.135 What State laws apply to my operations?

(a)(1) The State laws that apply to you by virtue of 12 U.S.C. 1464(n) are the laws of the States in which you conduct fiduciary activities. For each individual State, you may conduct fiduciary activities in the capacity of trustee, executor, administrator, guardian, or in any other fiduciary capacity the State permits for its State banks, trust companies, or other corporations that compete with Federal savings associations in the State.

(2) For each fiduciary relationship, the State referred to in 12 U.S.C. 1464(n) is the State in which you conduct fiduciary activities for that relationship.

(b) Except for State laws made applicable to you by virtue of 12 U.S.C. 1464(n), State laws that purport to regulate any other aspect of your fiduciary activities do not apply to your fiduciary operations.

8. Section 550.310 is amended by removing the first sentence and adding two sentences in its place to read as follows:

§ 550.310 What if the FDIC does not insure the deposits?

If the FDIC does not insure the entire amount of a self deposit, you must set aside collateral as security. If the FDIC does not insure the entire amount of an affiliate deposit, you or your affiliate must set aside collateral as security.* * *

9. In § 550.580, paragraph (c) is removed and the heading and introductory text of §550.580 are amended to read as follows:

§ 550.580 When may I conduct fiduciary activities without obtaining OTS approval?

Subject to the requirements of this subpart E, you do not need OTS approval under subpart B of this part if you conduct fiduciary activities in the following fiduciary capacities:

* * * * *

10. The heading and introductory text of § 550.600 are revised to read as follows:

§ 550.600 How may funds be invested when I act in an exempt fiduciary capacity?

If you act in an exempt fiduciary capacity under § 550.580, the funds of the fiduciary account may be invested only in the following:

* * * * *

11. A new part 551 is added as follows:

PART 551—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

Sec.

551.10 What does this part do?
551.20 Must I comply with this part?
551.30 What requirements apply to excepted transactions?
551.40 What definitions apply to this part?

Subpart A—Recordkeeping Requirements

551.50 What records must I maintain for securities transactions?
551.60 How must I maintain my records?

Subpart B—Content and Timing of Notice

551.70 What type of notice must I provide when I effect a securities transaction for a customer?
551.80 How do I provide a registered broker-dealer confirmation?
551.90 How do I provide a written notice?
551.100 What are the alternate notice requirements?
551.110 May I provide a notice electronically?
551.120 May I charge a fee for a notice?

Subpart C—Settlement of Securities Transactions

551.130 When must I settle a securities transaction?

Subpart D—Securities Trading Policies and Procedures

551.140 What policies and procedures must I maintain and follow for securities transactions?
551.150 How do my officers and employees file reports of personal securities trading transactions?

Authority: 12 U.S.C. 1462a, 1463, 1464

§ 551.10 What does this part do?

This part establishes recordkeeping and confirmation requirements that apply when a savings association (''you'') effects certain securities transactions for customers.

§ 551.20 Must I comply with this part?

(a) General. Except as provided under paragraph (b) of this section, you must comply with this part when:

(1) You effect a securities transaction for a customer.

(2) You effect a transaction in government securities.

(3) You effect a transaction in municipal securities and are not registered as a municipal securities dealer with the SEC.

(4) You effect a securities transaction as fiduciary. If you are a Federal savings association, you also must comply with 12 CFR part 550 when you effect such a transaction. If you are a State savings association, you must comply with applicable law when you effect such a transaction.

(b) Exceptions. (1) Small number of transactions. You are not required to comply with § 551.50(b) through (d) (recordkeeping) and § 551.140(a) through (c) (policies and procedures), if you effected an average of fewer than 500 securities transactions per year for customers over the three prior calendar years. You may exclude transactions in government securities when you calculate this average.

(2) Government securities. If you effect fewer than 500 government securities brokerage transactions per year, you are not required to comply with § 551.50 (recordkeeping) for those transactions. This exception does not apply to government securities dealer transactions. See 17 CFR 404.4(a).

(3) Municipal securities. If you are registered with the SEC as a ''municipal securities dealer,'' as defined in 15 U.S.C. 78c(a)(30) (see 15 U.S.C. 78o–4), you are not required to comply with this part when you conduct municipal securities transactions.

(4) Foreign branches. You are not required to comply with this part when you conduct a transaction at your foreign branch.

(5) Transactions by registered broker-dealers. You are not required to comply with this part for securities transactions effected by a registered broker-dealer, if the registered broker-dealer directly provides the customer with a confirmation. These transactions include a transaction effected by your employee who also acts as an employee of a registered broker-dealer (''dual employee'').

§ 551.30 What requirements apply to all transactions?

You must effect all transactions, including transactions excepted under § 551.20, in a safe and sound manner. You must maintain effective systems of records and controls regarding your customers' securities transactions. These systems must clearly and accurately reflect all appropriate information and provide an adequate basis for an audit.

§ 551.40 What definitions apply to this part?

Asset-backed security means a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period. Asset-backed security includes any rights or other assets designed to ensure the servicing or timely distribution of proceeds to the security holders.

Common or collective investment fund means any fund established under 12 CFR 550.260(b) or 12 CFR 9.18.

Completion of the transaction means:

(1) If the customer purchases a security through or from you, except as provided in paragraph (2) of this definition, the time the customer pays you any part of the purchase price. If payment is made by a bookkeeping entry, the time you make the bookkeeping entry for any part of the purchase price.

(2) If the customer purchases a security through or from you and pays for the security before you request payment or notify the customer that payment is due, the time you deliver the security to or into the account of the customer.

(3) If the customer sells a security through or to you, except as provided in paragraph (4) of this definition, the time the customer delivers the security to you. If you have custody of the security at the time of sale, the time you transfer the security from the customer's account.

(4) If the customer sells a security through or to you and delivers the security to you before you request delivery or notify the customer that delivery is due, the time you pay the customer or pay into the customer's account.

Customer means a person or account, including an agency, trust, estate, guardianship, or other fiduciary account for which you effect a securities transaction. Customer does not include a broker or dealer, or you when you:

(1) Act as a broker or dealer;

(2) Act as a fiduciary with investment discretion over an account;

(3) Are a trustee that acts as the shareholder of record for the purchase or sale of securities; or

(4) Are the issuer of securities that are the subject of the transaction.

Debt security means any security, such as a bond, debenture, note, or any other similar instrument that evidences a liability of the issuer (including any security of this type that is convertible into stock or a similar security). Debt security also includes a fractional or participation interest in these debt securities. Debt security does not include securities issued by an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1, et seq.

Government security means:

(1) A security that is a direct obligation of, or an obligation that is guaranteed as to principal and interest by, the United States;

(2) A security that is issued or guaranteed by a corporation in which the United States has a direct or indirect interest if the Secretary of the Treasury has designated the security for exemption as necessary or appropriate in the public interest or for the protection of investors;

(3) A security issued or guaranteed as to principal and interest by a corporation if a statute specifically designates, by name, the corporation's securities as exempt securities within the meaning of the laws administered by the SEC; or

(4) Any put, call, straddle, option, or privilege on a government security described in this definition, other than a put, call, straddle, option, or privilege:

(i) That is traded on one or more national securities exchanges; or

(ii) For which quotations are disseminated through an automated quotation system operated by a registered securities association.

Investment company plan means any plan under which:

(1) A customer purchases securities issued by an open-end investment company or unit investment trust registered under the Investment Company Act of 1940, making the payments directly to, or made payable to, the registered investment company, or the principal underwriter, custodian, trustee, or other designated agent of the registered investment company; or

(2) A customer sells securities issued by an open-end investment company or unit investment trust registered under the Investment Company Act of 1940 under:

(i) An individual retirement or individual pension plan qualified under the Internal Revenue Code; or

(ii) A contractual or systematic agreement under which the customer purchases at the applicable public offering price, or redeems at the applicable redemption price, securities in specified amounts (calculated in security units or dollars) at specified time intervals, and stating the commissions or charges (or the means of calculating them) that the customer will pay in connection with the purchase.

Investment discretion means the same as under 12 CFR 550.40(a).

Municipal security means:

(1) A security that is a direct obligation of, or an obligation guaranteed as to principal or interest by, a State or any political subdivision, or any agency or instrumentality of a State or any political subdivision.

(2) A security that is a direct obligation of, or an obligation guaranteed as to principal or interest by, any municipal corporate instrumentality of one or more States; or

(3) A security that is an industrial development bond, the interest on which is excludable from gross income under section 103(a) of the Code (26 U.S.C. 103(a)).

Periodic plan means a written document that authorizes you to act as agent to purchase or sell for a customer a specific security or securities (other than securities issued by an open end investment company or unit investment trust registered under the Investment Company Act of 1940). The written document must authorize you to purchase or sell in specific amounts (calculated in security units or dollars) or to the extent of dividends and funds available, at specific time intervals, and must set forth the commission or charges to be paid by the customer or the manner of calculating them.

SEC means the Securities and Exchange Commission.

Security means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, and any put, call, straddle, option, or privilege on any security or group or index of securities (including any interest therein or based on the value thereof), or, in general, any instrument commonly known as a ''security''; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing. Security does not include currency; any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of less than nine months, exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited; a deposit or share account in a Federal or State chartered depository institution; a loan participation; a letter of credit or other form of bank indebtedness incurred in the ordinary course of business; units of a collective investment fund; interests in a variable amount (master) note of a borrower of prime credit; U.S. Savings Bonds; or any other instrument OTS determines does not constitute a security for purposes of this part.

Sweep account means any prearranged, automatic transfer or sweep of funds above a certain dollar level from a deposit account to purchase a security or securities, or any prearranged, automatic redemption or sale of a security or securities when a deposit account drops below a certain level with the proceeds being transferred into a deposit account.

Subpart A—Recordkeeping Requirements

§ 551.50 What records must I maintain for securities transactions?

If you effect securities transactions for customers, you must maintain all of the following records for at least three years:

(a) Chronological records. You must maintain an itemized daily record of each purchase and sale of securities in chronological order, including:

(1) The account or customer name for which you effected each transaction;

(2) The name and amount of the securities;

(3) The unit and aggregate purchase or sale price;

(4) The trade date; and

(5) The name or other designation of the registered broker-dealer or other person from whom you purchased the securities or to whom you sold the securities.

(b) Account records. You must maintain account records for each customer reflecting:

(1) Purchases and sales of securities;

(2) Receipts and deliveries of securities;

(3) Receipts and disbursements of cash; and

(4) Other debits and credits pertaining to transactions in securities.

(c) Memorandum (order ticket). You must make and keep current a memorandum (order ticket) of each order or any other instruction given or received for the purchase or sale of securities (whether executed or not), including:

(1) The account or customer name for which you effected each transaction;

(2) Whether the transaction was a market order, limit order, or subject to special instructions;

(3) The time the trader received the order;

(4) The time the trader placed the order with the registered broker-dealer, or if there was no registered broker-dealer, the time the trader executed or cancelled the order;

(5) The price at which the trader executed the order;

(6) The name of the registered broker-dealer you used.

(d) Record of registered broker-dealers. You must maintain a record of all registered broker-dealers that you selected to effect securities transactions and the amount of commissions that you paid or allocated to each registered broker-dealer during each calendar year.

(e) Notices. You must maintain a copy of the written notice required under subpart B of this part.

§ 551.60 How must I maintain my records?

(a) You may maintain the records required under § 551.50 in any manner, form, or format that you deem appropriate. However, your records must clearly and accurately reflect the required information and provide an adequate basis for an audit of the information.

(b) You, or the person that maintains and preserves records on your behalf, must:

(1) Arrange and index the records in a way that permits easy location, access, and retrieval of a particular record;

(2) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section;

(3) Provide promptly any of the following that examiners or your directors may request:

(i) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(ii) A legible, true, and complete printout of the record; and

(iii) Means to access, view, and print the records.

(4) In the case of records on electronic storage media, you, or the person that maintains and preserves records for you, must establish procedures:

(i) To maintain, preserve, and reasonably safeguard the records from loss, alteration, or destruction;

(ii) To limit access to the records to properly authorized personnel, your directors, and OTS examiners; and

(iii) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(c) You may contract with third party service providers to maintain the records.

Subpart B—Content and Timing of Notice

§ 551.70 What type of notice must I provide when I effect a securities transaction for a customer?

If you effect a securities transaction for a customer, you must give or send the customer the registered broker-dealer confirmation described at § 551.80, or the written notice described at § 551.90. For certain types of transactions, you may elect to provide the alternate notices described in § 551.100.

§ 551.80 How do I provide a registered broker-dealer confirmation?

(a) If you elect to satisfy § 551.70 by providing the customer with a registered broker-dealer confirmation, you must provide the confirmation by having the registered broker-dealer send the confirmation directly to the customer or by sending a copy of the registered broker-dealer's confirmation to the customer within one business day after you receive it.

(b) If you have received or will receive remuneration from any source, including the customer, in connection with the transaction, you must provide a statement of the source and amount of the remuneration in addition to the registered broker-dealer confirmation described in paragraph (a) of this section.

§ 551.90 How do I provide a written notice?

If you elect to satisfy § 551.70 by providing the customer a written notice, you must give or send the written notice at or before the completion of the securities transaction. You must include all of the following information in a written notice:

(a) Your name and the customer's name.

(b) The capacity in which you acted (for example, as agent).

(c) The date and time of execution of the securities transaction (or a statement that that you will furnish this information within a reasonable time after the customer's written request), and the identity, price, and number of shares or units (or principal amount in the case of debt securities) of the security the customer purchased or sold.

(d) The name of the person from whom you purchased or to whom you sold the security, or a statement that you will furnish this information within a reasonable time after the customer's written request.

(e) The amount of any remuneration that you have received or will receive from the customer in connection with the transaction unless the remuneration paid by the customer is determined under a written agreement, other than on a transaction basis;

(f) The source and amount of any other remuneration you have received or will receive in connection with the transaction. If, in the case of a purchase, you were not participating in a distribution, or in the case of a sale, were not participating in a tender offer, the written notice may state whether you have or will receive any other remuneration and state that you will furnish the source and amount of the other remuneration within a reasonable time after the customer's written request.

(g) That you are not a member of the Securities Investor Protection Corporation, if that is the case. This does not apply to a transaction in shares of a registered open-end investment company or unit investment trust if the customer sends funds or securities directly to, or receives funds or securities directly from, the registered open-end investment company or unit investment trust, its transfer agent, its custodian, or a designated broker or dealer who sends the customer either a confirmation or the written notice in this section.

(h) Additional disclosures. You must provide all of the additional disclosures described in the following chart for transactions involving certain debt securities:

If you effect a transaction involving . . .	You must provide the following additional information in your written notice . . .
(1) A debt security subject to redemption before maturity	A statement that the issuer may redeem the debt security in whole or in part before maturity, that the redemption could affect the represented yield, and that additional information is available upon request.
(2) A debt security that you effected exclusively on the basis of a dollar price.	(i) The dollar price at which you effected the transaction; and (ii) The yield to maturity calculated from the dollar price. You do not have to disclose the yield to maturity if: (A) The issuer may extend the maturity date of the security with a variable interest rate, or (B) The security is an asset-backed security that represents an interest in, or is secured by, a pool of receivables or other financial assets that are subject continuously to prepayment.
(3) A debt security that you effected on basis of yield	(i) The yield at which you effected the transaction, including the percentage amount and its characterization (e.g., current yield, yield to maturity, or yield to call). If you effected the transaction at yield to call, you must indicate the type of call, the call date, and the call price; (ii) The dollar price calculated from that yield; and (iii) The yield to maturity and the represented yield, if you effected the transaction on a basis other than yield to maturity and the yield to maturity is lower than the represented yield. You are not required to disclose this information if: (A) The issuer may extend the maturity date of the security with a variable interest rate; or (B) The security is an asset-backed security that represents an interest in, or is secured by, a pool of receivables or other financial assets that are subject continuously to prepayment.

If you effect a transaction involving . . .	You must provide the following additional information in your written notice . . .
(4) A debt security that is an asset-backed security that represents an interest in, or is secured by, a pool of receivables or other financial assets that are subject continuously to prepayment.	(i) A statement that the actual yield of the asset-backed security may vary according to the rate at which the underlying receivables or other financial assets are prepaid; and (ii) A statement that you will furnish information concerning the factors that affect yield (including at a minimum estimated yield, weighted average life, and the prepayment assumptions underlying yield) upon the customer's written request.
(5) A debt security, other than a government security	A statement that the security is unrated by a nationally recognized statistical rating organization, if that is the case.

§ 551.100 What are the alternate notice requirements?

You may elect to satisfy § 551.70 by providing the alternate notices described in the following chart for certain types of transactions.

If you effect a securities transaction . . .	Then you may elect to . . .
(a) For or with the account of a customer under a periodic plan, sweep account, or investment company plan;	Give or send to the customer within five business days after the end of each quarterly period a written statement disclosing: (1) Each purchase and redemption that you effected for or with, and each dividend or distribution that you credited to or reinvested for, the customer's account during the period; (2) The date of each transaction; (3) The identity, number, and price of any securities that the customer purchased or redeemed in each transaction; (4) The total number of shares of the securities in the customer's account; (5) Any remuneration that you received or will receive in connection with the transaction; and (6) That you will give or send the registered broker-dealer confirmation described in § 551.80 or the written notice described in § 551.90 within a reasonable time after the customer's written request.
(b) For or with the account of a customer in shares of an open-ended management company registered under the Investment Company Act of 1940 that holds itself out as a money market fund and attempts to maintain a stable net asset value per share . . .	Give or send to the customer the written statement described at paragraph (a) of this section on a monthly basis. You may not use the alternate notice, however, if you deduct sales loads upon the purchase or redemption of shares in the money market fund.
(c) For an account for which you do not exercise investment discretion, and for which you and the customer have agreed in writing to an arrangement concerning the time and content of the written notice . . .	Give or send to the customer a written notice at the agreed-upon time and with the agreed-upon content, and include a statement that you will furnish the registered broker-dealer confirmation described in § 551.80 or the written notice described in § 551.90 within a reasonable time after the customer's written request.
(d) For an account for which you exercise investment discretion other than in an agency capacity, excluding common or collectively investment funds . . .	Give or send the registered broker-dealer confirmation described in § 551.80 or the written notice described in § 551.90 within a reasonable time after a written request by the person with the power to terminate the account or, if there is no such person, any person holding a vested beneficial interest in the account.
(e) For an account in which you exercise investment discretion in an agency capacity . . .	Give or send each customer a written itemized statement specifying the funds and securities in your custody or possession and all debits, credits, and transactions in the customer's account. You must provide this information to the customer not less than once every three months. You must give or send the registered broker-dealer confirmation described in § 551.80 or the written notice described in § 551.90 within a reasonable time after a customer's written request.
(f) For a common or collective investment fund . . .	(1) Give or send to a customer who invests in the fund a copy of the annual financial report of the fund, or (2) Notify the customer that a copy of the report is available and that you will furnish the report within a reasonable time after a written request by a person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account.

§ 551.110 May I provide a notice electronically?

You may provide any written notice required under this subpart B electronically. If a customer has a facsimile machine, you may send the notice by facsimile transmission. You may use other electronic communications if:

(a) The parties agree to use electronic instead of hard copy notices;

(b) The parties are able to print or download the notice;

(c) The system cannot automatically delete the electronic notice; and

(d) Both parties are able to receive electronic messages.

§ 551.120 May I charge a fee for a notice?

You may not charge a fee for providing a notice required under this subpart B, except that you may charge

a reasonable fee for the notices provided under §§ 551.100(a), (d), and (e).

Subpart C—Settlement of Securities Transactions

§ 551.130 When must I settle a securities transaction?

(a) You may not effect or enter into a contract for the purchase or sale of a security that provides for payment of funds and delivery of securities later than the latest of:

(1) The third business day after the date of the contract. This deadline is no later than the fourth business day after the contract for contracts involving the sale for cash of securities that are priced after 4:30 p.m. Eastern Standard Time on the date the securities are priced and:

(i) Are sold by an issuer to an underwriter under a firm commitment underwritten offering registered under the Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, or

(ii) Are sold by you to an initial purchaser participating in the offering;

(2) Such other time as the SEC specifies by rule (*see* SEC Rule 15c6–1, 17 CFR 240.15c6–1); or

(3) Such time as the parties expressly agree at the time of the transaction. The parties to a contract are deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities under a firm commitment offering, if the managing underwriter and the issuer have agreed to the date for all securities sold under the offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

(b) The deadlines in paragraph (a) of this section do not apply to the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are disseminated through an automated quotation system of a registered securities association.

Subpart D—Securities Trading Policies and Procedures

§ 551.140 What policies and procedures must I maintain and follow for securities transactions?

If you effect securities transactions for customers, you must maintain and follow policies and procedures that meet all of the following requirements:

(a) Your policies and procedures must assign responsibility for the supervision of all officers or employees who:

(1) Transmit orders to, or place orders with, registered broker-dealers;

(2) Execute transactions in securities for customers; or

(3) Process orders for notice or settlement purposes, or perform other back office functions for securities transactions that you effect for customers. Policies and procedures for personnel described in this paragraph (a)(3) must provide supervision and reporting lines that are separate from supervision and reporting lines for personnel described in paragraphs (a)(1) and (2) of this section.

(b) Your policies and procedures must provide for the fair and equitable allocation of securities and prices to accounts when you receive orders for the same security at approximately the same time and you place the orders for execution either individually or in combination.

(c) Your policies and procedures must provide for securities transactions in which you act as agent for the buyer and seller (crossing of buy and sell orders) on a fair and equitable basis to the parties to the transaction, where permissible under applicable law.

(d) Your policies and procedures must require your officers and employees to file the personal securities trading reports described at § 551.150, if the officer or employee:

(1) Makes investment recommendations or decisions for the accounts of customers;

(2) Participates in the determination of these recommendations or decisions; or

(3) In connection with their duties, obtains information concerning which securities you intend to purchase, sell, or recommend for purchase or sale.

§ 551.150 How do my officers and employees file reports of personal securities trading transactions?

An officer or employee described in § 551.140(d) must report all personal transactions in securities made by or on behalf of the officer or employee if he or she has a beneficial interest in the security.

(a) Contents and filing of report. The officer or employee must file the report with you within ten business days after the end of each calendar quarter. The report must include the following information:

(1) The date of each transaction, the title and number of shares, the interest rate and maturity date (if applicable), and the principal amount of each security involved.

(2) The nature of each transaction (*i.e.,* purchase, sale, or other type of acquisition or disposition).

(3) The price at which each transaction was effected.

(4) The name of the broker, dealer, or other intermediary effecting the transaction.

(5) The date the officer or employee submitted the report.

(b) Report not required for certain transactions. Your officer or employee is not required to report a transaction if:

(1) He or she has no direct or indirect influence or control over the account for which the transaction was effected or over the securities held in that account;

(2) The transaction was in shares issued by an open-end investment company registered under the Investment Company Act of 1940;

(3) The transaction was in direct obligations of the government of the United States;

(4) The transaction was in bankers' acceptances, bank certificates of deposit, commercial paper or high quality short term debt instruments, including repurchase agreements; or

(5) The officer or employee had an aggregate amount of purchases and sales of $10,000 or less during the calendar quarter.

(c) Alternate report. When you act as an investment adviser to an investment company registered under the Investment Company Act of 1940, an officer or employee that is an ''access person'' may fulfill his or her reporting requirements under this section by filing with you the ''access person'' personal securities trading report required by SEC Rule 17j–1(d), 17 CFR 270.17j–1(d).

Dated: May 23, 2002.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 02–14317 Filed 6–10–02; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–378–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; and A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness

directive (AD), applicable to all Airbus Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes, that currently requires repetitive inspections to detect cracking of the upper radius of the forward fitting of frame 47, and repair if necessary. This action would continue to require those actions but would shorten the compliance time and repetitive inspection intervals. This action also would expand the applicability to include additional airplanes. This proposal is prompted by issuance of mandatory continuing airworthiness information by a civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct such fatigue cracking, which could result in propagation of the cracking to the rear fitting and reduced structural integrity of fuselage frame 47.

DATES: Comments must be received by July 11, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–378–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–378–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket 2001–NM–378–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2001–NM–378–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 29, 1996, the FAA issued AD 96–18–18, amendment 39–9744 (61 FR 47808, September 11, 1996), applicable to all Airbus Model A300–600 series airplanes, to require repetitive inspections to detect cracking of the upper radius of the forward fitting of frame 47, and repair if necessary. That action was prompted by results of full-scale fatigue testing, which revealed cracking in the upper radius of frame 47. The requirements of that AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of frame 47 of the fuselage.

Actions Since Issuance of Previous Rule

Based on investigations and analyses and reports by the manufacturer, and in concert with the determination by the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, the FAA has determined that the inspection thresholds and intervals required by AD 96–18–18 must be shortened. This proposed AD follows from these findings.

Related Rulemaking

The FAA issued a related AD that applies to Model A300 B2 and B4 series airplanes. AD 96–13–11, amendment 39–9679 (61 FR 35122, July 5, 1996), mandates the incorporation of Airbus Industrie A300 Supplemental Structural Inspection Document (SSID). That SSID includes a requirement to inspect in accordance with Airbus Service Bulletin A300–53–0246, which would be required by paragraph (d) of this proposed AD.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–53–6029, Revision 05, dated April 11, 2001 (for Model A300–600 series airplanes). AD 96–18–18 cited Revision 02 of this service bulletin as the appropriate source of service information for accomplishment of the required repetitive eddy current inspections to detect cracking of the upper radius of the forward fitting of frame 47. Subsequent service bulletin revisions provide improved inspection methods. Flight cycles were incorporated into the compliance times and the corresponding values were adjusted in flight hours.

Airbus has also issued Service Bulletin A300–53–0246, Revision 03, dated April 11, 2001, which describes the same procedures as those in Service Bulletin A300–53–6029 for inspecting the same area on Model A300 B2 and B4 series airplanes.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2001–355(B), dated August 8, 2001, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the

applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Proposed Requirements

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 96–18–18 to continue to require repetitive eddy current inspections to detect cracking of the upper radius of the forward fitting of frame 47, and repair if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below. The proposed AD also would require that operators report results of inspection findings to Airbus. These inspection reports will enable the DGAC, the FAA, and the manufacturer to develop a better understanding of the nature and extent of the problem. This understanding will aid in developing a more permanent resolution to the cracking problem. The results of these reports may warrant further rulemaking.

Differences Between Proposed AD and Service Bulletins

Although the service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished per a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Unlike the procedures described in the service bulletins, this proposed AD would prohibit further flight if cracks are detected in the upper radius of the forward fitting of frame 47. However, the FAA may consider allowing continued flight with cracks on a case-by-case basis. Paragraph (f)(1) of this proposed AD would allow operators to request an alternative method of compliance that would allow continued flight with cracks, provided data are presented to justify the use of such an alternative method. The manufacturer has advised that it may propose an alternative method of compliance with the requirements of this AD to include a repetitive inspection interval that is based on crack size. Once this method is developed, approved, and available, the FAA may consider additional rulemaking.

In addition, the FAA finds that the thresholds specified in the service bulletin for Model A300–600 series airplanes (11,500 total flight cycles/29,600 total flight hours) are inadequate to ensure the safety of affected airplanes. Cracking has recently been found on an airplane at a lower threshold, so the FAA has determined that those thresholds must be reduced to 10,000 total flight cycles/26,000 total flight hours.

Explanation of Proposed Change to Paragraph (c)

Due to organizational restructuring within the Transport Airplane Directorate since AD 96–18–18 was issued, this proposed AD specifies that operators direct their requests for repair method approvals to the Manager of the FAA's International Branch, ANM–116 (not the Standardization Branch).

Clarification of Model Designation

The applicability of AD 96–18–18 and this proposed AD includes Model A300–600 series airplanes. However, the model designation of these airplanes has been revised in this proposed AD to conform to the type certificate data sheet listing.

Explanation of Change in Terminology

AD 96–18–18 specifies the compliance times in terms of ''landings.'' This proposed AD refers instead to ''flight cycles'' to more closely correspond to the terminology of the French airworthiness directive and the revised service bulletins described previously.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing repair procedures that will address the unsafe condition identified in this AD and terminate the repetitive inspections. Once these procedures are developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

There are approximately 127 airplanes of U.S. registry that would be affected by this proposed AD.

The inspection that is currently required by AD 96–18–18, and retained in this proposed AD, takes approximately 4 work hours per airplane, per inspection cycle, to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $240 per airplane, per inspection cycle.

The new proposed actions would take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $38,100, or $300 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9744 (61 FR 47808, September 11, 1996), and by adding a new airworthiness directive (AD), to read as follows:

AIRBUS: Docket 2001–NM–378–AD. Supersedes AD 96–18–18, Amendment 39–9744.

Applicability: All Model A300 B2 and B4 series airplanes; and all Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the upper radius of the forward fitting of fuselage frame 47, which could result in propagation of the cracking to the rear fitting and reduced structural integrity of frame 47, accomplish the following:

Model A300–600: Inspection

(a) For Model A300–600 series airplanes: At the earlier of the times specified by paragraphs (a)(1) and (a)(2) of this AD, perform an eddy current inspection to detect cracking of the upper radius of the left and right forward fitting of frame 47, in accordance with Airbus Service Bulletin A300–53–6029, Revision 2, dated November 7, 1994; or Revision 05, dated April 11, 2001. After the effective date of this AD, only Revision 05 of the service bulletin may be used.

Note 2: Accomplishment of an inspection before the effective date of this AD in accordance with Airbus Service Bulletin A300–53–6029, Revision 03, dated October 7, 1997, or Revision 04, dated October 25, 1999, is acceptable for compliance with the initial inspection requirements of paragraph (a) of this AD.

(1) Before the accumulation of 17,300 total flight cycles, or within one year after October 16, 1996 (the effective date of AD 96–18–18, amendment 39–9744), whichever occurs later.

(2) At the later of the times specified by paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Before the accumulation of 10,000 total flight cycles or 26,000 total flight hours, whichever occurs first.

(ii) Within 60 days after the effective date of this AD.

A300–600: Follow-on Inspections

(b) For Model A300–600 series airplanes on which no cracking is found during any inspection required by paragraph (a) of this AD:

(1) If the initial inspection WAS accomplished before the effective date of this AD, repeat the inspection within 6,600 flight cycles after that inspection or within 60 days after the effective date of this AD, whichever occurs first. Thereafter, repeat the inspection at least every 6,100 flight cycles or 15,600 flight hours, whichever occurs first.

(2) If the initial inspection was NOT accomplished before the effective date of this AD, repeat the inspection thereafter at least every 6,100 flight cycles or 15,600 flight hours, whichever occurs first.

Model A300–600: Corrective Action

(c) For Model A300–600 series airplanes on which any cracking is found during any inspection required by this AD: Before further flight, repair and/or reinspect the airplane in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated representative).

Note 3: Repair and/or reinspection accomplished before the effective date of this AD in accordance with a method approved by the Manager of the Standardization Branch is acceptable for compliance with the requirements of paragraph (c) of this AD.

Model A300 B2 and B4: Inspection and Follow-On Actions

(d) For Model A300 B2 and B4 series airplanes: At the applicable time specified in paragraph (d)(1), (d)(2), or (d)(3) of this AD, perform repetitive eddy current inspections to detect cracking of the upper radius of the forward fitting of frame 47, left and right sides, per Airbus Service Bulletin A300–53–0246, Revision 03, dated April 11, 2001. If any cracking is found: Before further flight, repair and/or reinspect the airplane in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent). This requirement terminates the corresponding inspection requirement of the A300 Supplemental Structural Inspection Document (SSID) for Model A300 B2 and B4 series airplanes. That SSID is mandated by AD 96–13–11, amendment 39–9679.

(1) For Model A300 B2 series airplanes: Perform the initial inspection at the later of the times specified by paragraphs (d)(1)(i) and (d)(1)(ii) of this AD. Repeat the inspection thereafter at least every 10,400 flight cycles or 13,300 flight hours, whichever occurs first.

(i) Before the accumulation of 16,500 total flight cycles or 21,000 total flight hours, whichever occurs first.

(ii) Within 1,000 flight cycles or 1,300 flight hours after the effective date of this AD, whichever occurs first.

(2) For Model A300 B4–100 series airplanes: Perform the initial inspection at the later of the times specified by paragraphs (d)(2)(i) and (d)(2)(ii) of this AD. Repeat the inspection thereafter at least every 8,500 flight cycles or 16,400 flight hours, whichever occurs first.

(i) Before the accumulation of 10,300 total flight cycles or 19,800 total flight hours, whichever occurs first.

(ii) Within 750 flight cycles or 1,500 flight hours after the effective date of this AD, whichever occurs first.

(3) For Model A300 B4–200 series airplanes: Perform the initial inspection at the later of the times specified by paragraphs (d)(3)(i) and (d)(3)(ii) of this AD. Repeat the inspection thereafter at least every 7,000 flight cycles or 13,600 flight hours, whichever occurs first.

(i) Before the accumulation of 11,000 total flight cycles or 21,200 total flight hours, whichever occurs first.

(ii) Within 750 flight cycles or 1,500 flight hours after the effective date of this AD, whichever occurs first.

Reporting Requirement

(e) At the applicable time specified in paragraph (e)(1) or (e)(2) of this AD: Submit a report of all results of each inspection required by paragraphs (a) and (d) of this AD to Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, Attention Jacques Leborgne, fax 33–5–61–93–36–14. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then

send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 96–18–18, amendment 39–9744, and AD 96–13–11, amendment 39–9679, are approved as alternative methods of compliance with the requirements of paragraphs (c) and (d) of this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 5: The subject of this AD is addressed in French airworthiness directive 2001–355(B), dated August 8, 2001.

Issued in Renton, Washington, on June 4, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AF37

Clarification of Rules Involving Residual Functional Capacity Assessments; Clarification of Use of Vocational Experts and Other Sources at Step 4 of the Sequential Evaluation Process; Incorporation of ''Special Profile'' into Regulations

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: For purposes of this notice, ''we,'' ''our,'' and ''SSA'' refer to the Social Security Administration and State agencies that make disability determinations for the Social Security Administration. ''You'' and ''your'' refer to individuals who claim benefits from the Social Security Administration based on ''disability.''

This document proposes to clarify our rules about the responsibility that you have to provide evidence and the responsibility that we have to develop evidence in connection with your claim of disability. This includes our rules about when we assess your residual functional capacity (RFC) and how we use this RFC assessment when we decide whether you can do your past relevant work or other work. These clarifications address issues of responsibility raised by some courts in recent cases.

We also propose to clarify that we may use vocational experts, vocational specialists, or other resources to obtain information we need to determine whether your impairment(s) prevent you from doing your past relevant work;

Add a special provision to our rules stating that, if you are at least 55 years old, and specific other circumstances are present, we will find that you are disabled; and

Make a number of minor editorial changes to clarify and update the language of our rules, and to use simpler language in keeping with our goal of using plain language in our regulations.

DATES: To be sure that we consider your comments, submit them no later than August 12, 2002.

ADDRESSES: You may give us your comments by using: our Internet site facility (i.e., Social Security Online) at *http://www.ssa.gov/regulations/;* e-mail to *regulations@ssa.gov;* telefax to 410–966–2830; or by letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703.

You may also deliver them to the Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them during these same hours by making arrangements with the contact person shown in this preamble.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office at: *http://www.access.gpo.gov/su_docs/aces/aces140.html.* It is also available on the Internet site for SSA: *http://www.ssa.gov/regulations/.*

FOR FURTHER INFORMATION CONTACT: Georgia E. Myers, Regulations Officer, Social Security Administration, 2109 West Low Rise, 6401 Security Boulevard, Baltimore, MD 21235–6401, 410–965–3632 or TTY 800–966–5609 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number, 800–772–1213 or TTY 800–325–0778, or visit our Internet website, Social Security Online, at *http://www.ssa.gov.*

SUPPLEMENTARY INFORMATION:

What Programs Would These Proposed Regulations Affect?

These proposed regulations would affect disability determinations and decisions we make for you under title II and title XVI of the Act. In addition, to the extent that Medicare and Medicaid eligibility are based on entitlement to benefits under title II and eligibility for benefits under title XVI, these proposed regulations would also affect the Medicare and Medicaid programs.

Who Can Get Disability Benefits?

Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act;
- Children of insured workers; and
- Widows, widowers, and surviving divorced spouses (see 20 CFR 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you have limited income and resources.

How Do We Define ''Disability''?

Under both the title II and title XVI programs, disability means the inability to ''. . . engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.'' (Sections 223(d)(1)(A) and 1614(a)(3)(A) of the Act.) This definition applies if you file a claim under title II or if you file a claim as an adult under title XVI. (There is a different definition of disability for children filing under title XVI. See section 1614(a)(3)(C) of the Act.)

In addition, we only consider you to be disabled if your physical or mental impairment(s) is so severe that you are not only unable to do your previous work, but you cannot, considering your age, education, and work experience, engage in any other kind of substantial gainful work that exists in the national economy. This is true regardless of whether this kind of work exists in the immediate area in which you live, or whether a specific job vacancy exists for you, or whether you would be hired if you applied for work. (See sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act.)

We will not consider you under a disability unless you furnish medical and other evidence that we need to show that you are disabled. (See section 223(d)(5)(A) and, by reference to section 223(d)(5), section 1614(a)(3)(H) of the

Act.) However, when we decide whether you are disabled (or whether you continue to be disabled), we will develop a complete medical history of at least the preceding twelve months for any case in which we decide that you are not disabled. (See sections 223(d)(5)(B) and 1614(a)(3)(H) of the Act.)

Who Makes the Rules, Regulations, and Procedures for Providing Evidence of Disability?

Section 205(a) of the Act and, by reference to section 205(a), section 1631(d)(1) provide that:

The Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

How Do We Decide Whether You Are Disabled?

To decide whether you are disabled under this statutory definition, we use a five-step sequential evaluation process, which we describe in our regulations at §§ 404.1520 and 416.920. We follow the five steps in order and stop as soon as we can make a determination or decision. The steps are:

1. Are you working and is the work you are doing substantial gainful activity? If you are working and engaging in substantial gainful activity, we find that you are not disabled regardless of your medical condition or your age, education, and work experience. If you are not, we go on to step 2 of the sequence.

2. Do you have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities? If you do not, we find that you are not disabled. If you do, we go on to step 3 of the sequence.

3. Do you have an impairment(s) that meets or equals the severity of an impairment listed in appendix 1 of subpart P of part 404 of our regulations? If you do, and the impairment(s) meets the duration requirement, we find you disabled. If you do not, we go on to step 4 of the sequence.

4. Considering your RFC and the physical and mental demands of the work you have done in the past, does your impairment(s) prevent you from doing your past relevant work? If not, we find that you are not disabled. If so, we go on to step 5 of the sequence.

5. Considering your RFC and your age, education, and past work experience, does your impairment(s) prevent you from doing any other work? If it does, and your impairment(s) meets the duration requirement, we find that you are disabled. If it does not, we find that you are not disabled.

We use different sequential evaluation processes if we are deciding whether your disability continues. See §§ 404.1594 and 416.994 of our regulations. However, these different processes also include steps that consider your RFC and past relevant work, and your ability to adjust to other work considering your RFC, age, education, and work experience.

What Revisions Are We Proposing To Make, and Why?

We propose changing several sections in subpart P of part 404 and subpart I of part 416 to clarify our longstanding rules about how we make determinations and decisions for initial applications at steps 4 and 5 of the sequential evaluation process. The changes we propose will also apply to steps 7 and 8 of the sequential evaluation processes for determining continuing disability in § 404.1594(f), and steps 6 and 7 in § 416.994(b)(5). However, for clarity we will refer in this preamble only to the steps of the sequential evaluation process for initial applications.

Several of the proposed revisions will clarify our longstanding interpretation of our rules that we assess your RFC once, after we have found that you have a severe impairment(s) that does not meet or equal a listing; i.e., after step 3 but before we consider step 4. We use this RFC assessment first to determine, at step 4, whether you are able to do any of your past relevant work. If we determine that you cannot perform past relevant work, or you have no past relevant work, we use the same RFC assessment at step 5 to determine whether you are able to make an adjustment to other work, given your RFC, age, education, and work experience.

Under the Act and §§ 404.1512 and 416.912 of our regulations, you generally have the burden of proving your disability. You must furnish medical and other evidence we can use to reach conclusions about your impairment(s) and its effect on your ability to work on a sustained basis. Our responsibility is to make every reasonable effort to develop your complete medical history. That includes arranging for consultative examinations, if necessary. We are responsible for helping you produce evidence that shows whether you are disabled.

Our administrative process was designed to be nonadversarial. See §§ 404.900(b) and 416.1400(b) of our regulations; *Richardson* v. *Perales,* 402 U.S. 389, 403 (1971); *Sims* v. *Apfel,* 120 S. Ct. 2080, 2083–85, 2086 (2000). In addressing burdens of proof, it is critical to keep in mind that we are using a term in our nonadversarial administrative process that describes a process normally used in adversarial litigation. ''Burdens of proof'' operate differently in the disability determination process than in a traditional lawsuit.

In the administrative process, the burden of proof generally encompasses both a burden of production of evidence and a burden of persuasion about what the evidence shows. *Director, OWCP* v. *Greenwich Collieries,* 512 U.S. 267, 273 (1994) (citing *Powers* v. *Russell,* 30 Mass. 69, 76 (1833). You shoulder the dual burdens of production and persuasion through step 4 of the sequential evaluation process. See *Bowen* v. *Yuckert,* 482 U.S. 137, 146 n.5 (1987).

Although you generally bear the burden of proving disability throughout the sequential evaluation process, there is a limited shift in the burden of proof to us ''only if the sequential evaluation process proceeds to the fifth step * * *.'' *Bowen* v. *Yuckert,* id. When the process proceeds to the fifth step, this means that you have demonstrated the existence of a severe impairment(s) resulting in an RFC that prevents the performance of past relevant work. When we decide that you are not disabled at step 5, this means that we have determined that there is other work that you can do. To make this finding, we must provide evidence that demonstrates that jobs exist in significant numbers in the national economy that you can do, given your RFC, age, education, and work experience. In legal terms, this is a burden of production of evidence.

This burden shifts to us because, once you establish that you are unable to do any past relevant work, it would be unreasonable to require you to produce vocational evidence showing that there are no jobs in the national economy that you can perform, given your RFC. However, as stated by the Supreme Court, ''It is not unreasonable to require the claimant, who is in a better position to provide information about his own medical condition, to do so.'' *Bowen* v. *Yuckert,* id. Thus, the only burden shift that occurs at step 5 is that we are required to prove that there is other work that you can do, given your RFC,

age, education, and work experience. That shift does not place on us the burden of proving RFC.

When the burden of production of evidence shifts to us at step 5, our role is to obtain evidence to assist in impartially determining whether there is a significant number of jobs in the national economy you can do. Thus, we have a burden of proof even though our primary interest in the outcome of the claim is that it be decided correctly. As required by the Act, the ultimate burden of persuasion to prove disability, however, remains with you.

What Specific Changes Are We Proposing?

Sections 404.1501 and 416.901 Scope of Subpart

The second sentence of §§ 404.1501(g) and 416.901(j) is very long and it includes a number of clauses. We propose to clarify this sentence by numbering and listing the clauses and by revising some language. This includes clarifying in proposed (g)(2) that assessment of RFC is our responsibility (''our residual functional capacity assessment'') and that we use this assessment at steps 4 and 5 of the sequential evaluation process.

Sections 404.1505 Basic Definition of Disability, and 416.905 Basic Definition of Disability for Adults

In paragraph (a), we propose to revise the second sentence, to delete the third sentence, and to add four new sentences. The revisions in the second sentence will clarify our longstanding policy that, when we consider your ''previous work,'' we consider only work that was ''past relevant work.'' Past relevant work is work that you performed within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn how to do it. See SSR 82–62, ''Titles II and XVI: A Disability Claimant's Capacity To Do Past Relevant Work, In General,'' Social Security Rulings, Cumulative Edition, 1982, p. 158.

The current third sentence explains that we consider your RFC, age, education, and work experience when we determine whether you can do other work; i.e., at step 5 of the sequential evaluation process. We propose to replace this sentence with four new sentences that will provide more detail about this policy, including cross-references to our rules on the sequential evaluation process and RFC. They will also clarify that we assess RFC once, and that we use this assessment at both step four and step five of the sequential evaluation process.

Proposed Sections 404.1512 and 416.912 Evidence

We propose several revisions in these sections to clarify both your responsibility and our responsibility. We propose to change the heading of these sections from ''Evidence of your impairment'' to ''Evidence'' because, as we discuss below, we propose to add a provision that is not about evidence of your impairment; i.e., a provision that is about our responsibility, at step 5 of the sequential evaluation process, to provide evidence of the existence of jobs.

We propose to make two changes in paragraph (c) to make it clearer. These are not substantive changes. First, we propose to add a new second sentence to paragraph (c) to clarify, consistent with the remainder of the current paragraph, that we may ask for non-medical information about functioning or about other non-medical issues in addition to medical information. Second, we propose to make a slight modification to the current second sentence (which will become the new third sentence) to make it clearer.

We also propose to add a new paragraph (g), ''Other work'' to explain our burden at step 5. It will explain that, in order to determine that you can make an adjustment to other work, we must provide evidence of the existence of work in the national economy that you can do, given your RFC and vocational factors. The new paragraph will include cross-references to regulations that explain how we evaluate your ability to do other work (§§ 404.1560 through 404.1569a and 416.960 through 416.969a, as appropriate).

The new paragraph will also clarify our longstanding interpretation of the statutory requirement that we consider your age, education, and work experience as well as your impairment(s) when we determine the ability to do other work at step 5.

Our use of the phrase ''make an adjustment to other work'' is not new. We used the phrase when we originally published proposed rules on the medical/vocational guidelines in appendix 2, subpart P of regulations part 404 (the grid rules) in 1978:

> If an individual cannot perform his or her past relevant work but the individual's physical and mental capacities are consistent with his or her meeting the demands of a significant number of jobs in the national economy and the individual has the vocational capabilities (considering his or her age, education, and past work experience) to make an adjustment to work different from that which the individual has performed, it will be determined that such an individual is not under a disability. However, if such an individual's physical and mental capacities in conjunction with his or her vocational capabilities (considering his or her age, education, and work experience) are not consistent with making an adjustment to work differing from that which the individual has performed in the past, it will be determined that such an individual is under a disability.

See 43 FR 9284, 9288 (March 7, 1978). We used the same language in the preamble when we published the final rules for the medical/vocational guidelines (see 43 FR 55349, 55352 (November 28, 1979)) and have used similar language in our Policy Interpretation Rulings (see, e.g., SSR 83–11, ''Titles II and XVI Capability To Do Other Work—The Exertionally Based Medical-Vocational Rules Met,'' Social Security Rulings, Cumulative Edition, 1983, p. 184). More recently, we have used the same or similar language in publications that we use to help the public better understand whether they may qualify for disability benefits under the Act and our regulations. Therefore, we are proposing to use this language in our regulations.

Sections 404.1520 Evaluation of Disability in General, and 416.920 Evaluation of Disability of Adults, in General

We propose to revise the language in paragraph (a) of these sections to make it clearer. We propose to divide it into five separate paragraphs. We also propose to modify the current language to explain more clearly what the five steps of the sequential evaluation process are, and to reflect the provisions of proposed new paragraph (e), which we discuss below.

We propose to add a new paragraph (e) to this section to explain that, after we decide that you are not working and have a severe impairment(s) that does not meet or equal any listing, we will assess your RFC. We then use this RFC assessment at step 4 to determine whether you are able to do any past relevant work and, if we make a determination at step 5, we use the same RFC assessment in determining whether you can do any other work.

Because we propose to add a new paragraph (e), we also propose to redesignate current paragraphs (e) and (f) as paragraphs (f) and (g). We also propose to revise these paragraphs to make changes consistent with proposed changes in other rules already described. For example, they will refer to ''our residual functional capacity assessment,'' to ''past relevant work'' (instead of ''work you have done in the past'' or ''past work experience''), and to making ''an adjustment to other work.''

Likewise, proposed paragraph (g) (current paragraph (f)) will clarify that, at step 5, we consider ''the same residual functional capacity assessment'' we used at step 4. In current paragraph (e) (proposed paragraph (f)), we also propose to change the phrase, ''[i]f we cannot make a decision based on your current work activity or on medical facts alone,'' to ''[i]f we cannot make a determination or decision at the first three steps of the sequential evaluation process,'' in order to make it clear that this language has always referred to determinations or decisions at steps 1, 2 and 3 of the sequential evaluation process. We also propose to make a comparable conforming change to §§ 404.1560(a) and 416.960(a).

We propose to revise current paragraph (f)(2) (proposed paragraph (g)(2)) to reflect that we are adding a second special medical-vocational profile under which we may find you disabled without referring to our grid rules. When we discuss changes we are proposing to §§ 404.1562 and 416.962 later in this notice, we explain the second profile and our reasons for proposing to include it. We also propose to modify the language that is in current paragraph (f)(2) (proposed paragraph (g)(2)) to delete the partial description of the first special medical-vocational profile that is currently in our regulations because it is duplicative of information already contained in §§ 404.1562 and 416.962.

Finally, we are proposing a number of minor editorial changes in current paragraphs (e) and (f) (proposed paragraphs (f) and (g)).

Sections 404.1545 and 416.945 Your Residual Functional Capacity

To make current paragraph (a) easier to understand, we propose to revise the paragraph by breaking it into five numbered subparagraphs with headings. We also propose to reorganize and clarify some of the text.

In proposed paragraph (a)(3), ''Evidence we use to assess your residual functional capacity,'' we propose to include references to §§ 404.1512 and 416.912, which explain your burden to provide evidence of the existence and severity of your impairment(s) and how it affects your functioning, and our responsibility to develop a complete medical history and to arrange for a consultative examination(s) if necessary.

In paragraph (a)(5), ''How we will use our residual functional capacity assessment,'' we propose to explain that we first use our RFC assessment to decide if you can do past relevant work and to explain that, if you cannot do past relevant work, or do not have any past relevant work, we use the same assessment to decide, at step 5, if you can make an adjustment to other work.

In addition, we propose other changes in this section to clarify our rules. In paragraph (a)(1), ''Residual functional capacity assessment,'' we propose to add a sentence to explain that RFC is the most you can do despite your limitations. This will incorporate into our regulations a clarification that we currently provide in SSR 96–8p, ''Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims,'' 61 FR 34474 (July 2, 1996). We also propose to incorporate another clarification provided in that SSR by explaining in paragraph (a)(2), ''If you have more than one impairment,'' that, when we assess RFC, we will consider all medically determinable impairments of which we are aware, including impairments that are not ''severe.''

Proposed paragraph (a)(3) will clarify the fifth, sixth, and seventh sentences of current paragraph (a), which discusses the evidence we consider when assessing RFC. Our intent is to clarify three points about how we consider evidence of pain and other symptoms in our RFC assessments. First, we will make clear that the phrase ''observations by your treating and examining physicians or psychologists,'' in the current rule, includes ''statements about what you can still do,'' as discussed in §§ 404.1513 and 416.913. Second, we will clarify that we consider descriptions and observations of your impairment-related limitations from both medical and non-medical sources. Third, by removing the phrase ''that are important in the diagnosis and treatment of your medical condition'' from the fifth sentence of current section (a), we will make clear that we consider all limitations that result from your medically determinable impairments, not just those that are important in the diagnosis and treatment of a medical condition. We also propose to delete the entire eighth sentence, which could be misinterpreted to mean that we may or may not consider evidence that we already have. Because that is not our intent, and because these proposed rules make clear that we consider all relevant medical and nonmedical evidence in the case record, we believe this language is unnecessary.

We propose to revise the last sentence of current paragraph (a) (which will become the last sentence of proposed (a)(5)(ii)) to remove the language that discusses our rules on RFC assessment in deciding whether your disability continues or ends. Those rules are already discussed in §§ 404.1594 and 416.994, and the revised language will simply direct you to those sections.

We propose a number of other editorial changes to the current rule. These changes are intended only to clarify the current language and to reorganize the provisions into a more logical order.

Proposed Sections 404.1546 and 416.946 Responsibility for Assessing Your Residual Functional Capacity

We propose to revise the heading of these sections, which are currently titled ''Responsibility for assessing and determining residual functional capacity.'' The two words ''and determining'' are superfluous. Our assessment is our determination about RFC.

The other changes we propose in this section are editorial. To make the section easier to understand, we propose to break up the current single paragraph into three paragraphs that address the responsibilities of:

- State agency medical and psychological consultants (proposed paragraph (a));
- State agency disability hearing officers (proposed paragraph (b)); and
- Administrative law judges and Appeals Council administrative appeals judges (proposed paragraph (c)).

Proposed Sections 404.1560 and 416.960 When We Will Consider your Vocational Background

We propose to change the heading, putting it into active voice, to make the meaning clearer. We propose to make changes in paragraphs (b), ''Past relevant work,'' and (c), ''Other work,'' consistent with the changes we are proposing in other sections, already noted above.

For clarity, we propose to revise paragraph (b) by dividing it into three subparagraphs, designated (b)(1) through (b)(3). We propose to add a new sentence in proposed paragraph (b)(1), ''Definition of past relevant work,'' defining ''past relevant work'' as work you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn how to do it. This definition is based on our longstanding interpretation in SSR 82–62, already noted above. We also propose to add a cross-reference to § 404.1565(a) or 416.965(a), as appropriate, because these paragraphs explain how we determine the 15-year period.

We propose to add new language in paragraph (b)(2), ''Determining whether you can do your past relevant work,'' to

explain how we obtain information that we need to determine, at step 4 of the sequential evaluation process, whether your impairment(s) prevents you from doing your past relevant work. It will indicate that we ask you for information about work you have done in the past, and that we may ask other people who know about your past work. This is consistent with the provisions in current §§ 404.1565(b) and 416.965(b), and we propose to include cross-references to those sections in paragraph (b)(2).

We also propose to explain in paragraph (b)(2) that we may use the services of vocational experts or vocational specialists, or other resources such as the ''Dictionary of Occupational Titles'' to obtain information that we need to determine whether you can do your past relevant work. For example, we may use one of these sources to determine how the work you did is usually performed in the national economy. This is a longstanding policy interpretation set out in SSR 82–61, ''Titles II and XVI: Past Relevant Work—The Particular Job or the Occupation As Generally Performed,'' Social Security Rulings, Cumulative Edition, 1982, p. 185.

Proposed paragraph (b)(3), ''If you can do your past relevant work'' will be essentially the same as the second sentence of current paragraph (b). We have edited it and made it into two sentences for clarity.

We propose to modify paragraph (c) to make clear that, if we decide at step 5 that you are not disabled, we are responsible for providing evidence of other work you can do (consistent with proposed §§ 404.1512(g) and 416.912(g)). The modified paragraph will also make clear that we are not responsible for providing additional evidence of RFC or for making another RFC assessment at step 5. This is because we use the same RFC assessment at step 5 that we made before we considered your ability to do past relevant work at step 4, a point in our process at which you have the burdens of production and persuasion.

Sections 404.1561 and 416.961 Your ability to do work depends upon your residual functional capacity

We propose to delete these sections because their provisions are incorporated into other proposed and existing rules.

Proposed Sections 404.1562 and 416.962 Medical-Vocational Profiles Showing an Inability to Make an Adjustment to Other Work

We propose to revise and update the headings of these sections in order to reflect changes we are proposing to their content.

Current Medical-Vocational Profile

Currently, §§ 404.1562 and 416.962 describe a special medical-vocational profile under which, if you have only a marginal education and work experience of 35 years or more during which you did arduous unskilled labor, and you are not working and are no longer able to do this kind of work because of a severe impairment, we will find that you are disabled. We consider this special medical-vocational profile at step 5 of the sequential evaluation process, before we consider the grid rules. We do this because we have decided that, if you match this profile, you do not have the ability to adjust to other work (i.e., you are disabled) regardless of your age. If you meet this profile, and are age 60 or over, we would usually find you disabled using our grid rules. However, if you are under age 60, you might not qualify without this special rule.

Although we have changed the language somewhat over the years, the current medical-vocational profile has been in our regulations since 1960 (when it was at § 404.1502(c)). However, it contains a number of provisions that need to be updated to be consistent with our current rules and policies. For example, the last sentence of the paragraph before the example speaks about the ability to do other work ''on a full-time or reasonably regular part-time basis.'' However, in SSR 96–8p, we explain that at step 5 we consider only full-time work when we consider other work you are able to do. See 61 FR 34474, 34475 (July 2, 1996). Other provisions in the current medical-vocational profile have been made obsolete or been superseded by more recent regulations, such as our rules on doing substantial gainful activity at step 1 of the sequential evaluation process, and our rules on transferability of skills in §§ 404.1568(d)(4) and 416.968(d)(4).

We therefore propose to delete the second and third sentences of the paragraph and to revise the example. These changes will only make the rule more consistent with our current policies and will not affect anyone who we would find disabled under the current profile. We propose to designate all the language discussing this current medical-vocational profile as paragraph (a) of §§ 404.1562 and 416.962.

We also propose to make a conforming change to the third sentence of section 203.00(b) in appendix 2 to subpart P of part 404, to reflect these changes.

Second Medical-Vocational Profile

We propose to add to §§ 404.1562 and 416.962 a second special medical-vocational profile that we have been using since 1975, but that is not in our regulations. We propose to designate the language discussing the second medical-vocational profile as paragraph (b). Under this profile, we will find you disabled if you:

- Are of ''advanced age'' (i.e., are at least 55 years old);
- Have a ''limited'' education or less (i.e., generally, an 11th grade education or less—see §§ 404.1564(b)(3) and 916.964(b)(3));
- Have no past relevant work (i.e., either no work experience or no work experience that satisfies our definition of ''past relevant work''); and
- Have a ''severe,'' medically determinable impairment(s).

If you have these characteristics, we would usually find you disabled using our grid rules. However, if you have solely ''nonexertional'' limitations (see § 200.00(e) of appendix 2 to subpart p of part 404), you might not qualify without this special profile.

The original instruction for this profile dates back to a policy decision of July 7, 1975. In 1982, we incorporated this profile into SSR 82–63, ''Titles II and XVI: Medical-Vocational Profiles Showing an Inability To Make an Adjustment to Other Work'' (see Social Security Rulings, Cumulative Edition, 1982, page 205). Therefore, the proposed rule would only incorporate our longstanding policy interpretation into our regulations.

We also propose to make clear in paragraph (b) and other related rules that, if you meet the second medical-vocational profile, we do not have to assess RFC. This is because, once we have determined that you have a ''severe'' impairment(s) and that you meet the other criteria in the profile, we will find you disabled, and we will not need an RFC assessment. We recognize that, in most cases, our normal sequential evaluation process would require us to do an RFC assessment before we determine that you have no past relevant work. However, because you must only have a ''severe'' impairment(s) under this profile, and your advanced age, limited education, and lack of past relevant work should be

readily apparent from the case record, an RFC assessment is unnecessary.

Sections 404.1563 and 416.963 Your Age as a Vocational Factor

We propose only editorial changes to the second sentence of paragraph (a).

Sections 404.1569a and 416.969a Exertional and Nonexertional Limitations

We propose to delete the seventh sentence of paragraph (a), ''General,'' and to add three new sentences in its place. These changes are consistent with other changes discussed above.

Sections 404.1594 How We Will Determine Whether Your Disability Continues or Ends, and 416.994 How We Will Determine Whether Your Disability Continues or Ends, Disabled Adults

We propose to revise the first sentence of § 404.1594(f)(7) and § 416.994(b)(5)(vi), which contain essentially the same language, in order to update the cross-reference. This is necessary due to the changes we are proposing to §§ 404.1560 and 416.960 and §§ 404.1561 and 416.961.

Section 203.00, Appendix 2 to Subpart P of Part 404

As already noted, we propose to revise the third sentence of section 203.00(b) to conform to the changes in proposed §§ 404.1562(a) and 416.962(a).

Are We Proposing Any Other Changes?

We propose to make a number of minor editorial changes throughout these rules to make them easier to read and understand. Because these proposed changes will not be substantive, we have not summarized them all.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were subject to OMB review.

Clarity of These Proposed Rules

Executive Order 12866 requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand.

For example:

Have we organized the material to suit your needs?

Are the requirements in the rules clearly stated?

Do the rules contain technical language or jargon that is not clear?

Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?

Would more (but shorter) sections be better?

Could we improve clarity by adding tables, lists, or diagrams?

What else could we do to make the rules easier to understand?

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules contain reporting requirements at §§ 404.1512(c), 416.912(c), 404.1545(a), 416.945(a), 404.1560(b) and 416.960(b). The public reporting burden is accounted for in the Information Collection Requests for the various forms that the public uses to submit the information to SSA. Consequently, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules. We are seeking clearance of the burden referenced in these rules because the rules were not considered during the clearance of the forms. An Information Collection Request has been submitted to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted to the Social Security Administration at the following address: Social Security Administration, Attn: SSA Reports Clearance Officer, Rm. 1–A–20 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401.

You may submit comments on the reporting requirements for up to 60 days after publication of this notice; however, your comments will be most useful if you submit them within 30 days of publication.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: April 2, 2002.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subpart P of part 404 and subpart I of part 416 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)-(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)-(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

2. Amend § 404.1501 by revising paragraph (g) to read as follows:

§ 404.1501 Scope of subpart.

* * * * *

(g) Our rules on vocational considerations are in §§ 404.1560 through 404.1569a. We explain in these rules—

(1) When we must consider vocational factors along with the medical evidence;

(2) How we use our residual functional capacity assessment to determine if you can still do your past relevant work or other work;

(3) How we consider the vocational factors of age, education, and work experience;

(4) What we mean by ''work which exists in the national economy'';

(5) How we consider the exertional, nonexertional, and skill requirements of work, and when we will consider the limitations or restrictions that result from your impairment(s) and related symptoms to be exertional,

nonexertional, or a combination of both; and

(6) How we use the Medical-Vocational Guidelines in appendix 2 of this subpart.

* * * * *

3. Amend § 404.1505, paragraph (a), by revising the second sentence, removing the third sentence, redesignating the fourth sentence as the last sentence, and adding four new sentences after the second sentence to read as follows:

§ 404.1505 Basic definition of disability.

(a) * * * To meet this definition, you must have a severe impairment(s) that makes you unable to do your past relevant work (see § 404.1560(b)) or any other substantial gainful work that exists in the national economy. If your severe impairment(s) does not meet or medically equal a listing in appendix 1, we will assess your residual functional capacity as provided in §§ 404.1520 and 404.1545. (See §§ 404.1520(g)(2) and 404.1562 for an exception to this rule.) We will use this residual functional capacity assessment to determine if you can do your past relevant work. If we find that you cannot do your past relevant work, we will use the same residual functional capacity assessment and your vocational factors of age, education, and work experience to determine if you can do other work. * * *

* * * * *

4. Amend § 404.1512 by:

a. Revising the section heading;

b. In paragraph (c), removing ''also'' from the second sentence, redesignating the second sentence as the last sentence, and adding one new sentence after the first sentence; and

c. Adding paragraph (g).

The additions and revisions are to read as follows:

§ 404.1512 Evidence.

* * * * *

(c) *Your responsibility.* * * * You must provide evidence showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information that we need to decide your case. * * *

* * * * *

(g) *Other work.* In order to determine under § 404.1520(g) that you are able to make an adjustment to other work, we must provide evidence about the existence of work in the national economy that you can do (see §§ 404.1560 through 404.1569a), given your residual functional capacity (which we have already assessed, as described in § 404.1520(e)), age, education, and work experience.

5. Amend § 404.1520 by revising paragraph (a), by redesignating paragraphs (e) and (f) as paragraphs (f) and (g), by revising newly redesignated (f) and (g), and by adding a new paragraph (e) to read as follows:

§ 404.1520 Evaluation of disability in general.

(a) *General*—(1) *Purpose of this section.* This section explains the five-step sequential evaluation process we use to decide whether you are disabled, as defined in § 404.1505.

(2) *Applicability of these rules.* These rules apply to you if you file an application for a period of disability or disability insurance benefits (or both) or for child's insurance benefits based on disability. They also apply if you file an application for widow's or widower's benefits based on disability for months after December 1990. See § 404.1505(a).

(3) *Evidence considered.* We will consider all evidence in your case record when we make a determination or decision whether you are disabled.

(4) *The five-step sequential evaluation process.* The sequential evaluation process is a series of five ''steps'' that we follow in a set order. If we can find that you are disabled or not disabled at a step, we make our determination or decision and we do not go on to the next step. If we cannot find that you are disabled or not disabled at a step, we go on to the next step. Before we go from step three to step four, we assess your residual functional capacity. See paragraph (e) of this section. We use this residual functional capacity assessment at both step four and step five when we evaluate your claim at these steps. These are the five steps we follow:

(i) At the first step, we consider your work activity, if any. If you are doing substantial gainful activity, we will find that you are not disabled. See paragraph (b) of this section.

(ii) At the second step, we consider the medical severity of your impairment(s). If you do not have a severe medically determinable physical or mental impairment that meets the duration requirement in § 404.1509, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled. See paragraph (c) of this section.

(iii) At the third step, we also consider the medical severity of your impairment(s). If you have an impairment(s) that meets or equals one of our listings in appendix 1 of this subpart and meets the duration requirement, we will find that you are disabled. See paragraph (d) of this section.

(iv) At the fourth step, we consider our assessment of your residual functional capacity and your past relevant work. If you can still do your past relevant work, we will find that you are not disabled. See paragraph (f) of this section.

(v) At the fifth and last step, we consider our assessment of your residual functional capacity and your age, education, and work experience to see if you can make an adjustment to other work. If you can make an adjustment to other work, we will find that you are not disabled. If you cannot make an adjustment to other work, we will find that you are disabled. See paragraph (g) of this section.

(5) *When you are already receiving disability benefits.* If you are already receiving disability benefits, we will use a different sequential evaluation process to decide whether you continue to be disabled. We explain this process in § 404.1594(f).

* * * * *

(e) *When your impairment(s) does not meet or equal a listed impairment.* If your impairment(s) does not meet or equal a listed impairment, we will assess and make a finding about your residual functional capacity based on all the relevant medical and other evidence in your case record, as explained in § 404.1545. (See paragraph (g)(2) of this section and § 404.1562 for an exception to this rule.) We use our residual functional capacity assessment at the fourth step of the sequential evaluation process to determine if you can do your past relevant work (paragraph (f) of this section) and at the fifth step of the sequential evaluation process (if the evaluation proceeds to this step) to determine if you can do other work (paragraph (g) of this section).

(f) *Your impairment(s) must prevent you from doing your past relevant work.* If we cannot make a determination or decision at the first three steps of the sequential evaluation process, we will compare our residual functional capacity assessment, which we made under paragraph (e) of this section, with the physical and mental demands of your past relevant work. See § 404.1560(b). If you can still do this kind of work, we will find that you are not disabled.

(g) *Your impairment(s) must prevent you from making an adjustment to other work.* (1) If we find that you cannot do your past relevant work because you have a severe impairment(s) (or you do not have any past relevant work), we will consider the same residual

functional capacity assessment we made under paragraph (e) of this section, together with your vocational factors (your age, education, and work experience) to determine if you can make an adjustment to other work. If you can make an adjustment to other work, we will find you not disabled. If you cannot, we will find you disabled.

(2) We use different rules if you meet one of the two special medical-vocational profiles described in § 404.1562. If you meet one of those profiles, we will find that you cannot make an adjustment to other work, and that you are disabled.

6. Amend § 404.1545 by revising revising paragraph (a) to read as follows:

§ 404.1545 Your residual functional capacity.

(a) *General*—(1) *Residual functional capacity assessment.* Your impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is the most you can still do despite your limitations. We will assess your residual functional capacity based on all the relevant evidence in your case record. See § 404.1546.

(2) *If you have more than one impairment.* We will consider all of your impairments of which we are aware, including your medically determinable impairments that are not ''severe,'' as explained in §§ 404.1520(c), 404.1521, and 404.1523, when we assess your residual functional capacity. See paragraph (e) of this section.

(3) *Evidence we use to assess your residual functional capacity.* We will assess your residual functional capacity based on all of the relevant medical and other evidence. In general, you are responsible for providing the evidence we will use to make a finding about your residual functional capacity. See § 404.1512(c). However, before we make a determination that you are not disabled, we are responsible for making every reasonable effort to develop your complete medical history, including arranging for a consultative examination(s) if necessary. See §§ 404.1512(d) through (f). We will consider any statements about what you can still do that have been provided by medical sources, whether or not they are based on formal medical examinations. See § 404.1513. We will also consider descriptions and observations of your limitations from your impairment(s), including limitations that result from your symptoms, such as pain, provided by you, your family, neighbors, friends, or other persons. See paragraph (e) of this section and § 404.1529.

(4) *What we will consider in assessing residual functional capacity.* When we assess your residual functional capacity, we will consider your ability to meet the physical, mental, sensory, and other requirements of work, as described in paragraphs (b), (c), and (d) of this section.

(5) *How we will use our residual functional capacity assessment.*

(i) We will first use our residual functional capacity assessment at step four of the sequential evaluation process to decide if you can do your past relevant work. See §§ 404.1520(f) and 404.1560(b).

(ii) If we find that you cannot do your past relevant work (or you do not have any past relevant work), we will use the same assessment of your residual functional capacity at step five of the sequential evaluation process to decide if you can make an adjustment to other work that exists in the national economy. See §§ 404.1520(g) and 404.1566. At this step, we will not use our assessment of your residual functional capacity alone to decide if you are disabled. We will use the guidelines in §§ 404.1560 through 404.1569a, and consider our residual functional capacity assessment together with the information about your vocational background to make our disability determination or decision. For our rules on residual functional capacity assessment in deciding whether your disability continues or ends, see § 404.1594.

* * * * *

7. Revise § 404.1546 to read as follows:

§ 404.1546 Responsibility for assessing your residual functional capacity.

We are responsible for assessing your residual functional capacity.

(a) *Responsibility for assessing residual functional capacity at the State agency.* When a State agency makes the disability determination, a State agency medical or psychological consultant(s) is responsible for assessing your residual functional capacity.

(b) *Responsibility for assessing residual functional capacity in the disability hearings process.* If your case involves a disability hearing under § 404.914, a disability hearing officer is responsible for assessing your residual functional capacity. However, if the disability hearing officer's reconsidered determination is changed under § 404.918, the Associate Commissioner for Disability or his or her delegate is responsible for assessing your residual functional capacity.

(c) *Responsibility for assessing residual functional capacity at the administrative law judge hearing or Appeals Council level.* An administrative law judge or the administrative appeals judge at the Appeals Council (when the Appeals Council makes a decision) is responsible for assessing your residual functional capacity.

8. Amend § 404.1560 by revising the section heading and paragraphs (a), (b), and (c) to read as follows:

§ 404.1560 When we will consider your vocational background.

(a) *General.* If you are applying for a period of disability, or disability insurance benefits as a disabled worker, or child's insurance benefits based on disability which began before age 22, or widow's or widower's benefits based on disability for months after December 1990, and we cannot decide whether you are disabled at one of the first three steps of the sequential evaluation process (see § 404.1520), we will consider your residual functional capacity together with your vocational background.

(b) *Past relevant work.* We will first compare our assessment of your residual functional capacity with the physical and mental demands of your past relevant work.

(1) *Definition of past relevant work.* Past relevant work is work that you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn to do it. See § 404.1565(a).

(2) *Determining whether you can do your past relevant work.* We will ask you for information about work you have done in the past. We may also ask other people who know about your work. See § 404.1565(b). We may use the services of vocational experts or vocational specialists, or other resources, such as the *Dictionary of Occupational Titles* and its companion volumes and supplements, published by the Department of Labor, to obtain information we need to determine whether you can do your past relevant work, given your residual functional capacity. For example, we may use the *Dictionary of Occupational Titles,* vocational experts, or vocational specialists to determine how a job you did is usually performed in the national economy.

(3) *If you can do your past relevant work.* If we find that you have the residual functional capacity to do your past relevant work, we will determine that you are not disabled. We will not consider your vocational factors of age, education, and work experience.

(c) *Other work.* (1) If we find that you can no longer do your past relevant work, we will use the same residual functional capacity assessment we used to decide if you could do your past relevant work when we decide if you can do other work. We will look at your ability to do other work by considering your residual functional capacity and your vocational factors of age, education, and work experience. Any work (jobs) that you can do must exist in significant numbers in the national economy (either in the region where you live or in several regions in the country).

(2) In order to support a finding that you are not disabled at this fifth step of the sequential evaluation process, we are responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that you can do, given your residual functional capacity and vocational factors. We are not responsible for providing additional evidence about your residual functional capacity because we will use the same residual functional capacity assessment that we used to determine if you can do your past relevant work.

§ 404.1561 [Removed]

9. Remove § 404.1561.

10. Revise § 404.1562 to read as follows:

§ 404.1562 Medical-vocational profiles showing an inability to make an adjustment to other work.

(a) *If you have done only arduous unskilled physical labor.* If you have no more than a marginal education (see § 404.1564) and work experience of 35 years or more during which you did only arduous unskilled physical labor, and you are not working and are no longer able to do this kind of work because of a severe impairment(s) (see §§ 404.1520(c), 404.1521, and 404.1523), we will consider you unable to do lighter work, and therefore, disabled.

Example to paragraph (a): B is a 58-year-old miner with a fourth grade education who has a lifelong history of unskilled arduous physical labor. B says that he is disabled because of arthritis of the spine, hips, and knees, and other impairments. Medical evidence shows a ''severe'' combination of impairments that prevents B from performing his past relevant work. Under these circumstances, we will find that B is disabled.

(b) *If you are at least 55 years old, have no more than a limited education, and have no past relevant work experience.* If you have a severe, medically determinable impairment(s) (see §§ 404.1520(c), 404.1521, and 404.1523), are of advanced age (age 55 or older, see § 404.1563), have a limited education or less (see § 404.1564), and have no past relevant work experience (see § 404.1565), we will find you disabled. If the evidence shows that you meet this profile, we will not need to assess your residual functional capacity or consider the rules in appendix 2 to this subpart.

11. Amend § 404.1563 by revising the second sentence of paragraph (a) and adding a new sentence after the revised second sentence to read as follows:

§ 404.1563 Your age as a vocational factor.

(a) *General.* * * * When we decide whether you are disabled under § 404.1520(g)(1), we will consider your chronological age in combination with your residual functional capacity, education, and work experience. We will not consider your ability to adjust to other work on the basis of your age alone. * * *

* * * * *

12. Amend § 404.1569a by removing the seventh sentence of paragraph (a), redesignating the eighth sentence as the last sentence, and adding 3 new sentences after the sixth sentence to read as follows:

§ 404.1569a Exertional and nonexertional limitations.

(a) *General.* * * * When we decide whether you can do your past relevant work (see §§ 404.1520(f) and 404.1594(f)(7)), we will compare our assessment of your residual functional capacity with the demands of your past relevant work. If you cannot do your past relevant work, we will use the same residual functional capacity assessment along with your age, education, and work experience to decide if you can adjust to other work. See §§ 404.1520(g) and 404.1594(f)(8). * * *

* * * * *

13. Amend § 404.1594 by revising the first sentence of paragraph (f)(7) to read as follows:

§ 404.1594 How we will determine whether your disability continues or ends.

* * * * *

(f) * * *

* * * * *

(7) If your impairment(s) is severe, we will assess your current ability to do substantial gainful activity in accordance with § 404.1560. * * *

* * * * *

14. Amend § 203.00 in appendix 2 to subpart P of part 404 by revising the section heading, revising the third sentence of paragraph (b), and adding a new fourth sentence to read as follows:

Appendix 2 To Subpart P of Part 404—Medical-Vocational Guidelines

* * * * *

§ 203.00 Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).

* * * * *

(b) * * * However, we will find that an individual who (1) has a marginal education, (2) has work experience of 35 years or more during which he or she did only arduous unskilled physical labor, (3) is not working, and (4) is no longer able to do this kind of work because of a severe impairment(s) is disabled, even though the individual is able to do medium work. See § 404.1562(a) in this subpart and § 416.962(a) in subpart I of part 416.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

15. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)-(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

16. Amend § 416.901 by revising paragraph (j) to read as follows:

§ 416.901 Scope of subpart.

* * * * *

(j) Our rules on vocational considerations are in §§ 416.960 through 416.969a. We explain in these rules—

(1) When we must consider vocational factors along with the medical evidence;

(2) How we use our residual functional capacity assessment to determine if you can still do your past relevant work or other work;

(3) How we consider the vocational factors of age, education, and work experience;

(4) What we mean by ''work which exists in the national economy'';

(5) How we consider the exertional, nonexertional, and skill requirements of work, and when we will consider the limitations or restrictions that result from your impairment(s) and related symptoms to be exertional, nonexertional, or a combination of both; and

(6) How we use the Medical-Vocational Guidelines in appendix 2 of subpart P of part 404 of this chapter.

* * * * *

17. Amend § 416.905, paragraph (a), by revising the second sentence, removing the third sentence, and adding four new sentences after the second sentence to read as follows:

§ 416.905 Basic definition of disability for adults.

(a) * * * To meet this definition, you must have a severe impairment(s) that makes you unable to do your past relevant work (see § 416.960(b)) or any other substantial gainful work that exists in the national economy. If your severe impairment(s) does not meet or medically equal a listing in appendix 1 to subpart P of part 404 of this chapter, we will assess your residual functional capacity as provided in §§ 416.920 and 416.945. (See §§ 416.920(g)(2) and 416.962 for an exception to this rule.) We will use this residual functional capacity assessment to determine if you can do your past relevant work. If we find that you cannot do your past relevant work, we will use the same residual functional capacity assessment and your vocational factors of age, education, and work experience to determine if you can do other work. * * *

* * * * *

18. Amend § 416.912 by:

a. Revising the section heading;

b. In paragraph (c), redesignating the second sentence as the last sentence and by adding a new sentence after the first sentence; and

c. Adding paragraph (g). The revisions and additions are to read as follows:

§ 416.912 Evidence.

* * * * *

(c) *Your responsibility.* * * * You must provide evidence showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information that we need to decide your case. * * *

* * * * *

(g) *Other work.* In order to determine under § 416.920(g) that you are able to make an adjustment to other work, we must provide evidence about the existence of work in the national economy that you can do (see §§ 404.1560 through 404.1569a), given your residual functional capacity (which we have already assessed, as described in § 416.920(e)), age, education, and work experience.

19. Amend § 416.920 by revising paragraph (a), by redesignating paragraphs (e) and (f) as paragraphs (f) and (g), by revising newly redesignated (f) and (g), and by adding a new paragraph (e) to read as follows:

§ 416.920 Evaluation of disability of adults, in general.

(a) *General*—(1) *Purpose of this section.* This section explains the five-step sequential evaluation process we use to decide whether you are disabled, as defined in § 416.905.

(2) *Applicability of these rules.* These rules apply to you if you are age 18 or older and you file an application for Supplemental Security Income disability benefits.

(3) *Evidence considered.* We will consider all evidence in your case record when we make a determination or decision whether you are disabled.

(4) *The five-step sequential evaluation process.* The sequential evaluation process is a series of five ''steps'' that we follow in a set order. If we can find that you are disabled or not disabled at a step, we make our determination or decision and we do not go on to the next step. If we cannot find that you are disabled or not disabled at a step, we go on to the next step. Before we go from step three to step four, we assess your residual functional capacity. See paragraph (e) of this section. We use this residual functional capacity assessment at both step four and at step five when we evaluate your claim at these steps. These are the five steps we follow:

(i) At the first step, we consider your work activity, if any. If you are doing substantial gainful activity, we will find that you are not disabled. See paragraph (b) of this section.

(ii) At the second step, we consider the medical severity of your impairment(s). If you do not have a severe medically determinable physical or mental impairment that meets the duration requirement in § 416.909, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled. See paragraph (c) of this section.

(iii) At the third step, we also consider the medical severity of your impairment(s). If you have an impairment(s) that meets or equals one of our listings in appendix 1 to subpart P of part 404 of this chapter and meets the duration requirement, we will find that you are disabled. See paragraph (d) of this section.

(iv) At the fourth step, we consider our assesment of your residual functional capacity and your past relevant work. If you can still do your past relevant work, we will find that you are not disabled. See paragraph (f) of this section.

(v) At the fifth and last step, we consider our assessment of your residual functional capacity and your age, education, and work experience to see if you can make an adjustment to other work. If you can make an adjustment to other work, we will find that you are not disabled. If you cannot make an adjustment to other work, we will find that you are disabled. See paragraph (g) of this section.

(5) *When you are already receiving benefits.* If you are already receiving disability benefits, we will use a different sequential evaluation process to decide whether you continue to be disabled. We explain this process in § 416.994(b)(5).

* * * * *

(e) *When your impairment(s) does not meet or equal a listed impairment.* If your impairment(s) does not meet or equal a listed impairment, we will assess and make a finding about your residual functional capacity based on all the relevant medical and other evidence in your case record, as explained in § 416.945. (See paragraph (g)(2) of this section and § 416.962 for an exception to this rule.) We use our residual functional capacity assessment at the fourth step of the sequential evaluation process to determine if you can do your past relevant work (paragraph (f) of this section) and at the fifth step of the sequential evaluation process (if the evaluation proceeds to this step) to determine if you can do other work (paragraph (g) of this section).

(f) *Your impairment(s) must prevent you from doing your past relevant work.* If we cannot make a determination or decision at the first three steps of the sequential evaluation process, we will compare our residual functional capacity assessment, which we made under paragraph (e) of this section, with the physical and mental demands of your past relevant work. See § 416.960(b). If you can still do this kind of work, we will find that you are not disabled.

(g) *Your impairment(s) must prevent you from making an adjustment to other work.* (1) If we find that you cannot do your past relevant work because you have a severe impairment(s) (or you do not have any past relevant work), we will consider the same residual functional capacity assessment we made under paragraph (e) of this section, together with your vocational factors (your age, education, and work experience) to determine if you can make an adjustment to other work. If you can make an adjustment to other work, we will find you not disabled. If you cannot, we will find you disabled.

(2) We use different rules if you meet one of the two special medical-vocational profiles described in § 416.962. If you meet one of those

profiles, we will find that you cannot make an adjustment to other work, and that you are disabled.

20. Amend § 416.945 by revising paragraph (a) to read as follows:

§ 416.945 Your residual functional capacity.

(a) *General*—(1) *Residual functional capacity assessment.* Your impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is the most you can still do despite your limitations. We will assess your residual functional capacity based on all the relevant evidence in your case record. See § 416.946.

(2) *If you have more than one impairment.* We will consider all of your impairments of which we are aware, including your medically determinable impairments that are not ''severe,'' as explained in §§ 416.920(c), 416.921, and 416.923, when we assess your residual functional capacity. See paragraph (e) of this section.

(3) *Evidence we use to assess your residual functional capacity.* We will assess your residual functional capacity based on all of the relevant medical and other evidence. In general, you are responsible for providing the evidence we will use to make a finding about your residual functional capacity. See § 416.912(c). However, before we make a determination that you are not disabled, we are responsible for making every reasonable effort to develop your complete medical history, including arranging for a consultative examination(s) if necessary. See §§ 416.912(d) through (f). We will consider any statements about what you can still do that have been provided by medical sources, whether or not they are based on formal medical examinations. See § 416.913. We will also consider descriptions and observations of your limitations from your impairment(s), including limitations that result from your symptoms, such as pain, provided by you, your family, neighbors, friends, or other persons. See paragraph (e) of this section and § 416.929.

(4) *What we will consider in assessing residual functional capacity.* When we assess your residual functional capacity, we will consider your ability to meet the physical, mental, sensory, and other requirements of work, as described in paragraphs (b), (c), and (d) of this section.

(5) *How we will use our residual functional capacity assessment.* (i) We will first use our residual functional capacity assessment at step four of the sequential evaluation process to decide if you can do your past relevant work. See 416.920(f) and 416.960(b).

(ii) If we find that you cannot do your past relevant work (or you do not have any past relevant work), we will use the same assessment of your residual functional capacity at step five of the sequential evaluation process to decide if you can make an adjustment to other work that exists in the national economy. See §§ 416.920(g) and 416.966. At this step, we will not use our assessment of your residual functional capacity alone to decide if you are disabled. We will use the guidelines in §§ 416.960 through 416.969a, and consider your residual functional capacity together with the information about your vocational background to make our disability determination or decision. For our rules on residual functional capacity assessment in deciding whether your disability continues or ends, see § 416.994.

* * * * *

21. Revise § 416.946 to read as follows:

§ 416.946 Responsibility for assessing your residual functional capacity.

We are responsible for assessing your residual functional capacity.

(a) *Responsibility for assessing residual functional capacity at the State agency.* When a State agency makes the disability determination, a State agency medical or psychological consultant(s) is responsible for assessing your residual functional capacity.

(b) *Responsibility for assessing residual functional capacity in the disability hearings process.* If your case involves a disability hearing under § 416.1414, a disability hearing officer is responsible for assessing your residual functional capacity. However, if the disability hearing officer's reconsidered determination is changed under § 416.1418, the Associate Commissioner for Disability or his or her delegate is responsible for assessing your residual functional capacity.

(c) *Responsibility for assessing residual functional capacity at the administrative law judge hearing or Appeals Council level.* An administrative law judge or the administrative appeals judge at the Appeals Council (when the Appeals Council makes a decision) is responsible for assessing your residual functional capacity.

22. Revise § 416.960 to read as follows:

§ 416.960 When we will consider your vocational background.

(a) *General.* If you are age 18 or older and applying for supplemental security income benefits based on disability, and we cannot decide whether you are disabled at one of the first three steps of the sequential evaluation process (see § 416.920), we will consider your residual functional capacity together with your vocational background.

(b) *Past relevant work.* We will first compare our assessment of your residual functional capacity with the physical and mental demands of your past relevant work.

(1) *Definition of past relevant work.* Past relevant work is work that you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn to do it. See § 416.965(a).

(2) *Determining whether you can do your past relevant work.* We will ask you for information about work you have done in the past. We may also ask other people who know about your work. See § 416.965(b). We may use the services of vocational experts or vocational specialists, or other resources, such as the *Dictionary of Occupational Titles* and its companion volumes and supplements, published by the Department of Labor, to obtain information we need to determine whether you can do your past relevant work, given your residual functional capacity. For example, we may use the *Dictionary of Occupational Titles,* vocational experts, or vocational specialists to determine how a job you did is usually performed in the national economy.

(3) *If you can do your past relevant work.* If we find that you have the residual functional capacity to do your past relevant work, we will determine that you are not disabled. We will not consider your vocational factors of age, education, and work experience.

(c) *Other work.* (1) If we find that you can no longer do your past relevant work, we will use the same residual functional capacity assessment we used to decide if you could do your past relevant work when we decide if you can do other work. We will look at your ability to do other work by considering your residual functional capacity and your vocational factors of age, education, and work experience. Any work (jobs) that you can do must exist in significant numbers in the national economy (either in the region where you live or in several regions in the country).

(2) In order to support a finding that you are not disabled at this fifth step of the sequential evaluation process, we are responsible for providing evidence

that demonstrates that other work exists in significant numbers in the national economy that you can do, given your residual functional capacity and vocational factors. We are not responsible for providing additional evidence about your residual functional capacity because we will use the same residual functional capacity assessment that we used to determine if you can do your past relevant work.

§ 416.961 [Removed]

23. Remove § 416.961.

24. Revise § 416.962 to read as follows:

§ 416.962 Medical-vocational profiles showing an inability to make an adjustment to other work.

(a) *If you have done only arduous unskilled physical labor.* If you have no more than a marginal education (see § 416.964) and work experience of 35 years or more during which you did only arduous unskilled physical labor, and you are not working and are no longer able to do this kind of work because of a severe impairment(s) (see §§ 416.920(c), 416.921, and 416.923), we will consider you unable to do lighter work, and therefore, disabled.

Example to paragraph (a): B is a 58-year-old miner with a fourth grade education who has a lifelong history of unskilled arduous physical labor. B says that he is disabled because of arthritis of the spine, hips, and knees, and other impairments. Medical evidence shows a ''severe'' combination of impairments that prevents B from performing his past relevant work. Under these circumstances, we will find that B is disabled.

(b) *If you are at least 55 years old, have no more than a limited education, and have no past relevant work experience.* If you have a severe, medically determinable impairment(s) (see §§ 416.920(c), 416.921, and 416.923), are of advanced age (age 55 or older, see § 416.963), have a limited education or less (see § 416.964), and have no past relevant work experience (see § 416.965), we will find you disabled. If the evidence shows that you meet this profile, we will not need to assess your residual functional capacity or consider the rules in appendix 2 to subpart P of part 404 of this chapter.

25. Amend § 416.963 by revising the second sentence of paragraph (a) and adding a new sentence after the newly revised second sentence to read as follows:

§ 416.963 Your age as a vocational factor.

(a) *General.* * * * When we decide whether you are disabled under § 416.920(g)(1), we will consider your chronological age in combination with your residual functional capacity, education, and work experience. We will not consider your ability to adjust to other work on the basis of your age alone. * * *

* * * * *

26. Amend § 416.969a by removing the seventh sentence of paragraph (a), redesignating the eighth sentence as the last sentence, and adding three new sentences after the sixth sentence to read as follows:

§ 416.969a Exertional and nonexertional limitations.

(a) *General.* * * * When we decide whether you can do your past relevant work (see §§ 416.920(f) and 416.994(b)(5)(vi)), we will compare our assessment of your residual functional capacity with the demands of your past relevant work. If you cannot do your past relevant work, we will use the same residual functional capacity assessment along with your age, education, and work experience to decide if you can adjust to other work. See §§ 416.920(g) and 416.994(b)(5)(vii). * * *

* * * * *

27. Amend § 416.994 by revising the first sentence of paragraph (b)(5)(vi) to read as follows:

§ 416.994 How we will determine whether your disability continues or ends, disabled adults.

* * * * *

(b) * * *

(5) * * *

* * * * *

(vi) *Step 6.* If your impairment(s) is severe, we will assess your current ability to do substantial gainful activity in accordance with § 416.960. * * *

* * * * *

[FR Doc. 02–13901 Filed 6–10–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–115285–01]

RIN–1545–AY84

Low-Income Taxpayer Clinics—Definition of Income Tax Return Preparer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that exclude certain Low-Income Taxpayer Clinics (LITCs) that qualify for grants under section 7526 of the Internal Revenue Code from the definition of income tax return preparer under section 7701(a)(36). These proposed regulations also exclude certain persons who are employed by, or volunteer for, such clinics.

DATES: Written or electronically generated comments and requests for a public hearing must be received by September 9, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–115285–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–115285–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at: www.irs.gov/regs.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Brinton T. Warren, at (202) 622–4940; concerning submissions of comments and requests for a public hearing, Treena Garrett of the Regulations Unit at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the definition of the term *income tax return preparer* under section 7701(a)(36) of the Internal Revenue Code (Code). These proposed regulations exclude certain qualified Low-Income Taxpayer Clinics (LITCs) from the definition of income tax return preparer and exclude certain persons who are employed by, or volunteer at, such clinics.

Section 7701(a)(36), defining the term income tax return preparer, was enacted by section 1203 of the Tax Reform Act of 1976, Public Law 94–455 (90 Stat. 1520) (1976) (TRA 1976). TRA 1976 also enacted many of the provisions of sections 6694 and 6695, which impose penalties for certain acts and omissions by income tax return preparers.

The preparer penalties enacted by TRA 1976 reflect the concern of Congress with improper practices within the commercial tax services industry. See H. R. Rep. No. 94–658, 94th Cong. 1st Sess. 274 (1976), 1976–3 (Vol. 2) C.B. 966. Consistent with the commercial focus of the legislative history, the definition of an income tax

return preparer requires that the tax return or claim for refund be prepared ''for compensation.'' Persons who do not receive compensation are not income tax return preparers for purposes of section 7701(a)(36) regardless of the extent to which they are involved with the preparation of a return or claim for refund.

Section 3601(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685) (1998) (RRA 1998), added section 7526 of the Code, which provides for grants to qualified LITCs. Qualified LITCs represent taxpayers in controversies with the IRS and operate programs to inform individuals for whom English is a second language (ESL taxpayers) about their rights and responsibilities as taxpayers (ESL outreach). Qualified LITCs are either clinical programs run by accredited educational institutions that allow students to represent low-income taxpayers, or tax-exempt organizations that provide representation to low-income taxpayers.

Under section 7526(b)(1)(A)(i), a qualified LITC may not charge more than a nominal fee for its authorized services (except for reimbursement of actual costs incurred). These proposed regulations do not address the definition of a nominal fee. The Treasury Department and the IRS specifically request comments on whether the final regulations, or other guidance, should define a nominal fee and, if so, the factors that should be considered in defining a nominal fee. In addition, although the Treasury Department and the IRS believe that a qualified LITC is not authorized by statute to provide return preparation assistance other than as described below, these regulations do not address the qualification of an LITC under section 7526 of the Code.

The Treasury Department and the IRS recognize that in the course of representing a taxpayer in a controversy with the IRS, a qualified LITC may provide assistance with a tax return or claim for refund that is related directly to that controversy. The Treasury Department and the IRS also recognize that as an ancillary part of a qualified LITC's ESL outreach program, the LITC may provide assistance with a tax return or claim for refund that will be treated as return preparation assistance. The Treasury Department and the IRS believe that such return preparation assistance should not cause the LITC, or its employees or volunteers, to be treated as income tax return preparers unless the LITC is compensated for such assistance. Accordingly, these proposed regulations specify when an LITC will be treated as having prepared a tax return or claim of refund for compensation for purposes of section 7701(a)(36).

The Treasury Department and the IRS expect that LITCs will follow the practices specified in sections 6694 and 6695 as the preferred practice for their operations even if they are not income tax return preparers within the meaning of section 7701(a)(36). For example, section 6695(a), in conjunction with section 6107(a), requires that an income tax return preparer furnish the taxpayer a completed copy of a tax return or claim for refund not later than the time the return or claim is presented to the taxpayer for signature.

Explanation of Provisions

The proposed regulations clarify that qualified LITCs, as defined by section 7526, and employees and volunteers of such LITCs, that provide assistance with a tax return or claim for refund will not be treated as income tax return preparers if two requirements are satisfied.

First, any such return preparation assistance must be (i) directly related to a controversy with the IRS for which the LITC is providing assistance or (ii) an ancillary part of an LITC's ESL outreach program. Second, the LITC cannot charge a separate fee or vary a fee based on whether the LITC provides assistance with a return of tax or claim for refund, or charge more than a nominal fee for its services.

Proposed Effective Date

The regulations, as proposed, would apply on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (preferably a signed original and 8 copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of the regulations is Brinton T. Warren of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 26 CFR Part 301

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

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.7701–15 is amended by:

1. Removing the language ''and'' from the end of paragraph (a)(7)(iii).

2. Removing the period at the end of paragraph (a)(7)(iv) and adding a semicolon in its place.

3. Adding paragraphs (a)(7)(v), (a)(7)(vi), (a)(8)(i) and (a)(8)(ii).

The additions read as follows:

§ 301.7701–15 Income tax return preparer.

* * * * *

(a) * * *

(7) * * *

(v) Any individual who provides tax assistance as part of a qualified Low-Income Taxpayer Clinic (LITC), as defined by section 7526, subject to the requirements of paragraphs (a)(8)(i) and (ii) of this section; and

(vi) Any organization that is a qualified Low-Income Taxpayer Clinic

(LITC), as defined by section 7526, subject to the requirements of paragraphs (a)(8)(i) and (ii) of this section. (8)(i) Paragraphs (a)(7)(v) and (a)(7)(vi) of this section apply only if any assistance with a return of tax or claim for refund under subtitle A of the Internal Revenue Code is directly related to a controversy with the Internal Revenue Service for which the qualified LITC is providing assistance, or is an ancillary part of an LITC program to inform individuals for whom English is a second language about their rights and responsibilities under the Internal Revenue Code.

(ii) Notwithstanding paragraph (a)(8)(i) of this section, paragraphs (a)(7)(v) and (a)(7)(vi) of this section do not apply if an LITC charges a separate fee or varies a fee based on whether the LITC provides assistance with a return of tax or claim for refund under subtitle A of the Internal Revenue Code, or if the LITC charges more than a nominal fee for its services.

* * * * *

Par. 3. *Effective date.* This amendment is applicable on the date the final regulations are published in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–14670 Filed 6–10–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Houston-Galveston–02–010]

RIN 2115–AA97

Security Zones; Ports of Houston and Galveston, TX

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish moving and fixed security zones around cruise ships that are transiting, anchored or moored in the Ports of Houston and Galveston, Texas. These security zones are needed for the safety and security of these vessels. Entry into these zones would be prohibited, unless authorized by the Captain of the Port, Houston-Galveston or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before August 12, 2002.

ADDRESSES: You may mail comments and related material to Marine Safety Office Houston-Galveston, 9640 Clinton Drive, Galena Park, TX, 77547. Marine Safety Office Houston-Galveston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Houston-Galveston between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) George Tobey, Marine Safety Office Houston-Galveston, Texas, Port Waterways Management, at (713) 671–5100.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP Houston-Galveston-02–010], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Houston-Galveston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. National security and intelligence officials have warned that future terrorist attacks against civilian targets may be anticipated. In response to these terrorist acts and warnings, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary. Due to the increased safety and security concerns surrounding the transit of cruise ships, the Captain of the Port, Houston-Galveston established temporary security zones around these vessels. The temporary final rule was published May 1, 2002 in the **Federal Register** (67 FR 21576).

Because the generalized high-level threat environment continues, the Captain of the Port Houston-Galveston has determined that there is a need for these security zones to remain in effect indefinitely. The Captain of the Port Houston-Galveston proposes to establish permanent security zones around these vessels as they transit within the Ports of Houston and Galveston. These security zones will reduce the potential of a waterborne attack on cruise ships and enhance public health, safety, defense, and security.

Discussion of Proposed Rule

The Coast Guard is proposing a permanent rule to create moving security zones around cruise ships when they pass the Galveston Bay Approach Lighted Buoy ''GB'' inbound and to continue the zone through the cruise ship's transit, mooring, and return transit until the cruise ship passes the sea buoy outbound. The establishment of moving security zones described in this proposed rule will be announced to mariners via Marine Safety Information Broadcast.

In the Ports of Houston and Galveston, no vessel would be permitted to operate within 500 yards of a cruise ship unless operating at the minimum safe speed required to maintain a safe course. Except as described in this proposed rule, no person or vessel would be permitted to enter within 100 yards of a cruise ship unless expressly authorized by the Captain of the Port Houston-Galveston. Moored vessels or vessels anchored in a designated anchorage area would be permitted to remain within 100 yards of a cruise ship while it is in transit.

The Houston Ship Channel narrows to 400 feet or less near Houston Ship Channel Entrance Lighted Bell Buoy ''18'' and continues at this width through Barbours Cut. Between these points vessels that must transit the navigable channel will have to gain permission from the Captain of the Port Houston-Galveston or his designated representative, to pass within 100 yards of a cruise ship. Mariners that anticipate encountering a cruise ship in this section of the channel are encouraged to contact ''Houston Traffic'' prior to getting underway.

For the purpose of this proposed rule the term ''cruise ship'' is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours any part of which is on the

high seas, and for which passengers are embarked or disembarked in the United States or its territories. This definition covers passenger vessels that must comply with 33 CFR parts 120 and 128.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The impacts on routine navigation are expected to be minimal as the proposed zones will only impact navigation for a short period of time and the size of the zones allow for the transit of most vessels with minimal delay.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the narrow portion of the Houston-Galveston Ship Channel during a transit of a cruise ship in the same location. This proposed security zone will not have a significant economic impact on a substantial number of small entities for the following reasons:

1. Between the Houston-Galveston Sea buoy and Houston Ship Channel Entrance Lighted Bell Buoy ''18'' the size of the security zone allows for vessels to safely transit around or through the zone with minimal interference.

2. Between Houston Ship Channel Entrance Lighted Bell Bouy ''18'' and Barbour's Cut the channel narrows to 400 feet. In this section the Captain of the Port Houston-Galveston through Vessel Traffic Service (VTS) Houston-Galveston, ''Houston Traffic,'' and designated on scene personnel may grant vessels permission to pass within 100 yards of a cruise ship.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG George Tobey, Marine Safety Office Houston-Galveston, Texas, Port Waterways Management, at (713) 671–5100.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–

1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.813 to read as follows:

§ 165.813 Security Zones; Ports of Houston and Galveston, Texas.

(a) *Location.* Within the Ports of Houston and Galveston, Texas, moving security zones are established encompassing all waters within 500 yards of a cruise ship between Galveston Bay Approach Lighted Buoy ''GB'', at approximate position 29°21′18″ N, 94°37′36″ W [NAD 83] and up to, and including, Barbours Cut. These zones remain in effect during the inbound and outbound transit of the cruise ship and continues while the cruise ship is moored or anchored.

(b) *Regulations.* (1) Entry of persons or vessels into this zone is prohibited unless authorized as follows.

(i) Vessels may enter within 500 yards but not closer than 100 yards of a cruise ship provided they operate at the minimum speed necessary to maintain a safe course.

(ii) No person or vessel may enter within 100 yards of a cruise ship unless expressly authorized by the Coast Guard Captain of the Port Houston-Galveston. Where the Houston Ship Channel narrows to 400 feet or less between Houston Ship Channel Entrance Lighted Bell Buoy ''18'', light list no. 34385 at approximately 29°21′06″ N, 94°47′00″ W [NAD 83] and Barbours Cut, the Captain of the Port Houston-Galveston may permit vessels that must transit the navigable channel between these points to enter within 100 yards of a cruise ship.

(iii) Moored vessels or vessels anchored in a designated anchorage area are permitted to remain within 100 yards of a cruise ship while it is in transit.

(2) Vessels requiring entry within 500 yards of a cruise ship that cannot slow to the minimum speed necessary to maintain a safe course must request express permission to proceed from the Captain of the Port Houston-Galveston, or his designated representative.

(3) For the purpose of this section the term ''cruise ship'' is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours, any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories.

(4) The Captain of the Port Houston-Galveston will inform the public of the moving security zones around cruise ships via Marine Safety Information Broadcasts.

(5) To request permission as required by these regulations contact ''Houston Traffic'' via VHF Channels 11/12 or via phone at (713) 671–5103.

(6) All persons and vessels within the moving security zone shall comply with the instructions of the Captain of the Port Houston-Galveston and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: May 29, 2002.

K.S. Cook,

Captain, U.S. Coast Guard, Captain of the Port Houston-Galveston.

[FR Doc. 02–14562 Filed 6–10–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Houston–Galveston–02–009]

RIN 2115–AA97

Security Zones; Captain of the Port Houston-Galveston Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish security zones within the Ports of Houston, Morgan's Point, Bayport, Texas City, and Freeport, Texas. These zones are needed to protect waterfront facilities, persons, and vessels from subversive or terrorist acts. Entry into these zones would be prohibited except for vessels described in our proposed rule or vessels that have obtained the express permission of the Captain of the Port Houston-Galveston or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before August 12, 2002.

ADDRESSES: You may mail comments and related material to Marine Safety Office Houston-Galveston, 9640 Clinton Drive, Galena Park, TX, 77547. Marine Safety Office Houston-Galveston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Houston-Galveston between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) George Tobey, Marine Safety Office Houston-Galveston, Texas, Port Waterways Management, at (713) 671–5100.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP Houston-Galveston–02–009], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Houston-Galveston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time

and place announced by a separate notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. National security and intelligence officials have warned that future terrorist attacks against civilian targets may be anticipated. In response to these terrorist acts, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary. The Captain of the Port, Houston-Galveston established temporary security zones around highly industrialized areas within the Captain of the Port, Houston-Galveston Zone [COTP Houston-Galveston–02–011]. (*See* temporary final rule entitled ''Security Zones; Captain of the Port Houston-Galveston Zone'' published elsewhere in today's issue of the **Federal Register**.)

Because the generalized high-level threat environment continues, the Captain of the Port Houston-Galveston has determined that there is a need for these security zones to remain in effect indefinitely. The proposed rule will establish permanent security zones identical to, and in the same location as, the temporary security zones previously established in the Captain of the Port Houston-Galveston Zone. The proposed rule also establishes a permanent security zone at Barbours Cut in Morgan's Point, Texas.

Discussion of Proposed Rule

Vessels operating within the Captain of the Port Houston-Galveston Zone are potential targets of terrorist attacks, or platforms from which terrorist attacks may be launched upon other vessels, waterfront facilities and adjacent population centers. The Ports of Houston, Morgan's Point, Bayport, Texas City, and Freeport are all heavily industrialized areas with general cargo facilities, container terminals, and bulk liquid transfer facilities.

The proposed rule establishes security zones around areas concentrated with commercial facilities considered critical to national security. These facilities are located in narrow manmade harbors or along narrow depth-restricted ship channels. Any waterway closure within these security zones resulting from a terrorist attack could have a significant adverse impact on national security and the national economy.

The proposed security zones are as follows:

(1) *Houston, Texas.* The Houston Ship Channel and all associated turning basins, bounded by a line drawn between Houston Ship Channel Light 132 (LLNR–24445) and Houston Ship Channel Light 133 (LLNR–24450) west to the T & N Rail Road Swing Bridge at the entrance to Buffalo Bayou, including all waters adjacent to the ship channel from shoreline to shoreline and the first 200 yards of connecting waterways.

(2) *Morgan's Point, Texas.* The Barbours Cut Ship Channel and Turning Basin containing all waters west of a line drawn between Junction Light ''Barbours Cut'' 29°41′12″ N, 94°59′12″ W, and Houston Ship Channel Light 91, 29°40′58″ N, 94°58

59″ W.

(3) *Bayport, Texas.* The Port of Bayport, Bayport Ship and Bayport Turning Basin containing all waters south of a line drawn from Bayport Ship Channel Light 9 and a western point at 29°36′26″ N, 95°01′17″ W.

(4) *Texas City, Texas.* The Port of Texas City Channel, Turning Basin and Industrial Canal containing all waters bounded by the area south and west of a line drawn between Cut B Inner Range Rear Light, and Texas City Channel Light 19.

(5) *Freeport, Texas.* The *Dow Barge Canal* containing all waters bounded by its junction with the Intracoastal Waterway, by a line drawn between the eastern point at latitude 28°56′48″ N, 95°18′20″ W, and the western point at 28°56′40″ N, 95°18′33″ W. And the Brazos Harbor, containing all waters west of a line drawn between the northern point at 28°56′27″ N, 95°20′00″ W, and the southern point 28°56′09″ N, 95°20′00″ W at its junction with the Old Brazos River Cut.

This proposed rule will increase the level of security within the ports by reducing the number of vessels transiting the industrialized areas and limiting access to only those vessels that are conducting business with port industries. It restricts access to vessels engaged or assisting in commerce with waterfront facilities within the security zones, vessels operated by port authorities, vessels operated by waterfront facilities within the security zones, and vessels operated by federal, state, county or municipal agencies. Vessels having a need to enter these zones but prohibited from doing so under this rule, must obtain express permission from the Captain of the Port Houston-Galveston or his designated representative prior to entry. Restricting access to these areas reduces potential methods of attack on vessels, waterfront facilities and adjacent population centers located within these zones.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The impacts on routine navigation are expected to be minimal. Due to the highly industrialized nature of these zones they are of limited interest to recreational boaters. Vessels engaged or assisting in commerce with facilities located within a zone or having the express permission of the Captain of the Port Houston-Galveston, are authorized entry under this rule.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. These security zones will not have an impact on a substantial number of small entities because this rule will not obstruct the regular flow of commercial vessel traffic conducting business within the zones. Other vessels may seek permission for entry into the zones from the Captain of the Port Houston-Galveston. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking.

If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG George Tobey, Marine Safety Office Houston-Galveston, Texas, Port Waterways Management, at (713) 671–5100.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.814 to read as follows:

§ 165.814 Security Zones; Captain of the Port Houston-Galveston Zone.

(a) *Location.* The following areas are designated as security zones:

(1) *Houston, Texas.* The Houston Ship Channel and all associated turning basins, bounded by a line drawn between Houston Ship Channel Light 132 (LLNR–24445) and Houston Ship Channel Light 133 (LLNR–24450) west to the T & N Rail Road Swing Bridge at the entrance to Buffalo Bayou, including all waters adjacent to the ship channel from shoreline to shoreline and the first 200 yards of connecting waterways.

(2) *Morgan's Point, Texas.* The Barbours Cut Ship Channel and Turning Basin containing all waters west of a line drawn between Junction Light ''Barbours Cut'' 29°41′12″ N, 94°59′12″ W (LLNR–23525), and Houston Ship Channel Light 91, 29°40′58″ N, 94°58′59″ W (LLNR–23375) (NAD 1983).

(3) *Bayport, Texas.* The Port of Bayport, Bayport Ship and Bayport Turning Basin containing all waters south of a line drawn from Bayport Ship Channel Light 9 (LLNR–23295) and a western point at 29°36′26″ N, 95°01′17″ W (NAD 1983).

(4) *Texas City, Texas.* The Port of Texas City Channel, Turning Basin and Industrial Canal containing all waters bounded by the area South and West of a line drawn between Cut B Inner Range Rear Light (LLNR 24770), and Texas City Channel Light 19 (LLNR 24810).

(5) *Freeport, Texas.* (i) The *Dow Barge Canal* containing all waters bounded by its junction with the Intracoastal Waterway, by a line drawn between the eastern point at latitude 28°56′48″ N, 95°18′20″ W, and the western point at 28°56′40″ N, 95°18′33″ W (NAD 1983).

(ii) The *Brazos Harbor* containing all waters west of a line drawn between the northern point at 28°56′27″ N, 95°20′00″ W, and the southern point 28°56′09″ N, 95°20′00″ W (NAD 1983) at its junction with the Old Brazos River Cut.

(b) *Regulations.* (1) Entry into these zones is prohibited except for the following:

(i) Commercial vessels operating at waterfront facilities within these zones;

(ii) Commercial vessels transiting directly to or from waterfront facilities within these zones;

(iii) Vessels providing direct operational/logistic support to commercial vessels within these zones;

(iv) Vessels operated by the appropriate port authority or by facilities located within these zones; and

(v) Vessels operated by federal, state, county, or municipal agencies.

(2) Other persons or vessels requiring entry into a zone described in this section must request express permission to enter from the Captain of the Port Houston-Galveston, or his designated representative.

(3) To request permission as required by these regulations contact ''Houston Traffic'' via VHF Channels 11/12 or via phone at (713) 671–5103.

(4) All persons and vessels shall comply with the instructions of the Captain of the Port Houston-Galveston and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: May 29, 2002.

K.S. Cook,

Captain, U.S. Coast Guard, Captain of the Port Houston-Galveston.

[FR Doc. 02–14560 Filed 6–10–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP St. Louis–02–005]

RIN 2115–AA97

Security Zones; Captain of the Port St. Louis, MO

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish five security zones throughout the Captain of the Port St. Louis Zone. These security zones are needed to protect the Fort Calhoun Nuclear Power Station in Fort Calhoun, Nebraska, the Cooper Nuclear Station in Brownville, Nebraska, the Quad Cities Generating Station in Cordova, Illinois, the Prairie Island Nuclear Generating Facility in Welch, Minnesota, and the Clinton Power Station in Clinton, Illinois from subversive actions by any group or groups of individuals whose objective it is to cause disruption to the daily operations of these facilities. Entry into any of these security zones is prohibited unless authorized by the Captain of the Port St. Louis or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before August 12, 2002.

ADDRESSES: You may mail comments and related material to: Commanding Officer, USCG Marine Safety Office St. Louis, Suite 8.104E, 1222 Spruce St., St. Louis, MO 63103–2835. Marine Safety Office St. Louis maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office St. Louis, Suite 8.104E, 1222 Spruce St., St. Louis, MO between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) Bill Clark, Marine Safety Office St. Louis at (314) 539–3091, ext. 541.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP St. Louis–02–005], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office St. Louis at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. National security and intelligence officials have warned that future terrorist attacks against civilian targets are anticipated. In response to these terrorist acts and warnings, heightened awareness and security of our ports and harbors is necessary. The Captain of the Port St. Louis is proposing to make three existing temporary security zones permanent and create two additional permanent security zones.

The three temporary security zones the Captain of the Port St. Louis proposes to make permanent are: the Fort Calhoun Nuclear Power Station zone on the Missouri River in Fort Calhoun, Nebraska, published in the **Federal Register** March 7, 2002 (67 FR 10325); the Cooper Nuclear Station zone on the Missouri River in Brownville, Nebraska, published March 7, 2002 (67 FR 10324); and the Quad Cities Generating Station zone on the Mississippi River in Cordova, Illinois, published February 28, 2002 (67 FR 9207).

The proposed rule would establish two new security zones for the Prairie Island Nuclear Generating Station in Welch, Minnesota and the Clinton Power Station in Clinton, Illinois.

Discussion of Proposed Rule

Permanent security zones are proposed for five locations within the Captain of the Port St. Louis Zone.

(1) *Fort Calhoun Nuclear Power Station, Fort Calhoun, Nebraska.* This proposed zone includes all water extending 75 feet from the shoreline of the right descending bank on the Missouri River, beginning at mile marker 645.6 and ending at mile marker 646.0.

(2) *Cooper Nuclear Station, Brownville, Nebraska.* This proposed zone includes all water extending 250 feet from the shoreline of the right descending bank on the Missouri River, beginning at mile marker 532.5 and ending at mile marker 532.9.

(3) *Quad Cities Generating Station, Cordova, Illinois.* This proposed zone includes all water extending 300 feet from the shoreline of the left descending bank on the Upper Mississippi River, beginning at mile marker 506.3 and ending at mile marker 507.3.

(4) *Prairie Island Nuclear Generating Facility, Welch, Minnesota.* This proposed zone includes all water extending 300 feet from the shoreline of the right descending bank on the Upper Mississippi River, beginning at mile marker 798.0 and ending at mile marker 798.3.

(5) *Clinton Power Station, Clinton, Illinois.* This proposed zone in Dewitt County in East Central Illinois is bounded by a dam constructed near the confluence of Salt Creek River mile 56 and the north fork of Salt Creek. The zone extends out 600 feet from shore.

Boundaries of the zone will begin at 40°10′30″ N, 88°50′30″ W; east to 40°10′30″ N, 88°49′55″ W; south to 40°10′15″ N, 88°49′55″ W; west to 40°10′15″ N, 88°50′30″ W; returning north to the origin. These coordinates are based upon [NAD 83].

These security zones are designed to reduce the potential of a waterborne attack and enhance the public health and safety by protecting the public, facilities, and surrounding areas from possible subversive actions or acts of terrorism. All vessels would be prohibited from entering the Prairie Island, Quad Cities and Clinton security zones unless expressly authorized by the Captain of the Port St. Louis or his designated representative. Sight surveys indicate that vessels may safely navigate around these zones with minimal interference.

Both the Fort Calhoun and the Cooper security zones contain a portion of the navigable channel of the Missouri River. All vessels that may safely navigate outside of the channel are prohibited from entering the security zone without the express permission of the Captain of the Port St. Louis or his designated representative. Vessels requiring use of the channel for safe navigation will be authorized entry into the zone but must remain within the channel unless otherwise expressly authorized by the Captain of the Port St. Louis or his designated representative.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

With the exception of the Fort Calhoun and Cooper zones the proposed zones do not include navigable channels. Vessel traffic should be able to safely transit around these zones. The proposed zones for Fort Calhoun Nuclear Power Station and the Cooper Nuclear Station allow deeper draft vessels to continue their transit, provided that they remain within the channel. Vessels that must transit through any of these security zones may seek permission from the Captain of the Port St. Louis or his designated representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities for the reasons enumerated under the Regulatory Evaluation above.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Bill Clark, Marine Safety Office St. Louis at (314) 539–3091, ext 541.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

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

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.825 to read as follows:

§ 165.825 Security Zones; Captain of the Port St. Louis, Missouri.

(a) *Location.* The following areas are designated as security zones:

(1) *Fort Calhoun Nuclear Power Station Security Zone, Fort Calhoun, Nebraska*—all waters of the Missouri River, extending 75 feet from the shoreline of the right descending bank beginning at mile marker 645.6 and ending at mile marker 646.0.

(2) *Cooper Nuclear Station Security Zone, Brownville, Nebraska*—all waters of the Missouri River, extending 250 feet from the shoreline of the right descending bank beginning at mile marker 532.5 and ending at mile marker 532.9.

(3) *Quad Cities Generating Station Security Zone, Cordova, Illinois*—all waters of the Upper Mississippi River, extending 300 feet from the shoreline of the left descending bank beginning at mile marker 506.3 and ending at mile marker 507.3.

(4) *Prairie Island Nuclear Generating Facility Security Zone, Welch, Minnesota*—all waters of the Upper Mississippi River, extending 300 feet from the shoreline of the right descending bank beginning at mile marker 798.0 and ending at mile marker 798.3.

(5) *Clinton Power Station Security Zone, Clinton, Illinois*—all waters of Lake Clinton in Dewitt County in East Central Illinois bounded by a dam constructed near the confluence of Salt Creek River mile 56 and the north fork of Salt Creek. The zone extends out 600 feet from shore. Boundaries of the zone will begin at 40°10′30″ N, 88°50′30″ W; thence east to 40°10′30″ N, 88°49′55″ W; thence south to 40°10′15″ N, 88°49′55″ W; thence west to 40°10′15″ N, 88°50′30″ W; thence returning north to the origin. These coordinates are based upon [NAD 83].

(b) *Regulations.* (1) Entry into these security zones is prohibited unless authorized by the Coast Guard Captain of the Port, St. Louis or his designated representative.

(2) The Fort Calhoun and Cooper security zones include a portion of the navigable channel of the Missouri River. All vessels that may safely navigate outside of the channel are prohibited from entering the security zone without the express permission of the Captain of the Port St. Louis or his designated representative. Vessels that are required to use the channel for safe navigation are authorized entry into the zone but must remain within the channel unless expressly authorized by the Captain of the Port St. Louis or his designated representative.

(3) Persons or vessels requiring entry into the security zones must contact the Captain of the Port, St. Louis at telephone number 314 539–3091, ext. 541 or Marine Safety Detachment Quad Cities at telephone number 309 782–0627 or Coast Guard Group Upper Mississippi River at telephone number 319 524–7511 or on VHF marine channel 16 in order to seek permission to enter the security zones. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, St. Louis or his designated representative.

(4) Designated representatives are commissioned, warrant, and petty officers of the U.S. Coast Guard.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: May 29, 2002.

E.A. Washburn,

Commander, U.S. Coast Guard, Captain of the Port, St. Louis.

[FR Doc. 02–14556 Filed 6–10–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP New Orleans–02–005]

RIN 2115–AA97

Security Zones; Lower Mississippi River, Southwest Pass Sea Buoy to Mile Marker 96.0, New Orleans, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent moving security zones around cruise ships entering and departing the Lower Mississippi River (LMR) from the Southwest Pass sea buoy to mile marker 96.0. These security zones are needed for the safety and security of these vessels. Entry into these zones would be prohibited to all persons and vessels unless authorized by the Captain of the Port, New Orleans or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before August 12, 2002.

ADDRESSES: You may mail comments and related material to Marine Safety Office New Orleans, 1615 Poydras Street, New Orleans, LA, 70112. Marine Safety Office New Orleans maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office New Orleans, 1615 Poydras Street, New Orleans, LA, 70112 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Ricardo Alonso, Marine Safety Office New Orleans, Port Waterways Management, at (504) 589–4222.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for

this rulemaking [COTP New Orleans–02–005], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office New Orleans at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. National security and intelligence officials have warned that future terrorist attacks against civilian targets may be anticipated. In response to these terrorist acts, heightened awareness and security of our port and harbors and the vessels that transit them is necessary. Due to the increased safety and security concerns surrounding the transit of cruise ships, the Captain of the Port, New Orleans established temporary moving security zones, [COTP New Orleans–02–004], around these vessels. These temporary moving security zones remain in effect until October 15, 2002. (See temporary final rule entitled ''Security Zones; Lower Mississippi River, Southwest Pass Sea Buoy to Mile Marker 96.0, New Orleans, Louisiana'' published elsewhere in today's issue of the **Federal Register**.)

Because the generalized high-level threat environment continues, the Captain of the Port New Orleans has determined that there is a need for these security zones to remain in effect indefinitely. The Captain of the Port New Orleans is proposing permanent regulations for security zones around these vessels as they transit between Southwest Pass and mile marker 96.0 LMR.

Discussion of Proposed Rule

In our proposed rule, moving security zones would commence when a cruise ship passes the Southwest Pass Entrance Lighted Buoy ''SW'' inbound and continues through its transit, mooring, and return transit until it passes the sea buoy outbound. No vessel would be permitted to operate within 500 yards of a cruise ship unless operating at the minimum safe speed required to maintain a safe course. Except as described in this rule, no person or vessel would be permitted to enter within 100 yards of a cruise ship unless expressly authorized by the Captain of the Port, New Orleans. Moored vessels or vessels anchored in a designated anchorage area would be permitted to remain within 100 yards of a cruise ship while it is in transit.

The establishment of moving security zones described in this rule would be announced to mariners via Marine Safety Information Broadcast.

For the purpose of this proposed rule the term ''cruise ship'' is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories. This definition covers passenger vessels that must comply with 33 CFR parts 120 and 128.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The impacts on routine navigation are expected to be minimal as the zones will only impact navigation for a short period of time and the size of the zones allows for the transit of most vessels with minimal delay.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit Southwest Pass and the Lower Mississippi River, to mile marker 96.0. These security zones would not have a significant economic impact on a substantial number of small entities. The size of the security zones allow for vessels to safely transit around or through the zones with minimal interference.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Ricardo Alonso, Marine Safety Office New Orleans, Port Waterways Management, at (504) 589–4222.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions

that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.812 to read as follows:

§ 165.812 Security Zones; Lower Mississippi River, Southwest Pass Sea Buoy to Mile Marker 96.0, New Orleans, Louisiana.

(a) *Location.* Within the Lower Mississippi River and Southwest Pass, moving security zones are established around all cruise ships between the Southwest Pass Entrance Lighted Buoy ''SW'', at approximate position 28°52′42″ N, 89°25′54″ W [NAD 83] and Lower Mississippi River mile marker 96.0 in New Orleans, Louisiana. These temporary moving security zones encompass all waters within 500 yards of a cruise ship. These zones remain in effect during the entire transit of the vessel and continue while the cruise ship is moored or anchored.

(b) *Regulations.* (1) Entry of persons and vessels into these zones is prohibited unless authorized as follows.

(i) Vessels may enter within 500 yards but not closer than 100 yards of a cruise ship provided they operate at the minimum speed necessary to maintain a safe course.

(ii) No person or vessel may enter within 100 yards of a cruise ship unless expressly authorized by the Coast Guard Captain of the Port New Orleans.

(iii) Moored vessels or vessels anchored in a designated anchorage area are permitted to remain within 100 yards of a cruise ship while it is in transit.

(2) Vessels requiring entry within 500 yards of a cruise ship that cannot slow to the minimum speed necessary to maintain a safe course must request express permission to proceed from the Captain of the Port New Orleans, or his designated representative.

(3) For the purpose of this section the term ''cruise ship'' is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours, any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories.

(4) The Captain of the Port New Orleans will inform the public of the moving security zones around cruise ships via Marine Safety Information Broadcasts.

(5) To request permission as required by these regulations contact ''New Orleans Traffic'' via VHF Channels 13/67 or via phone at (504) 589–2780 or (504) 589–6261.

(6) All persons and vessels within the moving security zones shall comply with the instructions of the Captain of the Port New Orleans and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: May 29, 2002.

R.W. Branch,

Captain, U.S. Coast Guard, Captain of the Port New Orleans.

[FR Doc. 02–14557 Filed 6–10–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA159–4189b; FRL–7211–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revisions to the Air Resource Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania of changes to the air resource regulations. The changes will make the Commonwealth's regulations consistent with Federal requirements, delete obsolete and unnecessary provisions, and apply the Commonwealth's monitoring requirements in a consistent fashion for all affected sources. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing by July 11, 2002.

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

FOR FURTHER INFORMATION CONTACT: Rose Quinto at (215) 814–2182, the EPA Region III address above or by e-mail at *quinto.rose@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action for the Pennsylvania's air resource regulations, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: May 8, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 02–14479 Filed 6–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD062–3087b; FRL–7220–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Visible Emissions and Open Fire Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Maryland State Implementation Plan (SIP). These revisions establish the exemption of certain intermittent visible emissions (VE) at Federal facilities, amend open burning distance limitations, and establish specific requirements for safety determinations at Federal facilities. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response of this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 11, 2002.

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

FOR FURTHER INFORMATION CONTACT: Betty Harris, (215) 814–2168, at the EPA Region III address above, or by e-mail at *harris.betty@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action of Maryland's Visible Emissions and Open Fire Amendments, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: May 21, 2002.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 02–14492 Filed 6–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[FRL–7228–8]

RIN 2050–AE78

Extension of Comment Period for Proposed Regulation of Oil-Bearing Secondary Materials From the Petroleum Refining Industry and Other Hazardous Secondary Materials Processed in a Gasification Device To Produce Synthesis Gas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending by an additional 75 days the comment period on its proposed rule (March 25, 2002 at 67 FR 13684) for revising the RCRA hazardous waste program to allow a conditional exclusion from the definition of solid waste. This conditional exclusion would be for hazardous oil-bearing secondary materials generated by the petroleum refining industry when processed in a gasification device manufacturing

synthesis gas fuel and other non-fuel chemical by-products. The proposal also solicits comment on a broader conditional exclusion to other hazardous secondary materials generated by industries other than the petroleum refining industry. The comment period is being extended to provide the public with additional time to evaluate and comment on both aspects of the proposed rule. As extended by this action, the comment period will now close on September 10, 2002.

DATES: EPA will accept public comment on this proposed rule until September 10, 2002. Comments postmarked after the close of the comment period will be stamped ''late'' and may or may not be considered by the Agency.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–2002–RPRP–FFFFF to: (1) If using regular postal mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA-HQ), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002; (2) If using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202; or (3) If using the Internet to: *rcra-docket@epa.gov*. All electronic comments must be submitted as an ASCII (text) file avoiding the use of special characters and any form of encryption. If possible, EPA's Office of Solid Waste (OSW) would also like to receive an additional copy of the comments on disk in WordPerfect 6.1 file format.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5303W), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002.

The official record (i.e., public docket) for the proposed rulemaking is F–2002–RPRP–FFFFF. In addition to this official record, two additional dockets have material supporting this proposal. They are: F–98–PR2A–FFFFF and F–98–RCSF–FFFFF.

Public comments and supporting materials are available for viewing in the RCRA Docket Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323. The RCRA Hotline is open Monday–Friday, 9 am to 6 pm, Eastern Standard Time. For more detailed information on specific aspects of this proposed rulemaking, contact Elaine Eby at 703–308–8449 or *eby.elaine@epa.gov*, or write her at the Office of Solid Waste, 5302W, U.S. Environmental Protection Agency Headquarters (EPA, HQ) (5302W), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002.

SUPPLEMENTARY INFORMATION: On March 25, 2002 (67 FR 13684), EPA proposed a conditional exclusion from the definition of solid waste. As noted in the proposal, the exclusion would apply to hazardous oil-bearing secondary materials (i.e., sludges, by-products, or spent materials) generated by the petroleum refining industry (Standard Industrial Classification (SIC) 2911), when processed, either on-site or off-site, in a gasification system to produce synthesis gas fuel and other non-fuel chemical by-products. As proposed, the exclusion is subject to a set of conditions that specify the following: (1) The system meets the definition of a gasification system; (2) the system generates a synthesis gas fuel that meets the specification of exempted synthesis gas; (3) the materials generated by the gasification system must not be placed on the land if they exceed the nonwastewater Universal Treatment Standards (UTS) for chromium, lead, nickel, vanadium, arsenic, and antimony (found at 40 CFR 268.48); and (4) the excluded materials must not be placed on the land or speculatively accumulated prior to insertion into the gasification system.

The proposal also solicits comment on an option to broaden the conditional exclusion to other generated hazardous secondary materials under an expanded set of conditions. These conditions include: (1) Each hazardous secondary material processed in the system contains greater than 20% by weight total organic carbon; (2) the gasification system does not process any hazardous waste which exhibits the characteristic of mercury and any hazardous waste for which mercury is a basis for listing under 40 CFR part 261, Appendix VII as hazardous secondary material; (3) the system meets the definition of a gasification system; (4) the system generates a synthesis gas fuel that meets the specification of exempted synthesis gas; (5) the materials generated by the gasification system are not placed on the land if they exceed the nonwastewater UTS for antimony, arsenic, barium, beryllium, cadmium, chromium (total), cyanides (total), cyanides (amenable), lead, mercury, nickel, selenium, silver, thallium, and vanadium; and (6) the excluded materials are not placed on the land or speculatively accumulated prior to insertion into the gasification system.

While the Agency has requested comment on all aspects of the proposal, we specifically solicit comment, information, and data on: (1) The performance of gasification on other hazardous secondary material (that are currently hazardous waste) known to contain concentrations of metals; (2) the performance of gasification on certain hazardous secondary materials that contain certain high concentration of non-contributing components (namely metals or halides); (3) potential partitioning of metals to the product synthesis gas fuel and their subsequent release during the combustion of the synthesis gas in turbines to produce power: (4) criteria for and the types of hazardous secondary materials that could be processed in a gasification system; (5) specific design and operating conditions for all components of the gasification system; (6) the market for building and operating gasification systems in the future; (7) the market for synthesis gas and other gasification products; and (8) appropriate documentation (reporting and record keeping) for those claiming this exclusion.

The Agency is extending the comment period by 75 days to accommodate requests by several parties for additional time to prepare relevant comments and to gather operating and emissions data on gasification systems permitted in Europe and Japan.

Dated: May 30, 2002.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 02–14631 Filed 6–10–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–67; FCC 02–121]

Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This document inquires into whether providers of Internet protocol relay services (IP Relay) should be permitted to recover their costs from the Interstate Telecommunications Relay Services (TRS) Fund on a permanent basis, or whether and how a methodology can be devised to allocate cost recovery between the Interstate TRS Fund and the states. The Commission solicits comment on cost recovery for IP Relay, including potential methods for allocating costs between the Interstate TRS Fund and the states.

DATES: Comments are due on or before July 11, 2002 and reply comments are due on or before July 26, 2002.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Washington, DC 20554. For more information on filing comments, *see* **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Sean O'More, of the Consumer and Government Affairs Bureau at (202) 418–2453 (voice), (202) 418–7870 (TTY) or e-mail *scomore@fcc.gov.*

SUPPLEMENTARY INFORMATION: The requirement for collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(H). Persons wishing to comment on this collection of information should direct their comments to Judy Boley, Office of the Managing Director, Federal Communications Commission, The Portals, Room 1C–804, 445 12th Street, SW., Washington, DC 20554, tel. 202–418–0214, e-mail *jboley@fcc.gov.* This is a summary of the Commission's *Second Further Notice of Proposed Rule Making,* adopted April 18, 2002, and released April 22, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325 Washington, DC 20554. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Dana Jackson, Federal Communications Commission, 445 12th Street, SW., Room 5–A741, Washington DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98–67, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may be purchased from the Commission's duplication contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Copies of this document in other alternative formats (computer diskette, large print and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau at (202) 418–7426 (voice), (202) 418–7365 (TTY), or e-mail *bmillin@fcc.gov.* This *Second Further Notice of Proposed Rule Making* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro.*

Synopsis

In this *Second Further Notice of Proposed Rule Making,* the Commission notes that there is no automatic means of determining the origination of IP Relay calls. In the absence of this information, TRS providers cannot determine, or report to the TRS Fund Administrator, whether a call is interstate or intrastate. We request comment on whether we should attempt to devise a method for allocating calls as intrastate or interstate, and if so, suggestions for how we may accomplish this goal. We seek comment on whether section 225 of the Communications Act requires us to develop a cost allocation methodology for IP relay calls, or whether the statute gives us the discretion to conclude that all costs for IP relay shall be reimbursable from the Interstate TRS Fund. To the extent that commenters believe that costs must be

allocated between the interstate and intrastate jurisdictions for purposes of recovery from the Interstate TRS Fund, we request that they consider what methods may exist, or could be developed, to determine the location of a caller using IP Relay. Further, we ask commenters to consider whether the use of a fixed allocator would satisfy the statutory requirement that costs caused by interstate relay services be recovered from all subscribers for every interstate service, and if so, how such a fixed allocator could best be derived. We also ask commenters to address whether the Commission should be responsible for devising a fixed allocator for dividing the reimbursement for IP Relay costs between the Interstate TRS Fund and the states, or whether we should charge some other party with this responsibility.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA) the Federal Communications Commission (Commission) has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Second Further Notice of Proposed Rulemaking. See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law No. 104–121, Title II, 110 Stat. 857 (1996). We expect that we could have complied with the RFA by completing an Initial Regulatory Flexibility Certification on this issue; however, we have chosen instead to complete this Initial Regulatory Analysis for more complete record. 5 U.S.C. 605(b). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second Further Notice of Proposed Rulemaking* provided in paragraph 51 of the item. The Commission will send a copy of the *Second Further Notice of Proposed Rulemaking,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). *See* 5 U.S.C. 603(a). In addition, the *Second Further Notice of Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the **Federal Register**. *See* 5 U.S.C. 603(a).

A. Need for, and Objectives of, the Proposed Rules

Telecommunications Relay Service (TRS), which is provided through the public switched telephone network (PSTN), enables persons with hearing and speech disabilities to communicate by telephone with persons who may or may not have such disabilities. 47 CFR 64.601(5)(7). TRS facilities have special equipment and are staffed by communications assistants (CAs) who relay conversations between people who use text telecommunications devices and people who communicate by voice. WorldCom, Inc. (WorldCom) indicates that its Internet Protocol (IP) Relay service is used in a manner similar to the PSTN-based TRS system. The user establishes a local connection to an Internet Service Provider using a computer, web phone, personal digital assistant, or any other IP-capable device. The user clicks on the relay operator icon, and when the call reaches the Internet platform a connection is automatically established, via an 800 number, to the WorldCom relay center. The call is then routed to a CA and a regular relay session is initiated. WorldCom, *Petition for Clarification, CC Docket No. 90–571, Telecommunications Services for Individuals with Hearing and Speech Disabilities,* Dec. 22, 2000, at 2.

WorldCom's Petition for Clarification (*Petition*) asked the Commission to clarify (1) that IP Relay falls within the definition of TRS and (2) that it is entitled to recover its operating costs under section 225 of the Communications Act. WorldCom, *Petition for Clarification, CC Docket No. 90–571, Telecommunications Services for Individuals with Hearing and Speech Disabilities,* Dec. 22, 2000. 47 U.S.C. 225. WorldCom further requested that the Commission allow it to recover all of the costs of its IP Relay service from the Interstate TRS Fund. Calls come to IP relay via the Internet, and there is currently no automatic method by which the IP Relay center can tell whether a given call is intrastate or interstate, given that Internet addresses have no geographic correlates. This is in contrast to PSTN-based TRS, in which the TRS center uses the caller's Automatic Numbering Identification (ANI) to identify the location of the caller.

The Commission briefly addressed the potential impact of the Internet on TRS earlier in this proceeding when the Commission requested comment on the provision of improved TRS and on WorldCom's *Petition.* We solicited comment on the use of the World Wide Web for TRS voice communications in the *Improved Service Report and Order and Further Notice of Proposed Rulemaking.* ''We also seek comment on improved transmission speed, wireless messaging services, use of the World Wide Web for voice communications, Internet telephony, and any other technologies or changes to technology that may improve relay services or should be available via TRS.'' *See* Improved Service Report and Order and Further Notice of Proposed Rulemaking, *Report and Order and Further Notice of Proposed Rulemaking,* 65 FR 38490, Jun. 21, 2000, 15 FCC Rcd 5140, 5197 (2000) (*Improved Service Report and Order and Further Notice of Proposed Rulemaking*). Consumer Information Bureau Seeks Additional Comment on the Provision of Improved Telecommunications Relay Service, DA 01–1555, *Public Notice*, 16 FCC Rcd 13100, Jun. 29, 2001; published at 66 FR 37631, Jul. 19, 2001. The Public Notice asked for public comment on the benefits of IP Relay, the appropriate means for allowing WorldCom to recover the costs of providing IP Relay, the minimum standards that should apply to IP Relay, and the security of IP Relay calls. *See Public Notice*, 16 FCC Rcd 13103. The Public Notice also sought comment on IP capabilities and outreach regarding TRS. While we do not reach these issues in our consideration of WorldCom's Petition, we will consider these comments along with the other comments received in response to our *Improved Service Report and Order and Further Notice of Proposed Rulemaking.* The Commission received 12 comments and five reply comments from carriers, organizations representing the deaf community, and public officials, along with hundreds of e-mail comments and letters from individuals who use IP Relay. Comments were filed by AT&T, Inc. (AT&T), the California Public Utilities Commission (California), Katherine Keller, Dana Mulvany, the National Association for the Deaf (NAD), Self Help for Hard of Hearing People (SHHH), Sprint Corporation (Sprint), Charles Sterling, Telecommunications for the Deaf, Inc. (TDI), The United States Telecommunications Association (USTA), Ronald Vickery, and WorldCom. Additionally, individuals sent over a hundred e-mails. California, Dana Mulvany, TDI, USTA, and WorldCom filed reply comments. In the *Second Notice of Proposed Rule Making* aspect of this item, we request comment on whether recovery of costs from the Interstate TRS Fund for IP Relay should be a temporary or a permanent measure. If this should be a temporary measure, we seek comment from the public on how IP Relay TRS providers can develop the capability to determine whether a call is intrastate or interstate. If a permanent measure, we seek

comment on the bases for such proposed action. Finally, we seek comment on the mechanisms for applying the process of reimbursement for all affected IP TRS Relay providers, including any small entities providing TRS.

B. Legal Basis

The proposed action is authorized under sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definition of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. 15 U.S.C. 632.

The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Telecommunications Industry Revenue report, regarding the TRS. FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service* (Aug. 2001). TRS Providers. Neither the Commission nor the SBA has developed a definition of small entity specifically applicable to TRS providers. The closest applicable definitions under the SBA rules are for wired telecommunications carriers and telecommunications resellers. 13 CFR 120.201, North American Industry Classification System (NAICS) Code 513310 and 513330. The SBA defines such establishments to be small businesses when they have no more than 1,500 employees. *See* 13 CFR 121.201, NAICS Code 513310 and 513330. According to our most recent data, there are 11 interstate TRS providers, which consist of entities whose core businesses are as interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. This is recent data from National Exchange Carriers Association, which administers the Interstate TRS Fund. We note that currently there are no wireless IP Relay TRS providers. However, we welcome comments on the proposals in our *Second Notice of Proposed Rulemaking* from wireless service providers. We do not have data specifying the number of these providers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and we are thus unable at this time to estimate with greater precision the number of TRS providers that would qualify as small business concerns under the SBA's definition. We note, however, that these providers include large interexchange carriers and incumbent local exchange carriers. Consequently, we estimate that there are fewer than 11 small TRS providers that may be affected by the proposed changes. We seek comment generally on our analysis identifying TRS providers, and specifically on whether we should conclude, for RFA purposes, that any TRS providers are small entities. There is currently one provider of IP Relay TRS, WorldCom, Inc. WorldCom, Inc. is not a small entity. AT&T Corp. and Sprint, Inc. have indicated their intention to provide IP Relay TRS. These two corporations are not small entities. Therefore they are outside the statutory mandated scope of this IRFA.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

If rules establishing a reimbursement system for IP Relay providers are promulgated pursuant to this proceeding, all providers of IP Relay, including small entities, will be required to report to the TRS Administrator data needed to calculate their reimbursement amount. This data would be provided on an existing Interstate TRS Fund Administrator's form. This form is straightforward and simple to complete. In addition, the form represents data that is already collected by TRS providers.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' 5 U.S.C. 603(c)(1)–(c)(4).

The proposals in the *Second Further Notice of Proposed Rulemaking,* and the comments the Commission seeks regarding them, are part of the Commission's analysis of its role with respect to the implementation and operation of nationwide TRS for persons with hearing and speech disabilities. The guiding principle shaping these proposals is Congress' direction to the Commission to ensure that TRS keeps pace with advancing technology and that the Commission's rules do not discourage the implementation of technological advances or improvements. *See* 47 U.S.C. 225(d)(2). Easily the majority of TRS service is provided by large interexchange carriers and incumbent local exchange carriers. The majority of IP Relay TRS is likely to be provided by these same carriers. Currently, WorldCom, which is a large entity, is the only provider of IP Relay. We believe that the number of small entities impacted by these proposals, apparently 11, would be potentially very small. With respect to proposals in the *Second Further Notice of Proposed Rulemaking*, common carriers providing voice transmission services that are subject to the TRS rules, including small entities, may comply with their obligations individually, through designees, through competitively selected vendors, or in concert with other carriers. *See* 47 U.S.C. 225(c). Because of the array of options available to TRS providers when complying with these requirements, the Commission expects that the proposals contained in the *Second Further Notice of Proposed Rulemaking* will have minimal impact on small entities. We tentatively conclude that our proposals in the *Second Further Notice of Proposed*

Rulemaking would impose minimum burdens on small entities. We seek comment on our tentative conclusion.

At this time, there is no mechanism available that would allow differentiation between intra- and inter-state calls made through the Internet. The *Second Further Notice of Proposed Rulemaking* identifies and requests comment on establishing a mechanism for reimbursing IP Relay providers based on the use of a fixed allocator. If an allocator were to be established, all TRS providers, including small entities, would be able to determine the appropriate amount for reimbursement. Such an approach would satisfy the statutory requirement that costs caused by interstate relay service be recovered from all subscribers for every interstate service. An alternative the Commission is considering is making the interim arrangement of cost recovery from the Interstate TRS Fund for *all* calls permanent. We recognize that this alternative may benefit small TRS providers, by simplifying reporting requirements and clarifying reimbursement amounts. We seek comment on the statutory basis for such a decision.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

It is further ordered that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 225, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C 151, 154(i), 154(j), 225, 303(r), and 403, the *Notice of proposed rulemaking is adopted.* Comments regarding the *Notice of proposed rulemaking are requested* as described.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Second Further Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–14678 Filed 6–10–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1280, MB Docket No. 02–130, RM–10438]

Digital Television Broadcast Service; Des Moines, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Frank Duross, Kaleidoscope Partners, Caroline K. Powley, JJJH, LLP, Stead Communications, and ValueVision International, Inc., applicants for a new television station at Des Moines, Iowa, proposing the substation of DTV channel 56 for analog channel 69 at Des Moines. DTV Channel 56 can be allotted to Des Moines at reference coordinates 41–38–05 N. and 93–34–46 W. with a power of 1000, a height above average terrain HAAT of 151 meters.

DATES: Comments must be filed on or before July 29, 2002, and reply comments on or before August 13, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lee G. Petro, Esquire, Fletcher, Heald & Hildreth, PLC, 11th Floor, 1300 North 17th Street, Arlington, Virginia 22209–3801.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–130, adopted May 29, 2002, and released June 5, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail: *qualexint@aol.com.*

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

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

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

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Iowa is amended by removing channel 69 at Des Moines.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under

Iowa is amended by adding DTV channel 56 at Des Moines.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–14649 Filed 6–10–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1279, MB Docket No. 02–129, RM–10437]

Digital Television Broadcast Service; Wilmington, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Raycom America, Inc., licensee of station WECT (TV), Wilmington, North Carolina, proposing the substitution of DTV channel 44 for DTV channel 54. DTV Channel 44 can be allotted to Wilmington at reference coordinates 34–19–16 N. and 78–13–43 W. with a power of 33, a height above average terrain HAAT of 290 meters.

DATES: Comments must be filed on or before July 29, 2002, and reply comments on or before August 13, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners.

Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jonathan Blake, Covington & Burling, 1201 Pennsylvania Avenue, NW., P.O. Box 7566, Washington, DC 20004–7566 (Counsel for Raycom America, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–129, adopted May 29, 2002, and released June 5, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

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

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

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

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under North Carolina is amended by removing DTV channel 54 and adding DTV channel 44 at Wilmington.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–14650 Filed 6–10–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1159; MB Docket No. 02–106, RM–10416; MB Docket No. 02–107, RM–10417; MB Docket No. 02–108, RM–10418; MB Docket No. 02–109, RM–10420]

Radio Broadcasting Services; Presque Isle, MI; Alpena, MI; Harrisville, MI; and Morgan, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes four allotments. The Audio Division requests comments on a petition filed by Northern Paul Bunyan Radio Company proposing the allotment of Channel 227A at Presque Isle, Michigan, as the community's first local aural transmission service. Channel 227A can be allotted to Presque Isle in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 227A at Presque Isle are 45–18–15 North Latitude and 83–28–37 West Longitude. Since Presque Isle is located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence has been requested. *See* Supplementary Information, *infra.*

DATES: Comments must be filed on or before July 8, 2002, and reply comments on or before July 23, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Robert J. Buenzle, Esq., 12110 Sunset Hills Road, Suite 450, Reston, Virginia 22090 (Counsel for Northern Paul Bunyan Radio Company); and Jerry E. White, Managing Partner, Morgan Radio Company, 2586 Old Pelham Road, Pelham, Georgia 31779 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–106, MB Docket No. 02–107, MB Docket No. 02–108, and MB Docket No. 02–109, adopted May 1, 2002, and released May 17, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554.

The Commission requests comments on a petition filed Northern Paul Bunyan Radio Company proposing the allotment of Channel 289A at Alpena, Michigan, as the community's third local commercial FM transmission service. Channel 289A can be allotted to Alpena in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.4 kilometers (4.0 miles) northeast to avoid a short-spacing to the licensed site of Station WKHQ–FM, Channel 290C1, Charlevoit, Michigan. The coordinates for Channel 289A at Alpena are 45–05–30 North Latitude and 83–21–48 West Longitude. Since Alpena is located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence has been requested.

The Commission requests comments on a petition filed by Northern Paul Bunyan Radio Company proposing the allotment of Channel 226A at Harrisville, Michigan, as the community's first local commercial FM transmission service. Channel 226A can be allotted to Harrisville in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 226A at Harrisville are 44–39–22 North Latitude and 83–17–41 West Longitude.

The Commission requests comments on a petition filed by Donald F. White and Jerry E. White, d/b/a Morgan Radio Company, proposing the allotment of Channel 228A at Morgan, Georgia, as the community's first local aural transmission service. Channel 228A can be allotted to Morgan in compliance with the Commission's minimum distance separation requirements with a site at city reference coordinates. The coordinates for Channel 228A at Morgan are 31–32–15 North Latitude and 84–35–58 West Longitude.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Morgan, Channel 228A.

3. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Presque Isle, Channel 227A; by adding Channel 289A at Alpena; and by adding Harrisville, Channel 226A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau.

[FR Doc. 02–14652 Filed 6–10–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1248; MB Docket No. 02–118; RM–10394]

Radio Broadcasting Services; Ridgway, Rangley, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on the proposed substitution of Channel 279C1 for Channel 279C2 at Ridgway, Colorado, and the modification of Station KBNG's authorization accordingly, and the substitution of Channel 257C1 for vacant Channel 279C1 at Rangely, Colorado, to accommodate its upgrade filed on behalf of Idaho Broadcasting Consortium. Channel 279C1 can be allotted at Ridgway at petitioner's requested site 11.9 kilometers (7.4 miles) north of the community. Additionally, Channel 257C1 can be allotted at Rangely at petitioner's suggested site 5.0 kilometers (3.1 miles) northwest of the community. The coordinates for Channel 279C1 at Ridgway are 38–15–26 NL and 107–46–54 WL. The coordinates for Channel 257C1 are 40–7–12 NL and 108–50–29 WL.

DATES: Comments must be filed on or before July 15, 2002, and reply comments on or before July 30, 2002.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Lee W. Shubert Katten Muchin Zavis Rosenman, 1025 Thomas Jefferson Street, NW., East Lobby, Suite 700 Washington, DC, 20007–5201.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–118, adopted May 15, 2002, and released May 24, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail: qualexint@aol.com.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 279C2 and adding 279C1 at Ridgway, and by removing Channel 279C1 and adding Channel 257C1 at Rangely.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau.

[FR Doc. 02–14673 Filed 6–10–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1247; MB Docket No. 02–119; RM–10435]

Radio Broadcasting Services; Clarksdale and Friars Point, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of CSN International, licensee of Station WWUN-FM, Channel 268A, Clarksdale, Mississippi. The petition proposes to change the community of license of Station WWUN–FM from Clarksdale to Friars Point, Mississippi and to upgrade Channel 268A, Station WWUN–FM, to Channel 268C3, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. The coordinates for requested Channel 268C3 at Friars Point, Mississippi, are 34–25–30 NL and 90–35–39 WL.

Petitioner's reallotment proposal complies with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 268C3 at Friars Point, Mississippi, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before July 15, 2002, and reply comments on or before July 30, 2002.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Cary S. Tepper, Esq; Booth, Freret, Imlay & Tepper, P.C.; 5101 Wisconsin Ave., NW., Suite 307; Washington, DC 20016–4120.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–119, adopted May 15, 2002, and released May 24, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Channel 268C3 at Friars Point, and removing Channel 268A at Clarksdale.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau.

[FR Doc. 02–14674 Filed 6–10–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1160; MB Docket No. 02–105; RM–10396]

Radio Broadcasting Services; Boonville, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on the proposed substitution of Channel 300A for vacant Channel 241A at Boonville, California. This channel change will allow Station KSXY(FM), Channel 240A, Healdsburg, California to discontinue using a directional FM antenna and to increase its power to maximum Class A (equivalent) FM facilities. Coordinates used for this proposal are 39–01–33 NL and 123–29–33 WL.

DATES: Comments must be filed on or before July 15, 2002, and reply comments on or before July 30, 2002.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Howard M. Weiss, Esq. and Alison J. Shapiro, Esq., Fletcher, Heald & Hildreth, P.L.C.; 1300 North 17th Street, 11th Floor; Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–105, adopted May 15, 2002, and released May 24, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the

Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com*

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 300A and removing Channel 241A at Boonville.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau.

[FR Doc. 02–14675 Filed 6–10–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Candidate Status Review for Rio Grande Cutthroat Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of candidate status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce the results of the candidate status review for the Rio Grande cutthroat trout (*Onchorhynchus clarki virginalis*) under the Endangered Species Act of 1973, as amended. After a review of all available scientific and commercial information, we have determined that listing of the Rio Grande cutthroat trout is not warranted at this time.

DATES: The finding announced in this document was made on June 3, 2002.

ADDRESSES: You may submit comments regarding this notice to the Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, New Mexico 87113. Written comments and materials received in response to this notice will be available for public inspection, by appointment, during normal business hours at the New Mexico Field Office.

FOR FURTHER INFORMATION CONTACT: Joy E. Nicholopoulos, Field Supervisor, U.S. Fish and Wildlife Service, 2105 Osuna Road NE, Albuquerque, New Mexico 87113. (505) 346–2525 ext 106.

SUPPLEMENTARY INFORMATION:

Background

On February 25, 1998, we received a petition from Kieran Suckling, of the Southwest Center for Biological Diversity requesting that the Service add the Rio Grande cutthroat trout (*Oncorhynchus clarki virginalis*) to the list of threatened and endangered species. The petition addressed the range-wide distribution of the Rio Grande cutthroat trout that includes populations in Colorado and New Mexico. Section 4(b)(3)(B) of the Endangered Species Act (Act) requires that we make a finding on whether a petition to list, delist or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action is—(a) not warranted; (b) warranted; or (c) warranted but precluded by listing proposals of higher priority. We subsequently published a notice of a 90-day finding in the **Federal Register** (63 FR 49062) on September 14, 1998. In the 90-day finding we concluded that the petition did not present substantial information indicating that listing of the Rio Grande cutthroat trout may be warranted.

On June 9, 1999, a complaint was filed by the Southwest Center for Biological Diversity challenging the September 14, 1998, 90-day petition finding as violating the Act and the Administrative Procedures Act. While the litigation was pending, we received information (particularly related to the presence of whirling disease in hatchery fish in the wild) that led us to believe that further review of the status of the species was warranted. On November 8, 2001, a settlement agreement executed by both parties (the Service and the Southwest Center for Biological Diversity) was filed with the court. The settlement stipulates that we will initiate a candidate status review for the Rio Grande cutthroat trout. The settlement also stipulates that on or before June 3, 2002, we will make a determination concerning the results of this review and, shortly thereafter, we will publish our determination in the **Federal Register**. The agreement also states that we will not vacate our previous determination in the interim.

Biogeography and Taxonomy

The Rio Grande cutthroat trout (RGCT) is a subspecies of cutthroat trout, endemic to the Rio Grande, Pecos, and possibly the Canadian River Basins in New Mexico and Colorado. The first specimens that were collected for scientific purposes came from Ute Creek in Costilla County, Colorado. Girard described these fish as *Salar virginalis* in 1856 (Behnke 1967). Cutthroat trout are distinguished by the red to orange slashes in the throat folds beneath the lower jaw. Rio Grande cutthroat trout have irregular shaped spots that are concentrated behind the dorsal fin (largest fin on the back), smaller less numerous spots located primarily above the lateral line anterior to the dorsal fin, and basibranchial (located on the floor of the gill chamber) teeth that are minute or absent. Rio Grande cutthroat trout are light rose to red-orange on the sides and pink or yellow-orange on the belly.

The historical distribution of RGCT is not known with certainty. In general, it is assumed that RGCT occupied all streams capable of supporting trout in the Rio Grande and Pecos basins (Stumpff and Cooper 1996). It is unclear if RGCT were also present in the Canadian River Basin. The Pecos River is a tributary of the Rio Grande, so a historic connection between RGCT in the two basins is possible. The Canadian River, tributary to the Mississippi River, has no connection with the Rio Grande. It is possible that through headwater capture (a tributary from one watershed joins with a tributary from another), there may have been natural migration of fish between the Pecos and Canadian headwater streams. However, because trout were moved and stocked frequently beginning in the 1800s, the difficulties in correctly identifying fish, and errors in locality records make it difficult to know if early reports of trout from the Canadian River headwaters were indeed RGCT. Genetic testing of RGCT from the three basins using

molecular methods has not yet clarified the situation, but research continues on this subject (pers. comm., Yvette Paroz, New Mexico Department of Game and Fish (NMDGF), 2002). Biologists have suggested that RGCT may have occurred in Texas (Garrett and Matlock 1991) and Mexico (Behnke 1967). Currently, the southern most distribution of RGCT occurs in Animas Creek, Sierra County, New Mexico, and Indian Creek on the Mescalero Apache Indian Reservation in Otero County, New Mexico.

Life History

Because the RGCT has not been studied intensively, less is known specifically about their habitat requirements or life history characteristics than is known for several other subspecies of cutthroat trout. As is true of other subspecies of cutthroat trout, it is found in clear, cold streams. Unlike some subspecies of cutthroat trout, such as the Bonneville (*O. c. utah*) and Yellowstone (*O. c. bouvieri*), RGCT did not originally inhabit large lake systems. However, they have been introduced into coldwater lakes and reservoirs. They spawn as high flows from snowmelt recede, typically from the middle of May to the middle of June in New Mexico (NMDGF 2002). Spawning is probably keyed to day length, water temperature, elevation, and runoff (Stumpff 1998, Sublette *et al.* 1990). The size of mature females ranges from 10.7–26 centimeters (4.21–10.27 inches (in)) (Stumpff 1998). Number of eggs per female varies greatly depending on the size and age of the fish. Stumpff (1998) reported that average egg production from 93 females spawned from Rio Puerco, New Mexico, was less than 100 eggs per female; however, these fish may have been collected after the peak of the spawn. From efforts to develop RGCT broodstock, fish from several streams were collected and spawned from 1994 to 1997. The average number of eggs per female from these collections was 175 (Stumpff 1998). The mean number of eggs taken from 12 RGCT from Indian Creek (Tularosa Basin) was 311 with the range between 232–454 (Cowley 1993). Sublette *et al.* (1990) state that females produce between 200–4,500 eggs; however, this figure applies to all cutthroat subspecies and is not specific to RGCT.

It is unknown if RGCT spawn every year or if some portion of the population spawns every other year as has been recorded for westslope cutthroat trout (*O. c. lewisi*) (McIntyre and Rieman 1995). Likewise, while it is assumed that females mature at age 3, they may not spawn until age 4 or 5 as seen in westslope cutthroat trout (McIntyre and Rieman 1995). Sex ratio is also unknown, but a ratio skewed towards more females might be expected (Cowley 1993). Although Yellowstone (Gresswell 1995), Colorado River (*O. c. pleuriticus*) (Young 1995), Bonneville (Service 2001), and westslope (Bjornn and Mallet 1964, McIntyre and Riemand 1995) cutthroat subspecies are known to have a migratory life history phase, it is not known if RGCT currently have, or once had, a migratory form when there were fluvial (flowing water) connections among watersheds.

Most cutthroat trout are opportunistic feeders, eating both aquatic invertebrates and terrestrial insects that fall into the water (Sublette *et al.* 1990). RGCT evolved with Rio Grande chub (*Gila pandora*), longnose dace (*Rhinichthys cataractae*) (all basins); Rio Grande sucker (*Catastomus plebius*) (Rio Grande Basin); white sucker (*C. commersoni*) and creek chub (*Semotilus atromaculatus*) (Pecos and Canadian Basins), and the southern redbelly dace (*Phoxinus erythrogaster*) (Canadian River Basin) (Rinne 1995). Many of these fish have either been extirpated from streams with RGCT or are greatly reduced in number. It is not known if they once were an important component of RGCT diet. Other species of cutthroat trout become more piscivorous (fish eating) as they mature (Sublette *et al.* 1990, Moyle 1976), and cutthroat trout living in lakes will prey heavily on other species of fish (Echo 1954). It is possible that native cyprinids (i.e., chubs, minnows, and dace) and catastomids may have once been important prey items for RGCT.

Growth of cutthroat trout varies with water temperature and availability of food. Slowest growth is seen in high-elevation streams where temperatures are cold and productivity is typically low. Most populations of RGCT are found in high-elevation streams and under these conditions growth may be relatively slow, and time to maturity may take longer than is seen in subspecies that inhabit lower elevation streams. Based on 471 fish from 3 streams, Cowley (1993) estimated the following age/size classes: age 0, 30–64 millimeters (mm), (1.0–2.5 in); age 1, 65–114 mm (2.5–4.5 in); age 2, 115–149 mm (4.5–5.9 in); age 3, 150–174 mm (5.9–6.9 in); age 4, 175–205 mm (6.9–8.0 in); and age 5, over 205 mm (8.0 in). At Seven Springs Hatchery, eggs hatched in 32 days at 10 degrees Celcius (°C), 50 degrees Fahrenheit (°F) (NMDGF 2002).

Typical of trout, RGCT require four types of habitat for survival: spawning habitat, nursery or rearing habitat, adult habitat, and overwintering habitat. Spawning habitat consists of clean gravel (little or no fine sediment present) that ranges between 6 to 40 mm (0.24–1.6 in) (NMDGF 2002). Nursery habitat is usually at the stream margins where water velocity is low and water temperature is slightly warmer. Harig and Fausch (in press) have found that water temperature may play a critical role in the life history of the young of the year cutthroat. Streams with cold temperatures (less than 7.8°C (46°F) mean daily temperature for July) may not have successful recruitment or reproduction in most years. The cold temperatures can delay spawning and prolong egg incubation. Fry (recently hatched fish) emerge later in the summer and may not have sufficient time to grow and gain metabolic reserves to be able to overwinter. Overwintering habitat in the form of large deep pools that do not freeze is also necessary for survival. Lack of large pools may be a limiting factor in headwater streams (Harig and Fausch in press).

Analysis

It has been estimated that there are 106 populations of RGCT in New Mexico (NMDGF 2002) and 161 in Colorado (Alves *et al.* 2002) in both streams and lakes. All of these populations contribute in some way to the overall security of the range-wide population. However, many of these populations are hybrids, some populations have an extremely low number of individuals, and some have been invaded by nonnative salmonids that either hybridize or compete with RGCT. These factors can make individual RGCT populations more vulnerable to extinction and limit the likelihood of their long-term persistence. Conservation actions can remove or reduce these threats. Because ecological factors affecting persistence vary among populations, we decided to use criteria to categorize populations based on vulnerability to threats that affect long-term persistence. The populations deemed most likely to persist are considered ''core'' populations. Criteria were established for purity, population stability, and security from invasion by nonnative salmonids. We recognize that our criteria are conservative, and that population estimates are not precise. For these reasons we also evaluate non-core populations (discussed in the conclusion) that do not meet all of the core criteria but are important components of the range-wide population.

Genetic Purity

For the purposes of this review we considered ''pure'' to mean that there was less than 1 percent introgression (genetic mixing) with either rainbow or another subspecies of cutthroat trout. Allendorf *et al.* (2001) suggest that conservation efforts should focus on maintaining and expanding remaining pure populations, and we have decided to follow this guidance for RGCT. To meet our criteria, testing for purity had to include either allozymes (forms of an enzyme) or nuclear DNA (genetic coding molecule in cell nucleus). We did not include populations that were tested only with meristics (counts of body parts). Although a meristic evaluation is a good first step to determine purity, individuals can look pure and still have a significant level of introgression. We also did not include the results from mitochondrial DNA (mtDNA). Because mtDNA is passed on only from the mother to her offspring, it can only detect hybridization when the mother is a rainbow trout or another subspecies of cutthroat trout and the father is RGCT; however, it cannot detect hybridization when the mother was RGCT and the father was another species. For this reason we have not included populations that were only tested with meristics and mtDNA or mtDNA only.

The exclusion of populations with evidence of greater than 1 percent introgression does not imply that these populations may not be important to the species conservation or that they should be eliminated from stream systems. They provide recreational opportunities for anglers; in some watersheds they may act as a buffer between pure populations and downstream areas where nonnatives are present, and in some streams hybrids may still contain genes unique to a watershed. There is a minimum of 30 pure, remnant populations of RGCT widely distributed range-wide. It is likely that the gene pool of the hybrid populations is represented in one of the many pure, remnant populations. In terms of restoration, only pure populations are used for translocation into renovated streams or for use as broodstock in hatcheries. For these reasons we view pure populations as particularly important to the status of the RGCT.

We identified a total of 82 populations (remnant and transplants) in New Mexico and Colorado that are genetically pure. An additional 13 populations have been identified as pure by NMDGF and Colorado Department of Wildlife (CDOW) based on meristics or a combination of meristics and mtDNA. Genetics testing is in progress on 12 populations in New Mexico, and 31 more populations are scheduled for testing through 2005 (NMDGF 2002). Once additional genetic testing is completed, it is likely that several more pure populations will be identified.

Population Stability

For the long-term persistence of a population, sufficient population size is needed to prevent inbreeding depression (genetic defects caused by mating of closely related family members) and maintain genetic variation (Franklin 1980). Large populations also have been suggested to be less susceptible to both demographic events (random changes in the population structure, e.g., uneven male/female ratios), and environmental random events (random changes in the fishes' surroundings) that can eliminate small populations. The expected time to extinction decreases as population size decreases (Rieman *et al.* 1993). Habitat size (length of stream) and habitat quality affect the potential size of the population: the larger the fragment, the more likely the population will be large and able to resist chance extinctions (Gilpin and Soulé 1986). Smaller stream fragments can have less diverse habitats and a lack of refugia (areas where individuals can survive through environmentally challenging periods) that can lead to greater population fluctuations through time (Rieman and McIntyre 1995). As long as birth rate equals or exceeds death rate, small populations may persist; however, smaller isolated populations may be more vulnerable to detrimental effects of genetic change and detrimental effects of demographic and environmental change.

Dr. David Cowley (New Mexico State University) developed a model to determine population viability for RGCT in New Mexico (NMDGF 2002). The model incorporates habitat size, population size, reproductive success, a probability of extinction of less than 10 percent over 100 years, and a probability that long-term net effective population size (N_e) of 500 is greater than 90 percent. For the purposes of this review, we consider elements in the model and work done on other populations of salmonids to evaluate the likelihood of long-term population persistence. Three factors were considered: population number, biomass (weight of fish per unit area), and stream length. Of these factors, population number is considered to be the most important for viability and has been discussed most often in the literature.

Franklin (1980) proposed some general rules for effective population sizes to maintain a genetically viable population. Franklin's ''50/500'' rule is still used as a starting point by which to judge the viability of populations. This rule suggests that a short-term N_e size of 50 will prevent an unacceptable rate of inbreeding, and a long-term N_e size of 500 will maintain overall genetic variability. The N_e size refers to an ideal population of breeding adults produced by the random union of an equal number of male and female gametes randomly drawn from the previous generation. The population size (N) needed to meet the effective population varies according the percent of individuals that are capable of breeding, the number of animals that actually breed, sex ratio, and other factors. Typically, N_e/N ratios vary from 10 to 33 percent giving long term population sizes of 2,000 to 5,000 (Thompson 1991). Population sizes between 2,000 and 5,000 have been suggested as appropriate for the long-term persistence of other fish populations (Nelson and Soulé 1987, Reiman and McIntyre 1993, Hilderbrand and Kershner 2000), based on both genetic and demographic consideration.

For this analysis we consider 2,500 total fish in a population to be a number that will ensure long-term persistence (*i.e.,* reduce the risks associated with small population size alone). Although larger populations are most likely incrementally ''safer,'' in the absence of specific work on RGCT, we determined that 2,500 individuals is a reasonable number that falls within the range suggested for other salmonids. Although there are examples of persistence of much smaller populations of RGCT (100–500 individuals), these fish evolved in connected systems and we have no assurance at this time that they can persist (*i.e.,* survive as a species for 100–500 years). We do not know if isolated populations of RGCT can be sustained for long periods (100 years) in small stream fragments; however, managers have documented the persistence of small RGCT populations for at least 30 years (Interagency meeting on RGCT, pers. comm. 2002). There are 11 pure populations in New Mexico and 10 in Colorado that have more than 500 and less than 2,500 individuals and 15 populations in both States with less than 500 individuals.

Biomass of fish and stream length are related to population size. Both of these factors have been used as alternative methods to judge the viability of inland trout populations (Service 1998, Hilderbrand and Kershner 2000). In the greenback cutthroat recovery plan, one

recovery goal is that populations have a biomass of 22 kilograms/hectare (kg/ha), 20 pounds/acre (ac) (lb/ac) (Service 1998). All the RGCT populations with 2,500 fish or more have a biomass greater than 22 kg/ha (20 lb/ac). The lowest biomass in the populations with 2,500 or more individuals is 29 kg/ha (26 lb/ac). Seventeen of 22 populations of RGCT with 2,500 fish or more have a biomass of 50 kg/ha (44.6 lb/ac) or more. Biomass is not considered a limiting factor in these pure populations.

Having sufficient stream length is another factor that can play a role in the survival of cutthroat trout populations (Hilderbrand and Kershner 2000, Harig and Fausch in press). Fish density is high for RGCT populations with over 2,500 individuals, suggesting that the stream length of 8 kilometers (km) (4.9 miles (mi)) suggested by Hilderbrand and Kershner (2000) is probably sufficient for most of the streams. Only one stream reach with a population of more than 2,500 fish is of a length shorter than is recommended. However, fish density is high (0.7 fish/meter, 0.21 fish/foot), and we deduce from this that the habitat is of high quality and sufficient to support a strong population.

We identified 22 pure populations with 2,500 or more fish, but there may be slightly more or slightly fewer. An inherent problem with using population size as a criterion for the status review is that populations fluctuate naturally from year to year. Survey sites might not represent the entire stream; a limited number of surveys have been conducted on each stream (0–4); survey methods vary; survey efficiency varies with crew experience and stream conditions (deep water, complex habitats such as beaver ponds, and low water conductivity decrease electrofishing efficiency); and surveys have not been conducted recently on some streams. Around every population estimate are upper and lower confidence intervals that may be large or small. It is possible that more populations should be included in the pure, secure, and stable category because they have slightly less than the 2,500 fish criterion employed here. Riley and Fausch (1992) found that two- and three-pass removal methods underestimate total abundance because of decreasing catchability of fish with each pass (electrofishing a set length of stream). Nearly all the survey results are from two- or three-pass methods, so it is possible that of the populations that did not meet the 2,500 fish criterion, some actually have 2,500 fish or more. It is possible that with new survey data the streams in the stable group could change with some dropping down below 2,500 fish and with others being added. Twelve populations in New Mexico that have tested pure have no population information available. It is possible that five of these, which are in longer stream segments (8 to 18 km [5.0 to 11.2 mi] long), would meet the 2,500 fish criterion.

Population Security

A population of RGCT is not considered secure if nonnative salmonids are present. The presence of rainbow trout in RGCT populations is unacceptable because of hybridization. Because brook trout (*Salvelinus fontinalis*) and brown trout (*Salmo trutta*) are fall spawners (RGCT spawn in spring), they do not hybridize with RGCT. However, they are competitors for food and space, and there have been both historic and recent examples of population extirpation due to nonnative introductions. In some limited situations, co-existence of RGCT and brook or brown trout may occur, especially in high-gradient or high-elevation streams that may favor cutthroat trout. However, not enough is known about the competitive interactions between these fish to know what factors tip the scale in favor of the nonnatives over RGCT. Preliminary evidence from Peterson and Fausch (2001) indicate that brook trout have the most impact on young of the year Colorado River cutthroat trout. Competitive interactions between RGCT and brook or brown trout have not yet been studied. Where nonnatives are present, active management must occur to remove them on a regular basis or the nonnative trout will gradually replace RGCT. For the purposes of this review, the emphasis is on self-sustaining pure populations of RGCT. Brook and brown trout are present in several pure populations of RGCT. While these populations are less secure than the populations without nonnatives, removal of the nonnatives by State agency personnel on a regular basis can lead to stable RGCT populations. These populations are important to the overall status of the subspecies.

Inextricably linked to the presence of nonnatives is the presence of a barrier. Barriers prevent nonnatives from migrating into habitat occupied by RGCT. They also prevent the upstream migration of RGCT, limiting gene flow among populations. Until more watersheds with connecting tributaries are restored, having secure barriers to prevent invasion of nonnatives is essential for protecting existing populations. Once large watersheds are restored, upstream barriers could be breached to allow for free passage of RGCT upstream and downstream. For this status review, populations had to be protected by a barrier to be considered secure with no nonnative trout above the barrier. We identified 13 populations that are pure (confirmed by appropriate genetic testing), have over 2,500 fish, are secured by a barrier, and do not coexist with nonnatives (see Table 1 below).

TABLE 1.—STREAMS WITH PURE, STABLE, AND SECURE POPULATIONS OF RIO GRANDE CUTTHROAT TROUT, THEIR WATERSHEDS, AND LAND STATUS

Watershed	Stream	Ownership
Colorado		
Saguache	Cross	Rio Grande NF/private.
San Luis	Medano Cr	Rio Grande NF/NPS.
Alamosa/Trinchera	San Francisco Cr	private/Rio Grande NF.
New Mexico		
Canones Cr	Canones Cr	Santa Fe NF.
El Rito Cr	El Rito Cr	Carson NF.
Red River	Bitter Cr	Carson NF.
Red River	Columbine Cr	Carson NF.
Rio Cebolla	Rio Cebolla	Santa Fe NF.
Rio Puerco West	Rio Puerco (west)	Santa Fe NF.

TABLE 1.—STREAMS WITH PURE, STABLE, AND SECURE POPULATIONS OF RIO GRANDE CUTTHROAT TROUT, THEIR WATERSHEDS, AND LAND STATUS—Continued

Watershed	Stream	Ownership
San Cristobal	San Cristobal	Carson NF.
Pecos River	Jacks	Santa Fe NF.
Rio Chamita	Powderhouse	Carson NF.
Rio Pueblo	Policarpio	Carson NF.
Tested pure with meristics and mtDNA or meristics only		
Colorado		
Alamosa/Trinchera	Cat Cr	Rio Grande NF.
Alamosa/Trinchera	Jaroso Cr	private.
Alamosa/Trinchera	Torcido	private.
Conejos	Osier	Rio Grande NF.
Conejos	Cascade Cr	Rio Grande NF.

NF = National Forest, NPS = National Park Service. Five streams have not been tested using allozymes or nuclear DNA, however, it is highly likely that they will test pure based on their isolation from nonnative trout.

Analysis of Factors Affecting the Populations

Section 4 of the Act and regulations (50 CFR 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be threatened or endangered due to one or more of the five factors discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The historic range of RGCT has been greatly reduced over the last 150 years. Many populations have been lost or impacted by water diversions, dams, habitat degradation, changes in hydrology, hybridization with rainbow trout, or competition with brown or brook trout. Quantifying the exact magnitude of loss in either number of fish or habitat is difficult because there are no baseline data. Stumpff and Cooper (1996) estimated the loss in habitat (stream miles) to be about 91 percent in New Mexico. Harig and Fausch (1998) suggest that native cutthroat (greenback and RGCT) have been reduced to less than one percent of their historic habitat. Because RGCT are now restricted to headwater and first and second order streams that are narrow and small compared to larger second, third, and fourth order streams they once occupied, the absolute loss of habitat is greater than stream miles might indicate and includes the loss of diversity of habitat found in larger stream systems. As a consequence of the habitat loss, RGCT populations that were once connected are now fragmented.

The constriction and fragmentation of RGCT habitat most likely began gradually about 1350 A.D. and accelerated in the late 1800s. Agriculture in the Rio Grande Valley began about 1350 A.D. and water diversions for the irrigation of crops started at that time (Crawford *et al.* 1993). Diversion of water from tributaries of the Rio Grande probably represents the first interruptions in RGCT habitat. Following Spanish colonization in 1598, human influence increased as more land was cleared and more acequias (irrigation canals) were built to divert water into fields. The greatest contraction in RGCT habitat most likely occurred between 1880 and 1973. In 1880, the maximum number of acres in the middle Rio Grande Valley were under cultivation, and grazing pressure was intense with over 2 million sheep and 200,000 cattle, horses, and mules (Crawford *et al.* 1993). In addition, it is likely that RGCT were sought for subsistence during this time. In the early 1900s, numerous water supply and flood control dams were built in the Rio Grande headwaters (Crawford *et al.* 1993). Rainbow, brook, and brown trout were introduced at the turn of the century (Sublette *et al.* 1990). The livestock industry grew through the mid-1930s and livestock numbers increased far beyond the carrying capacity of the range and had a widespread negative impact on riparian systems (Meehan and Platts 1978). In addition, timber harvest and an associated increase in roads led to increased levels of sedimentation in the streams. As a result of these multiple impacts, reduction of RGCT habitat occurred range-wide, affecting essentially every watershed.

Habitat fragmentation reduces the total area of habitat available, reduces habitat complexity, and isolates the fragments (Saunders *et al.* 1991, Rieman and McIntyre 1993, Rieman and McIntyre 1995, Burkey 1995). Originally, many watersheds supporting RGCT would have been connected creating an interconnected network. For example, in Colorado, the Trinchera, Conejos, Culebra, Costilla, and Alamosa Rivers would all have been connected through the upper Rio Grande, forming a vast network of streams. Each of these watersheds is now isolated from one another, and RGCT are restricted to fragments of streams. Compared to the lower elevation, larger order streams, the high-elevation streams that RGCT are now restricted to may represent relatively poor habitat. Water temperatures are colder, productivity is lower, length of time for young-of-the-year development is shorter, and amount of habitat available is less. For some isolated populations, fragmentation may lead to a negative growth rate and extinction over time (Terborgh and Winter 1980).

Burkey (1995) suggests that fragmentation accelerates extinction, especially when dispersal among fragments is not possible, as is the case with some RGCT populations. Isolated populations are vulnerable to extinction through demographic change (random changes in the population structure, e.g., uneven male/female ratios), environmental change (random changes in the fishes' surroundings) and catastrophes (e.g., fires and massive flooding), loss of genetic heterozygosity (genetic diversity) and fixation of rare detrimental alleles (inherited forms of a genetic trait), and human disturbance (Burkey 1995). It has been suggested that spatial and temporal complexity is needed so that the expression of complex life histories (*i.e.,* migratory and sedentary forms) can be maintained (Rieman *et al.* 1993, Dunham *et al.* 1997, Harig and Fausch in press). In

fragmented habitats, fish are unable to migrate or if they do migrate downstream past a barrier, they are lost from the population. It is possible that migratory behavior is a hedge against catastrophes. Individuals that have migrated away from a stream segment escape death during the catastrophic event and are then available to recolonize the open habitat once it becomes suitable again (Rieman and McIntyre 1993). In streams subject to a variety of natural extreme events (drought, fire, flooding) such as the streams in New Mexico, having a variety of life histories may have been an evolutionarily advantageous adaptation. Currently, fish migrating from isolated streams are lost from the population, and, if a population is extirpated, recolonization is not possible except through specific management activities such as stocking. Over time, this can lead to the loss of migratory behavior as the genes responsible for the behavior are non-advantageous and are essentially selected against.

Watershed scale projects have been initiated on both private and National Forest lands and are in various phases of implementation. Three projects are briefly summarized. A joint project between Vermejo Park Ranch and the States of Colorado and New Mexico to restore the Costilla Creek watershed is in progress. A Memorandum of Understanding was signed by all parties in 2001 and an Environmental Assessment was completed. Restoration is scheduled for July 2002. The restoration will remove brook trout, brown trout, and introgressed cutthroat trout and reintroduce pure RGCT into 4 tributaries and 4 small lakes, totaling 22 km (13.6 miles) of stream and 9.5 ha (23.5 acres) of lake. A draft environmental assessment has been completed on Animas Creek on the Ladder Ranch, Sierra County, New Mexico, in cooperation with the Gila National Forest. The restoration portion of the project is scheduled to occur in October 2002. Approximately 48 km (29.8 miles) of stream will be restored. A Watershed Restoration Action Strategy for the Comanche Creek watershed has been written, and a work plan has been submitted and approved by the New Mexico Environment Department. Six partners will work together to improve habitat conditions on Comanche Creek, a watershed with over 70 km of streams and pure RGCT in the upper tributaries. Recovery of this watershed will be a substantial gain for RGCT, especially if the pure populations expand downstream.

The recent establishment of the Valles Caldera National Preserve presents the opportunity to restore the headwaters of the East Fork Jemez and San Antonia Rivers with RGCT. With the Santa Fe National Forest managing the land downstream of the Valles Caldera, there is the opportunity to connect the two river systems together and restore over 112 km (69.6 miles) of stream. Initial contacts have been made and both parties are interested in pursuing this large-scale restoration project. The Rio Santa Barbara watershed (Camino Real Ranger District, Carson National Forest) is another site with excellent potential to reconnect multiple populations (West Fork, Middle Fork, and East Forks of Rio Santa Barbara, Jicarita, and Indian Creeks). In 1999, a barrier was built on East Fork and the barrier on the Middle Fork Rio Santa Barbara was improved. Brown trout were removed from above the barriers from 1998 to 2000. While some progress has been made, we note that a significant amount of planning and on the ground activities remain to be done. We recognize that these projects may not come to fruition, and we are not relying on them as part of this status review. However, we mentioned them here to recognize that the States and Federal agencies are looking for opportunities to conserve the RGCT in areas where it historically occurred.

Habitat fragmentation is a threat that can be alleviated by management activities. Currently there are five pure, stable, and secure populations that are connected to at least one other tributary. Six other large, pure, connected populations exist but nonnatives are present. State and Forest Service personnel remove nonnatives from these streams during population surveys and as part of ongoing management actions.

The Service determines that fragmentation is not a threat to the persistence of these 13 populations now or in the foreseeable future. All the 13 pure, stable, and secure populations have over 2,500 fish, which provide sufficient numbers to prevent an unacceptable rate of inbreeding and to maintain genetic variability in these populations. Recognizing this, population sizes between 2,000 and 5,000 have been suggested as appropriate for the long-term persistence of other fish populations (Nelson and Soulé 1987, Reiman and McIntyre 1993, Hilderbrand and Kershner 2000), based on both genetic and demographic consideration. Additionally, the length of these streams (mean equals 12.4 km (7.7 mi)) is sufficient to provide diverse habitats to meet all the life history requirements of the fish. This statement is supported by the high fish density (mean equals 0.5 fish/m (0.15 fish/ft)) present in these core streams. Another potential threat from fragmentation is related to catastrophic events. However, if a catastrophic event (e.g., fire, drought) results in the extirpation of one or more of these 13 populations, the States and Federal agencies have the capability to replace the population with hatchery fish or fish transplanted from another pure population.

Habitat Condition

Rio Grande cutthroat habitat has been degraded by many activities. Impacts have been caused by livestock grazing and timber harvest (with associated roads). Mining has impacted specific sites. Livestock grazing practices on public land in New Mexico have improved. Changing livestock stocking levels and improved management practices have occurred and will continue to occur following current management direction (James Webb, Rio Grande National Forest, *in litt.* 1994). Restoration of riparian areas and maintaining healthy habitat is a priority for the Forest Supervisors and Regional Foresters (Leonard Atencio, Santa Fe National Forest, *in litt.* 2002, Peter Clark, Rio Grande National Forest *in litt.* 2002). Although recovery of these habitats can be slow, the continued commitment of managers to restore watersheds will continue to improve RGCT habitat over time.

Timber harvest and associated road building have also led to the deterioration of RGCT habitat. However, timber harvest in the National Forests has declined appreciably in the last 15 years. As an example, in New Mexico, from 1987 to 1990 the amount of timber cut averaged 146,722 million board feet (MBF). From 1991 to 2001 the average has been 35,740 (MBF) (Paul Fink, USDA Forest Service, *in litt.* 2002). Few new roads are built in conjunction with timber harvest as the existing infrastructure can be used (Paul Fink, USDA Forest Service, pers. comm. 2002). Roads are being decommissioned and obliterated on all the forests, reducing their contribution to sedimentation of streams. For example in Region 3 of the USDA Forest Service, in 1999, 2000, and 2001, 528, 375, and 332 miles of roads, respectively, were decommissioned (Mike Noland, USDA Forest Service, *in litt.* 2002). Many of the current pure, stable, and secure populations occur at elevations where timber harvest has not occurred and therefore, have not been affected. As management activities proceed to expand populations to lower elevations, restoration will continue to improve habitat condition in those areas, such as

is planned on Comanche Creek (discussed above).

Habitat condition in streams with pure, stable, and secure populations was assessed by CDOW, NMDGF, or Forest Service biologists depending on which agency was most familiar with a particular stream. Condition was rated either as 0, no habitat problems; 0–1 which usually indicated that headwater reaches were in good condition and lower reaches had problems in discrete areas; 1, some problems identified (sedimentation, lack of pools, warm water temperature, heavy metals, etc.); and 2, pervasive problems related to RGCT habitat were identified. In most instances, sedimentation and problems related to livestock grazing were identified as primary sources of habitat degradation. While streams that are rated with a ''1'' have some level of habitat degradation that probably prevents populations from reaching maximum reproductive capability, the degradation is not judged to be a threat to the existence of any of the populations. In most instances, stream habitat condition was rated between the range of 0 to 1, with very few streams rated as 2. Based on the outcome of these assessments for each stream, it is the opinion of the agencies responsible that habitat problems are typically localized and can be or are being addressed through management practices (Interagency meeting on RGCT, pers. comm. 2002).

Based on the information provided to us by agency personnel (Interagency meeting on RGCT, pers. comm. 2002), discussed in the paragraph above, as well as the information stated above on timber harvest and livestock grazing, the Service determines that habitat condition is not a threat to the 13 pure, stable, and secure populations or to the populations with 500 to 2,500 fish. Although habitat condition may prevent maximum reproductive potential in some populations, habitat condition is not judged a threat to the existence of any of the populations. In addition, as evidenced by the number of roads being decommissioned, lower levels of timber harvest and associated road building, and changes in livestock management practices, sedimentation from these sources is most likely declining. Over time we expect RGCT trout habitat to improve.

Fish Barriers

Barriers are essential to separate RGCT from nonnative salmonids. However, to be effective barriers must be checked frequently and be maintained. Flood events can either blow a man-made barrier out, change the channel morphology permanently, or provide a temporary channel around the barrier that fish can use for upstream migration. Older gabion barriers (rocks in a wire basket) and culverts appear to be the most vulnerable structures. Changes in water velocity (either an increase or decrease depending on the situation) can change an impassable barrier into one that can be passed. These structures should be checked on a regular basis. Regardless of the structure, reaches above barriers need to be checked regularly because nonnatives are sometimes found upstream of barriers with no evidence of impairment to the barrier. This can be caused by an incomplete removal of nonnatives during stream restoration or illegal transplantation of nonnative trout. The only solution to the latter situation is the education of the public and gaining their widespread support for RGCT. Education and outreach efforts are discussed below under ''Public sentiment.''

Both Colorado and New Mexico have conducted barrier inventories (see factor D. for further information on past activities). New Mexico will assess the status of 8 barriers in 2003, 13 in 2004, and 13 in 2005 (NMDFG 2002). The Forest Service also assesses barriers as part of its stream surveys. With the increase in numbers of Forest Service fisheries biologists and technicians that has occurred in the last few years, miles of stream inventory have increased. For example, on the Carson National Forest a full time Fisheries Biologist and two technicians have been added to the staff (Fact sheet received from Carson National Forest, *in litt.* 2002). They completed 50 miles of stream surveys in 2001. In 2000, the Santa Fe National Forest hired a full time fisheries biologist. In 2001, they employed 2 temporary fisheries biologists, 8 fisheries technicians, and 7 interns. In 2001, 105 miles of stream were surveyed (Ferrel 2001). A similar level of staffing is expected for the field season of 2002, and it is anticipated that approximately 150 miles of streams will be surveyed (James Simino, Santa Fe National Forest, pers. comm. 2002). For these reasons, the Service determines that barrier failure is not a threat to the 13 pure, stable, and secure populations.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There is no commercial fishing for RGCT. Because of fishing regulations in New Mexico and Colorado, recreational angling is not considered a threat to the species. Many of the streams with RGCT are ''catch and release.'' Those that are not have a 2 (New Mexico) or 4 (Colorado) fish limit. Many of the streams with pure populations of RGCT are remote and angling pressure is light (Interagency meeting on RGCT, pers. comm. 2002).

Overutilization for scientific purposes is not considered a threat to RGCT. Because of advancements in molecular technology, a small clipping from a fin provides sufficient material to perform molecular analysis of genetic purity. To test for whirling disease, usually 60 fish are collected and these fish must be sacrificed. To minimize the collection of RGCT, nonnative salmonids are collected preferentially over RGCT or sample sites are selected below a barrier that protects a population of RGCT. In some situations fewer RGCT will be collected and sacrificed for testing.

Overutilization of a population can occur when it is used repeatedly as a source of fish for translocations. Managers must carefully assess the status of a population before it is used as a source of fish or eggs for broodstock or transplantation of adults to other streams. Reducing a population to low levels can make it very susceptible to other impacts, such as the introduction of nonnatives as has occurred on West Indian Creek in Colorado (Alves *et al.* 2002). When collecting fish for translocation, care must be taken in deciding how many, of what age class, and from where fish are taken. The broodstock management plan developed by Cowley (1993) for NMDGF addresses these issues and provides criteria regarding the selection of founder populations. With proper management, depletion of the 13 core populations is not a threat.

The Service determines that overutilization for recreational and scientific purposes is not a threat to the 13 pure, stable, and secure populations for the reasons stated above. Overutilization for commercial or educational reasons has not been identified as a threat.

C. Disease or Predation

Whirling disease (WD) was first detected in Pennsylvania in 1956, being transmitted here from fish brought from Europe (Thompson *et al.* 1995). *Myxobolus cerebralis* is a parasite that penetrates through the skin or digestive tract of young fish and migrates to the spinal cartilage where it multiplies very rapidly, putting pressure on the organ of equilibrium. This causes the fish to swim erratically (whirl), and have difficulty feeding and avoiding predators. In severe infections, the disease can cause high rates of mortality in young-of-the-year fish. Water

temperature, fish species and age, and dose of exposure are critical factors influencing whether infection will occur and its severity (Hedrick *et al.* 1999). Fish that survive until the cartilage hardens to bone can live a normal life span, but have skeletal deformities. Once a fish reaches three to four inches in length, cartilage forms into bone and the fish is no longer susceptible to effects from whirling disease. Fish can reproduce without passing the parasite to their offspring; however, when an infected fish dies, many thousands to millions of the parasite spores are released to the water.

The spores can withstand freezing, desiccation, passage through the gut of mallard ducks, and can survive in a stream for many years (El-Matbouli and Hoffmann 1991). Eventually, the spore must be ingested by its alternate host, the common aquatic worm, *Tubifex tubifex*. After about 3.5 months in the gut of the worms, the spores transform into a Triactinomyon (TAM). The TAM's leave the worm and attach to the fish or they are ingested when the fish eats the worm. Either method can lead to infection. It is likely that the parasite will continue to spread to more and more streams because the spores are easily transported by animals and humans.

Salmonids native to the United States did not evolve with WD. Consequently, most native species have little or no natural resistance. Colorado River cutthroat trout and rainbow trout are very susceptible to the disease with 85 percent mortality within 4 months of exposure to ambient levels of infectivity in the Colorado River (Thompson *et al.* 1999). Percent survival of RGCT in this research was less than one percent (Thompson *et al.* 1999). Even though the cutthroat trout had lower spore concentrations than did the rainbow trout, they often showed more overt signs of the disease and died at a faster rate. Brown trout, native to Europe, become infected by *M. cerebralis*, but rarely suffer clinical disease. At the study site on the Colorado River, brown trout thrive whereas there has been little recruitment to age 1 of rainbow trout since 1992 (Thompson *et al.* 1999). Yellowstone cutthroat trout have also been shown to be very susceptible to WD (Hiner and Moffitt 2001).

Whirling disease was first detected in New Mexico in 1988 in rainbow trout imported into private ponds in the Moreno Valley in northern New Mexico. The first case of WD in wild trout that could not be directly linked to importation or transportation of fish was detected in autumn of 1999 in the Pecos River. The Cebolla, San Juan, Cimarron, Red and Canones Rivers are also infected. Three of seven State hatcheries also tested positive (Seven Springs, Lisboa Springs, and Parkview). The *M. cerebralis* was accidentally introduced in Colorado in the 1980s through imported trout from a private hatchery. The parasite has been confirmed in three drainages that support RGCT: South Fork Rio Grande, Rio Grande, and the Conejos. Eight of Colorado's State hatcheries have tested positive for WD.

In New Mexico all WD positive fish are destroyed. Seven Springs fish hatchery has been renovated and is no longer WD positive. There is an ongoing program to test more drainages for WD. In Colorado, a policy implemented in spring 1995 prevents the stocking of trout from hatcheries testing positive into waters where WD has not been found, including wilderness areas and streams where native trout may be restored, and no WD positive fish are to be stocked in habitats that are capable of supporting self-reproducing salmonid populations in Colorado after 2003. Trout from positive hatcheries will be stocked into waters where the parasite has been found to minimize the risk of contaminating other watersheds. Only trout from hatcheries testing negative can be stocked into waters where the parasite has not been found.

Although WD is a potential threat to RGCT, high infection rates will probably only occur where water temperatures are relatively warm and where *T. tubifex* is abundant. *T. tubifex* is the secondary host for the parasite; when *T. tubifex* numbers are low, the number of TAMs produced will be low, and consequently, the infection rate of RGCT will be low. *T. tubifiex* is a ubiquitous aquatic oligochaete (worm); however, it is most abundant in degraded aquatic habitats, particularly in areas with high sedimentation, warm water temperatures, and low dissolved oxygen. In clear coldwater streams, as is typical of RGCT habitat, it is present but seldom abundant. *T. tubifex* is likely to be most abundant in beaver ponds, and populations of RGCT below beaver ponds may be at risk (Hiner and Moffitt 2001). In addition, infection rate is low at temperatures less than 10°C (50°F) (Thompson et al. 1999). At the time when the young fish are most susceptible (spring and early summer), the populations in high-elevation streams are probably partially protected by low water temperatures.

One threat to the RGCT is the introduction of WD infected fish into waters inhabited by the RGCT. Both States currently have web sites, brochures, and information in their fishing regulations regarding WD and what anglers can do to prevent its spread. In addition, both States have regulations regarding the stocking of fish by private landowners that are designed to eliminate the importation of WD positive fish. It states clearly in the fishing regulations that it is illegal to stock fish in public waters without prior permission from a State agency. Public education and compliance are two important elements in keeping imported fish disease free and not having nonnatives stocked in locations where they can enter RGCT streams.

The Service determines that WD is not a threat to the 13 pure, stable, and secure populations because these populations are located in high-elevation, headwater streams that typically have cold water and low levels of sedimentation limiting *T. tubifex* populations and infection rates from TAMs. Although RGCT is susceptible to infection there has not been a documented loss or decline in population number due to WD in a wild RGCT population. The States are testing all their hatchery fish before stocking, are in the process of documenting which streams in their States are WD positive, and are educating the public about how to prevent the spread of WD. With these efforts the spread of WD should be slowed and any problems in wild populations should be quickly detected.

D. The Inadequacy of Existing Regulatory Mechanisms

The NMDGF and the CDOW have authority and responsibility for the management of RGCT on all Federal, State, and private land within their respective States. The State agencies' capabilities include the regulation of fishing, law enforcement, research, and conservation and educational activities relating to RGCT. Policies regarding the stocking of nonnative fish (no nonnatives are stocked in RGCT populations) and minimization of exposure to WD and other diseases are in place in both Colorado and New Mexico. Additionally, New Mexico has a broodstock management plan in place.

New Mexico has an approved management plan currently being implemented that will ''facilitate long range cooperative, interagency conservation of Rio Grande cutthroat trout.'' From 1999 to 2001, population inventory was completed on 18 streams, barrier evaluations were completed on 14 streams, and genetic samples were taken from fish in 17 streams. The plan has schedules for fiscal years 2003 to 2005 for population inventory and monitoring, collection and analysis of genetic material, assessing barriers,

habitat inventory, inventory of unexplored streams, testing for and mapping WD, and maintaining a database of all the information. For example, 17 streams are scheduled for inventory and monitoring in 2003, the genetic purity of 8 populations will be analyzed, and barriers on 8 streams will be surveyed. A budget for all activities from 2003–2005 is also developed.

Rio Grande cutthroat trout is designated as a species of special concern by the State of Colorado. Colorado is both implementing and revising a previous management plan. Consistent with their direction to monitor populations, protect habitat and populations, and detect genetic contamination, 58 populations were monitored and 20 populations were analyzed using molecular techniques from 1998 to 2001. From 1999 to 2001, nonnative trout were removed from 3 streams and one lake, two barriers were maintained and one new barrier was installed. An inventory of barriers on RGCT streams in Colorado has been developed. Approximately 10,000 brochures on RGCT conservation have been distributed.

A range-wide conservation agreement that will facilitate cooperation and coordination among State and Federal agencies and other interested parties is in final draft and is expected to be finalized before the end of 2002. The agreement's goal is to assure the long-term persistence of the subspecies, preserve its genetic integrity, and to provide adequate numbers and populations. We applaud the efforts of the States to establish this multi-party agreement, and we believe that it will serve to better the status of the RGCT overall. We mentioned the draft plan in this finding to recognize that the States and Federal agencies have taken steps to draft such a plan. However, we are not relying on it as part of this status review because it is not finalized and would require us to speculate as to the final outcome of the plan.

The Forest Service, the landowner with the majority of pure RGCT populations, is also implementing special management for the RGCT. RGCT is a Management Indicator Species (MIS, species which have been identified as a representative for a group of species with special habitat requirements) on the Santa Fe and Carson National Forests, and is proposed as an MIS on the Rio Grande National Forest. All resident trout are MISs on the Gila National Forest. Management Indicator Species act as proxies for fulfilling the National Forest Management Act viability requirement. Habitat objectives are established for maintaining the viability of the MIS. The RGCT is also listed on the Regional Forester's Sensitive Species List. Sensitive species must receive special management emphasis to ensure their viability and to preclude trends towards endangerment. Forest Service objectives for sensitive species are to develop and implement management practices to ensure that the species does not become threatened or endangered, maintain viable populations, and develop and implement management objectives. The Forest Service also assesses barriers as part of its stream surveys (see discussion above in factor A. ''Fish Barriers'' above).

Based on the discussion above, both the States and the National Forests have adequate regulatory mechanisms to protect and enhance RGCT populations and habitat.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Fire

Wildfires are a natural disturbance in forested watersheds. Historically, fires occurred every 4–5 years (Swetman 1990), and burned the understory leaving open stands of older trees. Fire suppression has resulted in large increases in fuel loads and understory density. As a result, under the proper conditions, wildfires today can spread rapidly and burn intensely. In the Southwest, the fire season (May to June) is followed by the monsoon season (July to August). Consequently, denuded watersheds can be hit by heavy precipitation leading to floods and ash flows in streams. Although fish often survive the fire, the ash/slurry floods that occur after a fire can eliminate populations of fish from a stream (Rinne, 1996, Brown *et al.* 2001). In addition to ash, fire retardant slurry deposited on the fire may wash into streams and kill fish (Buhl and Hamilton 2000). Although the return interval for stand replacing fire is much greater in the Rocky Mountains (200 + years) (Ruediger et al. 2000), a fire of this magnitude could affect fish populations in several watersheds as it did in the greater Yellowstone ecosystem (Bozek and Young 1994). Because the return interval is shorter, fire is a more frequent threat to populations in New Mexico. There appears to be an association between severe droughts and large fire years (Swetnam and Baisan 1994). Because fire is unpredictable, it is hard to assess how great the risk of fire is to individual RGCT populations. Because several trout populations in New Mexico have been impacted in the last 10 years by fire, it is logical to assume that a few isolated RGCT populations could be lost to the effects of fire in the foreseeable future.

Catastrophic fire can also provide the opportunity to reclaim streams that were invaded by nonnatives. This situation has occurred on the Santa Fe National Forest where fish populations were eliminated from the Cow Creek watershed by the Viveash Fire in 2000. Once the habitat recovers, approximately 25 stream miles will be repatriated with RGCT (Ferrel 2002). The Dome Fire in the Jemez Mountains extirpated the fish residing in Capulin Canyon. In partnership with Bandalier National Monument, the Santa Fe National Forest is developing plans to repatriate RGCT in approximately 10 miles of perennial stream (Ferrel 2002). Fire risk can be reduced through fuels reduction and prescribed burns. The National Forests in New Mexico have active programs to improve forest health. As an example, 69,965 ac have been treated, improving watershed conditions associated with 62 stream miles, and an additional 145,575 ac are planned for treatment to improve conditions associated with an additional 79.5 stream miles (Ferrel 2002). Over the next 10 to 20 years it is possible that a small number of RGCT populations will be lost to fire; however, we do not believe that such a loss will affect the long-term persistence of the RGCT because the populations are widely distributed and loss of RGCT populations that contain nonnatives provides an opportunity to reestablish pure RGCT populations.

The Service cannot determine if fire is a threat to the 13 pure, stable, and secure populations. Fire is unpredictable and we have no way of determining where or with what intensity a fire may burn because so many variables are involved. New Mexico is in the midst of a drought and fire can be a threat. Because the populations are spread out across the landscape and are not grouped together, the chances of more than one population being affected is reduced. As mentioned above, if catastrophic fire does occur, it provides an opportunity to reintroduce pure RGCT trout into streams that had been dominated by nonnative trout and expand the range of RGCT.

Electrofishing

The standard method to collect population information on stream trout is electrofishing. In addition, short of complete stream renovation, electrofishing is the primary method used to remove brook and brown trout

from RGCT streams. Although there is a continuing need for additional data on the existing RGCT populations, it should also be recognized that electrofishing could have a negative effect on fish. Kocovsky *et al.* (1997) found that 44 percent of X-rayed fish showed evidence of spinal injury in a stream that had been electrofished for 8 years even though the fish showed no external sign of injury. It has also been shown that in a laboratory setting electroshocking can have a negative impact on salmonid eggs (Cho *et al.* 2001). Nielsen (1998) warns that the accumulated effects of electrofishing may be significant especially in small populations. Although some fish may be killed or injured by electrofishing, it is not known if these impacts affect RGCT populations over time. However, managers need to be aware of the potential dangers of electrofishing and begin exploring alternative methods such as trapping or visual observation as a means by which to evaluate populations.

Currently electrofishing is the primary tool to conduct population surveys, and to detect and remove nonnative trout in RGCT streams. It is expected that electrofishing in RGCT streams will continue until alternative census methods are adopted. Electrofishing will also continue to be the primary method for removing nonnatives, as no other expedient method exists. Snorkeling surveys are being used by the Forest Service as part of their stream inventories. While these inventories can detect nonnative adults, it is very difficult to distinguish between young trout species.

The Service determines that electrofishing is not a threat to the 13 pure, stable, and secure populations. Although individual fish may be injured, no research indicates that electrofishing is detrimental to populations as a whole. Electrofishing is a necessary tool at this time to control nonnative trout and to monitor population size.

Hatcheries

It is likely that future management of RGCT will depend in part on the use of hatchery-reared fish. Although hatcheries can produce many fish in a short period of time, the use of hatchery fish is not without risks (Busack and Currens 1995). Transmission of disease has been discussed (see above discussion on WD) and is a threat that must be managed. Maintenance of a ''wild'' broodstock is difficult, but if hatchery-reared RGCT are to survive in the wild, care must be taken so that broodstock does not become domesticated. Inbreeding can also pose a problem (Cowley 1993). Planning is essential in the selection of fish used as broodstock. Fish used as broodstock must be genetically pure. Streams that are used as sources for broodstock should be rotated so that the source population is not depleted and also so that the hatchery broodstock is infused with new genes. However, stocks from the Rio Grande, Pecos, and Canadian Basins should not be mixed until the population genetics of the fish has been clarified. New Mexico has a broodstock management plan designed specifically for RGCT that addresses these issues (Cowley 1993). Having been implemented in the field over the last several years, the feasibility and difficulties of various aspects of the plan have been tested. The Plan is currently under revision, and it could serve as a range-wide protocol.

Currently New Mexico has about 16,500 captive RGCT. Although Seven Springs Hatchery was to be in full RGCT production by 1998, infection by WD, subsequent disinfection and renovation of the hatchery, and difficulties in rearing RGCT have delayed full production. However, production from Seven Springs should increase over the next few years.

In Colorado, Haypress Lake contains wild broodstock, and captive populations are reared at Poudre Rearing Unit and at the Fishery Research Hatchery in Fort Collins. Colorado planted 33,400 RGCT into 6 waters in 1999, 66,600 into 40 waters in 2000, and 152,700 into 77 waters in 2001.

The Service determines that hatchery management is not a threat to the 13 pure, stable, and secure populations. Hatchery-reared fish are not planted into pure, stable RGCT populations so there is no risk of disease transmission into these populations. Hatchery equipment is sterilized before being used in the field to prevent disease transmission. If the criteria suggested by Cowley (1993) are implemented, a wild population would be used for spawning purposes only once, insuring that the source population is not depleted or compromised.

Public Sentiment

Several stream renovation projects are planned in the upcoming years. One obstacle that must be recognized is public resistance to the use of piscicides such as antimycin. Antimycin is an antibiotic that is an effective fish toxicant. It can be neutralized at stations outside the treatment area. The public must be educated and support range expansion of RGCT, or restoration efforts could be undermined. The ''Respect the Rio'' program on the Santa Fe National Forest is a particularly good example of an outreach effort to educate the public and gain support for stream restoration. In 2000, the Santa Fe National Forest was awarded a grant to begin this program, and an education coordinator was hired in 2002. Nearly 1,000 students and over 200 adults have heard presentations relating to native fish and respect for the land. The Respect the Rio program has three mascots: RGCT, Rio Grande chub, and Rio Grande sucker (Ferrel 2002). The Carson and Rio Grande National Forests also sponsor activities (e.g., Fish Fiesta) to educate and raise public awareness about RGCT. Both State management plans include education and outreach elements. Public support is essential for the success of future projects, and the States of New Mexico and Colorado recognize the importance of education and outreach in achieving their conservation goals for the RGCT. For this reason, the Service determines that public sentiment is not a threat to the 13 pure, stable, and secure populations.

Finding

There are 13 confirmed pure populations of RGCT with populations over 2,500 fish, that are secured by barriers and do not have nonnative competitors. There are an additional five populations in Colorado that are considered pure by CDOW based on meristics and/or mtDNA that have over 2,500 fish, are protected by a barrier, and have no nonnatives but have not yet been tested by allozymes or nuclear DNA (Torcido, Jaroso, Osier, Cat, and Cascade Creeks) (Table 1). Once these populations have been tested using allozymes or nuclear DNA, it is very likely that some or all will be part of the core group of secure populations, bringing the total to as many as 18. Biomass values for these populations range from 37 to 160 kg/ha (33 to 142 lb/acre). Stream length on Osier and Cascade Creeks is less than ideal; however, as in the case of Policarpio Creek, New Mexico, fish density in the two streams is high (0.89 and 0.5 fish/m (0.27 and 0.15 fish/foot), respectively), indicating suitable habitat conditions. In New Mexico, there are 12 populations that are in the process of being tested and an additional 12 populations that have tested pure but for which there is inadequate information to judge the status of the populations. Five of these creeks (Rio Frijoles, Chihuahuenos, Polvadera, Rio de Truchas, and Tienditas) are between 8 and 18 km (5.0 and 11.2 miles) long

and have the potential to be secure populations (see Table 2 below).

TABLE 2.—STREAMS THAT DID NOT MEET ALL THE CORE CRITERIA BUT ARE IMPORTANT COMPONENTS OF RANGE-WIDE RGCT STATUS AND ARE LIKELY TO PERSIST INTO THE FORESEEABLE FUTURE.

Watershed	Stream name	Ownership
Tested pure, large populations (5,000–15,000), brook or brown trout present:		
Colorado		
Alamosa/Trinchera	Sangre de Cristo	private.
Alamosa/Trinchera	Placer	private.
New Mexico		
Rio de las Vacas	Rio de las Vacas	Santa Fe NF.
Rio de las Vacas	Rito Café	Santa Fe NF.
Comanche Creek	Comanche Creek	Carson NF.
Tested pure, no population information, stream length 8–18 km:		
New Mexico		
Rio Frijoles	Rio Frijoles	Santa Fe NF.
Canones	Chihuahuenos	Santa Fe NF.
Rio Quemado	Rio de Truchas	Carson NF.
Rio de Fernando de Taos	Tienditas	Carson NF.
Canones	SF Polvadera	Santa Fe NF.

NF = National Forest. Not shown are the 21 streams with pure populations with between 500–2,500 RGCT (discussed below).

Additionally, some large populations of pure RGCT have recently been invaded by nonnatives, either because of barrier failure or illegal transplantation. In Colorado, low numbers of brook trout have been found in Sangre de Cristo Creek (with tributary Wagon Creek); however, population size (over 9,000 RGCT), biomass, and stream length are excellent. The same situation exists in the Placer Creek watershed where there are four linked tributaries (total of over 11,000 RGCT). In New Mexico, Rio de las Vacas and its tributaries, Rio de las Perchas and Rio Anastacio (total of over 15,000 RGCT); Rito Café (5,000 RGCT); and Comanche Creek (5,000 RGCT) are all strong RGCT populations that have either brook trout or brown trout present (Table 2). Brown trout were found in Rio de las Vacas in 2001. Electrofishing removal and surveys are scheduled for 2002 and the existing barrier will be improved by the Forest Service. These populations are important components of the range-wide population. Agency personnel are aware of the undesirability of nonnatives in RGCT streams and remove nonnatives both during the course of regular stream surveys and as on-going programs in selected streams.

In addition, there are 11 pure populations in New Mexico and 10 in Colorado (21 total) that have more than 500 and less than 2,500 fish and 15 pure populations in both States with less than 500 individuals. While these populations may be at greater long-term risk of extinction compared to large populations, they continue to persist. In the future these populations may be expanded downstream, and they may serve as repositories of unique genetic material. As such they also are important components of the range-wide population and provide additional security for the overall status of the subspecies.

In the context of the Act, the term ''threatened species'' means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The term ''endangered species'' means any species that is in danger of extinction throughout all or a significant portion of its range. The Act does not indicate threshold levels of historic population size at which (as the population of a species declines) listing as either ''threatened or endangered'' becomes warranted. Instead, the principal considerations in the determination of whether or not a species warrants listing as a threatened or endangered species under the Act are the threats that currently confront the species and the likelihood that the species will persist in the ''foreseeable future.'' Specific threats discussed in detail above in our five factor analysis include nonnative salmonids that either hybridize or compete with RGCT, habitat fragmentation, livestock grazing, timber harvest, overutilization, disease (e.g., whirling disease), inadequacy of existing regulatory mechanisms, fire, electrofishing, and opposition to the use of fish poisons (e.g., piscicides). We have determined that the 13 core populations are not threatened by any of the identified threats alone or in combination.

Our finding is also based upon the other large populations of RGCT identified in Tables 1 and 2, as well as the 21 other populations discussed above. We find that these populations are likely to persist into the future because of the large numbers of individuals within these populations and the threats are adequately addressed by the ongoing management actions of the States and Federal agencies to remove nonnatives (brook and brown trout), test for genetic purity, conduct stream surveys, maintain barriers, conduct public education and outreach, and test for WD.

At different times in discussing the ongoing management actions by the State or Federal government we have included a discussion of actions that are projected to occur over the next few years. We described the future conservation actions that agencies indicate they will be undertaking, but we have not relied on these future actions for purposes of determining the current status of the species or the adequacy of current management actions to alleviate threats to the RGCT.

After reviewing the best scientific and commercial information available (1998 status review, available literature, information supplied to us by State and Federal agencies, and other unpublished documents and maps), for all of the reasons discussed herein, we find that the RGCT is not endangered and is not likely to become endangered within the foreseeable future throughout all or a significant portion of its range and that listing as threatened or endangered is not warranted at this time.

References Cited

A complete list of all references cited in this notice is available from the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: June 3, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–14569 Filed 6–10–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 67, No. 112
Tuesday, June 11, 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

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Form FNS–259, Food Stamp Mail Issuance Report

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed revision of a currently approved information collection contained in form FNS–259, Food Stamp Mail Issuance Report.

DATES: Written comments must be submitted on or before August 12, 2002.

ADDRESSES: Send comments and requests for copies of this information collection to: Branch Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Electronic BenefitsTransfer Branch, (703) 305–2517.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Mail Issuance Report.

OMB Number: 0584–0015.

Form Number: FNS–259.

Expiration Date: 06/30/2002.

Type of Request: Revision of a currently approved collection.

Abstract: Section 7(d) of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2016(d)) requires that State agencies determine and monitor food stamp coupon inventories. Section 7(f) requires that the States are strictly liable for coupons losses except when the coupons are sent through the mail. In that case, the losses are to be determined by the regulations promulgated by the Secretary of Agriculture (7 U.S.C. 2016(f)). The Food Stamp Program regulations at 7 CFR 274.4(b)(3) require State agencies to report mail issuance, replacements, and returns on the FNS–259, Food Stamp Mail Issuance Report. Data from the report is then used, as explained in 7 CFR 276.2(b)(4), for calculation of the State agency's liability for mail losses. The proposed revision to the information collection burden reflects the reduction in respondents because of the change from coupon issuance to electronic benefit delivery systems.

Affected Public: State and local government employees and recipients.

Estimated Number of Respondents: 200.

Estimated Number of Responses per Respondent: 4.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden: 67 hours annually.

Dated: May 30, 2002.

Eric M. Bost,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 02–14679 Filed 6–10–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Special Use Permit for Helicopter Skiing

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS).

SUMMARY: High Mountains Heli-Skiing, holder of a Special Use Permit to conduct guided helicopter skiing on portions of the Caribou-Targhee and Bridger-Teton National Forests has requested issuance of a new 5-year priority Special Use Permit for 1,500 annual user days. On April 26, 2002, the Department of Agriculture, Forest Service issued a public scoping statement to prepare an Environmental Assessment to analyze issuing a new 5-year special use permit.

The April 26, 2002 scoping statement described the ''Purpose and Need'' for the Special Use Permit to be issued, environmental issues considered, estimated dates for completing an Environmental Assessment, information concerning public participation, and the names and addresses of the agency officials who can provide additional information. The purpose of the scoping statement was to begin the scoping phase of public involvement in the National Environmental Policy Act process, with a due date for comments of May 28, 2002. Based on comments received on the initial scoping statement and the level of public interest the Forest Service now considers an EIS to be the appropriate level of disclosure.

DATES: To be most useful for early identification of issues, comments concerning scope of the analysis should be received in writing or postmarked by July 16, 2002.

ADDRESSES: Send written comments to: Nancy Hall, Jackson District Ranger, Bridger-Teton National Forest, P.O. Box 1689, Jackson WY, 83001.

FOR FURTHER INFORMATION CONTACT: Ray Spencer, Interdisciplinary Team Leader, Jackson Ranger District, Bridger Teton National Forest (307) 739–5400.

Responsible Official: District Ranger Jackson Ranger District, Bridger-Teton National Forest.

SUPPLEMENTARY INFORMATION: The Jackson Ranger District of the Bridger-

Teton National Forest has received a request from High Mountains Heli-Skiing (HMHS) to issue a 5-year Special Use Permit that authorizes them to conduct a guided helicopter skiing business on National Forest System lands within portions of the Bridger-Teton (BTNF) and Caribout-Targhee National Forests (CTNF). The Forest Service is considering issuing this permit to retain heli-skiing as part of the range of quality recreational opportunities offered on the BTNF and CTNF. Actual skiing takes place on steep mountain slopes with minimal amounts of ledges, rock, or other exposed hazards. These areas are generally sparsely vegetated or non-forested ridges and slopes that have accumulated snow levels, but are within acceptable limits for avalanche danger. Areas with dense vegetation exposed above the snow or that are heavily forested are not usually selected for heli-sking activities. Elevations of drop-off areas at the top are usually between 9,000 and 10,000 feet. Pick-up areas at the bottom are generally between 6,500 and 7,500 feet in elevation. Approximately 65 primary landing zones would be used for dropping off skiers and another 20 primary landing zones may be used for picking up skiers. The number and locations of landing zones used for drop-offs may change considerably each day depending on snow and weather conditions. However, the pick-up areas are used more frequently and generally do not change.

The Forest Service believes that the appropirate level of analysis for this proposal at this point is an EIS under provisions of the National Environmental Policy Act. In addition to the Proposed Action and the required No Action alternative, the Jackson Ranger District has identified several other alternatives in response to identified issues.

These include:

- No helicopter skiing in the Palisades Wilderness Study Area;
- Issuing the permit for 468 user days; and
- Issuing a permit for 800 user days but limiting the permittee to the use of one helicopter at a time.

The authority for issuance of this permit is Title 36, Code of Federal Regulations, Part 251 Subpart B (36 CFR 251.50). The deciding agency official in this matter is the District Ranger, Jackson Ranger District, Bridger-Teton National Forest.

The current permit for this activity is for 468 service days. During recent seasons, the permittee has requested additional service days that were usually granted on a case-by-case basis. The highest number of service days authorized for use during the 1999–2000 season was 968, of which 903 service days were actually used. The average annual service days used during the last five years was 686. The operational season is from December 15 through April 15 annually.

Purpose and Need

National forest policy and Forest Land Management Plans for the BTNF and CTNF provide direction to Forest Service permit administrators regarding outfitter and guide operations on National Forest System lands. Based on this direction, Forest Service goals are to provide outfitting and guiding activities that ensure that visitors receive high quality services in a manner that promotes safe and environmentally responsible use. National direction recognizes outfitter guides as valuable recreation service providers, who help the agency meet its public service mission. Outfitting and guiding provide a small fraction of the total visitor days experienced on the National Forests, but the services provided are important to the visitor, the agency, the resources, and the economies of the communities where outfitters are based.

Heli-skiing has been a part of the recreational program of the Forest Service at this general location for over 26 years. This activity requires an outfitter-guide Special Use Permit that has a maximum term of 5 years. The current permit for this activity expires on December 15, 2002. To retain guided heli-skiing as part of the recreational opportunities offered to visitors on the BTNF and CTNF, an environmental analysis must be conducted to determine whether or not to issue a permit and if so, what is the appropriate level and area of use.

The proponent is interested in continuing this guided service into the future and has requested that the Special Use Permit be issued with modifications so that they may continue operation. The process of making a decision on this request will result in preparation of a Record of Decision based on the content of an EIS and associated reports and analyses. If the EIS and related processes are not completed by December 15, 2002, a temporary permit would be issued for this activity to continue under provisions and conditions of the existing permit.

Proposed Action

The Forest Service is proposing to issue a Special Use Permit that allows the operation of helicopter-skiing guide services to continue using portions of the Jackson and Greys River Ranger Districts on the Bridger-Teton National Forest and the Palisades Ranger District on the Caribou-Targhee National Forests that are not closed to this type of use as depicted on a map available at the Jackson Ranger District. The area traditionally used for activity under the proposed action includes portions of the Teton Mountain Range south of Teton Village to Phillips Canyon, the Snake River Range south of Mosquito Creek, the Palisades Range, the Gros Ventre Range on the south side of Cache Creek, and the Wyoming Range from Bradley Mountain to Ramshorn Peak, south to Greys River. Although heli-skiing activity is generally concentrated within a 90 square mile area, the proposed permit boundary includes approximately 475 square miles. A relatively large area is needed in order to accommodate various seasons and snow conditions and to allow flexibility to avoid impacts to resources and other recreationists.

The proposal is to issue a special use permit that authorizes 1,500 service days.

Decision To Be Made

The Forest Service will determine what the capacity and the appropriate level of use will be for the Special Use Permit area based on analyses provided in the EIS. The decision to be made is whether to issue the requested 5-year Special Use Permit for 1,500 annual service days, approve a modified version of the request, or deny the request for helicopter skiing within the proposed project area. The decision will, at a minimum, address the following questions:

1. Will the Proposed Action be implemented as proposed, as modified by an alternative or option, or not at all?
2. What mitigation measures and monitoring requirements will the Forest Service apply to the operations?
3. Does the project require a Forest Plan amendment?

Previous and Current Public Involvement History

A scoping notice that identified the Forest Service's intention of issuing a permit for continuing the heli-skiing services was mailed to interested public and agencies on November 9, 2001. Numerous comments were received regarding the issuance of a Special Use Permit for heli-skiing. Since that notice was provided to the public, the Forest Service refined and amassed more information regarding this proposal. Subsequently the Forest Service determined that additional public scoping comments would be helpful in

reviewing and analyzing this proposal. Consequently, a second scoping notice was provided to interested parties on April 26, 2002. As a result of comments received from the April 26, 2002 notice, the Forest Service determined that the appropriate level of analysis for this proposal should be in the form of an EIS. If any of those who provided comments to the scoping notices sent out on November 9, 2001 or April 26, 2002 wish to supplement their earlier comments or make new ones, they are encouraged to do so. If one elects not to supplement those earlier comments, the Forest Service will retain the previous comments for use in the ongoing scoping and analysis processes. Once the analysis is completed, those who participated earlier, as well as those who provide new comments, will be given the opportunity to review the Draft EIS and render comments on that document.

Interested agencies and the public are invited to participate in this scoping by relaying in writing to the Forest Service any concerns, interests, and issues that need to be addressed in the disclosure and analysis phase of the EIS process. After release of the Draft EIS for review, comments on the adequacy and merit of the disclosures can be submitted to the Forest Service. A preferred alternative will also be identified at this time. Responses to those comments will be incorporated into the Final EIS and a Record of Decision will be written and signed. Comments regarding the scope of the analysis and the issues that should be addressed in the Draft EIS may be sent to: High Mountain Heli-Skiing Special Use Permit, c/o Nancy Hall, Jackson Ranger District, PO Box 1689, Jackson, WY 83001.

A scoping notice for this project will be posted on the Bridger-Teton National Forest website at *http://www.fs.fed.us/btnf.* For more information please call Ray Spencer at (307) 739–5400.

While scoping continues through the final decision point in the process, it would be appreciated if comments on this NOI and/or the solicitation for scoping comments were postmarked no later than July 16, 2002.

This notice is part of an effort by the Forest Service to seek additional scoping information, comments, and assistance from Federal, State, and local agencies, as well as other individuals or groups who may be interested or affected by the Proposed Action. Public responses will become part of the public record for this process and will be used and disclosed in the EIS and related documents and will be available for public inspection. Persons may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act permits such confidentiality pursuant to 7 CFR 1.27(d). All applicable Federal, State, and county permits and licenses required by a decision will be obtained prior to implementation.

Issues

The following is a preliminary list of issues identified by the ID Team. Other issues raised during public involvement will also be discussed in this EIS. The preliminary issues include:

1. Impacts of the project on wilderness study area values;
2. Effects of helicopter noise on dispersed winter recreation;
3. Effects of helicopter noise on wildlife, specifically elk and moose;
4. Water Quality effects from potential fuel spills;
5. Socioeconomic effects;
6. Impacts of wildlife resources including Threatened, Endangered, Proposed and Forest Sensitive species; and
7. Impacts to outfitter—guide operations.

Decision Framework

The District Ranger of the Jackson Ranger District will decide whether or not to issue a permit for helicopter skiing and if so what terms and conditions will be included in the permit.

Public Involvement Process

Public participation is especially important at several points during the analysis, particularly during initial scoping and review of the Draft EIS. Individuals, organizations, federal, state, and local agencies who are interested in or affected by the decision are invited to participate in the scoping process. This information will be used in the preparation of the Draft EIS.

The second major opportunity for public input is during the review of the Draft EIS. The Draft EIS will be filed with the EPA (Environmental Protection Agency) and will be available for public review in July 2002. At that time the EPA will publish a notice of availability of the Draft EIS in the **Federal Register.** The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.** It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the Draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (Reviewers may wish to refer to the *Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act* at 40 CFR 1503.3 in addressing these points). The Forest Service believes, at this early stage, it is important to give reviewers notice of several federal court rulings related to public participation in the environmental review process.

First, reviewers of Draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the Draft EIS stage, but that are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc* v. *Harris,* 490 F.Supp. 1334, 1338 (E.D. Wis, 1980). Because of these courts rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft EIS or the merits of the alternates formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the Draft EIS, the comments will be analyzed and considered in preparing the Final EIS. The Final EIS is scheduled for completion in November 2002.

Note: The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audio tape, etc.) should contact USDA=s TARGET Center at 202–720–2600 (voice and

TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326–W, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250–9410 or call 202–720–5964 (voice and TCC). USDA is an equal opportunity provider and employer.

Dated: June 5, 2002.

Stanley G. Sylva,

Acting Forest Supervisor, Bridger-Teton National Forest.

[FR Doc. 02–14578 Filed 6–10–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Request for Proposals: Developing Uses for Small-Diameter and Low-Valued Hardwoods and Softwoods

AGENCY: Forest Products Laboratory, Forest Service, USDA.

ACTION: Request for proposals.

SUMMARY: The USDA Forest Service, Forest Products Laboratory requests proposals for forest products demonstration projects related to using small- diameter material and low-valued trees removed from hazardous fuel reduction activities. These funds are targeted to help communities, entrepreneurs, and others turn this thinning material into marketable forest products. These projects may be in conjunction with hazardous fuel reduction projects or could use material already removed. The goals of the grant are the following:

- To provide technical assistance for processing and manufacturing of small-diameter or low-valued hardwoods and softwoods.
- To help local enterprises or communities develop prototypes of forest products that use small-diameter or low-valued hardwoods and softwoods.
- To develop demonstration projects showcasing innovative uses for the small-diameter or low-valued hardwood and softwood resource.
- To conduct economic feasibility assessments of proposed products.
- To evaluate markets and/or marketing of low-valued softwoods and hardwoods.

We are looking for creative solutions to address the nationwide challenge in dealing with low-valued hardwoods and softwoods. Examples include value-added processing, such as finger-jointing or edge-gluing short lumber for millwork, machine stress rating lumber for engineered wood products, small-scale bioenergy applications (less than 1 MW electrical or 10 million BTUs thermal), erosion control mats, wood shavings, engineered wood products, wood/plastic composites, and roundwood as structural building elements.

Funding may be allocated for such things as technical assistance, marketing, prototype development, engineering designs and plans, log-sort yards, feasibility studies, and construction of demonstration structures using roundwood. Attachment 1 contains examples of projects that were funded in Fiscal Year 2001.

1. Award Information

A total of $1 million is available for granting under this program. *Individual grants or awards will not exceed $50,000.* Successful applicants will receive their awards by September 1, 2002. The grant period will extend from the award date until December 31, 2003. Projects not completed within the award timeframe can be extended. Semi-annual program and financial written progress reports will be required.

2. Eligibility Information

a. Eligible Applicants

Include State, local, and tribal governments, communities, non-profit organizations, educational institutions, Resource Conservation and Development Councils, commercial and industrial organizations, small or disadvantaged businesses, and individuals.

b. Cost Sharing (Matching Requirement)

Applicants must demonstrate a 20% cost share from non-federal sources, which can include in-kind contributions. In-kind, or non-cash contributions, must be reasonable, allowable, and the recipient must be able to demonstrate in the application (as well as a possible audit) that all costs can be shown as actual costs to the recipient in performing the project.

i. All unit costs must be clearly identified in the budget justification and must be allowable, reasonable, and auditable.

ii. Funds paid by the Federal government under another award, unless otherwise authorized by Federal statute, may not be used for cost sharing or matching.

3. Application and Submission Information

a. Application Format

The application should be submitted as shown in Attachment 2, Grant Application Checklist, and should be printed on one side only. The application package should be clipped or stapled with a single staple at the upper left-hand corner. No other bindings should be made on the application package.

b. Detailed Description of Project Narrative

A detailed description of the Project Narrative presented in the checklist is included as Attachment 3 of this application.

4. Application Submission Guidelines and Deadline

Two (2) copies of the Application and Appendices must be received by 5 PM, COB, on Monday, July 15, 2002.

Proposals may NOT be sent facsimile (fax) or email. An original signature is necessary.

Incomplete applications will be rejected (please refer to Section 3 for instructions on format and requirements of the application).

Applications should be sent to:

Mailing Address: Forest Products Laboratory, ATT: Kathy Walker, One Gifford Pinchot Dr., Madison, WI 53726–2398.

Shipping Address (FedEx): Forest Products Laboratory, ATT: Kathy Walker, 507 Highland Ave., Madison, WI 53705.

5. Application Review Process

a. Evaluation Panel

An evaluation panel will be composed of Forest Service, university, and State forest products utilization and marketing specialists, community-based forestry partnership representatives, representatives of State Foresters, from across the country. No proposals will be accepted from organizations employing any of the panel members. The evaluation panel will conduct their reviews the first part of August.

b. Evaluation Criteria and Point System

The proposals will be reviewed using the following criteria:

- Relevance of project to meeting Request for Proposal goals (20 points)
- Linkage with regional hazardous fuel reduction, including forest health and stand vigor prescriptions (20 points)
- Adequacy of proposal description (15 points)
- Clarity and explanation of methods, techniques, expectations, and outcomes (15 points)
- Qualifications and experience of applicant (10 points)
- Feasibility (10 points)
- Realistic budget and timeframe (5 points)

• Novelty or uniqueness (3 points)
• Past efforts (if any) on proposed project (2 points)

c. Evaluation Process

Each panel member will independently review the proposal and rank each of the proposals according to the criteria and numerical rating system. A total of 100 points is possible. The scores from all panel members will be tabulated. The panel will then reconvene to discuss, rank, and recommend proposals to be funded. Panel members may make recommendations of alternative budgets for certain proposals, perhaps with suggestions on eliminating certain aspects of project. If that occurs, the applicant will be contacted to see if the recommendation by the panelists is agreeable. Proposals will be prioritized and awarded until funding limits is reached.

Attachment 1: Examples of Projects Previously Funded

• Professional engineering designs for two enclosed small-diameter, roundwood kiosks for Salt Lake CityWinter Olympics, recreational building on the Wallowa Whitman NF, greenhouse for school in Catron County, pedestrian bridge and air-drying shed.
• Demonstration structures that use roundwood as a building element, such as trusses or I-beams.
• Prototype development and marketing opportunities of additional products that use juniper/plastic composites
• Economic and engineering feasibility of heating two schools in Montana with wood chips.
• Demonstration of small-scale modular energy units that use wood chips for producing electrical and thermal power
• Survey on potential market size for buildings that use roundwood as a structural building element.
• Evaluation of low-cost log profiling and sorting system to reduce sorting and handling costs in log-sort yard.
• Technical assistance on drying technologies for planning dry kiln.
• Technical assistance on potential timber bridge project.
• Technical assistance on sawmilling improvement at sawmill.
• Technical assistance on potential wood energy projects.
• Technical assistance on grading roundwood.
• Technical assistance on grade yields of small-diameter ponderosa pine.

Attachment 2: Grant Application Checklist

Content, Format, and Requirements

	Page
SF–424 Application for Federal Assistance	1
SF–424a Budget Information—Non-Construction Programs	2–3
AD–1047 Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions	4
AD–1048 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions	4
AD–1049 Certification Regarding Drug-Free Workplace Requirements Alternatives I—For Grantees Other Than Individuals (if applicable)	5
AD–1050 Certification Regarding Drug-Free Workplace Requirements Alternative II—For Grantees Who Are Individuals	5
Forms may be found on the Internet at *http://www.fpl.fs.fed.us/tmu/rfp/application.htm*.	
(**Note:** See Attachment 3 for directions for completing the Detailed Project Narrative, Budget Justification, and Appendices.)	
• Detailed Project Narrative (Limit to 5 pages).	
• Project Title	
• Statement of Need (Describe the existing situation and what needs to be done)	
• Project Coordinators and Partners	
• Goals and Objectives	
• Work Plan, Products, or Outcomes	
• Describe course of action to accomplih goal	
• Decribe how actions are consistent with program guidelines and direction for use of funds	
• Timetable	
• Response to evaluation criteria	
• Evaluation and Monitoring (Describe how progress and successful achievement of objectiveswill be measures)	
• Project and/or Proponent History	
• Budget Justification (Including match).	
• Appendices	
1. Key Personnel Qualifications (Limit to 2 pages)	
(Describe qualifications of all key personnel or organizations involved in accomplishing the objective)	
2. Letters of Support	
(Letters of support are needed for cooperators. Other letters of support will aid in the review and evaluation.)	

Attachment 3: Directions for Completing Project Narrative, Budget Justification, and Appendices

Project Narrative

The entire narrative section of the proposal is limited to five (5) single-spaced, one-sided pages. The narrative must be submitted onplain white papper that measures 8.5 by 11 inches with a minimum font size of 12. Top, bottom, and side margins must be no less than one (1) inch.

Project Title: The project title should be short (not to exceed 80 characters) but descriptive of the project.

Statement of Need: The statement of need should serve to describe the existing circumstances and what needs to be done to correct situation. The applicant should be specific and present definite actions that can be taken to accomplish project. This section could include geographic area, including local agency, community(s) served, county, state, and cooperating partners that are affected by circumstances.

Project Coordinator(s) and Partner(s): This section identifies the project coordinator(s) and describes the role that each will play in meeting the objectives of the project. Qualifications of these individuals should be listed in the Appendix under Key Personnel Qualifications. Partners to the project, whether directly or indirectly involved, should be identified and their respective role and contribution should be described. Partners, whether individuals or organizations, should provide Letters of Support and should be actively

involved in helping to meet the objectives of the project.

Goals and Objectives: The proposal should present and describe specific project goals for meeting the needs identified. Project goals should be consistent with the program goals of this Request for Proposals.

Work Plan, Product, and/or Outcomes: The applicant should describe the specific course of action(s) that will be taken to accomplish the stated goal(s), including the techniques or methods that will be used. A work plan and timetable for accomplishing each of the major actions should be presented. The proposal should also describe the specific product and/or outcomes that are expected as a result of this funding. Both direct and indirect benefits should be displayed. The proposal should also identify technical assistance needs to implement project. Phases of the project, that is, year 1, year 2, etc., and the associated activities and costs with each year, should be displayed. The actions presented in the work plan should correlate to the budget package presented in the application.

Evaluation and Monitoring: The applicant should describe how the progress would be monitored and what measures will be used to evaluate the degree of progress and success of the project. The monitoring and measurement of achievements should be correlated to the work plan and the various phases of implementation associated with the project.

Project and/or Proponent History: The applicant should provide a brief history of any activities related to this project.

Budget Justification

The budget justification must be limited to one (1) page. Budget justification should contain itemized details of the line items presented. The budget line items should coincide with the work elements provided in the Work Plan. The detailed budget and budget justification should provide sufficient details (e.g., personnel, equipment, consultants, supplies, administration, partnership contributions) to reflect costs needed to complete activities identified in the work plan. Matching amounts, if listed as in-kind contributions (e.g., personnel time, donated equipment, materials, matching non-federal grants), should be based on realistic calculated values. Costs should also provide enough detail to determine if they are reasonable and allowable. The budget should also identify the source of non-federal resources and the ability to meet matching requirements.

Appendices

Key Personnel Qualifications: Qualifications of the project manager should be included in an appendix. Qualifications are limited to two (2) pages in length and should contain the following: resume, biographical sketch, references, and demonstrated ability to manage the grant.

Letters of Support: Letters of support should be included in an appendix and are intended to display the degree of collaboration occurring between the different entities engaged in the project. These letters must include commitments of cash or in-kind services from all partners and must support the amounts listed in the budget. Each letter of support should be limited to one (1) page in length.

Authority: 16 U.S.C. 2101–2110.

Dated: June 3, 2002.

Sherrie L. Rasmussen,

Acting Director.

[FR Doc. 02–14541 Filed 6–10–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Columbia County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463), the Columbia County Resource Advisory Committee (RAC) will meet on June 17, 2002 in Dayton, Washington. The purpose of the meeting is to discuss the selection of Title II projects for Fiscal Year 2003 under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on June 17, 2002 from 7 p.m. to 9 p.m.

ADDRESSES: The meeting will be held at the Dayton Post Office, 202 South Second Street, Dayton, Washington.

FOR FURTHER INFORMATION CONTACT: Monte Fujishin, Designated Federal Official, USDA, Umatilla National Forest, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347. Phone: (509) 843–1891.

SUPPLEMENTARY INFORMATION: This meeting will focus on discussing Title II proposed projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: June 3, 2002.

Jeff D. Blackwood,

Forest Supervisor.

[FR Doc. 02–14542 Filed 6–10–02; 8:45 am]

BILLING CODE 3410–BH–M

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Plumas County Resource Advisory Committee (RAC) will hold a meeting on June 14, 2002, in Chester, California. One purpose of the meeting is to review and discuss the final project decisions (cycle 1 funding) made by the Plumas National Forest Supervisor for funding/implementation under the Title 2 provisions of the Secure Rural Schools and Community Self-Determination Act of 2000. Secondly, the cycle 1 process will be evaluated and a draft cycle 2 process will be determined.

DATES & ADDRESSES: The meeting will take place from 9–3 p.m., at the Lake Almanor Elks Lodge, 164 Main Street, Chester, California.

FOR FURTHER INFORMATION CONTACT: Lee Anne Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, P.O. Box 11500/159 Lawrence Street, Quincy, CA, 95971; (530) 283–7850; or by E-MAIL *eataylor@fs.fed.us.* Agendas are posted one week prior to the meeting on the internet at: *http://www.fs.r5.fs.fed.us/pay2states/plumas.* Prior meeting minutes and agendas are available on the same site.

SUPPLEMENTARY INFORMATION: Agenda items for the meeting include: (1) Review and discuss the final project decisions (2) Review applicable sections of the Secure Rural Schools and Community Self-Determination Act of 2000, regarding project implementation; (3) Review & discuss cycle 1 process, (4) Tentative timeline for cycle 2 process; and (5) Future meeting schedule/logistics/agenda. The meeting is open to the public and individuals may address the Committee after being recognized by the Chair.

Dated: June 3, 2002.

Mark J. Madrid,

Forest Supervisor.

[FR Doc. 02–14579 Filed 6–10–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Census Bureau

Quarterly Survey of Residential Alterations and Repairs

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 (44 U.S.C. 3506(c)(2)(A).

DATES: Written comments must be submitted on or before August 12, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *Mclayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Joseph Huesman, U.S. Census Bureau, Room 2125 Building 4, Washington, DC 20233–6916 on (301) 457–1605.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is the preeminent collector and provider of timely, relevant and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The Census Bureau conducts this survey which allows us to prepare estimates of the expenditures for residential improvement and repairs. This segment of the construction industry amounted to over $150 billion in 2000. A portion of these data are collected on form SORAR–705, which is mailed quarterly to owners of rental or vacant residential properties. Since residential improvement and repairs are a large and growing economic activity, any measure of the construction industry is incomplete without inclusion of these data.

The Census Bureau uses the information to publish improvement and repair expenditures for rental or vacant properties. Data on improvement and repairs to owner-occupied properties are collected in the Consumer Expenditures Survey.

Combined published estimates are used by a variety of private businesses and trade associations for marketing studies, economic forecasts and assessments of the construction industry. They also provide all levels of government with a tool to evaluate economic policy and measure progress towards established goals. For example, the Bureau of Economic Analysis (BEA) uses the improvement statistics to develop the structures component of gross private domestic investment in the national income and product accounts.

II. Method of Collection

The universe for this survey are the owners or designated representatives of the more than 40 million rental and vacant units in the United States. A sample of these owners—i.e., those identified in the Consumer Expenditures Survey—is mailed a questionnaire to report detailed improvement and repair expenditures for their entire property. Approximately 2,800 owners are queried each quarter.

The sample design uses a rotation procedure which brings one-fourth of the sample (approximately 700 properties) into the survey each quarter and takes one-fourth out of the survey each quarter. The data collected are adjusted for unreturned or unusable forms by region and metropolitan statistical area (MSA) status. The weights are adjusted so that sample counts of renter occupied and vacant housing units agree with independently derived controls from the Current Population Survey.

III. Data

OMB Number: 0607–0130.
Form Number: SORAR–705.
Type of Review: Regular Review.
Affected Public: Individuals or households, Businesses or Other for Profit, and State or Local Governments.
Estimated Number of Respondents: 2,800.
Estimated Time Per Response: .25 hours per quarter.
Estimates Total Annual Burden Hours: 2,800.
Estimated Total Annual Cost: The cost to the respondents is estimated to be $28,000.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13, United States Code, Section 182.

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) or 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 also will become a matter of public record.

Dated: June 6, 2002.

Madeleine Clayton,

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

[FR Doc. 02–14660 Filed 6–10–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

National Monthly Survey of Volunteering

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 or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 12, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ken Kaplan, U.S. Census Bureau, FOB 3, Room 3351, Washington, DC 20233–8400 at (301) 457–3836.

SUPPLEMENTARY INFORMATION:

I. Abstract

This monthly national survey will be conducted for 24 months beginning in September 2002 at the request of the USA Freedom Corps. This Survey of Volunteering will provide information on the total number of individuals in the United States involved in unpaid volunteer activities, factors that motivate volunteering, measures of the frequency or intensity with which individuals volunteer, types of organizations that facilitate volunteering, and activities in which volunteers participate.

Each month we will select a sample of 1,800 households from expired Current Population Survey (CPS) rotations. We will collect data for all persons 15 years of age or older. Proxy interviews are acceptable. There will be a total of 12 questions each month with some new questions rotating in quarterly to replace some existing questions. We may link to the CPS data for these respondents for analytical purposes.

II. Method of Collection

The data collection methodology will utilize computer-assisted telephone interviewing (CATI) in one of the Census Bureau's telephone centers.

III. Data

OMB Number: Not available.

Form Number: There will not be a form number because the survey will be conducted by CATI.

Type of Review: New collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,800 households monthly.

Estimated Time Per Response: 20 minutes per household.

Estimated Total Annual Burden Hours: 7,200 hours.

Estimated Total Annual Cost: There is no cost to respondents other than their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

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 or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 6, 2002.

Madeleine Clayton,

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

[FR Doc. 02–14661 Filed 6–10–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–580–815, A–580–816

Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Reviews in Accordance with Court Decision

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

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Reviews in Accordance with Final Court Decision.

SUMMARY: On August 30, 2001, the United States Court of International Trade (''CIT'') sustained the final remand determination of the 1994–95 administrative reviews for Dongbu Steel Co., Ltd. (''Dongbu''), Pohang Iron and Steel Co., Ltd., (''POSCO''), and Union Steel Manufacturing Co., Ltd. (''Union'') by the Department of Commerce (''the Department'') arising from the antidumping duty orders on Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea. *See AK Steel Corporation et al v. United States, et al*, Consol. Ct. No. 97–05–00875, Slip Op. 01–113 (Ct. Int'l Trade August 30, 2001). As there is now a final and conclusive court decision in this case, we are amending the final results of review in these matters. We will instruct the U.S. Customs Service to liquidate entries subject to these amended final results.

EFFECTIVE DATE: June 11, 2002.

FOR FURTHER INFORMATION CONTACT: Marlene Hewitt, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W.,Washington DC 20230; telephone (202) 482–1385.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1993 the Department issued antidumping duty orders on Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea. *See Antidumping Duty Order: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea*, 58 FR 44159 (August 19, 1993). On April 15, 1997, the Department published its final results of the 1994–1995 administrative reviews (second reviews) of Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea for three Korean manufacturers/exporters/producers: Dongbu, POSCO, and Union. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea; Final Results of Antidumping Administrative Review*, 62 FR 18404 (April 15, 1997) (''Final Results'').

AK Steel Corporation, Inland Steel Industries Inc., Bethlehem Steel Corporation, U.S. Steel Corporation A Unit of USX Corporation, LTV Steel Co., Inc., National Steel Corporation, (collectively ''AK Steel'' or ''Petitioners'') challenged certain aspects of the Department's *Final Results* at the CIT.

On November 23, 1998, the CIT affirmed the Department's *Final Results* on the following issues: (1) application of the Department's three-part ''PQ Test'' in determining Dongbu, POSCO and Union's classification of sales as export price (''EP'') or constructed export price (''CEP'') sales; (2) the determination to collapse the POSCO Group and not apply the ''fair value'' and ''major input'' provisions to the collapsed entities; (3) the determination that POSCO is not affiliated with Union and Dongbu; (4) the calculation of Dongbu's and Union's movement expenses; (5) the determination to accept POSCO's cost reconciliation explanation as reasonable; and (6) the calculation of Dongbu's warehousing expenses. *See AK Steel Corporation et al v. United States et al*, Consol. Ct. No. 97–05–00865, Slip Op. 98–159 (Ct. Int'l Trade November 23, 1998).

Petitioners appealed the CIT decision to the United States Court of Appeals for the Federal Circuit (''CAFC''). The CAFC held that (1) CEP rather than EP methodology was applicable and (2) having ''collapsed'' three affiliated foreign producers into a single entity for purposes of levying a single anti-dumping duty rate, it was permissible

for the Department not to apply the fair value and major-input provisions to underlying transactions between those companies. Accordingly, the CAFC affirmed-in-part, reversed-in-part and remanded. *See AK Steel Corporation et al v. United States et al*, 203 F.3d 1330 (Fed. Cir 2000).

The Korean producers then filed at the CAFC a petition for rehearing and suggestion for rehearing *en banc*. The CAFC took the case on reconsideration for the limited purpose of addressing certain statutory arguments that had not been raised during briefing or at oral argument. On September 12, 2000, the CAFC issued a new opinion and ordered that its previous opinion be withdrawn. *See AK Steel Corporation et al v. United States, et al*, 226 F. 3d 1361 (Fed. Cir. 2000). However, the outcome of the case remained essentially unchanged. In its new opinion, the CAFC again held that the CEP rather than EP methodology was applicable to respondents' sales and affirmed the CIT's decision that the Department was correct in not applying the fair value and major input provisions to the collapsed entities. The CAFC again remanded the final determination for the Department to reconsider whether the respondents' sales were properly considered EP sales. In its opinion, the CAFC specifically invalidated the Department's long-standing ''PQ Test,'' holding that ''where a contract for sale was between a U.S. affiliate of a foreign producer or exporter and an unaffiliated U.S. purchaser, then the sale must be classified as a CEP sale.'' The CAFC concluded that the judgment of the CIT is, accordingly, affirmed-in-part, reversed-in-part and remanded. *See AK Steel Corporation et al v. United States, et al* 226 F.3d 1361, at 1374, (Fed. Cir. 2000). The other issues were not appealed to the CAFC.

On January 2, 2001, the CIT, consistent with the CAFC's ruling, remanded the *Final Results* to the Department to calculate U.S. price based on CEP for all respondents (*i.e.*, Dongbu, POSCO, and Union). *See Court Remand Order in AK Steel Corporation et al v. United States, et al*, Consol. Ct. No. 97–05–00865, (Ct. Int'l Trade January 2, 2001).

On May 24, 2001, the Department filed its redetermination pursuant to court remand. The Department applied the test articulated by the CAFC and the corresponding CIT remand instructions. See AK Steel Corporation et al v. United States, et al, 226 F. 3d 1361 (Fed. Cir.2000) and *remand order*, Consol. Court No. 97–05–00865, (Ct. Int'l Trade January 2, 2001).

On June 21, 2001, the CIT remanded the redetermination to the Department to correct certain errors, in its redetermination, in calculating the margins for Dongbu and Union. *See* Court Remand Order in *AK Steel Corporation et al* v. United States, et al, Consol. Ct. No. 97–05–00865, (Ct. Int'l Trade June 21, 2001).

On August 6, 2001, the Department re-issued its redetermination pursuant to the court remand of June 21, 2001, after correcting errors in the margins for Dongbu, and Union.

On August 30, 2001, the CIT sustained the Department's redetermination on remand. *See AK Steel Corporation et al v. United States, et al*, Consol. Ct. No. 97–05–00865, Slip Op. 01–113 (Ct. Int'l Trade August 30, 2001).

Amendment to Final Results

As the time period for appealing the CIT's decision sustaining the Department's redetermination has expired and no party has appealed this decision, litigation in this case is now final and conclusive for Dongbu, POSCO, and Union. Pursuant to Section 516 A(c) of the Act, we are therefore amending our final results of review for the period August 1, 1994 through July 31, 1995, to reflect the findings in the redetermination.

The revised weighted-average margins for the above companies are as follows: BOXHD≤

COLD-ROLLED PRODUCTS:

Manufacturer/Exporter	Margin (percent)
Dongbu	0.22
POSCO	0.48
Union	0.78

CORROSION-RESISTANT PRODUCTS:

Manufacturer/Exporter	Margin (percent)
Dongbu	0.04
POSCO	0.09
Union	1.41

Accordingly, the Department will determine, and the U.S. Customs Service (''Customs'') will assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these amended final results. For assessment purposes, we have calculated importer-specific duty assessment rates for each class or kind of merchandise. The Department will issue appraisement instructions directly to Customs. The above amended rates will not affect Dongbu, POSCO, and Union's cash deposit rates currently in effect, which continue to be based on the margins found to exist in the most recently completed review.

This notice is published in accordance with sections 751(a)(1) and 777(i) of the Tariff Act (19 U.S.C. 1675(a)(1) and 1677f(i)) and 19 C.F.R. 351.221.

Dated: June 5, 2002

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–14662 Filed 6–10–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815, A–580–816]

Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Reviews in Accordance with Court Decision

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

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Reviews in accordance with Court Decision.

SUMMARY: On October 13, 2000, the United States Court of International Trade (''CIT'') affirmed the second remand determination of the 1995–96 administrative reviews for Dongbu Steel Co., Ltd. (''Dongbu''), Pohang Iron and Steel Co., Ltd., (''POSCO''), and Union Steel Manufacturing Co., Ltd. (''Union'') by the Department of Commerce (''the Department'') arising from the antidumping duty orders on Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea. *See Pohang Iron and Steel Co., Ltd. et al v. United States*, Consol. Ct. No. 98–04–00906, Slip Op. 00–132 (Ct. Int'l Trade October 13, 2000). As there is now a final and conclusive court decision in this case, we are amending the final results and amended final results of the reviews in this matter. We will instruct the U.S. Customs Service to liquidate entries subject to these amended final results.

DATES: Effective Date: June 11, 2002.

FOR FURTHER INFORMATION CONTACT: Marlene Hewitt, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and

Constitution Avenue, N.W.,Washington DC 20230; telephone (202) 482–1385.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1993, the Department issued antidumping duty orders on Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea. *See Antidumping Duty Order: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea*, 58 FR 44159 (August 19, 1993). On March 18, 1998, the Department published its final results of the 1995–1996 administrative reviews (third review) of Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea for three Korean manufacturers/exporters: Dongbu, POSCO, and Union. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea; Final Results of Antidumping Administrative Review*, 63 FR 13170 (March 18, 1998) (''*Final Results*''). On April 27, 1998, the Department published the amended final results of the 1995–1996 Administrative Review of Certain Cold-Rolled Carbon Steel Flat Products From Korea to reflect the correction of certain ministerial errors in the *Final Results*. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Korea: Amended Final Results of Antidumping Administrative Review*, 63 Fed. Reg. 20572 (April 27, 1998) (''*Amended Final Results*'').

Foreign producers Pohang Iron and Steel Co., Ltd. (''POSCO''), Pohang Coated Steel Co., Ltd. (''POCOS''), and Pohang Steel Industries Co., Ltd. (''PSI'') (collectively ''POSCO Group''), and Inland Steel Industries Inc., Bethlehem Steel Corporation, U.S. Steel Corporation A Unit of USX Corporation, LTV Steel Co., Inc., National Steel Corporation, (collectively ''domestic producers'' or ''petitioners'') contested at the CIT various aspects of the Department's *Final Results* and *Amended Final Results*.

On October 20, 1999, the CIT remanded certain aspects of the Department's *Final Results* and *Amended Final Results*. The court ordered the Department to explain or reconsider the following issues: (1) its determination that the POSCO Group's U.S. sales were constructed export price (''CEP'') as opposed to export price (''EP'') sales, (2) its inclusion of movement expenses in the calculation of CEP profit, (3) its calculation of and use of facts available for U.S. indirect selling expenses for the POSCO Group, and (4) Union's claim of free U.S. warehousing for one verification observation. *See Pohang Iron and Steel Co., Ltd. et al v. United States*, Consol. Ct. No. 98–04–00906, Slip Op. 99–112 (Ct. Int'l Trade October 20, 1999).

On February 22, 2000, the Department filed its redetermination pursuant to court remand. The Department re-examined, and recalculated the contested aspects of the *Final Results* and *Amended Final Results*. *See Final Results of Redetermination Pursuant to Court Remand: Pohang Iron and Steel Co., Ltd. et al v. United States*, Consol. Ct. No. 98–04–00906, Slip Op. 99–112 (Ct. Int'l Trade October 20, 1999) (''remand results'').

On July 6, 2000, the CIT sustained the Department's remand results with respect to Union's warehousing expenses and classification of the POSCO Group's U.S. sales as CEP sales, but remanded the remand results to the Department to correct further the indirect selling expenses adjustment. *See Pohang Iron and Steel Co., Ltd. et al v. United States*, Consol. Ct. No. 98–04–00906, Slip Op. 00–77 (Ct. Int'l Trade July 6, 2000).

On August 30, 2000, the Department filed its second redetermination pursuant to court remand. The Department re-calculated the POSCO Group's U.S. indirect selling expense adjustment by removing from interest expenses previously deducted imputed credit expenses in the programs used for the *Final Results* and *Amended Final Results*. *See Final Results of Redetermination Pursuant to Court Remand: Pohang Iron and Steel Co., Ltd. et al v. United States*, Consol. No. 98–04–00906, Slip Op. 00–77 (Ct. Int'l Trade July 6, 2000) (''second remand results'').

On October 13, 2000, the CIT affirmed the second remand results of the Department. *See Pohang Iron and Steel Co., Ltd. et al v. United States*, Consol. Ct. No. 98–04–00906, Slip Op. 00–132 (Ct. Int'l Trade October 13, 2000).

Amendment to Final Results

As the time period for appealing the CIT's decision sustaining the Department's second remand results has expired and no party has appealed this decision, litigation in this case is final and conclusive for Dongbu, POSCO, and Union. Pursuant to section 516 A(c) of the Act, we are therefore amending our final results of review for the period August 1, 1995 through July 31, 1996, to reflect the findings in the first and second remand results.

The revised weighted-average margins for the above companies are as follows:

COLD-ROLLED PRODUCTS:[1]

Manufacturer/Exporter	Margin (percent)
Dongbu	1.21
POSCO Group	5.73

[1] Union had no sales during the POR.

CORROSION-RESISTANT PRODUCTS:

Manufacturer/Exporter	Margin (percent)
Dongbu	0.60
POSCO Group	1.46
Union	0.39

Accordingly, the Department will determine, and the U.S. Customs Service (''Customs'') will assess, antidumping duties on all appropriate entries of subject merchandise from Dongbu, POSCO, and Union, in accordance with these amended final results. For assessment purposes, we have calculated importer-specific duty assessment rates for each class or kind of merchandise. The Department will issue appraisement instructions directly to Customs. The above amended rates will not affect Dongbu, POSCO, and Union's cash deposit rates currently in effect, which continue to be based on the margins found to exist in the most recently completed review.

This notice is published in accordance with sections 751(a)(1) and 777(i) of the Tariff Act (19 U.S.C. 1675(a)(1) and 1677f(i)) and 19 C.F.R. 351.221.

Dated: June 5, 2002

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. 02–14663 Filed 6–10–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; NIST Weights and Measures Survey

ACTION: Notice.

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 the proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3504(c)(2)(A)).

DATES: Written comments on the proposed collection of information must be submitted on or before August 12, 2002.

ADDRESSES: Submit written comments on the collection of information to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 1401 Constitution Avenue, NW., Washington, DC 20230, or via the Internet at *MClayton@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests of additional information, for copies of the information collection instrument(s) and instructions should be directed to Henry Oppermann, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600, Tel. (301) 975–5507, or *henry.oppermann@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The NIST Weights and Measures Division (WMD) is part of Technology Services in Gaithersburg, MD. The WMD is the national technical resource on U.S. weights and measures standards, practices, and test procedures. Weights and measures regulatory control of the commercial measurement system is performed at the state and local government level. The study is to document the changes that have occurred over the past 10 years in state and local weights and measures enforcement programs in terms of funding, administration, and allocation of resources to their different regulatory activities. Additionally, approximately fifteen weights and measures directors will be interviewed to obtain information as to how the regulatory environment and their operations have changed over 10 years to identify trends. Jurisdictions will be asked to identify what they see as their most critical needs under the current environment and operation conditions of their programs. The changes in the number of businesses and devices regulated by weights and measures will be examined to assess how the nature of the regulated businesses has changed. Approximately ten representatives of companies that manufacturer scales, load cells, and meter manufacturers will be interviewed to identify how their markets and customer needs have changed, and how this has affected their views on national and international standards. The responses will help state and local weights and measures offices evaluate their programs. This information will be used to assess the impact of weights and measures enforcement activities, and set program directions and priorities for the NIST Weights and Measures Division.

II. Method of Collection

Web forms will be the primary method to collect information on weights and measures resources, workloads, and distribution of resources. Paper forms as a backup data collection method for those who cannot access the web forms or prefer responding on paper. Interviews with selected weights and measures officials and industry representatives will result in the identification and assessment of national and international market trends, and trends in state and local budgets and program operations.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State or local government, business or for-profit organizations.

Estimated Number of Respondents: 90.

Estimated Time Per Response: 6 hours.

Estimated Total Annual Burden Hours: 540.

Estimated Total Annual Cost to the Public: $0.

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.

Dated: June 6, 2002.

Madeleine Clayton,

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

[FR Doc. 02–14659 Filed 6–10–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology, Commerce.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology (''NIST''), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States of America, its territories, possessions and commonwealths, to NIST's interest in the invention embodied in U.S. Patent No. 5,244,634, titled ''System For Detecting Transition and Rare Earth Elements in a Matrix,'' NIST Docket No. 92–003D to Metara, Inc., having a place of business at 1225 E. Arques Avenue, Sunnyvale, CA 94085. The grant of the license would be in the following fields of use: Semiconductor, Environmental, Pharmaceutical, Chemical and other related commercial applications.

FOR FURTHER INFORMATION CONTACT: J. Terry Lynch, National Institute of Standards and Technology, Office of Technology Partnerships, 100 Bureau Drive, Stop 2200, Gaithersburg, MD 20899, Phone 301–975–2691.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. The availability of the invention for licensing was published in the **Federal Register** on November 23, 1992.

U.S. Patent No. 5,244,634 is jointly owned by the U.S. government, as represented by the Secretary of Commerce, and Dionex Corporation. The invention accurately detects transition and rare earth elements in environmental materials and natural waters, industrial waste, biological fluids, and other samples. The system is sensitive enough to detect these elements below the parts-per-billion level. Samples may contain 1,000 to 1 million times more alkali or alkaline earth metals than transition and rare earth elements. Ion-exchange detection methods are not specific enough to detect ions of interest in such samples.

Dated: June 3, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–14613 Filed 6–10–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060502C]

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 public meetings of the Technical Review Panel and User Review Panel from June 26 through June 27, 2002.

DATES: The Council's Technical Review Panel and User Review Panel will convene in separate meetings at 8:30 a.m. on Wednesday, June 26, 2002 and will conclude by 5 p.m. on Thursday, June 27, 2002.

ADDRESSES: The meetings will be held at the Hilton Tampa Airport Westshore 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: Dr. Richard Leard, Senior Fishery Biologist, the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Technical Review Panel and User Review Panel will convene to review the Preliminary Draft of the Programmatic Environmental Impact Statement (PEIS) for the Generic Essential Fish Habitat (EFH) Amendment in separate meetings.

The Technical Review Panel will review the preliminary draft of the EFH PEIS and provide the Council and contractor with suggestions for technical revisions. In addition the Technical Review Panel members serve as contract monitors.

The User Review Panel will review the preliminary draft of the EFH PEIS and provide the Council and contractor with suggestions for revisions. In addition the User Review Panel members are asked to provide their comments on whether the documents properly address the issues for the user group they represent. The User Review Panel is comprised of representatives from the following sectors: recreational, charter, commercial, environmental, oil and gas industry, and wetlands owners.

Although non-emergency issues not contained in the agendas may come before the Technical and User Review Panels for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the MSFCMA, provided the public has been notified of the Council's intent to take final action to address the emergency.

Copies of the agendas of these meetings can be obtained by calling the Council office at 813–228–2815 (toll-free 888–833–1844).

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 June 19, 2002.

Dated: June 6, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–14667 Filed 6–10–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060502D]

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 will convene public meetings of the Reef Fish Advisory Panel (AP) and the Standing and Special Reef Fish Scientific and Statistical Committee (SSC) from June 24 through June 27, 2002.

DATES: The Council's Reef Fish AP will convene at 9 a.m. on Monday, June 24, 2002 and conclude by 5 p.m. on Tuesday, June 25, 2002. The SSC will convene at 9 a.m. on Wednesday, June 26, 2002 and will conclude by 5 p.m. on Thursday, June 27, 2002.

ADDRESSES: The meetings will be held at the Hilton Tampa Airport Westshore 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. Steven Atran, Population Dynamics Statistician, the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The AP and the SSC will review a report of the Council's Socioeconomic Panel (SEP). The major content of the SEP report is a bioeconomic model evaluation of the economic implications of various measures proposed to rebuild the Gulf of Mexico red grouper stock under the draft Secretarial Amendment 1 to the Reef Fish Fishery Management Plan to Set a 10-Year Rebuilding Plan for Red Grouper, with Associated Impacts on Gag and Other Groupers and Draft Supplemental Environmental Impact Statement. The AP and SSC will also provide recommendations to the Council on red grouper regulations.

Although other non-emergency issues not on the agenda may come before the AP/SSC 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/SSC 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 agendas of these meetings, and draft Secretarial Amendment 1, can be obtained by calling the Council office at 813–228–2815 (toll-free 888–833–1844). Additional materials, including an addendum to Secretarial Amendment 1 (reflecting changes to the Council's preferred alternatives made at the May Council meeting), and the Socioeconomic Panel report, can also be obtained from the Council office but may not be available until just prior to the meetings.

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 June 17, 2002.

Dated: June 5, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–14668 Filed 6–10–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060502B]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Receipt of applications for scientific research permits (1381, 1382, and 1383) and receipt of applications to modify permits (1140, 1156, 1309, 1317, 1322, and 1370).

SUMMARY: NMFS has received three new permit applications and six applications to modify existing scientific research permits related to Pacific salmon and steelhead. The proposed research is intended to increase knowledge of the listed species and to help guide management and conservation efforts.

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific daylight savings time on July 11, 2002.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (503–230–5400). Comments may also be sent via fax to 503–230–5435. Comments will not be accepted if submitted via e-mail or the internet.

FOR FURTHER INFORMATION CONTACT: Steve Stone, Portland, OR (ph: 503–231–2317, Fax: 503–230–5435, e-mail: *steve.stone@noaa.gov*)

SUPPLEMENTARY INFORMATION:

Species Covered in this Notice

The following ESA-listed species and evolutionary significant units (ESUs) are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened Puget Sound (PS); threatened Snake River (SnR) spring/summer and fall; endangered Upper Columbia River (UCR), threatened Lower Columbia River (LCR).

Coho salmon (*O. kisutch*): threatened Southern OR/Northern CA Coasts (SONCC), and threatened OR Coast (OC).

Sockeye (*O. nerka*): endangered SnR.

Chum (*O. keta*): threatened Columbia River (CR).

Steelhead (*O. mykiss*): endangered Upper Columbia River spring-run (UCR), threatened Middle Columbia River (MCR), threatened LCR, threatened SnR.

Authority

Scientific research and/or enhancement permits are issued under Section 10(a)(1)(A) of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 *et. seq*). Issuance of permits and permit modifications, as required by the ESA, is based on a finding that such permit/modifications: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR Parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

New Applications Received

Permit 1381

The City of Bellingham requests a 2–year permit for annual takes of juvenile, threatened, naturally produced and artificially propagated PS chinook salmon associated with research to be conducted in the Whatcom Creek estuary. The purpose of the study is to determine a baseline usage of the project area by juvenile salmonids in order to monitor the effectiveness of integrated cleanup and habitat restoration plans implemented on the Holly Street Landfill. The City proposes to capture (using beach seines), anesthetize, handle, measure, and release up to 10 juvenile, naturally produced and 13 juvenile, artificially propagated PS chinook salmon. In addition, the City of Bellingham is requesting indirect mortality of up to one juvenile, naturally produced and one juvenile, artificially propagated PS chinook salmon as a result of the study.

Permit 1382

The Utah State University in Logan, UT (USU) requests a 3-year scientific research permit for annual takes of juvenile, threatened, MCR steelhead associated with a scientific research project proposed to occur in the Walla Walla River Subbasin in Washington and Oregon. The objective of the research is to assess the population densities and life-history characteristics of steelhead and bull trout (*Salvelinus confluentus*) in association with habitat quality and land use in the subbasin. Information collected from the research will be used in recovery planning and will provide a template for research, monitoring, and evaluation programs for steelhead and bull trout populations throughout the Walla Walla River Subbasin as well as other subbasins. Adult and juvenile, threatened, MCR steelhead are proposed to be observed/harassed during snorkel surveys. In addition, up to 10 MCR steelhead adults and up to 600 MCR steelhead juveniles are proposed to be captured, handled, and released using backpack electrofishing, seining, angling, and screw traps. Up to 3 percent of the ESA-listed juvenile steelhead handled may be indirectly killed.

Permit 1383

The U.S. Geological Survey in Cook, WA (USGS) requests a 3-year permit for annual takes of juvenile and adult, threatened, LCR chinook salmon; threatened, MCR steelhead; threatened, LCR steelhead; and threatened, CR chum salmon associated with research to be conducted in selected watersheds between Bonneville Dam and The Dalles Dam. The objectives of the study are to (1) determine abundance, distribution, and life history patterns of anadromous and resident fishes, (2) identify populations and determine the status of steelhead and cutthroat trout (*O. clarki*), (3) restore and recover salmonid habitat, and (4) assess sympatric relationships between listed species and cutthroat trout. The USGS proposes to observe/harass juvenile and adult chinook salmon and steelhead and capture (using electrofishing and angling

equipment, seines, and minnow traps), anesthetize, handle, measure, and release up to 2400 juvenile LCR steelhead, 2050 juvenile MCR steelhead, 20 CR chum salmon, and 2225 juvenile LCR chinook salmon. In addition, the USGS is requesting indirect mortality of up to one juvenile CR chum salmon as a result of the study. Up to 5 percent of the LCR chinook salmon, MCR steelhead, and LCR steelhead handled may be indirectly and/or directly killed and provided to the U.S. Fish and Wildlife Services's Lower Columbia River Fish Health Center to gain information on diseases in wild fish as part of the National Wild Fish Health Survey.

Modification Requests Received

Permit 1140–modification 3

The Northwest Fisheries Science Center in Seattle, WA (NWFSC) requests an amendment (modification 3) to its permit for increased annual takes of juvenile, threatened, naturally produced and artificially propagated, PS chinook salmon associated with study 2 and a new study (study 3) to be conducted in Commencement Bay, Washington. The NWFSC is currently authorized under permit 1140 to annually take: threatened, juvenile, naturally produced and artificially propagated, PS chinook salmon; naturally produced and artificially propagated, SnR spring/summer chinook salmon; naturally produced and artificially propagated, UCR steelhead; SnR fall chinook salmon; UCR spring chinook salmon; SONCC coho salmon; and SnR sockeye salmon.

Study 1. This study is designed to assess the relationship between environmental variables, selected anthropogenic stressors, and bacterial and parasitic pathogens on disease-induced mortality of juvenile salmon in selected coastal estuaries in Oregon and Washington. The study will provide a better understanding of how environmental factors influence disease transmission.

Study 2. This study evaluates the effects of shoreline development on nearshore fish and submerged aquatic plant assemblages. The NWFSC coordinates their work with the University of Washington who is studying the effects of shoreline development on supralittoral ecology. The study focuses on changes in diet and available prey resources for several fish species. The NWFSC is requesting an extension to this study. The pilot study will evaluate the efficacy of several sampling methods and approaches that are effective for sampling different habitat types. The results of the pilot study will aid in designing statistically based studies to compare abundance, residence time, habitat use, diet, and behavior of juvenile salmon along the City of Seattle's shorelines. These investigations will help resource managers identify potential impacts of nearshore activities on ESA-listed fish, prioritize recovery actions, and identify approaches that provide maximum protection to listed fish habitat. The NWFSC proposes to harass (using snorkel surveys and video cameras), capture, anesthetize, handle (examine stomach contents using non-lethal evacuation), and release up to 92 juvenile, naturally produced and five artificially propagated PS chinook salmon in addition to their current take. In addition, the NWFSC is requesting indirect mortality of up to four juvenile, naturally produced and one juvenile, artificially propagated PS chinook salmon as a result of the study.

Study 3. The NWFSC proposes to monitor several sites in Commencement Bay for fish assemblage, habitat utilization, chemical contamination, and fish pathology information to evaluate the success of restoration activities. The NWFSC proposes to capture (using beach seines and trap/fyke nets), handle, and release up to 227 juvenile, naturally produced and 12 juvenile, artificially propagated PS chinook salmon in addition to their current take. The NWFSC also proposed to examine stomach contents using non-lethal evacuation. In addition, the NWFSC is requesting indirect mortality of up to 13 juvenile, naturally produced and one juvenile, artificially propagated PS chinook salmon as a result of the study.

Permit 1156–modification 2

The U.S. Environmental Protection Agency in Corvallis, OR (EPA) requests a modification to permit 1156 for annual takes of adult and juvenile, threatened, OC and SONCC coho salmon associated with research designed to assess status and trends of surface waters in the Pacific Northwest in a statistically and ecologically rigorous manner as mandated by the Clean Water Act (CWA). The research is designed to collect data used to enforce the CWA which will increase the recovery potential of ESA-listed species in various rivers in the Pacific Northwest. The research will benefit ESA-listed fish by providing baseline information to support enforcement of the CWA in freshwater river systems where ESA-listed fish may be present. Dynamac Corporation is a cooperator with the scientific research and its biologists are authorized to act as agents of EPA in conducting the research. EPA/Dynamac proposes to capture (using backpack or raft-mounted electrofishing), examine, and release up to 10 juvenile and two adult SONCC coho and five juvenile and two adult OC coho salmon. Adult OC coho salmon would be shocked but not netted during the activities. EPA/Dynamac requests indirect mortality of up to one juvenile OC coho salmon and one juvenile SONCC coho salmon as a result of the research. The EPA has also requested that the USGS, Biological Resources Division, be allowed to act as an agent under the permit.

Permit 1309–modification 1

The King County Department of Natural Resources in Seattle, WA (KCDNR) requests an amendment to permit 1309 for a project modification and increased annual takes of juvenile, threatened, artificially propagated, PS chinook salmon associated with study 1. The KCDNR is currently authorized annual takes of threatened juvenile, naturally produced and artificially propagated PS chinook salmon under three studies. The purpose of study 1 is to determine the presence of PS chinook salmon, improve understanding of juvenile salmon distribution, and to study their use of nearshore habitat in King County's lakes, streams, and marine nearshore habitat. The research will help determine the effectiveness of County programs at protecting and restoring habitat for PS chinook salmon. Study 1 consists of the following subtasks: (1) Agricultural watercourse monitoring, (2) the Cedar River restoration site monitoring, and (3) nearshore studies. The KCDNR is requesting authorization to capture ESA-listed fish using backpack electrofishing equipment. The KCDNR also proposes to examine the stomach contents (using non-lethal evacuation) from a subsample of PS chinook salmon captured under their current take authorization. In addition, the KCDNR requests authorization to lethally take up to 10 juvenile, artificially propagated PS chinook salmon to collect coded wire tags.

Permit 1317–modification 1

On April 12, 2002, a notice was published in the **Federal Register** (67 FR 17970) that NMFS received an application from the USGS for modification 1 to scientific research permit 1317. NMFS has received an amendment to that application from the USGS requesting (1) annual takes (capture, handle, and release) of adult, threatened, MCR steelhead associated

with the research, and (2) an additional task involving the non-lethal collection of gill tissue from juvenile, threatened, MCR steelhead to determine gill ATPase activity in steelhead smolts migrating through the wetland units at the Toppenish National Wildlife Refuge in WA.

Permit 1322–modification 1

On April 12, 2002, a notice was published in the **Federal Register** (67 FR 17970) that NMFS received an application from NWFSC for modification 1 to scientific research permit 1322. research. NMFS has received an amendment to that application from NWFSC requesting annual lethal takes (tissue, stomach content, scale, and otolith samples) of 400 juvenile CR chum salmon for genetic and pathogenic examination. This information will help (1) provide a better understanding of how environmental factors influence disease transmission, (2) determine the role of disease as a factor affecting survival of juvenile salmonids, and (3) track juvenile salmon migration and early life history.

On April 12, 2002, a notice was published in the **Federal Register** (67 FR 17970) that NMFS received an application from USU for a 1–year permit that would authorize takes of adult and juvenile, threatened, SnR spring/summer chinook salmon and adult and juvenile, threatened, SnR steelhead for the purpose of scientific research. NMFS has received an amendment to that application from USU requesting additional takes of ESA-listed SnR salmon and steelhead adults and juveniles associated with an additional 3-year study proposed to be conducted in the Imnaha River Subbasin in Oregon. The objective of the research is to assess the population densities and life history characteristics of steelhead and bull trout in association with habitat quality and land use in the subbasin. Information collected from the research will be used in recovery planning and will provide a template for research, monitoring, and evaluation programs for steelhead and bull trout populations throughout the Imnaha River Subbasin as well as other watersheds. Adult and juvenile, threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon and adult and juvenile, threatened, SnR steelhead are proposed to be observed/harassed during snorkel surveys. In addition, up to 20 adult, threatened, SnR spring/summer chinook salmon; up to 1300 juvenile, threatened, naturally produced, SnR spring/summer chinook salmon; up to 150 juvenile, threatened, artificially propagated, SnR spring/summer chinook salmon; up to 15 adult, threatened, SnR steelhead; and up to 600 juvenile, threatened, SnR steelhead are proposed to be captured, handled, and released using backpack electrofishing, seining, angling, and screw traps. Up to 3 percent of the ESA-listed juvenile salmon and steelhead handled may be indirectly killed.

Permit 1370–modification 1

Dated: June 6, 2002.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–14669 Filed 6–10–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Office of the Secretary; Federal Advisory Committee for Air Force Academy Academic and Institutional Programs

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of forthcoming meeting of the Federal Advisory Committee for Air Force Academy Academic and Institutional Programs. The purpose of this meeting is to consider morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy. Certain sessions of these meetings will be closed to the public.

DATES: June 25, 2002.

ADDRESSES: Washington DC, Capital Building.

FOR FURTHER INFORMATION CONTACT: Major Steve Sandridge or Ms. Sue Christensen, Institutional Events, HQ USAFA/XPO, 2304 Cadet Drive, Suite 300, USAF Academy CO 80840–5002, (719) 333–3832.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–14540 Filed 6–10–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Information Quality Guidelines

AGENCY: Office of the Chief Information Officer, Department of Education.

ACTION: Notice of reopening and extension of public comment period.

SUMMARY: This document extends the comment period for the Department of Education's draft Information Quality Guidelines. On May 1, 2002, the Department of Education published in the **Federal Register** (67 FR 21641) a notice of availability of these guidelines for public comment by May 31, 2002. We are now reopening the comment period and extending the deadline to June 17, 2002, in order to give the public more time to comment on the draft guidelines.

DATES: We must receive your comments on or before June 17, 2002.

ADDRESSES: Address all comments about the guidelines to Office of the Chief Information Officer, U.S. Department of Education, 7th and D Streets, SW., room 4082, Washington, DC 20202–4580. If you prefer to send your comments through the Internet, use the following address: *ocio.section515@ed.gov.* You must include the term ''Section 515 Information Quality Guidelines'' in the subject line of your electronic message. You may also fax your comments to us at (202) 708–9346.

FOR FURTHER INFORMATION CONTACT: For a Copy of the Guidelines and Further Information: The guidelines are available through the Internet at the following site: *www.ed.gov/offices/ocio/section515/index.html* Alternatively, you may contact Veena Bhatia, U.S. Department of Education, 7th and D Streets, SW., room 4036–16, Washington, DC 20202–4651. Telephone: (202)708–9279.

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.**

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Dated: June 5, 2002.

Craig B. Luigart,

Chief Information Officer.

[FR Doc. 02–14589 Filed 6–10–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Submission for OMB Review; Comment Request

AGENCY: Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) has submitted the proposed collection of information described in this notice to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The proposed collection of information would implement a statutory requirement that Technology Transfer Ombudsmen report quarterly on complaints they receive.

DATES: Comments regarding this collection of information should be received by July 11, 2002.

ADDRESSES: Written comments may be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOE, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503. A copy of the comments also should be sent to: Susan L. Frey, Director, Records Management Division (IM–11), Office of Records and Business Management, Office of the Chief Information Officer, U.S. Department of Energy, Germantown, Maryland 20874–1290.

SUPPLEMENTARY INFORMATION: DOE proposed the following collection of information on March 25, 2002 (67 FR 13614); no public comments were received:

(1) *OMB No.:* New; (2) *Collection Title:* Technology Partnerships Ombudsmen Reporting Requirements; (3) *Type of Review:* New collection; (4) *Purpose:* This collection of information would implement a provision in the Technology Commercialization Act of 2000 (Pub. L. 106–404) that requires Technology Transfer Ombudsmen appointed by DOE national laboratories to report quarterly on the number and nature of complaints and disputes received and the Ombudsman's assessment of their resolution; (5) *Estimated Number of Respondents:* 24 Technology Transfer Ombudsmen; (6) *Estimated Number of Burden Hours:* 100 (Quarterly times 24 respondents).

Request for Comments: OMB is particularly interested in comments which address: (1) Whether the proposed collection of information is necessary; (2) the accuracy of DOE's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who choose to respond.

Statutory Authority: 44 U.S.C. 3507(a)(1).

Susan L. Frey,

Director, Records Management Division, Office of Records and Business Management, Office of the Chief Information Officer, Department of Energy.

[FR Doc. 02–14610 Filed 6–10–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–342–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 5, 2002.

Take notice that on May 31, 2002, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective June 1, 2002:

Fifty-Second Revised Sheet No. 8
Fifty-Second Revised Sheet No. 9
Fifty-First Revised Sheet No. 13
Sixty-Third Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately $2.9 million of above-market costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%). ANR advises that the proposed changes would decrease current quarterly Above-Market Dakota Cost recoveries from $3,099,144 to $2,872,498.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–14604 Filed 6–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–343–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 5, 2002.

Take notice that on May 31, 2002 Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing its annual Fuel Retention Adjustment filing pursuant to Section 31 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Eastern Shore states that Section 31, ''Fuel Retention Adjustment'', specifies that with no less than thirty (30) days prior notice, Eastern Shore shall file with the Commission revised tariff sheets containing a re-determined Fuel Retention Percentage (FRP) for affected transportation rate schedules to be effective July 1 of each year. Such FRP is designed to reimburse Eastern Shore for the cost of its Gas Required for Operations (''GRO'') which consists of

(a) gas used for compressor fuel and (b) gas otherwise used, lost or unaccounted for, in its operations. Eastern Shore's FRP is calculated by determining the GRO quantities attributable to system-wide operations for the affected transportation rate schedules using the last twelve (12) month period for which actual data is available and then dividing such quantity by the transportation quantities received by Eastern Shore for the corresponding twelve (12) month period.

Eastern Shore states that as shown in its filing, Eastern Shore's calculated FRP is .30%, a decrease of .08% from the current FRP in effect.

Eastern Shore states that copies of its filing has been mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–14605 Filed 6–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–344–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

June 5, 2002.

Take notice that on May 31, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Twenty-eighth Revised Sheet No. 5. GTN requests that the above-referenced tariff sheet become effective July 1, 2002.

GTN asserts that the purpose of this filing is to comply with Paragraph 37 of the terms and conditions of First Revised Volume No. 1–A of its FERC Gas Tariff, ''Adjustment for Fuel, Line Loss and Other Unaccounted For Gas Percentages.'' These tariff changes reflect that GTN's fuel and line loss surcharge percentage will decrease to 0.0002% per Dth per pipeline-mile for the six-month period beginning July 1, 2002. Also included, as required by Paragraph 37, are workpapers showing the derivation of the current fuel and line loss percentage in effect for each month the fuel tracking mechanism has been in effect.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–14606 Filed 6–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–115–000]

PH Generating Statutory Trust A; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

June 5, 2002.

Take notice that on May 30, 2002, PH Generating Statutory Trust A (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an amendment to its application for determination of exempt wholesale generator status filed in this proceeding on April 8, 2002.

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.

Comment Date: June 12, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–14602 Filed 6–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–345–000]

Tennessee Gas Pipeline Company; Notice of Filing and Request for Waiver

June 5, 2002.

Take notice that on May 31, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing a revised accounting of Tennessee's take-or-pay transition costs and a request for waiver of the requirement that Tennessee restate its take-or-pay transition surcharges.

Tennessee states that this filing of the revised accounting is in compliance with Article XXV of the General Terms and Conditions of its FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee further states that the request for waiver is based on the fact that Tennessee has not incurred any significant recoverable take-or-pay costs since its last filing on November 30, 2001.

Tennessee states that copies of the filing has been mailed to all affected customers and state regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–14607 Filed 6–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1894–000, et al.]

Bethlehem Steel Corporation, et al. Electric Rate and Corporate Regulation Filings

June 3, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Bethlehem Steel Corporation

[Docket No. ER02–1894–000]

Take notice that on May 23, 2002, Bethlehem Steel Corporation (Bethlehem Steel) tendered for filing under Section 205 of the Federal Power Act, a rate schedule for reactive services provided to the Pennsylvania-New Jersey-Maryland Interconnection, L.L.C. (PJM) transmission grid from Bethlehem Steel's Pennwood facility.

Bethlehem Steel requests an effective date on the first day of the month immediately following Commission approval of the filing. Copies of this filing were served upon PJM.

Comment Date: June 13, 2002.

2. California Independent System Operator Corporation

[Docket No. ER02–1895–000]

Take notice that on May 24, 2002, the California Independent System Operator Corporation (ISO) filed a notice a Meter Service Agreement for ISO Metered Entities (MSA) between the ISO and Yuba City Energy Center, LLC. The ISO requests that the MSA be made effective as of May 10, 2002.

The ISO has served copies of this filing upon Yuba City Energy Center, LLC and the Public Utilities Commission of the State of California.

Comment Date: June 14, 2002.

3. California Independent System Operator Corporation

[Docket No. ER02–1896–000]

Take notice that on May 24, 2002, the California Independent System Operator Corporation (ISO) filed a Participating Generator Agreement (PGA) between the ISO and Yuba City Energy Center, LLC. The ISO requests that the PGA be made effective as of May 10, 2002.

The ISO has served copies of this filing upon Yuba City Energy Center, LLC and the Public Utilities Commission of the State of California.

Comment Date: June 14, 2002.

4. California Independent System Operator System

[Docket No. ER02–1897–000]

Take notice that on May 24, 2002, the California Independent System Operator Corporation (ISO) filed a notice concerning the termination of the Participating Generator Agreement (PGA) between the ISO and POSDEF Power Company, L.P. (POSDEF). The ISO requests that the termination of the PGA be effective as of April 30, 2002.

The ISO has served copies of this filing upon POSDEF, the Public Utilities Commission of the State of California, and the persons listed on the service list for Docket No. ER01–1956–000.

Comment Date: June 14, 2002.

5. California Independent System

[Docket No. ER02–1898–000]

Take notice that on May 24, 2002, the California Independent System Operator Corporation (ISO) filed a notice concerning the termination of the Meter Service Agreement for ISO Metered Entities (MSA) between the ISO and POSDEF Power Company, L.P. (POSDEF). The ISO requests that the termination of the MSA be effective as of April 30, 2002.

The ISO has served copies of this filing upon POSDEF, the Public Utilities Commission of the State of California, and the persons listed on the service list for Docket No. ER01–1955–000.

Comment Date: June 14, 2002.

6. New York Independent System Operator, Inc.

[Docket No. ER02–1899–000]

Take notice that on May 24, 2002, the New York Independent System Operator, Inc. (NYISO) on behalf of the Long Island Power Authority (LIPA), filed proposed revisions to the NYISO's Open Access Transmission Tariff (OATT). The proposed filing would revise LIPA's wholesale transmission service charge.

The NYISO has requested that the Commission make the filing effective on June 1, 2002. A copy of this filing was served upon all signatories of the NYISO OATT.

Comment Date: June 14, 2002.

7. New York Independent System Operator, Inc.

[Docket No. ER02–1900–000]

Take notice that on May 24, 2002, the New York Independent System Operator, Inc. (NYISO) filed revisions to its Market Administration and Control Area Services Tariff (Services Tariff) in order to ensure the deliverability of energy from New York generators that

have committed to supply installed capacity to external control areas.

The NYISO has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, to ISO New England Inc., the PJM Interconnection, L.L.C., the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: June 14, 2002.

8. South Carolina Electric & Gas Company

[Docket No. ER02–1901–000]

Take notice that on May 24, 2002, South Carolina Electric & Gas Company (SCE&G) submitted a firm point-to-point transmission service agreement and a non-firm transmission service agreement (the Agreements) establishing UBS AG, London Branch (UBS London) as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of April 24, 2002, for the Agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon UBS London and the South Carolina Public Service Commission.

Comment Date: June 14, 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, 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). 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–14573 Filed 6–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–137–000, et al.]

GNE, LLC, et al.; Electric Rate and Corporate Regulation Filings

June 4, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. GNE, LLC

[Docket No. EG02–137–000]

Take notice that on May 30, 2002, GNE, LLC, located at 1024 Central Street, Millinocket, Maine, 04462, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

GNE, LLC is a Delaware limited liability company that will own and operate six hydroelectric plants located at or near Berlin, New Hampshire with a total nameplate capacity of approximately 30 megawatts and certain undivided joint ownership interests in several transmission interconnection components that will be part of the eligible facility. GNE, LLC states it will be engaged directly and exclusively in the business of owning and operating all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment Date: June 25, 2002.

2. Ocean Peaking Power, L.P.

[Docket No. EG02–138–000]

Take notice that on May 29, 2002, Ocean Peaking Power, L.P. (the Applicant), a limited partnership with its principal place of business at 111 Broadway, New York, NY 10006, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant proposes to construct, own and operate a natural gas-fired, simple cycle power plant to be located in the town of Lakewood, New Jersey. The proposed power plant will ultimately have a nominally rated generating capacity of approximately 500 MW, although at commencement of commercial operations it will have a nominally rated generating capacity of approximately 333 MW. The power plant is expected to commence commercial operation in January 2003. All capacity and energy from the power plant will be sold exclusively at wholesale.

Comment Date: June 25, 2002

3. Buchanan Generation, LLC

[Docket No. EG02–139–000]

Take notice that on May 30, 2002, Buchanan Generation, LLC (Buchanan), filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Buchanan, a Virginia limited liability company whose members are Buchanan Energy Company of Virginia, LLC and CONSOL Energy Inc., states that it is constructing 88 MW of natural gas-fired generation in Buchanan County, Virginia.

Comment Date: June 25, 2002.

4. Sierra Pacific Power Company

[Docket No. ER02–254–002]

Take notice that on May 29, 2002, Sierra Pacific Power Company tendered for filing its compliance filing making the changes to the executed Interconnection and Operation Agreement between Sierra Pacific Power Company and Duke Energy Washoe, LLC required by the Commission's April 30th Order in this docket.

Comment Date: June 19, 2002.

5. Midwest Independent Transmission System operator, Inc.

[Docket No. ER02–947–002]

Take notice that on May 29, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing, in compliance with the Order of the Federal Energy Regulatory Commission (Commission) in Midwest Independent Transmission System Operator Inc., 99 FERC ¶ 61,112 (2002) and pursuant to Section 205 of the Federal Power Act (FPA), 16 USC 824d (2000) and Section 385.205 of the Commission's regulations, 18 CFR 385.205 (2001), proposed revisions to Attachment T of the Midwest ISO's Open Access Transmission Tariff, FERC Electric Tariff, First Revised Volume No. 1.

Pursuant to the Commission's regulations, 18 CFR 385.2010 (2001), the Midwest ISO has served this filing on

all parties on the official service list in this proceeding. In addition, the Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: June 19, 2002.

6. American Electric Power Service Corporation

[Docket No. ER02–1904–000]

Take notice that on May 24, 2002, the American Electric Power Service Corporation (AEPSC) tendered for filing four Service Agreements, which include Service Agreements for new customers and replacement Service Agreements for existing customers under the AEP Companies' Power Sales Tariffs. The Power Sales Tariffs were accepted for filing effective October 10, 1997 and have been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5 (Wholesale Tariff of the AEP Operating Companies) and FERC Electric Tariff Original Volume No. 8, effective January 8, 1998 in Docket No. ER98–542–000 (Market-Based Rate Power Sales tariff of the CSW Operating Companies) AEPSC respectfully requests waiver of notice to permit the attached Service Agreements to be made effective on or prior to May 1, 2002.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: June 14, 2002.

7. UAE Mecklenburg Cogeneration LP

[Docket No. ER02–1902–000]

Take notice that on May 24, 2002, UAE Mecklenburg Cogeneration LP 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.

Comment Date: June 14, 2002.

8. FPL Energy Marcus Hook, L.P.

[Docket No. ER02–1903–000]

Take notice that on May 24, 2002, FPL Energy Marcus Hook, L.P. 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.

Comment Date: June 14, 2002.

9. New England Power Pool

[Docket No. ER02–1905–000]

Take notice that on May 24, 2002, the New England Power Pool (NEPOOL) Participants Committee tendered for filing with the Federal Energy Regulatory Commission (Commission) two Service Agreements for Non-Firm Through or Out Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the Commission's regulations.

Acceptance of these Service Agreements will recognize the provision of Non-Firm Through or Out Service to South Eastern Electric Development Corporation Development Corporation and South Eastern Generating Corporation in accordance with the provisions of the NEPOOL Open Access Transmission Tariff, as amended and supplemented. In each case, an effective date of July 1, 2002 for commencement of transmission service has been requested. Copies of this filing were sent to all NEPOOL members, the New England public utility commissioners and all parties to the transactions.

Comment Date: June 14, 2002.

10. The Connecticut Light and Power Company

[Docket No. ER02–1906–000]

Take notice that on May 28, 2002, Northeast Utilities Service Company (NUSCO), on behalf of its affiliate, The Connecticut Light and Power Company (CL&P), filed an executed Engineering, Licensing, Construction, Interconnection and Equipment Removal Agreement—Waterside Power Temporary Emergency Generation by and between CL&P and Waterside Power, L.L.C. (Waterside), designated as Original Service Agreement No. 92 (Service Agreement) under Northeast Utilities System Companies' Open Access Transmission Tariff (Tariff No. 9). The Service Agreement is a new agreement establishing the terms and conditions under which an emergency gas turbine electrical generating facility being constructed by Waterside in Stamford, Connecticut will be temporarily interconnected to CL&P's transmission system.

NUSCO states that a copy of this filing has been mailed to Waterside, and that Waterside fully consents to and supports this filing. NUSCO and Waterside request an effective date for the Service Agreement of June 1, 2002, and request any waivers of the Commission's regulations that may be necessary to permit such an effective date.

Comment Date: June 18, 2002.

11. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER02–1907–000]

Take notice that on May 28, 2002, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), submitted a Notice of Cancellation of service agreements with Customers under Allegheny Power's Open Access TransmissionService Tariff. Allegheny Power has requested a waiver of notice to allow the cancellation to be effective as of April 1, 2002.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment Date: June 18, 2002.

12. Progress Energy Inc. on behalf of Progress Ventures, Inc.

[Docket No. ER02–1908–000]

Take notice that on May 28, 2002, Progress Ventures, Inc. (Progress Ventures) tendered for filing executed Service Agreements between Progress Ventures and the following eligible buyers, Effingham County Power, LLC, Rowan County Power, LLC and MPC Generating, LLC. Service to these eligible buyers will be in accordance with the terms and conditions of Progress Ventures Market-Based Rates Tariff, FERC Electric Tariff No. 1.

Progress Ventures requests an effective date of May 1, 2002 for each Service Agreement. Copies of the filing were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission, the Florida Public Service Commission and the Georgia Public Service Commission.

Comment Date: June 18, 2002.

13. New England Power Pool

[Docket No. ER02–1909–000]

Take notice that on May 28, 2002, the New England Power Pool (NEPOOL)

Participants Committee submitted the Eighty-Fifth Agreement Amending New England Power Pool Agreement (the Eighty-Fifth Agreement), which proposes to add a Financial Assurance Policy for Non-Participant FTR (Financial Transmission Right) Customers, which is Attachment O to the NEPOOL Tariff. This Financial Assurance Policy would complement the implementation of NEPOOL's FTR markets, projected to occur later this year.

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: June 18, 2002.

14. Arizona Public Service Company

[Docket No. ER02–1910–000]

Take notice that on May 28, 2002, Arizona Public Service Company (APS) tendered for filing additions to several Interconnection and Operating Agreements under its Open Access Transmission Tariff.

A copy of this filing has been served on Pinnacle West Energy, Reliant Energy Desert Basin, LLC, the Western Electricity Coordinating Council and the Arizona Corporation Commission.

Comment Date: June 18, 2002.

15. Allegheny Power

[Docket No. ER02–1911–000]

Take notice that on May 24, 2002, West Penn Power Company, Monongahela Power Company and The Potomac Edison Company, all doing business as Allegheny Power filed requisite copies of executed Transition Services Agreements between Allegheny Power and the City of New Martinsville, West Virginia, The City of Philippi, West Virginia and Harrison Rural Electrification Association. These should be substituted for the unexecuted versions contained in the original filing filed on March 28, 2002. Allegheny Power recites that the Transition Services Agreements are needed to implement the PJM West arrangements and divide responsibility for the PJM bill between the customers and Allegheny Power.

Comment Date: June 14, 2002.

16. Entergy Services, Inc.

[Docket No. ER02–1912–000]

Take notice that on May 28, 2002, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc. (Entergy Gulf States), tendered for filing six copies of a Notice of Termination of the Interconnection and Operating Agreement and Generator Imbalance Agreement between Entergy Gulf States and Calcasieu Development Company, L.L.C.

Comment Date: June 18, 2002.

17. Nevada Power Company

[Docket No. ER02–1913–000]

Take notice that on May 29, 2002, Nevada Power Company tendered for filing an unexecuted Interconnection and Operation Agreement between Nevada Power Company and GenWest, LLC.

Comment Date: June 19, 2002.

18. Southern Indiana Gas & Electric Company

[Docket No. ER02–1914–000]

Take notice that on May 29, 2002, Southern Indiana Gas & Electric Company (SIGECO), tendered for filing an executed Service Agreement for Generator-Related Ancillary Services between SIGECO and Midwest Independent Transmission System Operator, Inc. (Midwest ISO) under SIGECO's FERC Electric Tariff, Second Revised Volume No. 3.

SIGECO respectfully requests that the Service Agreement become effective on February 1, 2002, the date service commenced and the date upon which the Commission has previously made the Service Agreement effective in Docket No. ER02–997–000. Copies of the filing were served upon the above-mentioned company and the Indiana Utility Regulatory Commission.

Comment Date: June 19, 2002.

19. American Electric Power Service Corporation

[Docket No. ER02–1915–000]

Take notice that on May 28, 2002, the American Electric Power Service Corporation (AEPSC) tendered for filing six (6) non-redacted, confidential copies and six (6) redacted, non-confidential copies of Service Agreements for the sale of power by AEPSC, which are greater than one year in length. The Power Sales Tariffs were accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5 (Wholesale Tariff of the AEP Operating Companies) and FERC Electric Tariff Original Volume No. 8, Effective January 8, 1998 in Docket ER 98–542–000 (Market-Based Rate Power Sales Tariff of the CSW Operating Companies). AEPSC respectfully requests waiver of notice to permit the attached Service Agreements to be made effective on or prior to May 1, 2002.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: June 18, 2002.

20. Rainy River Energy Corporation

[Docket No. ER02–1916–000]

Take notice that on May 28, 2002, the Rainy River Energy Corporation (RREC) filed with the Federal Energy Regulatory Commission (Commission) a Long-Term Capacity and Energy Purchase Contract between RREC and Wisconsin Public Power Inc., a Long-Term Capacity and Energy Purchase Contract between RREC and Madison Gas and Electric Company, an EEI Master Power Purchase and Sale Agreement and Transaction Confirmation for the sale of 80 MW for 12.5 months to Wisconsin Electric Power Company to be effective May 1, 2002.

Comment Date: June 18, 2002.

21. Southern Company Services, Inc.

[Docket No. ER02–1917–000]

Take notice that on May 28, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed three transmission service agreements under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5) (Tariff). Specifically, these agreements are as follows: (1) One firm point-to-point transmission service agreement with Morgan Stanley Capital Group, Inc. (Service Agreement No. 450); (2) one firm point-to-point transmission service agreement with Williams Energy Marketing & Trading Company (Service Agreement No. 451); and (3) one rollover firm point-to-point transmission service agreement with Exelon Generation Company, LLC (First Revised Service Agreement No. 397).

Comment Date: June 18, 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, 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). 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–14574 Filed 6–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–438–000]

Northwest Pipeline Corporation; Notice of Availability of the Environmental Assessment for the Proposed Rockies Expansion Project

June 5, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Northwest Pipeline Corporation (Northwest) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project (''Rockies Expansion Project''), with appropriate mitigating measures as recommended, would not constitute a major Federal action significantly affecting the quality of the human environment. The EA evaluates alternatives to the proposal, including system alternatives, route alternatives, and route variations.

The EA assesses the potential environmental effects of the construction and operation of the proposed facilities in Wyoming and Idaho. The purpose of the Rockies Expansion Project is to allow Northwest to expand its physical north flow capacity by constructing and operating six loops totaling about 91.1 miles as follows:

- Muddy Creek Loop: 30.6 miles of 30-inch-diameter pipeline in Sweetwater and Lincoln Counties, Wyoming;
- Kemmerer Loop: 15.5 miles of 30-inch-diameter pipeline in Lincoln County;
- Pegram Loop: 11.2 miles of 24-inch-diameter pipeline in Lincoln County;
- Soda Springs Loop: 19.6 miles of 24-inch-diameter pipeline in Bear Lake County, Idaho;
- Lava Loop: 9.4 miles of 24-inch-diameter pipeline in Caribou County, Idaho; and
- Pocatello Loop: 4.8 miles of 24-inch-diameter pipeline in Bannock County, Idaho.

Northwest also proposes to uprate or otherwise modify seven of its existing compressor stations as follows:

- Green River Compressor Station: compressor uprating of 970 horsepower (hp);
- Muddy Creek Compressor Station: compressor uprating of 2,117 hp;
- Pegram Compressor Station: compressor reconfiguration with no change in horsepower;
- Lava Compressor Station: compressor uprating and installation of a new compressor to increase 5,077 hp;
- Pocatello Compressor Station: compressor reconfiguration with no change in horsepower;
- Burley Compressor Station: replacement of three compressors with two new units to increase 9,400 hp, and installation of two portable units to augment compression by 2,660 hp when needed; and
- Buhl Compressor Station: compressor reconfiguration and installation of a new compressor to increase 4,700 hp.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state, and local agencies; public interest groups; interested individuals; newspapers; libraries; and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please follow these instructions carefully to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 1, PJ–11.1;
- Reference Docket No. CP01–438–000; and
- Mail your comments so that they will be received in Washington, DC on or before July 5, 2002.

Comments 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 and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to be a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214) [1]. Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 (direct line) or you can call the FERC operator at 1–800–847–8885 and ask for External Affairs. Information is also available on the FERC website (*www.ferc.gov*) using the ''RIMS'' link [2] to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

[2] The Commission is in the process of replacing RIMS and CIPS with the Federal Energy Regulatory Records Information System (FERRIS). If RIMS or CIPS cannot be found at the identified Commission web sites, FERRIS can be used to access information.

CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

Magalie R. Salas,

Secretary.

[FR Doc. 02–14601 Filed 6–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Temporary Suspension of Water Release Schedule and Solicitation of Comments, Motions To Intervene, and Protests

June 5, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Temporary suspension of water release schedule.

b. *Project No:* 2861–043.

c. *Date Filed:* March 26, 2002.

d. *Applicant:* New Hampshire Department of Environmental Services-Water Resources Division and Pontook Operating Limited Partnership (licensees).

e. *Name of Project:* Pontook Project.

f. *Location:* The project is located on the Androscoggin River in Coos County, New Hampshire.

g. *Filed Pursuant to*: Federal Power Act, 16 USC 791 (a) 825(r) and sections 799 and 801.

h. *Applicant Contact*: Maureen Winters, Kleinschmidt Associates, 75 Main Street, PO. Box 576, Pittsfield, ME 04967, (207) 487–3328.

i. *FERC Contact*: Any questions on this notice should be addressed to Mr. John Mark at (212) 273–5940, or e-mail address: *john.mark@ferc.gov*.

j. *Deadline for filing comments and or motions*: June 21, 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. Please include the project number (P–2861–043) on any comments or motions filed.

k. *Description of Request*: The licensees are requesting Commission approval to suspend scenic and recreational flows during August and September 2002 for construction related to replacing the dam gate structure at the hydroelectric project.

l. *Location of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. 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.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—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, 385.214. 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, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–14603 Filed 6–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Western Area Colorado Missouri Control Area Energy Imbalance Service—Rate Order No. WAPA–97

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: The Secretary of the Department of Energy (DOE) confirmed and approved Rate Order No. WAPA–97 and Rate Schedule L–AS4, which placed into effect the provisional formula rate for Energy Imbalance Service for the Western Area Colorado Missouri control area (WACM). The provisional formula rate will remain in effect until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places it into effect on a final basis or until it is replaced by another rate. The provisional formula rate will provide sufficient revenue to pay all assigned costs.

DATES: This provisional formula rate will become effective on an interim basis on the first day of the first full billing period beginning on or after July 1, 2002. It will remain in effect pending FERC's approval of it or a substitute formula rate on a final basis through March 31, 2003, or until superseded.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel T. Payton, Rates Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986, telephone (970) 461–7442, e-mail *dpayton@wapa.gov.*

SUPPLEMENTARY INFORMATION: The Deputy Secretary approved the existing Rate Schedule L–AS4 for Energy Imbalance Service on March 23, 1998 (Rate Order No. WAPA–80, 63 FR 16778, April 6, 1998). FERC confirmed and approved the formula rate schedules on July 21, 1998, under FERC Docket No. EF98–5181–000 (84 FERC 61,066). The existing formula rate became effective on April 1, 1998, and is approved through March 31, 2003. Rate Schedule L–AS4 will be amended as necessary to incorporate the terms of this provisional formula rate, which is needed to adequately recover the cost of energy purchased when entities conducting business within WACM are unable to match their resources and obligations accurately.

The existing rate schedule provides for the ability to charge 100 mills per kilowatt-hour for under deliveries

occurring more than five times per month outside of a bandwidth of ± 1.5 percent. For over deliveries outside the bandwidth, the current rate schedule provides for the transmission customer (customer) to be credited up to 50 percent of the regional average monthly price for non-firm purchases. Within the bandwidth, the customer and Western Area Power Administration (Western) exchange energy.

There has been a great deal of price volatility over the last year, with on-peak prices ranging from a high of $537 per megawatthour (MWh), to a low of $23 per MWh. WACM, as a control area operator, must balance resources against obligations. As such, in times of deficit energy, WACM must purchase energy to keep the control area in balance. The existing 100-mill charge is inadequate to repay the costs of balancing energy in a high-cost market. At other times, it may be excessive. This proposed pass-through cost methodology will result in an equitable recovery of expenses.

Any change to Energy Imbalance Service will be as set forth in a revision to this schedule pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service agreement.

Provisional Formula Rate for Energy Imbalance Service

The provisional formula rate for Energy Imbalance Service is designed to recover purchase power costs made to balance energy requirements within WACM. This provisional formula rate establishes a bandwidth of ± 5 percent (10 percent total bandwidth), with a minimum deviation of 2 MW.

Within the bandwidth, the gross energy imbalance for each applicable customer within WACM shall be totaled and netted to determine an aggregate energy imbalance for WACM. For both over and under deliveries, the customer will receive a credit or charge equal to the weighted average real-time sale or purchase price.

Outside the bandwidth, each customer's energy imbalance will be calculated separately. For over deliveries, the customer will be credited 50 percent of the weighted average real-time sale price. For under deliveries, the customer will be charged 150 percent of the weighted average real-time purchase price.

Customers will be granted bandwidth expansions in certain cases for contributions to frequency bias, large thermal resources, and loss of a physical resource. The conditions for bandwidth expansion in these cases are outlined in-depth in the rate order.

This provisional formula rate is developed pursuant to the Department of Energy Organization Act (42 U.S.C. 7101–7352), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts that specifically apply to the project involved, were transferred to and vested in the Secretary of Energy.

By Delegation Order No. 00–0037.00 published December 6, 2001, the Secretary delegated: (1) The authority to develop long-term power and transmission rates on a non-exclusive basis to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, effective September 18, 1985 (50 FR 37835), have been followed by Western in developing this provisional formula rate.

Rate Order No. WAPA–97, confirming, approving, and placing the proposed WACM Energy Imbalance Service rate into effect on an interim basis, is issued. New Rate Schedule L–AS4 will be submitted promptly to FERC for confirmation and approval on a final basis.

Dated: May 30, 2002.

Spencer Abraham,

Secretary.

Department of Energy

Secretary

[Rate Order No. WAPA–97]

In the Matter of: Western Area Power Administration Rate Adjustment for Western Area; Colorado Missouri Energy Imbalance Service; Order Confirming, Approving, and Placing the Western Area Colorado Missouri Control Area Energy Imbalance Service Rate Into Effect on an Interim Basis.

This Energy Imbalance Service formula rate is established pursuant to section 302 of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101–7352, through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, primarily section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts specifically applicable to the project involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Delegation Order No. 00–037.00 published December 6, 2001, the Secretary delegated: (1) The authority to develop long-term power and transmission rates on a non-exclusive basis to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

Existing DOE procedures for public participation in power rate adjustments are found in 10 CFR part 903. Procedures for approving power marketing administration rates by FERC are found in 18 CFR part 300.

Acronyms/Terms and Definitions

Acronym/Term and Definition

ACE—Area Control Error.
AGC—Automatic Generation Control; a closed loop control system where generation normally responds to errors in energy balance.
DOE—Department of Energy.
Energy Imbalance Service—Service provided when there is a difference between a customer's resources and obligations within the control area.
FERC—Federal Energy Regulatory Commission.
FRR—Frequency Responsive Reserves
LAP—Loveland Area Projects.
LSE—Load-Serving Entity.
minor rate adjustment A rate adjustment that results in an annual revenue increase of less than 1 percent.
MW—Megawatt; unit of power equal to 1,000 kilowatts.
MWh—Megawatthour; energy delivered when 1 MW is supplied over 1 hour.
MVAR—Megavar, equal to 1,000 kilovolt-amperes reactive (VAR).
MV–90—WACM/RMR's metering database.
NERC—North America Electric Reliability Council (or its successors).
NITS—Network Integration Transmission Service.
OATT—Open Access Transmission Tariff.
Obligations—Delivery of energy in the name of the LSE or PSE to physical metered delivery points (load) or to load of another entity by way of scheduled sales from inside or outside of WACM.
±%Bandwidth—A percentage of metered load as measured directly at the loads or calculated by boundary metering.
PSE—Purchasing/Selling Entity.
Rate Order No. WAPA–80—Rate Order for Loveland Area Projects Transmission and Ancillary Services, Effective April 1, 1998.

Rate Schedule L–AS4—Rate Schedule filed within Rate Order No. WAPA–80 for Energy Imbalance Service.
real-time—Purchase or sale made for immediate next hour or hours.
Resources—Receipt of energy, either from customer rights to physical metered generation within WACM or scheduled purchase traceable to another entity's generation from inside or outside WACM.
RMR—Rocky Mountain Customer Service Region.
RMRG—Rocky Mountain Reserve Group.
WACM—Western Area Colorado Missouri control area.
WECC—Western Electric Coordinating Council, Western Systems Coordinating Council successor agency.
Western—Western Area Power Administration, U.S. Department of Energy.

Effective Date

This provisional formula rate will become effective on an interim basis on the first day of the first full billing period beginning on or after July 1, 2002, and will be in effect pending FERC's approval of it or a substitute formula rate on a final basis through March 31, 2003, or until superseded. This formula rate will be applied under existing transmission contracts, Western's OATT, and any subsequent agreements required. It will replace Schedule L–AS4, Energy Imbalance Service, updated October 1, 2001.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, have been followed by Western in the development of this formula rate and schedule. The provisional formula rate for Energy Imbalance Service represents an increase of less than 1 percent in total LAP revenues; therefore, it is a minor rate adjustment as defined at 10 CFR part 903.2(f)(1). The distinction between a minor and a major rate adjustment is used only to determine the public procedures for the rate adjustment.

The following is a summary of the steps Western took to ensure involvement of interested parties in the rate adjustment process:

1. On December 20, 2001, RMR published a Notice of Proposed Rate in the **Federal Register** for revision of existing Energy Imbalance Service Rate Schedule L–AS4. The public comment period was to end January 31, 2002.

2. An informal public information meeting was held on January 15, 2002. Fifteen entities were represented at the meeting.

3. Based upon written comments received prior to January 31, 2002, the end of the public comment period, RMR extended the comment period to February 28, 2002. At the time of this extension, RMR also delayed implementation of Energy Imbalance Service to May 1, 2002.

4. In response to requests at the January 15 information meeting, RMR electronically transmitted trial bills to customers for Energy Imbalance Service on February 15, 2002, to provide customers an opportunity to view Energy Imbalance Service calculations and pricing.

5. Western received written comments from seven parties during the comment period.

6. On March 29, 2002, Western sent a letter to customers stating that the scheduled implementation date for Energy Imbalance Service had been changed to June 1, 2002 (implementation has subsequently been moved to July 1, 2002).

The following organizations submitted written comments:

Basin Electric Power Cooperative, Inc.
Black Hills Power & Light
Colorado Springs Utilities
City of Torrington, Wyoming
Flathead Electric Cooperative, Inc.
Nebraska Municipal Power Pool (Municipal Energy Agency of Nebraska)
Tri-State Generation and Transmission Association, Inc.

Description of WACM

WACM is operated by RMR and has within its borders Federal generating resources from the Pick-Sloan Missouri Basin Program, Fryingpan-Arkansas Project, and the Colorado River Storage Project. There are also large thermal generators within WACM that are not Federal resources, such as the Laramie River Station and Craig Powerplant, operated by Basin Electric Power Cooperative, Inc. and Tri-State Generation and Transmission Association, Inc., respectively. A number of smaller thermal units also exist within WACM.

The Federal generation is currently the only generation resource that responds to energy imbalances within WACM. The thermal generators located within WACM are either not on AGC, or are operated to an ACE signal that responds only to their sub-control area.

WACM has interconnections with seven other control areas: Nebraska Public Power District, Western Area Upper Missouri East, Western Area Upper Missouri West, Public Service Company of Colorado, Public Service Company of New Mexico, Pacificorp East, and Western Area Lower Colorado.

The peak load within WACM is about 2,900 MW with approximately 4,700 MW of generation, 1,000 MW of which is Federal generation.

Energy Imbalance Service

WACM provides Energy Imbalance Service when there is a difference between a customer's resources and obligations. Energy Imbalance is calculated as resources minus obligations (adjusted for transmission and transformer losses) for any combination of scheduled transfers/transactions integrated over each hour.

Resources are defined as actual generation plus scheduled resources, imports, or receipts. Obligations are defined as actual deliveries plus scheduled obligations, exports or deliveries plus losses not accounted for separately. Some deviation from zero is expected, and a bandwidth based on metered load is established to accommodate reasonable variations from an exact match. Deviation beyond an acceptable bandwidth is not considered prudent utility practice. Through-schedules, imports, and exports will not be included in the determination of the bandwidth.

Balancing energy is provided by WACM, most of which must be purchased in the real-time market.

Existing Rate Schedule and Need for Action

The rate adjustment is needed to adequately recover the cost of energy purchased when entities conducting business within WACM are unable to match their resources and obligations.

Rate Schedule L–AS4 currently provides for a charge of 100 mills per kilowatt-hour for under deliveries occurring more than five times per month outside a bandwidth of ±1.5 percent. For over deliveries outside the bandwidth, the current rate schedule provides for a credit of 50 percent of the regional weighted average monthly price for non-firm purchases. Within the bandwidth, energy is exchanged between the customer and Western.

There has been a great deal of price volatility over the last year, with on-peak prices ranging from a high of $537 per MWh, to a low of $23 per MWh. The existing 100-mill charge is inadequate to repay the expenses of balancing energy in a high-cost market. At other times, 100 mills may be excessive. The provisional formula rate for Energy Imbalance Service uses a cost-based methodology, which will result in an equitable assessment of expenses to customers and WACM.

Applicability of Energy Imbalance Service

Energy Imbalance Service will apply to any entity that falls into one or more of the following categories:

1. Those serving load internal to WACM.

2. Those operating or holding scheduling rights to generators within WACM.

3. Those receiving scheduled resources as a buyer whose load is within WACM at a point where the buyer is the PSE at that Point of Delivery (POD).

4. Those delivering scheduled obligations as a seller whose resource is within WACM from a point where the seller is the PSE at that Point of Receipt (POR).

Energy Imbalance Bandwidth

WACM is establishing a bandwidth of ±5 percent (based on customer load) with a minimum deviation of 2 MW, applied hourly to any energy imbalance that occurs as a result of a difference in the customers' resources and obligations. WACM has increased the bandwidth from ±1.5 percent to ±5 percent to accommodate the widest range of imbalanced energy in a non-punitive manner. The 2 MW minimum allows for situations in which entities with loads less than 40 MW have a wider bandwidth than ±5 percent; e.g., using the ±5 percent, a load of 30 MW would normally have a bandwidth of ±1.5 MW, but the minimum bandwidth of 2 MW results in an increased bandwidth of ±7 percent. This accommodation allows the smaller customer more flexibility to deal with scheduling requirements (in whole megawatts) and forecasting difficulties.

In situations where a customer has elected to functionally integrate its load with another customer's and provide one schedule, that combined schedule will be treated as one entity for purposes of bandwidth calculation. The bandwidth will be determined by the sum of the load(s), not the sum of the bandwidths. The 2 MW minimum will only apply once in this scenario.

Formula Rate

All Energy Imbalance Service provided, both inside and outside the bandwidth, will be settled financially, accounted for hourly at the end of each month.

There are four scenarios for Energy Imbalance Service, each of which receive a specific pricing calculation. They are: (1) Over delivery within the bandwidth; (2) under delivery within the bandwidth; (3) over delivery outside the bandwidth; and (4) under delivery outside the bandwidth.

Within the bandwidth, the gross energy imbalance for each applicable entity within WACM shall be totaled and netted to determine an aggregate energy imbalance for WACM. The sign of the aggregate energy imbalance will determine whether sale or purchase pricing will be used (surplus conditions will use sale pricing and deficit conditions will use purchase pricing). One-hundred percent of the real-time weighted average sale or purchase price is charged or credited to the customer, using hourly data when available.

Outside the bandwidth, WACM energy imbalance will not be aggregated. Each entity within WACM will be charged or credited independently for Energy Imbalance Service taken, dependent upon their over- or under-delivery status. For an under delivery outside the bandwidth, the charge will be 150 percent of the real-time hourly weighted average purchase price. For an over delivery outside the bandwidth, the credit will be 50 percent of the real-time hourly weighted average sale price.

If hourly data is unavailable, pricing defaults are as shown below in Table 1.

Examples of Energy Imbalance Service Calculations

TABLE 1

Within the bandwidth	
Credits for over deliveries (based on weighted average real-time sale price)	Credits for under deliveries (based on weighted average real-time purchase price)
Scenario: WACM Aggregate Net Over Delivery Sale #1 25 MW @ $22 ($550). Sale #2 25 MW @ $20 ($500). Sale #3 25 MW @ $17 ($425). Sale #4 25 MW @ $12 ($300). Purchase #1 100 MW @ $35($3,500). Purchase #2 50 MW @$32 ($1,600). Purchase #3 100 MW @ $15 ($1,500). Purchase #4 50 MW @ $10 ($ 500).	Scenario: WACM Aggregate Net Under Delivery.
Calculation: ($550+$500+$425+$300) = $1,775 $1,775 / 100 MW = $17.75/MW	Calculation: ($3,500+$1,600+$1,500+$500)=$7,100 $7,100 / 300 MW = $23.67/MW.
Weighted Average Real-Time Sale Price Price = $17.75/MW	Weighted Average Real-Time Purchase Price = $23.67/MW.
Customer would be credited $17.75/MW	Customer would be charged $23.67/MW.
Pricing Defaults: If no hourly real-time sales, default is to daily real-time sales weighted average on/off-peak. If no daily real-time sales, default is to monthly real-time sales weighted averaged on-/off-peak. If no monthly real-time sales, default is to the prior month real-time sales weighted average on-/off-peak.	Pricing Defaults: If no hourly real-time purchase, default is to daily real-time purchase weighted averaged on-/off-peak. If no daily real-time purchase, default is to monthly real-time purchase weighted averaged on-/off-peak. If no monthly real-time purchase, default is to prior month real-time purchase weighted average on-/off-peak.
Applicable transmission cost deducted	Applicable transmission cost added.

TABLE 2

Outside the bandwidth	Credits for over deliveries (based on weighted average real-time sale price)
	Credits for under deliveries (based on weighted average real-time purchase time)
Scenario: Customer A Over Delivered	Scenario: Customer B Under Delivered.

TABLE 2—Continued

Outside the bandwidth	Credits for over deliveries (based on weighted average real-time sale price) Credits for under deliveries (based on weighted average real-time purchase time)
Sale #1 25 MW @ $22 ($550)	Purchase #1 100 MW @ $35 ($3,500)
Sale #2 25 MW @ $20 ($500)	Purchase #2 50 MW @ $32 ($1,600)
Sale #3 25 MW @ $17 ($425)	Purchase #3 100 MW @ $15 ($1,500)
Sale #4 25 MW @ $12 ($300)	Purchase #4 50 MW @ $10 ($ 500)
Calculation:	Calculation:
($550+$500+$425+$300) = $1,775	($3,500+$1,600+$1,500+$500)=$7,100
$1,775 / 100 MW = $17.75/MW	$7,100 / 300 MW = $23.67/MW.
Weighted Average Real-Time Sale Price = $17.75/MW	Weighted Average Real-Time Price = $23.67/MW.
Customer credited 50% = $8.88/MW	Customer charged 150% = $35.50/MW.
Pricing Defaults: Same as shown in Table 1	Pricing Defaults: Same as shown in Table 1.
Applicable transmission cost deducted	Applicable transmission cost added.

Comparison of Existing and Provisional Formula Rate for Energy Imbalance Service

The following is a comparison of the existing rate and the provisional formula rate for Energy Imbalance Service.

Existing rate schedule effective October 1, 2001	Provisional formula rate schedule effective July 1, 2002
Energy imbalance will be settled with both energy and dollars	All energy imbalance will be settled financially, accounted for hourly, at the end of each month.
Within the bandwidth, the customer and Western will exchange energy through energy deviation accounting.	Within the bandwidth, the gross energy imbalance for each applicable entity within WACM shall be totaled and netted to determine an aggregate energy imbalance for WACM (deficit conditions use purchase pricing; surplus conditions use sale pricing). One-hundred percent of the weighted average real-time purchase or sale price is charged or credited to the customer, using hourly pricing data when available (see Table 1 for defaults).
Outside the ± 1.5% bandwidth, for negative excursions (2 MW minimum) and occurring more than 5 times per month, RMR reserves the right to charge 100 mills/kWh.	Outside the bandwidth, for negative excursions (2 MW minimum), RMR will charge the customer 150% of the hourly weighted average real-time purchase price (with defaults as stated herein).
Outside the ± 1.5% bandwidth, positive excursions may be credited to the customer within 30 days for 50% of the regional weighted average monthly price for non-firm purchases.	Outside the bandwidth, for positive excursions (2 MW minimum), RMR will credit the customer 50% of the hourly weighted average real-time sales price (with defaults as stated herein).
A credit for over delivery will be provided if over deliveries do not impinge upon WACM operations. For example, during times of high water or operating constraints, RMR reserves the right to eliminate credits for over deliveries..	A credit for over delivery may not apply during times of WACM operating constraints; e.g., high-water ''must-run'' conditions. During these times, RMR reserves the right to eliminate credits for over deliveries.
No bandwidth expansion provided	Bandwidth may be expanded during certain hours in response to loss of physical resource, frequency bias contribution, and start up/shut down of large thermal resources.

Energy Imbalance and Control Area Operating Constraints

WACM reserves the right to eliminate credits for over deliveries during times of WACM operating constraints, such as ''must-run'' hydrologic conditions, or when WACM cannot dispose of surplus energy. It is not feasible for Western to offer a credit for energy when the market price is zero (or near zero).

In the case of over delivery, if the disposition of over-delivered energy results in zero value sales, there is no income to disburse. Due to the unpredictable nature of hour-to-hour energy imbalance and the very short notice for disposition of over deliveries, Western expects some hours of zero value sales and the elimination of credits.

Additionally, if Western is unable to dispose of the entire net over delivery, and operating criteria for the control area are not met, there may be financial penalties to Western from reliability oversight agencies such as NERC or WECC. In these cases, credit to customers will be eliminated and parties over delivering may share in the cost to Western of the penalty.

Treatment for Jointly Owned Generation

In the case of a jointly owned generator, the charges and/or credits for Energy Imbalance Service will be assigned to the operating agent of the generator. Unless WACM is provided with a legally binding signed agreement from the owners designating a specific methodology to allocate among owners and entitlees, the amount of aggregate energy imbalance will be assigned to the operating agent of the generator(s). Western reserves the right to refuse a designation that does not provide for the full and accurate recovery of all generator energy imbalances existing among owners and/or entitlees.

Generation owners and/or entitlees will be responsible for the actual implementation of the allocation among the multiple owners. Providing WACM with a methodology within a signed agreement will not in itself be sufficient. The generation owners must ensure that

proper tagging and scheduling of the generation is accomplished so that the Energy Imbalance Service is assigned accurately to each generation owner.

Physical Resource Loss

Western recognizes that the loss of a physical resource or generator due to an uncontrollable event (forced outage), can result in a loss of a significant percentage of an entity's resource(s), and may result in an energy condition outside the bandwidth. To lessen the impact of such instances, the bandwidth will be widened to accommodate the amount of time required for an emergency response.

Western will apply this expanded bandwidth to those cases where a resource is lost (either internal to or scheduled into WACM) due to an uncontrollable event, that is replaced for 1 or 2 hours by a coordinated response from a Western-recognized reserve-sharing group, such as RMRG.

Responses to another group member's loss of a unit during a reserve group activation will be accounted for by an after-the-fact schedule for the response. Therefore, no bandwidth expansion is required. For those entities for which real-time ACE is used to measure energy imbalance, bandwidth expansion will be evaluated on a customer-by-customer basis.

Contributions for Frequency Bias

For those entities operating generation in a tie-line bias mode, subject to the requirements for FRR, Western intends to offset the calculated raw energy imbalance by an amount equal to the weighted average hourly frequency multiplied by the entity's frequency response bias factor. This will eliminate any Energy Imbalance Service costs incurred due to provision of frequency support to the interconnection. Inadvertent energy accumulated between sub-control areas and WACM due to activation of FRR will be separately tracked. For an entity to qualify for this accommodation, the requesting entity must provide Western with data required for physical confirmation of FRR participation. Minimum data that must be provided in real time includes the scan-by-scan information regarding individual unit capability, real MW output, and reactive MVAR output. Engineering data commonly used for system modeling must also be provided. Other data may be required and will be requested in writing. No credit will be allowed for frequency bias contributions until the requested real-time and engineering data is provided to WACM.

Consideration of Large Thermal Resources

Western recognizes the difficulty in transitioning large base-load thermal resources between an on-line and off-line state. During such transitions, these units generate energy that is not easily predicted, controlled, or scheduled, and over-supply may result if the unit is still synchronized and generating, but the delivery schedules are zero. During these transitional periods, Western will expand the bandwidth until the unit is adjusted to its desired position: on or off line.

These transitional periods should be infrequent occurrences and not considered normal operation. The expanded bandwidth will be applied hourly beginning with the first hour containing synchronized generation from the unit. The period of expanded bandwidth will continue until the unit has reached an output level deemed by the operating agent and agreed to by Western to be sufficient for scheduling energy (minimum scheduling level).

For scheduled transitions from on line to off line, expanded bandwidth will be applied hourly beginning with the hour in which the unit generates less than the minimum scheduling level.

Forced transitions from on-line to off-line will receive credit as explained in the ''Physical Resource Loss'' section of this notice.

The bandwidth will not be expanded when ramping services have been acquired by an entity.

Treatment of Intermittent Renewable Resources

Western promotes the installation of renewable sources of energy, but recognizes that these resources fluctuate significantly as a normal part of their operation. WACM is a geographically large control area with few resources available to balance loads and resources, which limits WACM's ability to cover the fluctuation anticipated with an intermittent renewable resource. Western will apply Energy Imbalance Service to renewable energy resources. However, Western is willing to purchase, on a pass-through cost basis, the regulation and energy required to mitigate the fluctuations inherent in intermittent resources. This will assure that the intermittent resources only pay for their impact on the system and are not penalized for out-of-band excursions.

Contractual Vehicle for Energy Imbalance Service

All entities currently operating within WACM post revenues and expenses for energy deviation under their interconnection agreements. Energy Imbalance Service will replace energy deviation accounting for all transactions, effective July 1, 2002. Some customers within WACM serve load without the use of the Federal transmission system. Prior to July 1, 2002, as Western works through the implementation of Energy Imbalance Service with its customers, Western will determine whether or not a customer has an existing contract or needs to execute an additional agreement.

For customers who are unwilling to take Energy Imbalance Service, Western will work with them to meter their load out of WACM. Until such time as that meter reconfiguration is accomplished, Western will charge or credit the customer for Energy Imbalance Service taken.

Certification of Rates

Western's Administrator has certified that the Energy Imbalance Service, Rate Schedule L–AS4, placed into effect on an interim basis herein is the lowest rate possible consistent with sound business principles. The formula rate has been developed in accordance with agency administrative policies and applicable laws.

Energy Imbalance Service Written Comments

Following is a summary of written comments received during the public comment period and RMR's response. Comments were combined and paraphrased to address similar issues. Several requests for clarification and definition of various words, phrases or processes were made, and Western has addressed those within the context of this order.

In addition to clarification, changes have been made to the proposed rate methodology published in the **Federal Register** on December 20, 2001, based upon the input received during the public process.

Comment: Several comments received related to: (1) The complexity of the billing and the volume of data; (2) the use of network transmission billing as a starting point for Energy Imbalance Service calculation; and (3) the ability of the control area and customers to implement this service.

Response: RMR has both the staff and systems in place to implement Energy Imbalance Service. Western will continue to work with customers to simplify the presentation of material and assure that the customer understands the Energy Imbalance Service calculation. RMR has eliminated

the marginal pricing methodology to simplify the billing process.

Western agreed with the comment to begin with the NITS billing data as a starting point for Energy Imbalance Service calculation and has made that change for any customer currently receiving a network transmission bill from Western.

Customers are not required to develop or maintain any new systems in response to Energy Imbalance Service. However, they must maintain full, active, and ongoing communication with Western. Additionally, it will be the customers' responsibility to review the bill and promptly notify Western of any concerns.

Western will provide customers the detail necessary to support the Energy Imbalance Service calculations. This will include, but not be limited to, hourly details of all import and export schedules and generation and load data. Each customer will receive a summary file combining all elements into a final Energy Imbalance Service bill.

Comment: A commenter asked whether Western's current energy deviation accounting will now be handled through Energy Imbalance Service and result in a net cash transaction versus energy exchange.

Response: Effective June 30, 2002, existing energy deviation accounts will be ''frozen'' and settled consistent with the terms of existing contracts or mutual agreements. Energy Imbalance Service and subsequent billing will replace all previous WACM internal deviation energy accounting and will be settled financially.

Comment: A commenter asked how an existing contract for regulation and frequency response service outside the OATT would be handled within the scope of Energy Imbalance Service calculation.

Response: Western will honor all existing contracts and will expand the bandwidth accordingly for regulation service taken as provided by the customer's contract with Western.

Comment: Several comments were received concerning administrative issues for Energy Imbalance Service, specifically: (1) defining the process for Energy Imbalance Service to be followed when a generator is jointly owned; and (2) requesting information about how Western will charge for loads off the Federal transmission system.

Response: Western has addressed both of these issues in separate sections within the text of this rate order, entitled ''Treatment of Jointly-Owned Generation'' and ''Contractual Vehicle for Energy Imbalance.''

Comment: A commenter raised a question about a single PSE that currently uses two PSE codes (one for merchant activity and one for reliability) in the tagging system. Will they be treated separately?

Response: These types of tagging situations will be addressed on a case-by-case basis by WACM. It would appear that the two entities will be treated (accounted for) separately, as the tags indicate that they are separate entities. However, at the customer's request and with WACM's concurrence, Western will manually merge them into a final energy accounting and bill.

Comment: Customers employing AGC in a tie-line bias mode as recommended by WECC and NERC may be penalized by their efforts to support regional reliability. The commenter feels WACM should offer a penalty adjustment to allow for AGC control.

Response: Western agrees and has addressed this issue in the section entitled ''Contribution for Frequency Bias'' in this final rate order.

Comment: Comments were made concerning the processes to be used in the administration of Energy Imbalance Service, specifically: (1) Extension of the comment period; (2) equal treatment of all parties; and (3) dispute resolution and the processes that are in place when the service is implemented.

Response: Western officially extended the comment period until February 28, 2002, to allow parties sufficient time to comment after viewing sample data.

Western will continue to work with all parties to ensure the accuracy of data and equitable treatment. If any customer has information that would assist Western in reconciling its energy accounts, Western encourages them to initiate a timely exchange so that the information can be considered in the customer's Energy Imbalance Service calculation.

It is Western's intention that any and all disputes over the calculation of Energy Imbalance Service will be resolved between Western and the customer prior to billing for the service. However, if no resolution is achieved, the process to address disputes outlined in the customer's service contract will be used.

Comment: Various comments were made concerning the final calculation of the energy imbalance bills. These included comments and questions on (1) after-the-fact checkouts and related adjustments; (2) calculation of ACE; (3) metering errors and energy-only meters; (4) proper accounting for losses; and (5) the timing and disposition of bills.

Response: The primary principle of Energy Imbalance Service is to account for generation, load, and control area boundary flow on an hourly basis. However, Western recognizes that scheduling differences among control areas may require changes to be made in accordance with inadvertent resolution procedures established by NERC and WECC. Western has expanded its checkout processes and will continue to work with individual generation operators and LSEs toward improving daily and monthly checkouts. Affected customers will be responsible for contacting Western concerning tagging and checkout issues and working through the discrepancies in a timely manner prior to Energy Imbalance Service billing. Once inter-control area schedules are agreed upon, Western will consider additional corrections to schedules totally inside the control area on a case-by-case basis.

Western is working with all customers impacted by the implementation of Energy Imbalance Service to ensure that where Western calculates an individual customer's ACE within the control area, it is in agreement with the customer's ACE measurement. This will be an ongoing effort up to, through, and beyond implementation of Energy Imbalance Service. Western will continue to work toward the real-time notification to customers of potential imbalance. This action, however, will not postpone implementation of Energy Imbalance Service within WACM.

Metering errors will also be addressed on a case-by-case basis. Western will account for energy-only meters by dividing monthly energy by the number of hours in the month. Monthly meters are normally used in applications where load characteristics are primarily flat, such as small 24-hour industrial operations without large hour-to-hour variations. Most loads in WACM with a significant impact to Energy Imbalance Service calculations are already metered with interval recording devices. Any remaining monthly energy-only meters in WACM that Western believes to have a load profile other than the flat model will need to be replaced at the customer's expense.

Western assesses applicable control area, network, or grandfathered contract service with a uniform loss rate associated with physical load in WACM. Western will allow customers to ''scale up'' each hourly meter reading (multiplying by 1 plus the applicable loss rate) in the same manner currently in force; *i.e.,* the increase of load meters having the same loss factor. Losses associated with point-to-point transmission service on Western's transmission system, or through the WACM control area for purposes of

merchant transactions, will remain, for now, under a separate ongoing loss collection process.

The issuance of final Energy Imbalance Service bills for any month will take place at the earliest possible date following the end of the month. However, Energy Imbalance Service billing is not possible until all relevant energy schedules have been through the NERC and WECC checkout process and all after-the-fact pricing calculations have been completed. This may take several months. Western's research has shown that most utilities billing for Energy Imbalance Service have a lag from ''month-end to bill'' of about 60 to 90 days.

Comment: Comments expressed concern about WACM's MV–90 metering system as the determinant of actual load obligations within WACM on an after-the-fact basis.

Response: Western currently reads 300 meters by remote means and achieves an error rate of less than 1 percent. Remote readings for the previous month (including error processing) are usually completed by the third day of the following month.

Comment: Many comments were received concerning the Energy Imbalance Service methodology. They included requests for: (1) An expansion of the ±4 percent bandwidth; (2) revised treatment of forced resource outages; (3) elimination of out-of-band penalties for non-firm intermittent renewable resources; and (4) elimination of out-of-band penalties for large thermal units during startup and shutdown transitions.

Response: Western has expanded the previously proposed bandwidth of ±4 percent to ±5 percent. Please refer to the section of this rate order entitled, ''Energy Imbalance Bandwidth.''

Western will allow some expansion of the bandwidth under certain criteria during times of loss of a physical resource. Western has addressed the issue of forced resource outages in the section of this rate order entitled ''Physical Resource Loss.''

Western will apply Energy Imbalance Service to renewable energy resources. However, Western is willing to purchase, on a pass-through cost basis, the regulation and energy required to mitigate the fluctuations inherent in intermittent resources. Western has addressed the issue of non-firm intermittent renewable resources in the section of this rate order entitled ''Treatment of Intermittent Renewable Resources.''

Western will allow some expansion of the bandwidth under certain criteria during startup and shutdown of large thermal resources. Western has addressed this issue in the section of this rate order entitled ''Consideration of Large Thermal Resources.''

Comment: Comments questioned the use of WACM prices versus published indices, how these prices are determined, and whether WACM will make them available to the customers.

Response: Western has eliminated the use of industry indices in its pricing structure. Prices are derived from WACM hourly real-time sales and purchases (in some cases multiple-hour transactions).

The prices may or may not bear a relationship to a published market index, but Western maintains that the best method to ensure that Western does not over- or under-collect revenue, nor under- or over-credit for surpluses, is to adhere to the actual real-time purchase and sales pricing.

The WACM sales and purchase pricing will be posted after-the-fact on a web site currently under development. Customers will be provided information related to the web site's access and use prior to the first issuance of an Energy Imbalance Service bill.

Comment: Several comments were received concerning: (1) The complexity of the pricing structure; (2) the need for an out-of-band penalty; (3) how Western makes the distinction between merchant and reliability related transmission; and (4) and the application of revenues received for the out-of-band penalties.

Response: Western has simplified the pricing mechanism by eliminating both marginal pricing and the use of industry indices. This rate order contains the details of these changes. Pricing for both within and outside of the bandwidth will be the average prices for real-time transactions, with penalties for out-of-band imbalances.

Federal transmission transactions correspond with an energy transaction. Western determines its merchant versus reliability energy transactions by virtue of the transaction either being done in preschedule or real-time mode. The transmission transactions would follow the associated energy transaction and be deemed to be either for merchant or reliability purposes.

Western's analysis substantiated out-of-band penalties as: (1) An appropriate economic disincentive for entities operating outside the expanded bandwidth of ±5 percent; and (2) a mitigation of Western's risk in crediting customers for over deliveries.

Compensation from the penalties applied outside the bandwidth will cover unplanned maintenance costs associated with unscheduled unit responses, as well as Western's expenses for disruption of generation schedules.

Comment: The provision that allows WACM the ability to offer no financial credit during periods when control area operations are compromised by over delivery (*e.g.,* during periods of high water or other operating constraints) was questioned.

Response: Western maintains that during times of control area constraints, it reserves the right to offer no credit for over delivery of energy. Western addressed this comment in the section of this rate order entitled ''Energy Imbalance Service and Control Area Operating Constraints.''

Comment: Concern was expressed that small-load entities that are required to schedule in whole MW increments would be penalized by Energy Imbalance Service.

Response: The size of an entity will not exempt a customer from the responsibility of balancing resources with obligations. However, the 2 MW minimum bandwidth was established expressly for the smaller customer, so that scheduling in whole MWs would not push them outside the bandwidth. More detailed information on this comment appears in the sections of this rate order entitled ''Energy Imbalance Bandwidth'' and ''Formula Rate.''

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability

involving rates or services applicable to public property.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from Congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Availability of Information

Comments, letters, memorandums, or other documents made or kept by Western in developing the proposed rate will be made available for inspection and copying at the Rocky Mountain Customer Service Region located at 5555 East Crossroads Boulevard, Loveland, CO 80538–8986.

Submission to the Federal Energy Regulatory Commission

The interim rate herein confirmed, approved, and placed into effect, together with supporting documents, will be submitted to FERC for confirmation and final approval.

Order

I confirm and approve on an interim basis, effective July 1, 2002, Rate Schedule L–AS4 for Energy Imbalance Service for the Western Area Colorado Missouri control area for the Western Area Power Administration. The rate schedule shall remain in effect on an interim basis, pending FERC confirmation and approval of it or a substitute rate on a final basis through March 31, 2003.

Dated: May 30, 2002.

Spencer Abraham,
Secretary.

Rate Schedule L–AS4, (Supersedes L–T3); Schedule 4 to OATT,

July 1, 2002.

Department of Energy

Western Area Power Administration, Rocky Mountain Region, Western Area Colorado Missouri Control Area; Schedule of Rate for Energy Imbalance Service

Effective

The first day of the first full billing period beginning on or after July 1, 2002, through March 31, 2003.

Available

Within the Rocky Mountain Customer Service Region's Western Area Colorado Missouri control area (WACM).

Applicable

To customers receiving Energy Imbalance Service from WACM.

Character and Conditions of Service

WACM provides Energy Imbalance Service when there is a difference between a customer's resources and obligations. Energy Imbalance is calculated as resources minus obligations (adjusted for transmission and transformer losses) for any combination of scheduled transfers, transactions, or actual load integrated over each hour. Both Federal transmission customers and customers on others' transmission systems within WACM must either obtain this service from WACM or make alternative comparable arrangements to satisfy its Energy Imbalance Service obligation.

Formula Rate

All Energy Imbalance Service provided, both inside and outside the bandwidth, will be settled financially, accounted for hourly at the end of each month. The WACM shall establish a deviation band of ±5 percent (with a minimum of 2 MW) of the actual load to be applied hourly to any energy imbalance that occurs as a result of a customer's schedules and/or meter data.

Normally, there are four scenarios for Energy Imbalance Service, each of which receive a specific pricing calculation. They are: (1) Over delivery within the bandwidth; (2) under delivery within the bandwidth; (3) over delivery outside the bandwidth; and (4) under delivery outside the bandwidth. During periods of control area operating constraints, Western reserves the right to eliminate credits for over deliveries and parties over delivering may share in the cost to Western of the penalty.

Within the Bandwidth

The gross energy imbalance for each applicable entity within WACM shall be totaled and netted to determine an aggregate energy imbalance for WACM. The sign of the aggregate energy imbalance will determine whether sale or purchase pricing will be used (surplus conditions use sale pricing and deficit conditions will use purchase pricing).

Depending upon the sign of the aggregate energy imbalance for all entities within WACM, the pricing for charges and credits within the bandwidth will be: Weighted Average Sale or Purchase Price @ 100%.

Outside the Bandwidth

Each entity within WACM will be charged or credited independently for Energy Imbalance Service taken, dependent upon their over- or under-delivery status.

Under Delivery (customer deficit) = Customer will be charged 150% of the weighted average real-time purchase price.

Over Delivery (customer surplus) = Customer will be credited 50% of the weighted average real-time sale price.

Expansion of the bandwidth will be allowed during the following instances:

—The loss of a physical resource.
—Upon evidence of proven frequency bias contribution for control area needs.
—The transition (start up/shut down) period for large thermal resources.

Pricing Defaults

When no hourly data is available, the pricing defaults for sales and purchase pricing both within and outside the bandwidth will be applied in the following order:

—Weighted average real-time sale or purchase pricing for the day (on and off peak).
—Weighted average real-time sale or purchase pricing for the month (on and off peak).
—Weighted average real-time sale or purchase pricing for the prior month (on and off peak).
—Weighted average real-time sale or purchase pricing for the month prior to the prior month (and continuing until sale or purchase pricing located) (on and off peak).

Billing

The billing determinants for the above formula rates are specified in the final rate order and in the associated service agreement.

[FR Doc. 02–14609 Filed 6–10–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0104; FRL–7182–7]

Industrial Economics Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including

information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Industrial Economics Inc. in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Industrial Economics Inc. has been awarded multiple contracts to perform work for OPP, and access to this information will enable Industrial Economics Inc. to fulfill the obligations of the contract.

DATES: Industrial Economics Inc. will be given access to this information on or before June 17, 2002.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. Contractor Requirements

Under contract number GS–10F–0224J, the contractor will perform the following:

EPA's Office of Enforcement and Compliance Assurance (OECA) is responsible for providing assistance to enforcement professionals from EPA and the States in determining: (1) A violator's economic benefit of noncompliance; (2) the violator's ability to pay for compliance, clean-ups and civil penalties (hereinafter referred to as ''ability to pay''); (3) the value of a supplemental environmental project (SEP); and (4) the value of compliance. This assistance is largely provided through five current computer models: Ben, Abel, Indipay, Munipay and Project. Ben calculates a violator's economic savings from violating the law. Abel, Indipay, and Munipay evaluate claims of inability to pay from for-profit entities, individuals and municipalities, respectively. Project calculates the net-present, after-tax value of a proposed supplemental environmental project.

OECA also provides support in these areas through the use of expert financial consultants where the models are insufficient. OECA must keep its models up to date, provide educational programs to ensure proper application of the models, support negotiations, trials and hearings, and provide advice to our enforcement professionals as to issues that arise in using the models.

Since there are very few corporate finance, municipal finance, or accounting experts within OECA, the contractor shall provide that expertise and update the models, develop new models as appropriate and educate enforcement staff on the models. The contractor shall also provide expert advice to enforcement personnel regarding financial issues that impact enforcement litigation, and when directed, support enforcement negotiations, and appear as expert witnesses in hearings and trials. However, EPA employees will make all policy decisions in regard to finance/accounting issues.

To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as, such data remains proprietary or confidential, the contractor shall protect such data from unauthorized use and disclosure.

All files or other information identified as CBI shall be treated as confidential and kept in a secure area with access limited to only contractor personnel directly involved in the case or special project assignment. The contractor, subcontractor, and consultant personnel are bound by the requirements and sanctions contained in their contracts with EPA and in EPA's confidentiality regulations found at 40 CFR part 2, subpart B. The contractor, subcontractors, and consultant must adhere to EPA-approved security plans which describe procedures to protect CBI, and are required to sign non-disclosure agreements before gaining access to CBI.

All official data, findings, and results of investigations and studies completed by the contractor shall be available for EPA and Department of Justice internal use only. The contractor shall not release any part of such data without the written direction of the project officer.

This contract involves no subcontractors.

OPP has determined that the contracts described in this document involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with Industrial Economics Inc., prohibits use of the information for any purpose not specified in these contracts; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Industrial Economics Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Industrial Economics Inc. until the requirements in this document have been fully satisfied. Records of information provided to Industrial Economics Inc. will be maintained by EPA Project Officers for these contracts. All information supplied to Industrial Economics Inc. by EPA for use in connection with these contracts will be returned to EPA when Industrial Economics Inc. has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: June 3, 2002.

Linda Vlier Moos,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 02—14635 Filed 6–10–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7228–5]

Demonstration Program To Recognize Local Governments Taking Extraordinary Efforts To Protect Watersheds—Clean Water Partners for the 21st Century—Extension of Application Deadline

AGENCY: Environmental Protection Agency.

ACTION: Extension of application deadline until July 15, 2002.

SUMMARY: On April 8, 2002 at 67 FR 16751 EPA published a **Federal Register** notice announcing the creation of this program and requesting applications to be submitted by May 30, 2002. This notice announced the intention by the Office of Water at the Environmental Protection Agency (EPA) to undertake a demonstration program to recognize local governments of various types that are undertaking extraordinary actions now to protect and enhance watershed health and also commit to undertake specific actions in the future, over and above the requirements of the Clean Water Act (CWA). The program is intended to give local governments of all types the opportunity to be recognized, and is not limited to wastewater treatment agencies. The program is not intended to replace EPA's existing National Wastewater Excellence awards program, which will continue to recognize operational achievements in specific areas of wastewater management. A fuller description of the program and guidelines for submitting applications can be found at *www.cleanwaterpartners.org.*

DATES: The date by which applications for this program are to be submitted is being extended from May 30, 2002 until July 15, 2002. None of the other elements of the program are affected by this Notice.

ADDRESSES: Applications are to be sent electronically to *www.cleanwaterpartners.org* or faxed to Clean Water Partners for the 21st Century Program at 202–833–4657.

FOR FURTHER INFORMATION CONTACT: Jim Horne, Office of Wastewater Management, Phone (202) 564–0571, E-mail: *horne.james@epa.gov*

Dated: May, 30, 2002.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 02–14633 Filed 6–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0096; FRL–7181–6]

Norflurazon and Fenbutatin-Oxide Tolerance Reassessment Decisions; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice of tolerance reassessment for norflurazon and fenbutatin-oxide starts the 30–day public comment period during which the public is invited to submit comments on the Agency's ''Report of the Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision (TRED) for Norflurazon'' and ''Report of the Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision (TRED) for Fenbutatin-oxide.'' The Agency is providing an opportunity, through this notice, for interested parties to comment on the Agency's tolerance reassessment decisions in accordance with procedures described in Unit I of this document. All comments will be carefully considered by the Agency. If any comment causes the Agency to revise its decision on tolerance reassessment for norflurazon and/or fenbutatin-oxide, the Agency will publish notice of its amendment in the **Federal Register.**

DATES: Comments, identified by docket ID number OPP–2002–0096, must be received on or before July 11, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I under **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by the EPA, it is imperative that you identify docket ID number OPP–2002–0096 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Beth Edwards, telephone number: (703) 305–5400; e-mail address: edwards.beth@epa.gov for norflurazon; and Lorilyn Montford, telephone number: (703) 308–8170; e-mail address: montford.lorilyn@epa.gov for fenbuuutatin-oxide, Special Review and Reregistration Division (7508C) Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug, and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticides users; and the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access TRED documents electronically, go directly to the TREDs table on the EPA Office of Pesticide Programs Home Page, at http://www.epa.gov/pesticides/reregistration/status.htm.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0096. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, including printed and paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity

Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by the EPA, it is imperative that you identify docket ID number OPP–2002–0096 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0096. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the appropriate person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burdens or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

This notice constitutes and announces the availability of the norflurazon and fenbutatin-oxide TREDs. These decisions have been developed as part of the public participation process that EPA and the U.S. Department of Agriculture (USDA) are using to involve the public in the reassessment of pesticide tolerances under FFDCA. The EPA must review tolerances and tolerance exemptions that were in effect when FQPA was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard of the new law.

In reviewing these tolerances, the Agency must consider, among other things, aggregate risks from non-occupational sources of pesticide exposure, whether there is increased susceptibility to infants and children, and the cumulative effects of pesticides with a common mechanism of toxicity. The tolerances are considered reassessed once the safety finding has been made that aggregate risks are not of concern. A reregistration eligibility decision (RED) was completed for norflurazon in June 1996 and fenbutatin-oxide in September 1994, prior to FQPA enactment, and therefore needed an updated assessment to consider the provisions of the Act.

FFDCA requires that the Agency, when considering whether to establish, modify, or revoke a tolerance, consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' At this time, norflurazon and fenbutatin-oxide have not been identified as sharing a common mechanism of toxicity and are not scheduled for a cumulative risk assessment. Additionally, the tolerances for norflurazon (58) and fenbutatin-oxide (42) are now considered reassessed as safe under section 408(q) of FFDCA.

The reregistration program is being conducted under Congressionally-mandated time frames, and the EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, the Agency is issuing these TREDs as final documents because no risk mitigation or changes to existing labeling are necessary. All comments received within 30 days of publication of this **Federal Register** notice will be carefully considered by the Agency. If any comment significantly impacts a TRED, the Agency will amend its decision by publishing a **Federal Register** notice.

B. What is the Agency's Authority for Taking this Action?

The legal authority for these TREDs falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' and either reregistering products or taking ''other appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticide Tolerances.

Dated: May 31, 2002.

Lois A Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–14636 Filed 6–10–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7229–3]

Draft Action Plan for the Development of a Framework for Metals Assessment and Guidance for Characterizing and Ranking Metals (External Review Draft)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a draft for public review and comment.

SUMMARY: This notice announces the availability of the External Review Draft of a document, Draft Action Plan for the Development of a Framework for Metals Assessment and Guidance for Characterizing and Ranking Metals, EPA/630/P–02/003A, prepared by a cross-agency workgroup under the auspices of the Science Policy Council. This External Review Draft of the Project Work Plan will be reviewed by the EPA's Science Advisory Board in an advisory capacity. The EPA also is announcing a public comment period for the draft document. EPA will consider the SAB's advice and public comment submissions in revising the Draft Action Plan. The plan may be modified and amended from time to time, as necessary, to reflect actual project requirements and progress. Information on the date and location of the SAB public review meeting (anticipated mid-summer 2002) will be published in a future **Federal Register** notice.

DATES: Comments may be submitted through the day of the SAB Advisory meeting, however in order for the Agency to consider comments in the development of the final charge to the SAB, comments should be received no later than July 2, 2002.

ADDRESSES: Comments may be mailed to the Technical Information Staff (8623D), NCEA–W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or delivered to the Technical Information Staff at 808 17th Street, NW., 5th Floor, Washington, DC 20006; telephone: 202–564–3261; facsimile: 202–565–0050. The EPA mail room does not accept courier deliveries. Electronic comments may be e-mailed to: *metals.assessment@epa.gov.*

The document is available primarily via the Risk Assessment Forum Publications Page at *http://www.epa.gov/ncea/raf/rafpub.htm.* A limited number of paper copies will be made available upon individual request to the Technical Information Staff. Please provide the document's title, Draft Action Plan for the Development of a Framework for Metals Assessment and Guidance for Characterizing and Ranking Metals, EPA/630/P–02/EPA/630/P–02/003A, as well as your name and address to properly process your request.

FOR FURTHER INFORMATION CONTACT: Dr. William P. Wood, Risk Assessment Forum, National Center for Environmental Assessment (8601–D), U.S. Environmental Protection Agency, Washington, DC 20460; telephone: 202 564–3361; fax: 202 565–0062; e-mail: *risk.forum@epa.gov.*

SUPPLEMENTARY INFORMATION: Many EPA programs are faced with deciding whether and how to regulate toxic metals. These decisions range from setting regulatory standards for environmental releases, to establishing safe levels in different environmental media, to setting priorities for regulatory or voluntary efforts. A basic input to the decision-making process for most EPA programs is an assessment of the potential hazards and risks posed by the metal(s) to human health and the environment. Hazard and risk assessments of metals and metal compounds raise issues not generally encountered with organic chemicals. In recognition of the unique assessment issues raised by metals and the complexity of addressing these issues consistently across the Agency's various programs, the Agency's Science Policy Council tasked an Agency work group to devise an Action Plan. The goal of this Action Plan is to establish a process for developing guidance that will assure (1) a consistent application of scientific principles for assessing hazard and risk for metals, (2) state-of-the-science application of methods and data, (3) A transparent process (*i.e.* articulating assumptions and uncertainties), and (4) the flexibility to address program-specific issues. The Action Plan includes brief descriptions of the Agency's metals assessment activities, and identifies critical assessment issues that need to be addressed by the cross-agency guidance.

Dated: June 5, 2002.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 02–14632 Filed 6–10–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0107; FRL–6799–3]

Minor Changes to OPPTS Harmonized Test Guidelines, Series 830 Product Properties; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has established a unified library for test guidelines issued by the Office of Prevention, Pesticides and Toxic Substances (OPPTS) for use in testing chemical substances to develop data for submission to EPA under the Toxic Substances Control Act (TSCA), the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Agency is announcing minor changes to the Series 830—Product Properties Test Guidelines of these OPPTS harmonized test guidelines. The availability of final guidelines in this series was announced in the **Federal Register** on August 28, 1996 (61 FR 44308) (FRL–5390–7) and minor editorial revisions were announced in the **Federal Register** on March 18, 1998 (63 FR 13254) (FRL–5761–6). The Agency periodically announces in the **Federal Register** the availability of new and changed test guidelines.

FOR FURTHER INFORMATION CONTACT: *For general information contact*:

TSCA information contact: TSCA Hotline at TAIS/7408, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

FIFRA information contact: Communications Services Branch, Field and External Affairs Division, Office of Pesticide Programs (7506C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5017; fax number: (703) 305–5558.

For technical information contact: Harold Podall, Office of Pesticide Programs, Registration Division (7505C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9373; e-mail address: podall.harold@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are or may be required to conduct

testing of chemical substances under TSCA, FFDCA, or FIFRA, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. You may also obtain electronic copies of the OPPTS harmonized test guidelines from the EPA Internet Home Page at http://www.epa.gov/opptsfrs/home/guidelin.htm.

III. What Action is EPA Taking?

EPA is announcing minor changes to the following Series 830 OPPTS harmonized test guidelines. These changes are minor or editorial in nature and do not amend the existing requirements under FIFRA or the TSCA section 4 test rules. Explicit test requirements for registration are set out in 40 CFR parts 158 and 796 and the test guidelines contain standards for and examples of acceptable testing.

1. *OPPTS 830.6317 Storage stability*. Paragraphs (b)(2)(ii) and (b)(2)(iii) addressing frequency at which chemical analysis for the concentration(s) of the active ingredient(s) is conducted over the 1 year test duration have been changed to include an analysis at the 9-month point. This change will enable better definition of the slope of the degradation curve and permit improved extrapolation of the degradation curve past the 12-month point. Additionally, the change provides guidance for frequency of testing for storage stability studies continued beyond 1 year. The final guideline was reviewed by the FIFRA Scientific Advisory Panel (SAP) at its September 27, 1995 meeting and the revised guideline contains no new scientific issues that the Agency believes warrant review by the SAP.

2. *OPPTS 830.7300 Density/relative density/bulk density*. Paragraph (c), Test procedures, has been changed to correct a typographical error in a citation by replacing the words ''ASTM D-727'' with ''ASTM D-729.'' This is a minor editorial change.

IV. Are there Any Applicable Voluntary Consensus Standards that EPA Should Consider?

This notice of availability does not involve a proposed regulatory action that would require the Agency to consider voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) 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 requires EPA to provide an explanation to Congress, through Office of Management and Budget (OMB), when the Agency decides not to use available and applicable voluntary consensus standards when the NTTAA directs the Agency to do so.

List of Subjects

Environmental protection, Chemical testing, Test guideline.

Dated: May 30, 2002.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 02–14637 Filed 6–10–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

June 5, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments August 12, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, 445 12th Street, SW, Room 1-C804, Washington, DC 20554 or via the internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith Boley Herman at 202–418–0214 or via the internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0175.

Title: Section 73.1250, Broadcasting Emergency Information.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 50.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 50 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: Emergency situations in which the broadcasting of information is considered as furthering the safety of life and property include, but are not limited to, tornadoes, hurricanes, floods, tidal waves, earthquakes, and school closings. Section 73.1250(e) requires that immediately upon cessation of an emergency during which broadcast facilities were used for the transmission of point-to-point messages or when daytime facilities were used during

nighttime hours by an AM station, a report in letter form shall be forwarded to the FCC in Washington, DC, setting forth the nature of the emergency, the dates and hours of the broadcasting of emergency information and a brief description of the material carried during the emergency. A certification of compliance with the non-commercialized provision must accompany the report where daytime facilities are used during nighttime hours by an AM station. The report is used by FCC staff to evaluate the need and nature of the emergency broadcast to confirm that an actual emergency existed.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–14645 Filed 6–10–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 31, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 12, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0863.

Title: Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act (SHVA).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for non-profit entities.

Number of Respondents: 848.

Estimated Time per Response: 30 minutes.

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 125,000 hours.

Total Annual Costs: $13,000.

Needs and Uses: In February 1999, the FCC released a Report and Order (R&O) that described a method for measuring the Grade B signal strength at a household so that the satellite and broadcast industries and consumers would have a uniform method for calibrating actual household signal strength and thereby determine which consumers are ''unserved'' by over-the-air network signals. The written records of test results are made after testing and predicting the strength of a television station's signal. The R&O also endorsed a computer model to predict whether a household is likely to be able to receive a signal of the required strength.

OMB Control Number: 3060–0055.

Title: FCC Form 327, Application for Cable Television Relay Service Station (CARS) Authorization.

Form Number: FCC 327.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households, State, local or tribal governments.

Number of Respondents: 973.

Estimated Time per Response: 3 hrs. 10 mins. (3.166 hrs.).

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 3,081 hours.

Total Annual Costs: $184,870.

Needs and Uses: Under 47 CFR Sections 78.11–78.40 of FCC Rules, an applicant files FCC Form 327 to obtain an initial license or the modification, transfer, assignment, or renewal of an existing Cable Television Relay Service (CARS) microwave radio license. Franchised cable systems and other eligible services use the 12 GHz and 18 GHz CARS bands for microwave relays pursuant to 47 CFR part 78 of the Commission's Rules. CARS is principally a video transmission service used for intermediate links in a distribution network, *i.e.,* CARS stations relay broadcast television, low power television, AM, FM, and cablecasting video and audio signal transmissions for and supply program material to these various broadcast transmission systems using point-to-point and point-to-multipoint transmissions.

OMB Control Number: 3060–0061.

Title: FCC Form 325, Annual Report of Cable Television Systems.

Form Number: FCC 325.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 1,100.

Estimated Time per Response: 1–2 hours.

Frequency of Response: Annual reporting requirements.

Total Annual Burden: 3,600 hours.

Total Annual Costs: $4,000.

Needs and Uses: The FCC uses Form 325 to solicit basic operational information from all cable systems nationwide, including: The operator's name and address; system-wide capacity and frequency information; channel usage; and number of subscribers. Operators of every operational cable television system are currently required to complete the form to verify, correct, and/or furnish the FCC with the most current information on their respective cable systems.

OMB Control Number: 3060–0688.

Title: Abbreviated Cost-of-Service Filing for Cable Network Upgrades.

Form Number: FCC 1235.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; State, local or tribal governments.

Number of Respondents: 100.

Estimated Time per Response: 10–20 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 1,500 hours.

Total Annual Costs: $200.

Needs and Uses: FCC Form 1235 is an abbreviated cost of service filing for

significant network upgrades that allows cable operators to justify rate increases related to capital expenditures used to improve rate-related cable services. The FCC Form 1235 is reviewed by the cable operator's respective local franchise authority.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 02–14646 Filed 6–10–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

June 4, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 12, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman or Leslie Smith, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov* or *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0126.

Title: Section 73.1820, Station Log.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, and not-for-profit institutions.

Number of Respondents: 15,122.

Estimated Time Per Response: 0.17 hours to 0.5 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 15,326 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 73.1820 requires that each licensee of an AM, FM or TV broadcast station maintain a station log. Each entry must accurately reflect the station's operation. This log should reflect adjustments to operating parameters for AM stations with directional antennas without an approved sampling system; for all stations the actual time of any observation of extinguishment or improper operation of tower lights; and entry of each test of the Emergency Alert System (EAS) for commercial stations. The data is used by FCC staff in field investigations to assure that the licensee is operating in accordance with the technical requirements as specified in the FCC Rules and with the station authorization, and is taking reasonable measures to preclude interference to other stations. It is also used to verify that the EAS is operating properly.

OMB Control No.: 3060–0641.

Title: Notification to File Progress Report.

Form No.: FCC Form 218–I.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, and individuals or households.

Number of Respondents: 500.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 500 hours.

Total Annual Cost: N/A.

Needs and Uses: The data collected is used by Commission staff to determine whether the 218–219 MHz licensee (previously IVDS) is entitled to their authorization to operate. From this data, the Commission is able to confirm that the licensee has provided a showing of ''substantial service'' to the population or land area within 10 years of the license grant pursuant to 47 CFR 95.833. The data collected ensure licensees are making proper use of the spectrum.

OMB Control No.: 3060–0714.

Title: Antenna Registration Number Required as Supplement to Application Forms.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local and tribal government, and federal government.

Number of Respondents: 516,000.

Estimated Time Per Response: .084 hours (or five minutes).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 43,344 hours.

Total Annual Cost: N/A.

Needs and Uses: In July 1996, the antenna clearance procedures were replaced with a uniform registration procedure that applied to antenna structure owners. Structure owners receive an Antenna Structure Registration Number which is a unique number that identifies an antenna structure. Once obtained, this number must be used on all filings related to the antenna structure. Collecting the registration number enables the Commission to efficiently maintain a registration database, as well as process the applications without unnecessary delay related to antenna structure discrepancies. By entering the registration number in the database, the antenna clearance can immediately be validated for accuracy through the Universal Licensing System (ULS).

OMB Control No.: 3060–0850.

Title: Quick-Form Application for Authorization in the Ship, Aircraft, Amateur, Restricted, and Commercial Operator, and General Mobile Radio Services.

Form No.: FCC Form 605.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and state, local, or tribal government.

Number of Respondents: 175,000.

Estimated Time Per Response: .44 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 77,000 hours.

Total Annual Cost: $2,537,500.

Needs and Uses: The FCC Form 605 is a consolidated application form for various services and is used to collect licensing data for the Universal

Licensing System (ULS). The form is being revised to include a new operator class code for the Restricted and Commercial Radio Operators and to clarify existing instructions for the general public. There is also a change to the estimated average burden and increased number of respondents due to additional filings for exemptions since the last submission to the Office of Management and Budget (OMB).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–14647 Filed 6–10–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

June 5, 2002.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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 control number. For further information contact Marie Moyd, Federal Communications Commission, (202) 418–2111.

Federal Communications Commission

OMB Control No.: 3060–0989.

Expiration Date: 11/30/2002.

Title: Procedures for Applicants Requiring Section 214 Authorization for Domestic Interstate Transmission Lines Acquired Through Corporate Control, 47 CFR Sections 63.01, 63.03 and 63.04.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 35 respondents; 47.29 hours per response (avg.).; 1655 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $20,000.

Frequency of Response: On occasion.

Description: In a Report and Order issued in CC Docket No. 01–150, released March 21, 2002, the Commission provides presumptive streamlining categories, allows for joint applications for international and domestic transfers of control, clarifies confusion about content of applications, provides timelines for streamlined transaction review, provides a pro forma transaction process, allows asset acquisitions to be treated as transfers of control and deletes obsolete sections of its rules. The Report and Order sets forth the procedures for common carriers requiring authorization under section 214 of the Communications Act of 1934, as amended to acquire domestic interstate transmission lines through a transfer of control. Under section 214 of the Act, carriers must obtain the Commission approval before constructing, acquiring or operating an interstate transmission lines. Acquisitions involving interstate common carriers therefore require affirmative action by the Commission before the acquisition can occur. Pursuant to 47 CFR sections 63.03 and 63.04, domestic section 214 applications involving domestic transfers of control, at a minimum should specify: (1) The name, address and telephone number of each applicant; (2) the government, state, or territory under the laws of which each corporate or partnership applicant is organized; (3) the name, title, post office address, and telephone number of the officer or contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed; (4) the name, address, citizenship and principal business of any person or entity that directly or indirectly owns at least ten percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one percent); (5) certification pursuant to 47 CFR sections 1.2001 through 1.2003 that no party to the application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988; (6) a description of the transaction; (7) a description of the geographic areas in which the transferor and transferee (and their affiliates) offer domestic telecommunications services, and what services are provided in each area; (8) a statement as to how the application fits into one or more of the presumptive streamlined categories in section 63.03 or why it is otherwise appropriate for streamlined treatment; (9) identification of all other Commission applications related to the same transaction; (10) a statement of whether the applicants are requesting special consideration because either party to the transaction is facing imminent business failure; (11) identification of any separately filed waiver requests being sought in conjunction with the transaction; and (12) a statement showing how grant of the application will serve the public interest, convenience and necessity, including any additional information that may be necessary to show the effect of the proposed transaction on competition in domestic markets. Where an applicant wishes to file a joint international section 214 transfer of control application and domestic section 214 transfer of control application, the applicant must submit information that satisfies the requirements of 47 CFR 63.18. In the attachment to the international application, the applicant must submit the information described in 47 CFR 63.04(a)(6)–(a)(12). *See* 47 CFR 63.03 and 63.04. No. of respondents: 25; hours per response: 65 hours; total annual burden: 1625 hours). Pursuant to 47 CFR 63.03(d), applicants are not required to file post-consummation notices of pro forma transactions, except that a post transaction notice must be filed with the Commission within 30 days of a pro forma transfer to a trustee or a debtor-in-possession. The notification can be in the form of a letter (in duplicate to the Secretary). The letter or other form of notification must also contain the information listed in sections (a)(1) through (a)(4) in section 63.04. A single letter may be filed for more than one such transfer of control. *See* 47 CFR 63.03 and 63.04. (*No. of respondents:* 10; *hours per response:* 3 hours; *total annual burden:* 30 hours). Information will be used to ensure that applicants comply with the requirements of 47 USC section 214. *Obligation to respond:* Mandatory.

Public reporting burdens for the collections of information are as noted above. Send comments regarding the burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–14638 Filed 6–10–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 26, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Clinton M. Day, C. Parke Day, C. Peyton Day, C. Burke Day, Kathleen Day, Day Investments, LLC, and Deen Day-Smith, all of Duluth, Georgia; to retain voting shares of Integrity Bancshares, Inc., Alpharetta, Georgia, and thereby indirectly acquire additonal voting shares of Integrity Bank, Alpharetta, Georgia.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Michele Costello Lundy and Christopher G. Costello, both of Marion, Kansas; to acquire voting shares of Tampa State Bankshares, Inc., Tampa, Kansas, and thereby indirectly acquire voting shares of Tampa State Bank, Tampa, Kansas.

Board of Governors of the Federal Reserve System,

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–14656 Filed 6–10–02; 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 Web site 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 July 5, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Cincinnati BancGroup, Inc., Mason, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Kenney, Kenney, Illinois.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. American Bancshares, Inc., Baxter Springs, Kansas; to acquire 100 percent of the voting shares of Southwest Missouri Bancshares, Inc., Ozark, Missouri, and thereby indirectly acquire Southwest Community Bank, Ozark, Missouri.

Board of Governors of the Federal Reserve System, June 5, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–14575 Filed 6–10–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 02-13180) published on page 36882 of the issue for May 28, 2002.

On page 36883, in the first column, under the Federal Reserve Bank of Minneapolis heading, the entry for State Bank of Hawley Employee Stock Ownership Plan & Trust, Hawley, Minnesota, is revised to read as follows:

A.Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. State Bank of Hawley Employee Stock Ownership Plan & Trust, Hawley, Minnesota; to acquire an additional 6 percent, for a total of 38.8 percent of the voting shares of Bankshares of Hawley, Inc., Hawley, Minnesota, and thereby indirectly acquire State Bank of Hawley, Hawley, Minnesota.

Comments on this application must be received by June 21, 2002.

Board of Governors of the Federal Reserve System, June 5, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–14577 Filed 6–10–02; 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 July 5, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Security Bancorp of Tennessee, Inc., Halls, Tennessee; to acquire 45.63

percent of the voting shares of Patriot Bank, Millington, Tennessee.

Board of Governors of the Federal Reserve System, June 6, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–14655 Filed 6–10–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 5, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Citigroup, Inc., New York, New York and its subsidiaries; to acquire Golden State Bancorp, Inc., San Francisco, California, and its subsidiaries, including California Federal Bank, San Francisco, California, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4) of Regulation Y.

In connection with this notice, Citigroup also has applied to acquire indirectly Citibank (West) FSB, San Francisco, California, a de novo federal savings bank, pursuant to section 225.28(b)(4) of Regulation Y.

Board of Governors of the Federal Reserve System, June 5, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–14576 Filed 6–10–02; 8:45 am]

BILLING CODE 6210–01–S

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

TIME AND DATE: 11:00 a.m., Monday, June 17, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 7, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–14841 Filed 6–7–02; 3:31 pm]

BILLING CODE 6210–01–P

GENERAL ACCOUNTING OFFICE

Appointments to the Medicare Payment Advisory Commission

AGENCY: General Accounting Office (GAO).

ACTION: Notice of appointments.

SUMMARY: The Balanced Budget Act of 1997 established the Medicare Payment Advisory Commission (MedPAC) and gave the Comptroller General responsibility for appointing its members. This notice announces three new appointments and two reappointments to fill the vacancies occurring this year.

DATES: Appointments are effective May 1, 2002 through April 30, 2005.

ADDRESSES: *GAO*: 441 G Street, NW., Washington, DC 20548. *MedPAC*: 1730 K Street, NW., Suite 800, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: *GAO*: Molly Ryan, 202/512–3592. *MedPAC*: Murray N. Ross, Ph.D., 202/653–7220.

SUPPLEMENTARY INFORMATION: To fill this year's vacancies I am announcing the following: Newly appointed members are Nancy-Ann DeParle, J.D., Senior Advisor, JP Morgan Partners and Adjunct Professor at the Wharton School of the University of Pennsylvania; David F. Durenberger, President, Public Policy Partners, Inc.: Senior Health Policy Fellow at the Graduate School of Business, University of St. Thomas; Chairman and Chief Executive Officer, University of St. Thomas/University of Minnesota's National Institute of Health Policy; and former Senator from Minnesota; and Nicholas J. Wolter,M.D., Chief Executive Officer, Deaconess Billings Clinic and Pulmonary and Critical Care Physician, Billings Clinic. Reappointed members are Carol Raphael, President and Chief Executive Officer, Visiting Nurse Service of New York; and Mary K. Wakefield, Ph.D., R.N., Director, Center for Rural Health, University of North Dakota School of Medicine and Health Sciences.

(Sec. 4022, Pub. L. 105–33, 111 Stat. 251, 350)

David M. Walker,

Comptroller General of the United States.

[FR Doc. 02–14623 Filed 6–10–02; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 02112]

Asthma and Hazardous Substances, Applied Research and Development; Notice of the Availability of Funds

A. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program to conduct research on the impact of hazardous substances on asthma. This program addresses the

''Healthy People 2010'' focus area of Environmental Health.

The purpose of this program is to: (1) Link secondary data sources available for asthma with data on environmental contamination to evaluate the contribution of environmental exposures to asthma occurrence or morbidity among one or more communities exposed to hazardous air pollutants; (2) provide scientific information about the association between hazardous substances and asthma morbidity; and (3) develop and apply a methodology which could serve as a useful model for other organizations when responding to questions concerning the health impact of air releases of hazardous substances.

Measurable outcomes of the program will be in alignment with the following performance goal for the Agency for Toxic Substances and Disease Registry (ATSDR): Developing and providing reliable, understandable information for people in affected communities and tribes and for stakeholders.

B. Eligible Applicants

Assistance will be provided to official public health agencies of States or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and Federally recognized Indian Tribal governments. State organizations, including State universities, State colleges, and State research institutions, must establish that they meet their respective State's legislature definition of a State entity or political subdivision to be considered to be an eligible applicant.

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 $250,000 is available in FY 2002 to fund two to three awards. It is expected that the average award will be $100,000, ranging from $80,000 to $120,000. The awards are expected to 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.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies and services. Funds for contractual services may be requested; however, the primary recipient of ATSDR funds must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Equipment may be purchased with these funds, however, the equipment proposed should be appropriate and reasonable for the research activity to be conducted. Equipment may be acquired only when authorized, and the applicant should provide a justification of need to acquire equipment, a description of the equipment, and the cost of purchase versus lease. To the greatest extent practicable, equipment and products purchased with ATSDR funds should be made in the United States. ATSDR retains the right to request the return of all equipment which is in operable condition and was purchased with grant funds (upon completion of the project period).

Funding Priorities

Priority will be given to the proposed project that (1) is conducted in one or more areas where a completed air pathway has already been established for one or more hazardous substances from a particular point source. These hazardous substances, or urban air toxics (UATs), have been previously linked to asthma in the workplace and include: adehydes (such as formaldehyde), polyisocyanates/isocyanates (such as toulene diisocyanate), acid anhydrides, and metals (such as cadmium); (2) includes a partnership between public health and environmental agencies; (3) clearly demonstrates a mechanism for community-based participation; and (4) demonstrates a new or innovative application of Geographic Information Systems (GIS).

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for activities under 1. Recipient Activities, and ATSDR will be responsible for the activities listed under 2. ATSDR Activities.

1. Recipient Activities

a. Develop a research project which examines the possible relationship between hazardous air pollutants and asthma morbidity using available data sources. Provide scientific information concerning hazardous substances and asthma and develop a model for others to address the health impact of hazardous substances to stakeholders.

b. Develop study protocol for approval of project implementation.

c. Develop, field test, and revise data extraction instruments and models that estimate ambient exposure to hazardous pollutants.

d. Disseminate research results to community members, and publish in written format for distribution.

e. Provide evidence of collaborate efforts with the local health environmental agencies on proposed and future community outreach activities.

f. Provide plans for working collaboratively with representatives of the communit(ies).

g. Collaborate with partners on these program activities, and meet annually to coordinate planned efforts and review progress.

2. ATSDR Activities

a. Provide scientific, epidemiologic, and environmental assistance.

b. Provide assistance on the development of the protocol and evaluation of the data extraction instruments.

c. Facilitate external peer review of the protocol and final report.

d. Provide assistance to awardees on data analysis and interpretation of findings.

e. Provide technical assistance to awardees (if more than one award is made) to ensure a sharing of information and methodologies, as appropriate.

f. Provide assistance for the dissemination of information to community members resulting from this project.

g. Facilitate an annual meeting between awardees and partners to coordinate planned efforts and review progress.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed so it is important to follow them in writing your program plan. The narrative should be no more than 30 pages, double-spaced, printed on one side, with 1 inch margins, and unreduced fonts (font size 12 point), on 8½ by 11 inch paper. Do not include any spiral or bound materials or pamphlets.

1. Title Page

The heading should include the title of the cooperative agreement announcement, the project title, the organization name, and the organization address, and the project director's name, address, and telephone number.

2. Abstract

A one page, singled-spaced, typed abstract must be submitted with the application. The heading should include the title of cooperative agreement announcement, project title, organization, name and address, project director and telephone number. This abstract should include a work plan identifying activities to be developed, activities to be completed, and a time line for completion of these activities.

3. Application Narrative

The narrative of each application must address the evaluation component in addition to the following:

a. Briefly state the applicant's understanding of the need or problem to be addressed, the purpose, and goals over the three year period of the cooperative agreement.

b. Describe in detail the objectives and the methods to be used to achieve the objectives of the project. The objectives should be specific, time-phased, measurable, and achievable during each budget period. The objectives should directly relate to the program goals. Identify the steps to be taken in planning and implementing the objectives and the responsibilities of the applicant for carrying out the steps.

c. Provide the name, qualifications, and proposed time allocation of the Principal Investigator who will be responsible for administering the project. Describe staff, experience, facilities, equipment available for performance of this project, and other resources that define the applicant's capacity or potential to accomplish the requirements stated above. List the names (if known), qualifications, and time allocations of the existing professional staff to be assigned to (or recruited for) this project. List the support staff available for performance of this project. List the available facilities, including space.

d. Document the applicant's expertise, and extent of experience in the areas of asthma, environmental health, and studies that link environmental databases with health indicators.

e. Provide letters of support or other documentation demonstrating coordination with the state health department and all other agencies or organizations described as participating in the project.

f. Describe how the affected communities will be involved in the proposed project.

g. State whether or not Humans are subjects in this proposal. (*See* Human Subjects in the Evaluation Criteria and Other Requirements sections.)

h. Describe how the CDC/ATSDR policy requirements will be met regarding the inclusion of women, ethnic, and racial groups in the proposed research. (See Women, Racial and Ethnic Minorities in the Evaluation Criteria and Other Requirements sections.)

4. Budget

Provide a detailed budget which indicates anticipated costs for personnel, equipment, travel, communications, supplies, postage, and the sources of funds to meet these needs. The applicant should be precise about the program purpose of each budget item. For contracts described within the application budget, applicants should name the contractor, if known; describe the services to be performed; and provide an itemized breakdown and justification for the estimated costs of the contract; the kinds of organizations or parties to be selected; the period of performance; and the method of selection. The budget narrative pages showing, in detail, how funds in each object class will be spent, should be placed directly behind form 424A and not in the body of the application.

F. Submission and Deadline

Letter of Intent (LOI)

In order for ATSDR to determine the level of interest in the program announcement, a non-binding letter of intent to apply is requested from potential applicants. The letter of intent should be submitted on or before June 30, 2002, 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 0937–0189). Forms are available on the Centers for Disease Control and Prevention Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

On or before July 30, 2002, submit the application to:Technical Information Management—PA 02112, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received on or before the deadline date.

Late Applications: Applications which do not meet the criteria above will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an objective review group appointed by ATSDR.

1. Study Design and Methods (30 percent)

a. Adequacy of the study design and methodology for accomplishing the stated goals and objectives.

b. The degree to which efficient and innovative approaches are proposed to address the problems.

c. The extent to which the applicant's plans and schedule proposed for accomplishing the activities to be carried out in this project are clearly stated, are realistic given the length of the funding period, and can be achieved within the proposed budget.

d. Adequacy of the plan to establish partnerships with community(ies), local environmental agencies, and other relevant public and private groups and organizations.

e. The extent to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research.

This includes:

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.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

2. Program Personnel (20 percent)

a. Applicant's technical experience and understanding (e.g. in the areas of asthma, environmental health, and database linkage).

b. Qualifications and time allocation of the professional staff to be assigned to this project.

c. Extent to which the management staff and their working partners are clearly described.

3. Community Involvement and Dissemination of Results (20 percent)

Adequacy of the plan to address community concerns and create lines of communication. Adequacy of methods to disseminate the study results to state and local public health officials, tribal governments, Indian Health Service, community residents, and to other

concerned individuals and organizations.

4. Understanding of the Problem (10 percent)

Responsiveness to the objectives of the cooperative agreement including:

a. The applicant's understanding of the problems related to community exposures to hazardous substances and concerns regarding morbidity from asthma.

b. Relevance of the proposed program to these and related problems.

5. Goals and Objectives (10 percent)

The extent to which the proposed goals and objectives are clearly stated and measurable. Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the identified purpose of the cooperative agreement. Measures must be objective/quantitative and must measure the intended goals of the proposed project. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

6. Facilities and Resources (10 percent)

The adequacy of the applicant's facilities, equipment, and other resources available for performance of this project.

7. Human Subjects (Not scored)

Does the application adequately address the requirements of 45 CFR Part 46 for the protection of human subjects?

8. Budget Justification (Not Scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original and two copies of:

1. Semi-annual progress report. The progress report will include a data requirement that demonstrates measures of effectiveness. (See Attachment III)

2. Financial Status Report (FSR) no more than 90 days after the end of the budget period.

3. Final financial status report and performance report, no more than 90 days after the end of the project.

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 complete description of each, *see* Attachment 1.

AR–1 Human Subjects Requirements

AR–2 Requirements of Inclusion of Women and Racial and Ethnic Minorities in Research

AR–7 Executive Order 12372 Review

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–17 Peer Review and Technical Reviews of Final Reports of Health Studies—ATSDR

AR–18 Cost Recovery—ATSDR

AR–19 Third Party Agreements—ATSDR

AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized in sections 104(i)(1)(E),(7) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. 9604 (i)(1)(E),(7) and (15)). The Catalog of Federal Domestic Assistance number is 93.206.

J. Where To Obtain Additional Information

This and other ATSDR 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 content of all the documents, business management technical assistance may be obtained from: Edna Green, Grants Management Specialist, Centers for Disease Control and Prevention (CDC), Procurement and Grants Office, Acquisition and Assistance Branch B, Announcement 02112, 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341–4146, Telephone (770) 488–2743, E-mail address: *ecg4@cdc.gov.*

For program assistance, contact: Sherri Berger-Frank, Deputy Branch Chief, Health Investigations Branch, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–31, Atlanta, Georgia 30333, Telephone: (404) 498–0606, E-mail address: *Sberger@cdc.gov*Or: Michelle Lackey, Epidemiologist, Health Investigations Branch, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–31, Atlanta, Georgia 30333, Telephone: (404) 498–0569, E-mail address: *Mlackey@cdc.gov.*

Dated: June 5, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–14581 Filed 6–10–02; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 02154]

Determining the Prevalence of Multiple Sclerosis and Amyotrophic Lateral Sclerosis in Communities Living Around Hazardous Waste Sites; Notice of the Availability of Funds

A. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program to Determine the Prevalence of Multiple Sclerosis (MS) and Amyotrophic Lateral Sclerosis (ALS), in communities living around hazardous waste sites. This addresses the ''Healthy People 2010'' focus area of Environmental Health.

The purpose of this program is to conduct research to determine the prevalence of MS and ALS among individuals in specific communities near sources of hazardous substances.

Measurable outcomes of the program will be in alignment with the following performance goals for ATSDR: (1) Develop and provide reliable, understandable information for people in affected communities and tribes and for stakeholders; and (2) Build and enhance effective partnerships.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized in sections 104(i)(1)(E), (7) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. 9604 (i)(1)(E), (7) and (15)). The Catalog of Federal Domestic Assistance number is 93.206.

C. Eligible Applicants

Assistance will be provided to the health departments of States or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam,

the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian Tribal governments. State organizations, including State universities, State colleges, and State research institutions, must establish that they meet their respective State legislature's definition of a State entity or political subdivision to be considered to be an eligible applicant.

Two levels of cooperative agreements will be awarded:

Level I: Eligible applicants for Level I funding are those States or State entities that: (1) Have identified a community or communities concerned about MS and ALS and hazardous substances; and (2) do not have an existing program for determining MS and ALS prevalence in a given community.

Level II: Eligible applicants for Level II funding are those States or State entities that: (1) Have an existing program for determining MS or ALS prevalence in specific areas; and (2) have identified additional communities with concerns of these diseases and hazardous substances, or have identified an additional health concern in the communities in which they are currently working (*e.g.*, previous work focused on MS, but the applicant would now like to expand surveillance to ALS).

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.

D. Availability of Funds

Approximately $450,000 is available in FY 2002 to fund up to six awards. It is expected that up to three awards will be made to Level I applicants. The average award will be $100,000, ranging from $90,000 to $110,000. It is expected that up to three awards will be made to Level II applicants. The average award will be $75,000, ranging from $50,000 to $90,000. It is expected 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.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies and services. Funds for contractual services may be requested; however, the primary recipient of ATSDR funds must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Equipment may be purchased with these funds, however, the equipment proposed should be appropriate and reasonable for the research activity to be conducted. Equipment may be acquired only when authorized, and the application should provide a justification of need to acquire equipment, the description, and the cost of purchase versus lease. To the greatest extent practicable, all equipment and products purchased with CDC/ATSDR funds should be American made. ATSDR retains the right to request return of all equipment purchased (in operable condition) with grant funds at the conclusion of the project period.

Funding Preference

Preference will be given to the proposed projects that are conducted in more than one community where MS and ALS and hazardous substances have been identified as health concerns.

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for activities under 1. Recipient Activities, and ATSDR will be responsible for the activities listed under 2. ATSDR Activities.

1. Recipient Activities

Level I

a. Participate in collaborative planning conferences with other recipients and ATSDR to develop or refine a common set of research questions, and to develop and implement complementary research protocols.

b. Develop study protocol for approval of project implementation to include methods for data collection, data management, and data analysis.

c. Establish cooperative relationships with medical care providers in the area(s) to be studied.

d. Collaborate and share data with other recipients to answer specific research questions and present and publish research findings.

e. Collaborate with other recipients in a pooled anonymized data set. Data analysis will be conducted at the state and federal levels.

f. Disseminate research results to community members through collaborative relationships with community groups and state health and environmental agencies.

Level II

a. Responsible for all Level I activities.

b. Expand existing MS prevalence project to include ALS, additional communities, and/or the collection of incidence data.

2. ATSDR Activities

a. Provide scientific, epidemiologic, and environmental assistance.

b. Work collaboratively with investigators to help facilitate research activities across sites. Provide assistance on the development of the protocol and evaluation of the data extraction instruments.

c. Facilitate external peer review of the protocol and the final report(s).

d. Prepare and submit materials to the CDC Institutional Review Board (IRB). The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

e. Provide assistance to awardees in the analysis of research information and the presentation and publication of findings.

f. Provide technical assistance to awardees to ensure a sharing of information and methodologies, as appropriate.

g. Facilitate an annual meeting between awardees and ATSDR to coordinate planned efforts and review progress.

F. Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed so it is important to follow them in laying out your program plan. The narrative should be no more than 30 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12 point font. Do not include any spiral or bound materials or pamphlets.

Cover Letter: Include a one-page cover letter stating whether applying for Level I funding or Level II funding. If applying for Level II funding, applicant must explain how they fulfill eligibility requirements.

Narrative

1. Title Page

The heading should include the title of the cooperative agreement announcement, project title, organization, name and address, project

director's name address and telephone number.

2. Abstract

A one page, singled-spaced, typed abstract must be submitted with the application. The heading should include the title of the cooperative agreement announcement, project title, organization, name and address, project director and telephone number. This abstract should include a work plan identifying activities to be developed, activities to be completed, and a time-line for completion of these activities.

3. Application Narrative

The narrative of each application must address the evaluation component, in addition to the following:

a. Briefly state the applicant's understanding of the need or problem to be addressed, the purpose, and goals over the three year period of the cooperative agreement.

b. Describe in detail the objectives and the methods to be used to achieve the objectives of the project. The objectives should be specific, time-phased, measurable, and achievable during each budget period. The objectives should directly relate to the program goals. Identify the steps to be taken in planning and implementing the objectives and the responsibilities of the applicant for carrying out the steps.

c. Provide the name, qualifications, and proposed time allocation of the Principal Investigator who will be responsible for administering the project. Describe staff, experience, facilities, equipment available for performance of this project, and other resources that define the applicant's capacity or potential to accomplish the requirements stated above. List the names (if known), qualifications, and time allocations of the existing professional staff to be assigned to (or recruited for) this project, the support staff available for performance of this project, and the available facilities including space.

d. Document the applicant's expertise, and extent of experience in the areas of MS, ALS, environmental health, and chronic disease surveillance.

e. Provide letters of support or other documentation demonstrating coordination with all other agencies or organizations described as participating in the project.

f. Describe how the affected communities will be involved in the proposed project.34. Budget

Provide a detailed budget which indicates anticipated costs for personnel, equipment, travel, communications, supplies, postage, and the sources of funds to meet these needs. The applicant should be precise about the program purpose of each budget item. For contracts described within the application budget, applicants should name the contractor, if known; describe the services to be performed; and provide an itemized breakdown and justification for the estimated costs of the contract; the kinds of organizations or parties to be selected; the period of performance; and the method of selection. The budget narrative pages showing, in detail, how funds in each object class will be spent, should be placed directly behind form 424A and not in the body of the application.

G. Submission and Deadline

Letter of Intent (LOI)

In order to enable ATSDR to determine the level of interest in the program announcement, a non-binding letter of intent to apply is requested from potential applicants. The letter of intent should state whether the applicant plans to apply for Level I funding or Level II funding. The letter of intent should be submitted on or before June 30, 2002, 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 0937–0189). Forms are available in the application kit and at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*

On or before July 30, 2002, submit the application to: Technical Information Management—PA 02154, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received on or before the deadline date.

Late Applications: Applications which do not meet the criteria above will be returned to the applicant.

H. 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 goals 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 objective review group appointed by ATSDR:

1. Demonstrated Capacity (40 percent)

a. The degree to which the applicant demonstrates prior work conducted in communities living near hazardous waste sites concerned with MS and ALS in their area.

b. Adequacy of the plan to include at least one community where neurodegenerative disease has already been identified as a health concern.

c. The extent to which the applicant's plans include accomplishing the activities listed under Recipient Activities in this announcement.

d. The extent to which the applicant's plans and schedule proposed for accomplishing the activities to be carried out in this project are clearly stated, are realistic given the length of the funding period, and can be achieved within the proposed budget.

e. The extent to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(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.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

2. Community Involvement and Dissemination of Results(20 percent)

a. A clear identification and description of the community(ies) to be involved in this project.

b. Adequacy of the plan for recruitment and outreach for study participants including the process of establishing partnerships with community(ies) and recognition of the mutual benefits.

c. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

d. Adequacy of plans to address community concerns and create lines of communication, including letters of support.

e. Adequacy of methods to disseminate the study results to community residents, state and local public health officials, tribal governments, Indian Health Service, and to other concerned individuals and organizations.

3. Facilities and Resources (10 percent)

The adequacy of the applicant's facilities, equipment, and other resources available for performance of this project.

4. Understanding of the Problem (10 percent)

a. The applicant's understanding of the problems related to community exposures to hazardous substances and concerns regarding MS and ALS.

b. The relevance of the proposed program to these and related problems.

5. Program Personnel (10 percent)

a. Applicant's technical experience and understanding (e.g. in the areas of MS and ALS, environmental health, and chronic disease surveillance).

b. List the names (if known), qualifications, and time allocation of the professional staff to be assigned to (or recruited for) this project and the support staff available for performance of this project.

c. Extent to which the management staff and their working partners are clearly described.

6. Goals and Objectives (10 percent)

The extent to which the proposed goals and objectives are clearly stated and measurable.

7. Human Subjects (Not scored)

Not scored, however, an application can be disapproved if the research risks are sufficiently serious and protection against risks are so inadequate as to make the entire application unacceptable.

8. Budget Justification (Not Scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with the original and two copies of:

1. Semi-annual progress report.

2. Financial Status Report (FSR) no more than 90 days after the end of the budget period.

3. Final financial status report and performance report, no more than 90 days after the end of the project.

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.

AR–1 Human Subjects Requirements
AR–2 Requirements of Inclusion of Women and Racial and Ethnic Minorities in Research
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–17 Peer Review and Technical Reviews of Final Reports of Health Studies—ATSDR
AR–18 Cost Recovery—ATSDR
AR–19 Third Party Agreements—ATSDR
AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other ATSDR 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:Edna Green, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Announcement 02154, 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341–4146, Telephone (770) 488–2743, E-mail address: *ecg4@cdc.gov.*

For program assistance, contact: Curtis Noonan, Epidemiologist,Health Investigations Branch, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–31,Atlanta, Georgia 30333, Telephone: (404) 498–0588, E-mail address: *cen9@cdc.gov.*

Dated: June 5, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–14582 Filed 6–10–02; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–60]

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: Aggregate Reports for Tuberculosis Program Evaluation (OMB No. 0920–0457)—Extension—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

CDC, National Center for HIV, STD, and TB Prevention, Division of Tuberculosis Elimination (DTBE), proposes to continue the Aggregate Reports for Tuberculosis Program Evaluation, previously approved under OMB No. 0920–0457. This request is for a 3-year extension of clearance. There are no revisions to the report forms, data definitions, or reporting instructions.

To ensure the elimination of tuberculosis in the United States, key program activities, such as finding tuberculosis infections in recent contacts of cases and in other persons likely to be infected and providing therapy for latent tuberculosis infection, must be monitored. In 2000, CDC

implemented two program evaluation reports for annual submission: Aggregate report of follow-up for contacts of tuberculosis, and Aggregate report of screening and preventive therapy for tuberculosis infection (OMB No. 0920–0457). The respondents for these reports are the 68 state and local tuberculosis control programs receiving federal cooperative agreement funding through DTBE. These reports replaced two, twice-yearly program management reports in the Tuberculosis Statistics and Program Evaluation Activity (OMB 0920–0026): Contact Follow-up (CDC 72.16) and Completion of Preventive Therapy (CDC 72.21). The replacement reports emphasized treatment outcomes, high-priority target populations vulnerable to tuberculosis, and programmed electronic report entry and submission through the Tuberculosis Information Management System (TIMS).

No other federal agency collects this type of national TB data, and the Aggregate report of follow-up for contacts of tuberculosis, and Aggregate report of screening and preventive therapy for tuberculosis infection are the only data source about latent tuberculosis infection for monitoring national progress toward tuberculosis elimination.

In addition to providing ongoing assistance about the preparation and utilization of these reports at the local and state levels of public health jurisdiction, CDC held three national training workshops about the reports and will convene additional workshops when requested by the respondents. CDC also provides respondents with technical support for the TIMS software (Electronic—100%, Use of Electronic Signatures—No). The annual burden to respondents is estimated to be 204 hours. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hours)	Total burden (in hours)
State & Local TB Control Programs	68	1	90/60	102
State & Local TB Control Programs	68	1	90/60	102
Total				204

Dated: May 31, 2002.

Julie Fishman,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–14564 Filed 6–10–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–33–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Surveillance for Bloodstream and Vascular Access Infections in Outpatient Hemodialysis Centers (0920–0442)—Revision—National Center for Infectious Diseases (NCID), NCID Centers for Disease Control and Prevention (CDC), is proposing to renew a study of bloodstream infections, vascular access infections, hospitalization, and antimicrobial starts at U.S. outpatient hemodialysis centers. Although bloodstream and vascular access infections are common in hemodialysis patients, there was previously no system to record and track these complications.

Participation in the proposed project is voluntary. Currently about 80–90 centers report data each month. We estimate that about 100 of the approximately 4,500 U.S. outpatient hemodialysis centers will participate in the coming years. Participating centers may collect data continuously, or may discontinue participation at any time; we estimate that the average center will participate for nine months. Each month, participating centers will record the number of hemodialysis patients they treat and maintain a log of all hospitalizations and intravenous (IV) antimicrobial starts. For each hospitalization or IV antimicrobial start, further information (e.g., type of vascular access, clinical symptoms, presence of a vascular access infection, and blood culture results) will be collected. These data may be reported to CDC on paper forms or via a secure Internet site. CDC aggregates this data and generates reports which are sent to participating dialysis centers.

Centers that participate in the Internet-based reporting system may also analyze their own data and print out reports as desired. Rates of bloodstream infection, vascular access infection, and antimicrobial use per 1000 patient-days will be calculated.

Also, the percentage of antimicrobial starts for which a blood culture is performed will be calculated. Through use of these data, dialysis centers will be able to track rates of key infectious complications of hemodialysis. This will facilitate quality control improvements to reduce the incidence of infections, and clinical practice guidelines to improve use of antimicrobials. The total estimated annualized burden is 6,300 hours.

Form	Number of respondents	Number of responses/respondent	Average burden/response (in hours)
Agreement to participate	100	1	1
Census form	100	12	1
Log	100	12	1
Incident form	100	200	12/60

Dated: May 31, 2002.

Julie Fishman,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–14563 Filed 6–10–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–32–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Annual Submission of the Quantity of Nicotine Contained in Smokeless Tobacco Products Manufactured, Imported, or Packaged in the United States (OMB No. 0920–0444)—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). Oral use of smokeless tobacco represents a significant health risk, which can cause cancer and a number of noncancerous oral conditions, and can lead to nicotine addiction and dependence. The Office on Smoking and Health (OSH) within the National Center for Chronic Disease Prevention and Health Promotion, CDC has been delegated the authority for implementing major components of the Department of Health and Human Services' (HHS) tobacco and health program, including collection of tobacco ingredients information. HHS overall goal is to reduce death and disability resulting from cigarette smoking and other forms of tobacco use through programs of information, education and research.

The Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4401 et seq., Pub. L. 99–252) requires that each person who manufactures, packages, or imports smokeless tobacco provide the Secretary of HHS annually with a report on the quantity of nicotine contained in smokeless tobacco products. This notice implements this nicotine reporting requirement. CDC is requesting OMB clearance to collect this information for three years. All companies are required to submit this information for all brands. A standard methodology for measurement of quantity of nicotine in smokeless tobacco has been developed. The methodology (''Protocol for Analysis of Nicotine, Total Moisture, and pH in Smokeless Tobacco Products'') is intended to provide standardized measurement of nicotine, total moisture, and pH in smokeless tobacco products. This information should be submitted in the prescribed format. In addition, we ask that companies provide an electronic copy of this information on a floppy disk or CD–ROM. The annual burden for this data collection is 18,766 hours.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)
Tobacco manufacturers	11	1	1,706

Dated: May 31, 2002.

Julie Fishman,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–14565 Filed 6–10–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02152]

Dissertation Awards for Minority Doctoral Candidates for Violence-Related Injury Prevention Research; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2002 funds to fund grants for Injury Prevention and Control Dissertation Awards for Minority Doctoral Candidates for Violence-Related Injury Prevention Research was published in the **Federal Register** on May 9, 2002, Vol. 67, No. 90, pages 31344–31348. The notice is amended as follows: On page 31346, second column, Section F. Submission and Deadline, Paragraph 3, line 2, should be changed to read ''* * * June 24, 2002, submit the application * * *''

Dated: June 5, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–14580 Filed 6–10–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Federal Allotments to State Developmental Disabilities Councils and Protection and Advocacy Formula Grant Programs for Fiscal Year 2003

AGENCY: Administration on Developmental Disabilities (ADD), Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of Fiscal Year 2003 Federal allotments to State Developmental Disabilities Councils and Protection and Advocacy Formula grant programs.

SUMMARY: This notice sets forth Fiscal Year (FY) 2003 individual allotments and percentages of the total appropriation to States administering the State Developmental Disabilities Councils and Protection and Advocacy programs, pursuant to Section 122 and Section 142 of the Developmental Disabilities Assistance and Bill of Rights Act (Act). The allotment amounts are based upon the FY 2002 Budget Request and are contingent upon congressional appropriations for FY 2003. If Congress enacts and the President approves a different appropriation amount, the allotments will be adjusted accordingly. The State allotments will be available each year on the ADD homepage on the Internet: *http://www.acf.dhhs.gov/programs/add/.*

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Doris Lee, Grants Fiscal Management Specialist, Office of Grants Management, Administration for Children and Families, telephone (202) 205–4626.

SUPPLEMENTARY INFORMATION: Section 122(a)(2) of the Act requires that adjustments in the amounts of State allotments shall be made not more often than annually and that States must be notified no less than six (6) months before the beginning of the fiscal year in which such adjustment is to take effect. In relation to the State Developmental Disabilities Council allotments, the descriptions of service needs were reviewed in the State plans and are consistent with the results obtained from the data elements and projected formula amounts for each State (Section 122(a)(5)).

The Administration on Developmental Disabilities has updated the following data elements for issuance of Fiscal Year 2003 allotments for both of the Developmental Disabilities formula grant programs.

A. The number of beneficiaries in each State and Territory under the Childhood Disabilities Beneficiary Program are from Table 5.J10 of the ''Annual Statistical Supplement, 2001, to the Social Security Bulletin'' issued by the Social Security Administration;

B. State data on Average Per Capita Income are from Table 1—Per Capita Personal Income, 1991–2000 of the ''Survey of Current Business,'' November, 2001, issued by the Bureau of Economic Analysis, U.S. Department of Commerce. The most recent comparable data for the Territories were obtained from the Department of Commerce October, 2000; and

C. State data on Total Population and Working Population (ages 18–64) are based on 2000 Census from the ''Estimate of Resident Population of the U.S. by Selected Age Groups and Sex,'' issued by the Bureau of the Census, U.S. Department of Commerce. Total population estimates for the Territories are also based on 2000 Census data issued by the Bureau of Census. The Territories working population was issued in the Bureau of Census report, ''General Characteristics Report: 1980,'' which is the most recent data available from the Bureau.

TABLE 1.—FY 2003 ALLOTMENTS—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

	Developmental Disabilities Councils	Percentage of total appropriation
Alabama	$1,285,711	1.841993
Alaska	446,374	.639504
Arizona	1,121,495	1.606726
Arkansas	789,163	1.130606
California	6,385,753	9.148643
Colorado	754,297	1.080655
Connecticut	637,453	0.913257
Delaware	446,374	.639504
District of Columbia	446,374	.639504
Florida	3,438,186	4.925768
Georgia	1,847,000	2.646132
Hawaii	446,374	.639504
Idaho	446,374	.639504
Illinois	2,615,776	3.747530
Indiana	1,483,364	2.125163
Iowa	741,508	1.062333
Kansas	608,716	.872086
Kentucky	1,181,052	1.692052
Louisiana	1,331,411	1.907466
Maine	446,374	.639504
Maryland	1,005,718	1.440857
Massachusetts	1,282,287	1.837088
Michigan	2,427,059	3.477162
Minnesota	1,020,449	1.461961
Mississippi	925,309	1.325658
Missouri	1,357,149	1.944340
Montana	446,374	.639504
Nebraska	446,374	.639504
Nevada	446,374	.639504
New Hampshire	446,374	.639504
New Jersey	1,555,524	2.228544
New Mexico	505,480	.724184
New York	4,026,994	5.769332
North Carolina	1,949,039	2.792320
North Dakota	446,374	.639504
Ohio	2,808,310	4.023367
Oklahoma	896,268	1.284052
Oregon	741,028	1.061645
Pennsylvania	2,979,037	4.267961
Rhode Island	446,374	.639504
South Carolina	1,109,913	1.590133
South Dakota	446,374	.639504
Tennessee	1,485,376	2.128046
Texas	4,418,646	6.330438
Utah	560,646	.803218
Vermont	446,374	.639504
Virginia	1,493,292	2.139387

TABLE 1.—FY 2003 ALLOTMENTS—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

	Developmental Disabilities Councils	Percentage of total appropriation
Washington	1,141,734	1.635722
West Virginia	662,448	.949066
Wisconsin	1,283,244	1.838459
Wyoming	446,374	.639504
American Samoa	234,348	.335742
Guam	234,348	.335742
Northern Mariana Islands	234,348	.335742
Puerto Rico	2,311,163	3.311122
Virgin Islands	234,348	.335742
Total	$69,800,000	100.000000

TABLE 2.—FY 2003 ALLOTMENTS—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

	Protection and advocacy	Percentage of total appropriation
Alabama	$578,462	1.686478
Alaska	333,400	.972012
Arizona	510,837	1.489321
Arkansas	355,110	1.035306
California	2,874,486	8.380426
Colorado	374,374	1.091469
Connecticut	345,433	1.007093
Delaware	333,400	.972012
District of Columbia	333,400	.072012
Florida	1,547,567	4.511857
Georgia	831,243	2.423449
Hawaii	333,400	.972012
Idaho	333,400	.972012
Illinois	1,176,955	3.431356
Indiana	667,478	1.946000
Iowa	340,000	.991254
Kansas	333,400	.972012
Kentucky	531,337	1.549087
Louisiana	598,988	1.746231
Maine	333,400	.972012
Maryland	452,605	1.319548
Massachusetts	576,790	1.681603
Michigan	1,091,837	3.183198
Minnesota	459,176	1.338706
Mississippi	416,307	1.213723
Missouri	610,676	1.780397
Montana	333,400	.972012
Nebraska	333,400	.972012
Nevada	333,400	.972012
New Hampshire	333,400	.972012
New Jersey	699,877	2.040458
New Mexico	333,400	.972012
New York	1,811,462	5.281230
North Carolina	877,066	2.557044
North Dakota	333,400	.972012
Ohio	1,263,454	3.683539
Oklahoma	403,390	1.176064
Oregon	352,753	1.028434
Pennsylvania	1,340,145	3.907128
Rhode Island	333,400	.972012
South Carolina	499,417	1.456026
South Dakota	333,400	.972012
Tennessee	668,314	1.948437
Texas	1,989,098	5.799120
Utah	333,400	.972012
Vermont	333,400	.972012
Virginia	671,977	1.959117
Washington	513,912	1.498286
West Virginia	358,836	1.046169
Wisconsin	577,382	1.683329
Wyoming	333,400	.972012
American Samoa	178,367	.520020

TABLE 2.—FY 2003 ALLOTMENTS—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

	Protection and advocacy	Percentage of total appropriation
Guam	178,367	.520020
Northern Mariana Islands	178,367	.520020
Puerto Rico	1,040,221	3.032714
Virgin Islands	178,367	.520020
DNA People Legal Services[2]	178,367	.520020
Total	[1] $34,300,000	100.000000

[1] In accordance with Public Law 106–402, Section 142(a)(6)(A), $700,000 has been withheld to fund technical assistance. The statute provides for spending up to two percent (2%) of the amount appropriated under Section 142 for this purpose. Unused funds will be reallotted in accordance with Section 122(e) of the Act.

[2] American Indian Consortiums are eligible to receive an allotment underSection 142(a)(6)(B) of the Act.

Dated: May 1, 2002.

Patricia A. Morrissey,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 02–14657 Filed 6–10–02; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0125]

New Food Chemicals Codex Monographs, Revisions of Certain Food Chemicals Codex Monographs, New and Revised General Test Procedures, Revised Policy, and Revised Guideline; Opportunity for Public Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on proposed new Food Chemicals Codex specification monographs, proposed changes to certain Food Chemicals Codex specification monographs, proposed new and revised general test procedures, a proposed revised policy, and a proposed revised guideline. Additions, revisions, and corrections to current specification monographs for certain substances used as food ingredients, as well as new monographs, new and revised test procedures, a revised policy, and a revised guideline are being prepared by The National Academies, Institute of Medicine (IOM), Committee on Food Chemicals Codex (the committee). This material is expected to be included in the next publication of the Food Chemicals Codex (the fifth edition). The committee is in the process of revising the entire fourth edition of the Food Chemicals Codex and its supplements to produce a comprehensive fifth edition, scheduled for public release in the autumn of 2003. Comments are being invited on the changes proposed in this notice or on any other item in the fourth edition of the Food Chemicals Codex or its supplements.

DATES: Submit written or electronic comments by August 12, 2002.

ADDRESSES: Submit written comments and supporting data and documentation to the Committee on Food Chemicals Codex/FO–3038, Food and Nutrition Board, Institute of Medicine, 2001 Wisconsin Ave. NW., Washington, DC 20007. (NOTE: This is a temporary address to be used for sending responses to this notice by U.S. mail only.) Submit all responses to be delivered by other carriers to the Committee on Food Chemicals Codex/FO–3038, Food and Nutrition Board, Institute of Medicine, 2101 Constitution Ave. NW., Washington, DC 20418. Submit electronic comments to *fcc@nas.edu*. Copies of the proposed new Food Chemicals Codex specification monographs, proposed changes to certain monographs, proposed new and revised general test procedures, and proposed revisions to a policy and to a guideline, may be obtained upon written request from the IOM or may be examined at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests for copies should specify by name the monographs, test procedure, policy or guideline desired. For electronic access see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ricardo A. Molins, Project Director/FO–3038, Committee on Food Chemicals Codex, Food and Nutrition Board, Institute of Medicine, 2101 Constitution Ave. NW., Washington, DC 20418, 202–334–2580; or Paul M. Kuznesof, Office of Food Additive Safety (HFS–205), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3009.

SUPPLEMENTARY INFORMATION: By contract with the IOM, FDA supports the preparation of the Food Chemicals Codex, a compendium of specification monographs for substances used as food ingredients. Before any specifications are included in a Food Chemicals Codex publication, public announcement is made in the **Federal Register**. All interested parties are invited to comment and to make suggestions for consideration. Suggestions should be accompanied by supporting data or other documentation to facilitate and expedite review by the committee.

In the **Federal Register** of August 8, 2000 (65 FR 48521), January 22, 2001 (66 FR 6624), as corrected on February 9, 2001 (66 FR 9710), and June 13, 2001 (66 FR 31936), FDA announced that the committee was considering new and revised monographs, new and revised general test procedures, new and revised test solutions, and revisions to a policy for inclusion in the third supplement to the fourth edition of the Food Chemicals Codex. The third supplement to the fourth edition of the Food Chemicals Codex was released by the National Academy Press (NAP) in November 2001. It is available for sale from NAP (1–800–624–6242; 202–334–3313; FAX 202–334–2451; Internet *http://www.nap.edu*); 2101 Constitution Ave. NW., Lockbox 285, Washington, DC 20055.

The committee is in the process of revising the entire fourth edition of the Food Chemicals Codex and its supplements to produce a comprehensive fifth edition. This revision encompasses policies, general monographs, flavor chemical monographs, and general tests and procedures. Notice of items that have undergone substantive revision will be given in the **Federal Register** and also

made available electronically. FDA now is announcing that the committee is soliciting comments and information on proposed new Food Chemicals Codex specification monographs, on proposed changes to certain monographs, on proposed new and revised general test procedures, on a proposed revised policy and on a proposed revised guideline; as well as comments and information on any other item in the fourth edition of the Food Chemicals Codex or its supplements. These new and revised monographs, new and revised test procedures, and revised policy and guideline are expected to be published in the fifth edition of the Food Chemicals Codex. If comments are received that cannot be addressed by the committee before publication of the fifth edition, the new monographs or test procedures, revised monographs or test procedures, or revised policy or guideline affected will be considered for the first supplement to the fifth edition of the Food Chemicals Codex. Copies of the proposed items may be obtained upon written request from IOM at the address listed previously or through the Internet at *http://www.iom.edu/fcc*.

FDA emphasizes, however, that it will not consider adopting and incorporating any of the committee's new or revised monographs, new or revised test procedures, revised policy, or revised guideline into FDA regulations without ample opportunity for public comment. If FDA decides to propose the adoption of new monographs and test procedures and changes that have received final approval of the committee, it will announce its intention and provide an opportunity for public comment in the **Federal Register**.

The committee invites comments and suggestions by all interested parties on specifications to be included in the 2 proposed new monographs, 75 proposed revisions of current monographs, 2 proposed new general test procedures, 2 proposed revised general test procedures, proposed revised policy, and proposed revised guideline included in this document. The committee notes that in all of the monographs included in this document, the heavy metals (such as lead) specification and test have been removed, new heavy metals specifications and tests have been added as necessary, and taste and scent references have been removed from all descriptions, except those for flavors. In all of these proposed documents, the language has been modified to be more specific and consistent.

I. Proposed New Monographs

Ferrous Glycinate

Transglutaminase

II. Current Monographs to which the Committee Proposes to Make Revisions

Acetic Acid, Glacial (FEMA Number added; Description revised; Lead specifications revised)

Aconitic Acid (Synonym and FEMA Number added; Description and Identification revised; Lead specifications added; Tridodecylamine and Ultraviolet Absorbance specifications deleted)

Adipic Acid (Lead specifications added)

Agar (Description revised)

Aluminum Ammonium Sulfate (Lead requirement and test revised; Assay test revised; Fluoride test moved to Appendix IIIB)

Aluminum Potassium Sulfate (Lead specifications added; Assay test revised; Fluoride test moved to Appendix IIIB)

Aluminum Sodium Sulfate (Formula deleted; CAS Numbers added and revised; Lead specifications added; Assay test revised; Fluoride test moved to Appendix IIIB)

Aluminum Sulfate (Lead requirement and test revised; Assay test revised)

Ammonium Bicarbonate (Lead specifications added)

Ammonium Sulfate (Lead specifications added)

Aspartame (Lead specifications added)

Azodicarbonamide (Lead requirement and test revised)

Balsam Peru Oil (CAS Number added)

Basil Oil, European Type (CAS Number added; Description revised)

Beeswax, White (Functional Use in Foods and Lead specifications revised)

Beeswax, Yellow (Functional Use in Foods and Lead specifications revised)

Bergamot Oil, Coldpressed (FEMA Number added; Angular Rotation requirement revised; Lead specifications deleted)

Butane (Description revised)

1,3-Butylene Glycol (Synonym added; Lead specifications added)

Calcium Ascorbate (Arsenic and Fluoride specifications deleted)

Calcium Bromate (CAS Number added; Lead specifications revised)

Calcium Chloride (Functional Use in Foods revised)

Calcium Glycerophosphate (Lead requirement revised)

Calcium Hydroxide (Lead specifications revised)

Calcium Oxide (Lead requirement revised)

Calcium Sulfate (Lead specifications added)

Canola Oil (Synonyms revised; CAS Number added; Functional Use in Foods modified; Sulfur test modified)

Carnauba Wax (Functional Use in Foods and Lead specifications revised)

beta-Carotene (INS Number revised; Lead specifications added)

Carrot Seed Oil (CAS and FEMA numbers added)

Cassia Oil (CAS and FEMA numbers added)

Castor Oil (Synonym added; Description revised; Identification Test B added; Lead specifications added)

Cellulose, Powdered (Structure added; Functional Use in Foods revised; Lead specifications added)

Cinnamon Bark Oil, Ceylon Type (CAS and FEMA Numbers added)

Cinnamon Leaf Oil (CAS Number revised; FEMA Number added)

Copper Gluconate (Identification Test B revised; Lead specifications revised)

Cottonseed Oil (Unhydrogenated) (Description revised; Functional Use in Foods revised; Arsenic specifications deleted)

beta-Cyclodextrin (Substance Name now hyphenated; Lead test revised; Microbial Limits Specifications deleted)

Dammar Gum (Microbial Limits deleted)

Decanoic Acid (FEMA Number added; Description and Functional Use in Foods revised)

Diacetyl Tartaric Acid Esters of Mono- and Diglycerides (Synonym, INS Number, and CAS Numbers added; Description revised; Lead specifications added; Assay for Tartaric Acid, Acid Value, and Fatty Acids tests revised)

Diatomaceous Earth (CAS Number added, revised; Description revised; Arsenic specifications revised; Loss on Drying requirement revised)

Ethylene Dichloride (Lead specifications added)

Ferrous Fumarate (Synonym added; Description revised; Lead requirement and test revised; Mercury test moved to Appendix IIIB)

Ferrous Gluconate (Structure and Description revised; Lead requirement and test revised; Mercury test moved to Appendix IIIB)

Flavor Chemicals, Specifications for Flavor Chemicals (Note added; rest of notes renumbered sequentially)

Food Starch, Modified (Arsenic specifications deleted; Lead test revised)

Fumaric Acid (FEMA Number added; Description revised; Lead specifications added)

Gibberellic Acid (Lead specification revised)

Glycerol Ester of Gum Rosin (Lead and Ring-and-Ball Softening Point requirements revised)
Glycerol Ester of Partially Dimerized Rosin (Ring-and-Ball Softening Point requirement revised)
Glycerol Ester of Partially Hydrogenated Wood Rosin (Ring-and-Ball Softening Point requirement revised)
Glycerol Ester of Polymerized Rosin (Ring-and-Ball Softening Point requirement revised)
Glycerol Ester of Tall Oil Rosin (Ring-and-Ball Softening Point requirement revised)
Glyceryl-Lacto Esters of Fatty Acids (Synonym and INS Number added; Total Lactic Acid test revised)
Glyceryl Monooleate (Synonyms, Structure, INS Number, and FEMA Number added; Description and Functional Use in Foods revised)
Glyceryl Monostearate (CAS Number added)
Glyceryl Palmitostearate (Lead specifications added)
Glyceryl Tristearate (Synonym, Formula Weight, and Lead test revised)
Guar Gum (INS Number added; Description revised; Arsenic specifications deleted; Lead specifications revised)
4-Hexylresorcinol (Lead specifications revised)
Isobutane (CAS Number added; Description and Identification Test B revised)
Isobutylene—Isoprene Copolymer (Description and Total Unsaturation requirement revised)
Lard (Unhydrogenated) (Functional Use in Foods revised; Insoluble Matter renamed; Hexane-Insoluble Matter test added; Unsaponifiable Matter specifications added)
Lemongrass Oil (CAS and FEMA numbers added; Angular Rotation requirements revised; Steam-Volatile Oil specifications deleted)
Magnesium Sulfate (Formula Weight added, CAS Numbers added and revised, Lead limit added)
Myrrh Oil (CAS Number revised; FEMA Number added; Angular Rotation requirement revised)
Pectins (Functional Use in Foods revised; Identification test revised; Arsenic specifications deleted; Acid-Insoluble Ash, Degree of Amide Substitution and Total Galacturonic Acid in the Pectin Component, and Total Galacturonic Acid in Pectin Component specifications renamed; Total Insoluble Substances specifications added)
Pentaerythritol Ester of Partially Hydrogenated Wood Rosin (Ring-and-Ball Softening Point requirement revised)
Pentaerythritol Ester of Wood Rosin (Ring-and-Ball Softening Point requirement revised)
Potassium Gibberellate (CAS Number added, Lead limit revised)
Potassium Metabisulfite (Lead specifications added; Selenium requirement revised; Assay test revised)
Propyl Gallate (Lead specifications added)
Pyridoxine Hydrochloride (Lead specifications added)
Soy Protein Concentrate (Lead test modified)

III. Proposed New General Test Procedures

Cadmium Limit Test (new)
Transglutaminase Activity (Appendix V: Enzyme Assays)

IV. Proposed Revised General Test Procedures

Curcumin Content, Appendix VIII: Oleoresins (Standard Preparation deleted; Sample Preparation and Procedure revised)
Hexane-Insoluble Matter, Appendix VII: Fats and Related Substances (Sample size increased to 100 g, and test scaled accordingly; test moved from the Lecithin monograph to Appendix VII (test also added to Lard and Tallow monographs))

V. Proposed Revised Policy and Guideline

Microbiological Attributes (Policy) (rewritten)
Fluoride Limits (Guideline) (rewritten)

VI. Comments and Electronic Access

Interested persons may submit to the Committee on Food Chemicals Codex written and electronic comments regarding the monographs, general test procedures, policy and guideline identified in this notice, or comments on any other item in the fourth edition of the Food Chemicals Codex or its supplements, by August 12, 2002. Timely submission will allow comments to be considered for the fifth edition of the Food Chemicals Codex. Comments received after this date may not be considered for the fifth edition, but will be considered for the first supplement to the fifth edition of the Food Chemicals Codex. Those wishing to make comments are encouraged to submit supporting data and documentation with their comments. Two copies of any comments regarding the monographs, the general test procedures, the policy, or the guideline listed in this notice, as well comments on any other item in the fourth edition of the Food Chemicals Codex or its supplements, are to be submitted to the Committee on Food Chemicals Codex (*see* **ADDRESSES**). Comments and supporting data or documentation are to be identified with the docket number found in brackets in the heading of this document and each submission should include the statement that it is in response to this **Federal Register** notice. The committee staff will forward a copy of each comment to the Dockets Management Branch (*see* **ADDRESSES**). Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Copies of the proposed changes may also be obtained through the Internet at *http://www.iom.edu/fcc*.

Dated: May 21, 2002.

L. Robert Lake,

Director, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 02–14546 Filed 6–10–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

2002 Survey of Mental Health Organizations, General Hospital Mental Health Services, and Managed Care Organizations (SMHO)—(OMB No 0930–0119, Revision)—The 2002 SMHO, to be conducted by SAMHSA's Center for Mental Health Services (CMHS), will be conducted in two phases. There will be only minor changes to the forms used in the 2000 SMHO. Phase I will be a brief two-three page inventory consisting of four forms: (1) A specialty mental health organization form; (2) A general hospital or Veterans Affairs Medical Center with either separate mental health services or integrated mental health services forms; (3) A community residential organization form; and (4) A managed behavioral healthcare organization form. This short inventory will be sent to all known organizations to define the

universe of valid mental health organizations to be sampled in Phase II. The inventory will collect basic information regarding the name and address of the organizations, their type and ownership, size measures (e.g., number of staff), and the kinds of services provided.

Phase II will sample approximately 2,000 mental health organizations and utilize a more detailed survey instrument. Although the Sample Survey form will be more comprehensive, it will be very similar to surveys and inventories fielded in 2000 and earlier. The organizational data to be collected by the Sample Survey form include university affiliation, client/patient census by basic demographics, revenues, expenditures, and staffing.

The resulting data base will be used to provide national estimates and will be the basis of the National Directory of Mental Health Services. In addition, data derived from the survey will be published by CMHS in *Data Highlights,* in *Mental Health, United States,* and in professional journals such as *Psychiatric Services* and the *American Journal of Psychiatry. Mental Health, United States* is used by the general public, state governments, the U.S. Congress, university researchers, and other health care professionals. The following table summarizes the burden for the survey.

Questionnaire	Number of respondents	Responses/respondent	Average hours/response	Total burden (Hrs.)
Phase I (Inventory)				
Specialty Mental Health Organizations	3,342	1	0.50	1,671
General Hospitals:				
With Separate Psych. Units	1,622	1	0.50	811
Without Separate Psych. Units	3,514	1	0.50	1,757
VA Medical Centers	145	1	0.50	73
Community Residential Organizations	945	1	0.50	473
Managed Care Organizations	990	1	0.50	495
Phase II (Sample Survey)				
Specialty Mental Health Organizations	1,308	1	3.50	4,578
General Hospitals and VA Hospitals with Separate Mental Health Services	692	1	3.50	2,422
Total	10,558	.....	.....	12,280
3-year Average	3,519	.....	.....	4,093

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 4, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–14583 Filed 6–10–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Office for Women's Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee for Women's Services of the Substance Abuse and Mental Health Services Administration (SAMHSA) for June 2002.

The meeting of the Advisory Committee for Women's Services will include a discussion of SAMHSA's Priorities, Programs and Principles regarding: Co-occurring Disorders; Substance Abuse treatment capacity; Seclusion and Restraint; Prevention and Early Intervention; Children and Families; New Freedom Initiative; Terrorism/Bio-Terrorism; Homelessness; Aging; HIV/AIDS and Hepatitis C; Criminal Justice, and other issues affecting women.

A summary of the meeting and/or a roster of committee members may be obtained from: Nancy P. Brady, Executive Secretary, Advisory Committee for Women's Services, Office for Women's Services, SAMHSA, Parklawn Building, Room 13–99, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5184.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Advisory Committee for Women's Services.

Meeting Date: June 20, 2002.

Place: 9751 Washingtonian Boulevard, Gaithersburg, MD.

Type: Open: June 20, 2002—1:45–5 p.m.

Contact: Nancy P. Brady, Executive Secretary, Telephone: (301) 443–5184 and FAX: (301) 443–8964.

Dated: June 4, 2002.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health, Services Administration.

[FR Doc. 02–14545 Filed 6–10–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intent To Prepare a Comprehensive Conservation Plan and Environmental Assessment for Eastern Neck National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA)

pursuant to the National Environmental Policy Act and its implementing regulations. A CCP will be prepared for Eastern Neck National Wildlife Refuge (NWR) located within the Town of Rock Hall, Maryland. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*): (1) To advise other agencies and the public of our intentions; and (2) to obtain suggestions and information on the scope of issues to include in the environmental documents.

DATES: Inquire at the address below for dates of planning activity and due dates for comments. The public scoping meetings will be held in June 2002 in the Towns of Rock Hall, Chestertown and Centreville.

ADDRESSES: Address comments, questions, and request for more information to the following: Refuge Manager, Eastern Neck National Wildlife Refuge, 1730 Eastern Neck Road, Rock Hall, Maryland 21661, 410–639–7056.

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuges purposes. The planning process will consider many elements, including habitat and wildlife management, habitat protection and acquisition, public uses, and cultural resources. Public input into this planning process is essential. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the refuges and how the Service will implement management strategies.

The Service will solicit public input via open houses, public meetings, workshops, and written comments. Special mailings, newspaper articles, and announcements will inform people of the time and place of such opportunities for public input to the CCP. Eastern Neck National Wildlife Refuge is located on Eastern Neck Island, which sits at the mouth of the Chester River in Kent County, Maryland. Total refuge acreage is 2,285 acres and includes brackish tidal marsh, cropland, forest, grassland and open water impoundments. Comments on the protection of threatened and endangered species and migratory birds, and the protection and management of their habitats will be solicited as part of the planning process.

Review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR Parts 1500–1508), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations.

Dated: June 4, 2002.

Mamie A. Parker,

Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 02–14543 Filed 6–10–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Extension agreement to the Class III gaming compact between the Assiniboine and Sioux Tribes of the Fort Peck Reservation and the State of Montana.

DATES: This action is effective June 11, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: May 29, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–14665 Filed 6–10–02; 8:45 am]

BILLING CODE 4310–4N–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–02–017]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 17, 2002 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC, 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1010 (Preliminary)(Lawn and Garden Steel Fence Posts from China)—briefing and vote. (The Commission is currently scheduled to transmit it determination to the Secretary of Commerce on June 17, 2002; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before June 24, 2002.)
5. Inv. Nos. 731–TA–935–936 and 938–942 (Final)(Structural Steel Beams from China, Germany, Luxembourg, Russia, South Africa, Spain, and Taiwan)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before June 25, 2002.)
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 7, 2002.

By order of the Commission:

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–14746 Filed 6–7–02; 11:56 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the

workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,143 & A & B; Carolace Embroidery Co., Inc., New York, NY and Ridgefield, NJ and FNC Textiles, A Subsidiary of Carolace Embroidery Co., Inc., Hope Mill, NC
TA–W–39,732; Innovative Home products, Covington, OH
TA–W–40,620; Ethyl Petroleum Additives, Natchez, MS
TA–W–40,823; Glenayre Electronics, Inc., Quincy, IL
TA–W–40,873; Genalite Corp., Jessup, PA
TA–W–40,875; Graham Tech, Inc. d/b/a Hopkins Machine and Tool, Cochraton, PA
TA–W–40,888; Carling Technologies, Carling Switch, Inc., Brownsville, TX
TA–W–40,903; Monona Wire Corp., Spring Green Div., Livingston Facility, Livingston, WI
TA–W–39,370; Security Plastics, Inc., Miami Lakes, FL
TA–W–39,834; Westvaco Corp., Flexible Packaging Plant, A Div. Of Meadwestvaco, Springfield, MA
TA–W–40,177; Autoforge, Inc., Harmonsburg, PA
TA–W–40,100; FMC Technologies, Inc., Homer City, PA
TA–W–40,838; Pannier Corp., Glenshaw, PA
TA–W–40.973; Hawthorn Missouri, Inc., Hermann, MO
TA–W–41,043; Champion Parts, Inc., Beech Creek, PA
TA–W–41,149; Steel Heddle, Inc., Greenville, SC
TA–W–41,228; Inter Tape Polyment Central Products Co, Marysville, MI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA—W–41,411; Bowen Machine and Fabricating, d/b/a/ Bowen Industrial Contractors, Inc., Hurley, NM
TA–W–41,194 & A & B; J. Allan Steel 3500 Neville Road, Pittsburgh, PA and 829 Beaver Ave., Pittsburgh, PA and 16500 Rockside Road, Cleveland, OH
TA–W–41,239; Enerflex, Inc., Cedar Mountain, NC

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,301; Faraday LLC, Siemens Building Technologies, Tecumseh, MI
TA–W–40,891; Von Hoffman Press, Inc., Owensville, MO
TA–W–40,756; MRC Bearings, SKF USA, Inc., Jamestown, NY
TA–W–41,257; J. Miller Industries, Inc., Corona, CA
TA–W–41,548; Universal Instruments Corp., Fabrications Dept, 90 Bevier Street, Binghamton, NY
TA–W–39,320; Ogemaw Forge Co., West Branch, MI
TA–W–41,308; Simmons Foods, Inc., McAlister, OK
TA–W–41,353; ITT Industries, ITT Cannon Switch Products, Eden Prairie, MN
TA–W–40,657; Agilent Technologies, Network Products Div., Fort Collins, CO
TA–W–40,976; Abitibi Consolidated, Donohue Industries, Inc., Lufkin Div., Lufkin, TX

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–41,006; Schlumberger Wireline and Schlumberger Dowell, Williston, ND
TA–W–40,797; The Hazan Group, Secaucus, NJ

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–41,332; A. Stucki Co., Pittsburgh, PA
TA–W–39,601; Minnesota Mining and Manufacturing Co., Microflex Div., Columbia, MO

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–41,408; Maine Brush, LLC, Lisbon Falls, ME: April 19, 2001.
TA–W–41,227; Viracon, Inc., A Subsidiary of Apogee, Inc., Owatonna, MN: March 4, 2001.
TA–W–41,169; Fruit of The Loom, Inc., Jamestown, KY: January 21, 2001.
TA–W–41,135; Erie Forge and Steel, Inc., Erie, PA: February 25, 2001.
TA–W–40,971; M.J. Soffe Co., Bladenboro, NC: January 30, 2001.
TA–W–40,954; Shield Acquisition, LLC, Caldwell Moser Leather Co., New Albany, IN: January 17, 2001.
TA–W–40,879; Sheldahl, Inc., Northfield, MN: October 31, 2000.
TA–W–40,872; Hein-Werner Corp., Baraboo, WI: January 2, 2001.
TA–W–40,850; Newbold Corp., Rocky Mount, VA: December 13, 2000.
TA–W–40,760 & A; Sew Special, Inc., Asheboro, NC and Randleman, NC: October 30, 2000.
TA–W–40,653; Welland Chemical, Inc., Newell, PA: December 13, 2000.
TA–W–40,629; Hyde Park Foundry, A Subsidiary of Akers National Roll, Hyde Park, PA: November 15, 2000.
TA–W–40,423 & A; Wells Lamont Industry Group, Warsaw, IN and Atwood, IN: October 24, 2000.
TA–W–40,337; General Electric Quartz, Inc., Newark, OH: November 2, 2000.
TA–W–39,929; Pillowtex Corp., Hawkinsville, GA: August 13, 2000.
TA–W–41,459; Dave Goldberg, Inc., Long Island City, NY: April 18, 2001.
TA–W–41,383; Jabil Circuit, Auburn Hills, MI: March 7, 2001.
TA–W–41,350; Tractech, Inc., Warren, MI: March 7, 2001.
TA–W–41,013; Chelsea Coat, Ltd, Lynbrook, NY: February 15, 2001.
TA–W–40,902; Forecaster of Boston, Formally Known as Madeira Twin Fashions, New Bedford, MA: July 8, 2001.
TA–W–40,775; Pillowtex Corp., Tarboro Plant, Tarboro, NC: January 4, 2001.
TA–W–40,738; DW Manufacturing, d/b/a Millennium Technology Service, White City, OR: December 18, 2000.
TA–W–40,439; Communication Associates, Inc., Anniston, AL: November 27, 2000.
TA–W–39,898; Multilayer Technology, Inc., (Multek), A Subsidiary of Flextronics International, Inc., Austin, TX: August 10, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchaper D, Chapter 2, Title II,

of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of May, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increased imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA—TAA–04962; Ogemaw Forge Co., West Branch, MI
NAFTA—TAA–05275; FMC Technologies, Inc., Homer City, PA
NAFTA—TAA–05301; BMI Industries, Inc., Schaumburg, IL
NAFTA—TAA–05888; Pillowtex Corp., Tarboro Plant, Tarboro, NC
NAFTA—TAA–05965; Inter Tape Polymer, Central Products Co., Marysville, MI
NAFTA—TAA–06013; Amstead Industries, Inc., American Steel Foundry-Keystone, Alliance, OH
NAFTA—TAA–06124; Holophane, A Div. Of Acuity Lighting Group, Inc., Springfield, OH
NAFTA—TAA–05022; Minnesota Mining & Manufacturing Co., Microflex Div., Columbia, MO
NAFTA—TAA–05248; Pillowtex Corp., Hawkinsville, GA
NAFTA—TAA–05454; Faraday, LLC, Siemens Building Technologies, Tecumseh, MI
NAFTA—TAA–05475; Carling Technologies/Carling Switch, Inc., Brownsville, TX
NAFTA—TAA–05578; Detroit Tool and Engineering Co., Lebanon, MO
NAFTA—TAA–05587; Glenayre Electronics, Inc., Quincy, IL
NAFTA—TAA–05619; Graham Tech, Inc., d/b/a Hopkins Machine & Tool, Cochranton, PA
NAFTA—TAA–05708; Seco/Warwick Corp., Meadville, PA
NAFTA—TAA–05719; Monona Wire Corp., Spring Green Div., Livingston Facility Livingston, WI
NAFTA—TAA–05789; Genalite Corp., Jessup, PA
NAFTA—TAA–05831; Champion Parts, Inc., Beech Creek, PA
NAFTA—TAA–05840; McCoy-Ellison, Inc., Monroe, NC
NAFTA—TAA–05905; Laclede Steel Co., Fairless Hills, PA
NAFTA—TAA–05952; Abitibi Consolidated, Donohue Industries, Inc., Lufkin Div., Lufkin, TX
NAFTA-TAA–06020; A. Stucki Co., Pittsburgh, PA

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

NAFTA–TAA–05870; J. Allan Steel, 3500 Neville Rd, Pittsburgh, PA
NAFTA–TAA–05864; Westwood, LLC, A Affiliate of KSL Holdings, Inc., Marion Div., Marion, NC
NAFTA–TAA–06150; Stabilit America, Inc., Glasteel Div., Allentown, PA

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–06004; Bill Levkoff, Inc., New York, NY: December 26, 2000.
NAFTA–TAA–06024; ITT Industries, ITT Cannon Switch Products, Eden Prairie, MN: March 20, 2001.
NAFTA–TAA–06033; Sanmina L.P., Cable Div., Carrollton, TX: April 2, 2001.
NAFTA–TAA–06058; Walls Industries, Cleburne, TX: March 26, 2001.
NAFTA–TAA–06064; SML Labels (USA), Inc., San Francisco, CA: April 8, 2001.
NAFTA–TAA–06068; Jabil Circuit, Auburn Hills, MI: March 12, 2001.
NAFTA–TAA–05700; Hein-Werner Corp., Baraboo, WI: January 2, 2001.
NAFTA–TAA–05739; Shield Acquisition, LLC, Caldwell Moser Leather Co., New Albany, IN: January 17, 2001.
NAFTA–TAA–05826; Fruit of The Loom, Inc., Jamestown, KY: January 21, 2001.
NAFTA–TAA–05953; Honeywell, Bendix Commercial Vehicle Systems Div., ABS Plant, Elyria, OH: March 12, 2001.
NAFTA–TAA–05966; Bristol Tank and Welding Co., Inc., Langhorne, PA: March 5, 2001.
NAFTA–TAA–05979; Erie Forge and Steel, Inc., Erie, PA: February 26, 2001.
NAFTA–TAA–06014; Welland Chemical, Inc., Newell, PA: March 19, 2001.
NAFTA–TAA–06037; The Toro Company, Irrigation Div. Including Leased Workers of Volt Temporary Services, Riverside, CA: March 26, 2001.
NAFTA–TAA–06096; Intimate Touch, New York, NY: March 21, 2001.

I hereby certify that the aforementioned determinations were issued during the month of May, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 31, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–14599 Filed 6–10–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Ace of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to workers separations at the firm.

TA–W–39,486; O'Neal Steel, Inc., Weldment Div. Roaanoke, VA

TA–W–39,859; Modern Tool and Die, Modern Line Products, Indianola, MS

TA–W–40,943; Ormet Aluminum Mill Products, Jackson, TN

TA–W–41,005; F.L. and J.C. Codman Co., Rockland, MA

TA–W–41,061; Jeld-Wen of Shite Swan, White Swan, WA

TA–W–41,284; Corning Cable Systems Telecommunications Cable Plant, Hickory, NC

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–41,394; Watkins Motor Lines, Inc., Charlotte, NC

TA–W–41,375; Wolverine Proctor and Schwartz, Inc., Div. of American Tool and Machine Co., Fitchburg, MA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,479; Textron Folk, Turf and Specialty Products, Racine, WI

TA–W–40,988; Screen Creations Ltd, O'Fallon, MO

TA–W–41,082; Bacou-Dalloz, GPT Glendale, Inc., Lakeland, FL

TA–W–41,247; Wellington Leisure Products, Parsons, TN

TA–W–41,356; Aspen Trailer, Inc., Litchfield, MN

TA–W–41,361; Vesuvius USA, South Webster, OH

Affirmative Determination for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–41,528; the Toro Co., Irrigation Div., Including Leased Workers of Volt Temporary Services Riverside, CA: April 16, 2001.

TA–W–41,371; Franklin Brass Mfg. Co., Rancho Dominiguez, CA: March 26, 2001.

TA–W–41,306 & A; Riverside Paper Corp., Riverside Paper Co., Appleton, WI and Kerwin Paper Mill, Appleton, WI: March 18, 2001.

TA–W–41,153; Georgia-Pacific Corp., Louisville, MS: January 8, 2001.

TA–W–40,107; Continental Accessories, Inc., North Sturgis, MI: September 7, 2000.

*TA–W–41,084*Milady Bridals, Inc., Union City, NJ: February 14, 2001.

TA–W–41,034; American Mold and Engineering Co., Fridley, MN: January 18, 2001.

TA–W–40,981; Gates Ruber Co., Galesburg, IL: January 11, 2001.

TA–W–40,959; Jester Apparel, Brooklyn, NY: December 21, 2000.

TA–W–40,896; Them's Fine Apparel, Bethel Springs, TN: September 6, 2000.

TA–W–40,758; R and M Dress, Inc., Also Known as Old Friends Clothing Co., Lebanon, PA: October 26, 2000.

TA–W–40,506; Sunrise Medical Oshkosh, WI: October 29, 2000.

?TA–W–40,277; Modern Plastic Technics, West Berlin, NJ: October 2, 2000.

TA–W–40,172; SGL Corp., St. Marys, PA: September 20, 2000.

TA–W–41,544; Osprey Packs, Inc., Cortez, CO: May 17, 2001.

TA–W–41,539; CECO Door Products, Harlingen, TX: April 22, 2001.

TA–W–41,460; Hoffman Enclosures, Inc., A Pentair Co., Anoka, MN: April 18, 2001.

TA–W–41,364; Amloid Corp., Saddle Brook, NJ: March 19, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of May, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–06156; Textron Golf, Turf and Specialty Products, Racine, WI

NAFTA–TAA–04981; O'Neal Steel, Inc., Weldment Div., Roanoke, VA

NAFTA–TAA–05898; R.C.M. Manufacturing Co., River Falls Manufacturing Co. Div. of S. Rothschild & Co., Fall River, MA

NAFTA–TAA–05922; Gates Rubber Co., Galesburg, IL

NAFTA–TAA–05946; Modern Tool and Die, Modern Line Products, Indianola, MD

NAFTA–TAA–05954; F.L. and J.C. Codman Co., Rockland, MA

NAFTA–TAA–05962; Parksley Apparel, Parksley, VA

NAFTA–TAA–06054; Guilford Mills, Inc., Cobleskill, NY

NAFTA–TAA–06083; MJM Knitwear Corp., Brooklyn, NY

NAFTA–TAA–06121; Acorn Products Co., Inc., Lewiston, ME

NAFTA–TAA–06134; Independent Tool and Manufacturing, Meadville, PA

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–06106; Spiegel Group Teleservices, Wichita, Kansas Call Center, Wichita, KS

NAFTA–TAA–05819; Seagate Technology, Oklahoma City, OK

NAFTA–TAA–06142; Watkins Motor Lines, Inc., Charlotte, NC

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–06097; Amloid Corp., Saddle Brook, NJ: March 21, 2001.

NAFTA–TAA–05282; Them's Fine Apparel, Bethel Springs, TN: September 6, 2000.

NAFTA–TAA–05338; Continental Accessories, Inc., North Sturgis, MI: September 7, 2000.

NAFTA–TAA–05476; Modern Plastics Technics, West Berlin, NJ: October 2, 2000.

NAFTA–TAA–05723; Screen Creations, Ltd, O'Fallon, MO: January 8, 2001.

NAFTA–TAA–05927; Doerun Sportswear, Inc., Doerun, GA: February 26, 2001.

NAFTA–TAA–06123; Starkey Laboratories, Glencoe, MN: April 16, 2001.

NAFTA–TAA–06125; Wabash Technologies, Inc., Automotive Business Unit, Huntington, IN: April 15, 2001.

NAFTA–TAA–06056; Oetiker, Inc., Livingston, NJ: February 22, 2001.

NAFTA–TAA–06175; Wabash Alloys, LLC, Syracuse, NY: March 1, 2001.

I hereby certify that the aforementioned determinations were issued during the month of May, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 4, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–14600 Filed 6–10–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,989]

Crouse-Hinds, Division of Cooper Industries, Inc., Syracuse, NY; Notice of Negative Determination Regarding Application for Reconsideration

By application of March 15, 2002, the International Brotherhood of Electrical Workers (IBEW), Local #2084 requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on February 26, 2002 and published in the **Federal Register** on March 20, 2002 (67 FR 13010).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Crouse-Hinds, Division of Cooper Industries, Inc., Syracuse, New York engaged in the production of electrical products designed to protect electrical systems, was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The investigation revealed that there was no lost customer base at the Syracuse plant. The investigation further revealed that the company anticipates transferring some of the production to a foreign source, but this did not occur during the investigation. The company did not import electrical products that protect electrical systems during the period of the investigation.

The petitioner alleges that some production at the subject firm was recently produced at affiliated foreign facilities. The petitioner further indicated, that this production began at the time of the writing of their request for administrative reconsideration.

A shift in production is not relevant to meeting the eligibility requirement relating to the Trade Act of 1974. In order for the workers to meet the eligibility requirement, imports ''like or directly competitive'' with what the subject plant produced must ''contribute importantly'' to the layoffs at the subject plant. A review of the initial investigation shows that the company did not import products ''like or directly competitive'' during the initial investigation.

A TAA petition filed by the workers of Crouse-Hinds, Division of Cooper Industries, Inc., Syracuse, New York was instituted by the Department of Labor on April 8, 2002. The identifying number is TA–W–41,277. That investigation will consider all pertinent data that was obtained during the initial investigation and all relevant data obtained since that investigation.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 14th day of May, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–14591 Filed 6–10–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or

threatened to begin and the subdivision on the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address show below, not later than July 21, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address show below, not later than July 21, 2002.

The petitioners filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 25th day of March, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 03/25/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,102	EA.Com, Inc. (Wkrs)	Charlottesville, VA	02/11/2002	Provide Services to Online Video Games.
41,103	Metso Minerals Industries (PACE).	Clintonville, WI	02/18/2002	Conveyors and Crushing Plants—Gravel.
41,104	Siegel Robert of Arkansas (Wkrs).	Wilson, AR	02/27/2002	Plastic Automotive Grilles and Parts.
41,105	Arlee Home Fashions (Wrks)	Leachville, AR	02/12/2002	Chair Pad Pillow Covers.
41,106	Hunter Fan Company (IUE)	Memphis, TN	02/15/2002	Ceiling Fans.
41,107	Trinity Industries (Wrks)	Girard, OH	02/13/2002	Cold Rolled Plate for Railroad Cars.
41,108	Cedar Hill Mfg., Inc (Comp)	Ansonville, NC	02/25/2002	Outer T Shirts, Sweatshirts, Other Tops.
41,109	R.G. Knitting Mills, Inc (Wkrs)	Woonsocket, RI	02/26/2002	Knitted Fabric.
41,110	Phillips Advance (Wrks)	Boscobel, WI	02/12/2002	Florescent Ballast.
41,111	Invensys Climate Controls (Comp).	Brownsville, TX	02/28/2002	Plastic Molding Parts.
41,112	Toshiba America Medical (Wkrs).	San Francisco, CA	02/07/2002	Magnetic Resonance Imagers.
41,113	American Fine Wire Corp (Comp).	Salma, AL	02/22/2002	Gold and Aluminum Bonding Wire.
41,114	Tyco Electronics (Wrks)	Stockton, CA	03/06/2002	Printed Circuit Board.
41,115	Insteel Wire Products (Comp)	Andrews, SC	02/20/2002	Variery Products of Nails
41,116	Standard Fusee Corp (Comp)	South Beloit, ILl	02/19/2002	Highway and Railway Flares.
41,117	Canto Tool Corp (Comp)	Meadville, PAN	02/08/2002	Tools.
41,118	Samuel Steel Pickling (wkrs)	Twinsburg, OH	02/26/2002	Provide Pickling Services—Steel.
41,119	ADS Machinery Corp (Wrks)	Warren, OH	02/19/2002	Steel Processing Equipment.
41,120	American Xtal Technology (Wrks).	Fremont, CA	02/08/2002	Wafers of GaAs and InP.
41,122	Cer-Tek, Inc (Comp)	El Paso, TX	02/07/2002	Motor Speed Controllers.
41,123	Aldrich Corp (Comp)	Greenwood, SC	02/05/2002	Textile Waste Handling/Collection Equip.
41,124	Simpson Timber Co (IAM)	Shelton, WA	02/14/2002	Wood Panel.
41,125	Dillon Yarn (Wrks)	Dillion, SC	01/15/2002	Textiles.
41,126	U.S. Steel Corp (USWA)	Clariton, PA	01/29/2002	Coke for Blast Furnaces.
41,127	Phaztech, Inc (Wkrs)	St. Marys, PA	02/21/2002	Tooling for Powder Metal Parts.
41,128	ITW-Jecmco (Wkrs)	Minooka, IL	02/01/2002	Indicator Lamps.
41,129	Orvis Co., Inc (The) (Comp)	Tipton, MO	02/25/2002	Luggage Bags.
41,130	Tristar Refractories (Comp)	Cincinnati, OH	02/19/2002	Ceramic Tubes.
41,131	David White LLC ()	Berlin, WI	02/25/2002	Surveying Equipment.
41,132	B/E Aerospace, Inc (Comp)	Jacksonville, FL	02/25/2002	Galley, Lavatories, Closets for Aircraft.
41,133	Baldwin Piano and Organ (UFCW).	Greenwood, MS	02/13/2002	Pianos.
41,134	N.J. Petterson, Inc. (Wkrs)	Mentor, OH	02/20/2002	Software Consulting Services.
41,135	Erie Forge and Steel (USWA)	Erie, PA	02/25/2002	Ingots and Billets.
41,136	Keystone Powdered Metal (IUE).	St. Marys, PA	02/10/2002	Bearings.
41,137	ASL—Dallas Plant (Comp)	Dallas, TX	02/11/2002	Pillow Shells.
41,138	Huntsman Polymers Corp. (Wkrs).	Odessa, TX	02/13/2002	Styrene Monomer.
41,139	Garvin Industries (Wkrs)	Grand Haven, MI	02/20/2002	Metal Stampings.
41,140	Columbiaknit (Comp)	Portland, OR	02/13/2002	Knit Shirts.
41,141	Garan, Inc. (Wkrs)	Kaplan, LA	02/08/2002	Women and Children, Shirts.
41,142	SPX Valves and Controls (Comp).	Lake City, PA	02/26/2002	Valves.
41,143	Liebert Corp. (Comp)	Delaware, OH	02/25/2002	Un-interruptable Power Supply.
41,144	Dawson Furniture Co (Comp)	Webb City, MO	02/20/2002	Solid Wood Household Furniture.
41,145	US Ecology—Idaho (Wkrs)	Sterling, IL	02/02/2002	Provide Hazardous waste processing.
41,146	Voest-Alpine Industries (Wkrs)	Canonsburg, PA	02/25/2002	Provide Various Engineering Services.
41,147	Boeing Co. (The) (Comp)	Salt Lake City, UT	02/06/2002	Aircraft Parts.
41,148	Brook Manufacturing Co (Comp).	Union, MS	02/21/2002	Pedal Box Modules.
41,149	Steel Heddle, Inc. (Comp)	Greenville, SC	02/05/2002	Components for Textile Weaving Machines.

APPENDIX—Continued

[Petitions instituted on 03/25/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,150	Robur Corp (Comp)	Evansville, IN	02/11/2002	Gas Absorption Chillers—Air Condition.
41,151	Bernard Chaus, Inc. (Wrks)	Secaucus, NJ	02/07/2002	Garments.
41,152	Haworth, Inc (Wrks)	Holland, MI	01/15/2002	Freestanding, Wood, and Veneer Products.
41,153	Georgia Pacific Corp (SCIW)	Louisville, MS	01/08/2002	Southern Plywood.
41,154	Justin Brands (Wkrs)	El Paso, TX	01/31/2002	Boots.
41,155	International Steel Wool (Comp).	Springfield, OH	01/14/2002	Annealed Steel Wool.
41,156	London Harness and Cable (Wrks).	Trenton, NJ	01/13/2002	Wring Harness.
41,157	Kolenda Tool and Die (Comp)	Wyoming, MI	01/15/2002	Plastic Injection Molds for Automobiles.
41,158	P/E Technologies, Inc (USWA).	Cleveland, OH	01/28/2002	Rebuilding Steel Mill Machinery.
41,159	Renfro (Wrks)	Star, NC	01/30/2002	Hosiery/Socks.
41,160	MK Gold Company (Wrks)	Searchlight, NY	01/18/2002	Contact Mining Services.
41,161	Wheeling Pittsburgh Steel (USWA).	Wheeling, WV	03/18/2002	Intergrated Steel.
41,162	Delphi Automotive Systems (Wkrs).	Oak Creek, WI	01/03/2002	Engineering Design Work.
41,163	Crane Merchandising (Comp)	Bridgetown, MO	01/29/2002	Vending Machines.
41,164	Britax Heath Techna, Inc (Wkrs).	Bellingham, WA	01/30/2002	Aircraft Interior Components.
41,165	Flextronics Enclosures (Wrks)	Smithfield, NC	01/21/2002	Motorola Cabinets.
41,166	Goetz Dolls, Inc. (Wkrs)	Baldwinsville, NY	01/15/2002	Vinyl Limbs for Dolls.
41,167	Tri-Way Manufacturing (Wrks)	El Paso, TX	01/26/2002	Plastic Injection Molds.
41,168A	Duplex Novelty Corp (UNITE)	New York, NY	01/17/2002	Wooden Buttons.
41,168	Duplex Novelty Corp (UNITE)	Bronx, NY	01/17/2002	Wooden Buttons.
41,169	Fruit of The Loom, Inc (Wrks)	Jamestown, KY	01/21/2002	Underwear, Sweatshirts, Sweatpants.
41,170	Hoskins Manufacturing Co (Wrks).	Hamburg, MI	11/29/2001	Alloy Wires.
41,171	Western Log Homes (Comp)	Chiloquin, OR	11/02/2001	Landscape and Housing Materials.
41,172	Goodyear Tire and Rubber (Wrks).	Danville, VA	11/07/2001	Airplane Tires.
41,173	Progress Lighting Co (IBEW)	Philadelphia, PA	12/03/2001	Lighting Fixtures.
41,174	Ketcham Diversified Tool (Comp).	Cambridge Sprgs, PA	12/31/2001	Machine Parts, Molds, Dies.
41,175	A. Brod, Inc. (Comp)	Long Island Cty, NY	12/14/2001	Hats.
41,176	Eastern Felt Company (UNITE).	Westerly, RI	12/20/2001	Non-Woven Needle Pouch.
41,177	Dana Corp., Victor Reinz (Comp).	Robinson, IL	10/25/2001	Soft Gaskets & Engine Repair Kits.
41,178	Pabst Brewing Co (Wrks)	Fogelsville, PA	09/21/2001	Beer and Malt Beverages.
41,179	Pemco, Inc (Comp)	Sheboygan, WI	02/14/2002	Speed Ream Wrapper.
41,180	Johnston and Murphy (Comp)	Nashville, TN	02/20/2002	Footwear.
41,181	Motorola (Comp)	Elma, NY	02/21/2002	Automotive Electronic Modules.
41,182	Hughes Fabricating Co (Wkrs)	Corinth, MS	02/08/2002	Electrical Cover Plates, Brackets.
41,183	Alcoa Lebanon Works (Wrks)	Lebanon, PA	02/05/2002	Various Aluminum Foil Products.
41,184	Xerox Corp (UNITE)	El Segundo, CA	02/26/2002	Electronic Printed Circuit Boards.
41,185A	Pittsburgh Logistics (Wkrs)	Rochester, PA	02/18/2002	Management of Warehousing & Distribution.
41,1185	Pittsburgh Logistics (Wkrs)	Independence, OH	02/18/2002	Management of Warehousing & Distribution.
41,186	Swanson-Erie Corp (UAW)	Erie, PA	02/21/2002	Automatic Assembly Machine.
41,187	Flowline Div., Markovitz (Comp).	New Castle, PA	02/18/2002	Aluminium & Nickle Alloy Corrosion.
41,188A	Landau Uniform (Comp)	Olive Branch, MS	02/18/2002	Healthcare Uniforms—Plants, Shirts.
41,189	Hitachi Electronic Device (Wrks).	Greenville, SC	02/13/2002	TV Tubes (CRT&PRT).
41,190	TRW Automotive (Comp)	Cookeville, TN	02/22/2000	Automobile Airbags.
41,191	Reflexite Display Optics (Wkrs).	Rochester, NY	02/13/2002	Retroreflective and Optical Products.
41,192	Graham-Field Health Prod (Comp).	Bay Shore, NY	02/13/2002	Wheel Chairs, Walkers, etc.
41,193	Progressive Technologies (Wkrs).	Pilot Mountain, NC	02/25/2002	Battert Packs.
41,194A	J. Allan Steel (USWA)	Pittsburgh, PA	02/11/2002	Cut & Distribute Carbon Steel Products.
41,194B	J. Allan Steel (USWA)	Pittsburgh, PA	02/11/2002	Cut & Distribute Carbon Steel Products.
41,194	J. Allan Steel (USWA)	Pittsburgh, PA	02/11/2002	Cut & Distribute Carbon Steel Products.
41,195	Wellman Thermal Systems (UAW).	Shelbyville, IN	03/13/2002	Heating elements.

[FR Doc. 02–14553 Filed 6–10–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 21, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 21, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 8th day of April, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 04/08/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,230	Eagle Picher Industries (Wkrs)	Seneca, MO	03/07/2002	Lead Acid Batteries.
41,231	Corning, Inc. (AFGWU)	Wilmington, NC	02/08/2002	Fiber Optics.
41,232	Presto Lifts (IBT)	Pawtucket, RI	03/25/2002	Equipment used to move Boxes.
41,233	Associated Garments (Wkrs)	Miami, FL	2/19/2002	Garments.
41,234	Spring Ford Industries (Wkrs)	Springdale, NC	03/15/2002	Men & Women Apparel.
41,235	Charmilles Technologies (Wkrs).	Owosso, MI	01/19/2002	Electrical Discharge Machinery.
41,236	Kayby Mills of NC (Wkrs)	Thomasville, GA	10/30/2001	Hosiery products—Socks, Tights.
41,237	Garan Manufacturing (Wkrs)	Philadelphia, MS	11/06/2001	Children's Pants.
41,238	Keystone Thermistor (Co.)	Mt. Jewett, PA	02/26/2002	Temperature Devices for Automotive.
41,239	Enerflex, Inc.	Cedar Mountain, NC	03/29/2002	Provide Steam Power Supply Service.
41,240	Nortel Networks (Wkrs)	Raleigh, NC	02/28/2002	GSM Base Stations.
41,241	Alliant Techsystems (Wkrs)	Radford, VA	02/14/2002	M14 Propellants.
41,242	Chevron U.S.A. Production (Co.).	Houston, TX	03/07/2002	Crude Oil and Natural Gas.
41,243	Texaco Exploration (Co.)	Houston, TX	03/07/2002	Crude Oil and Natural Gas.
41,244	Jetfill Division—Turdon (Co.)	Houston, TX	06/01/2002	InkJet Cartridges.
41,245	International Paper (IAM)	Oswego, NY	03/07/2002	Lingerboard and Medium.
41,246	Avanti (Wkrs)	Chili, NY	02/24/2002	Advertising Catalog.
41,247	Wellington Leisure Prod. (Wkrs).	Parsons, TN	03/06/2002	Replacement Cushions & Patio Umbrellas.
41,248	NAS Interplex (Wkrs)	Flushing, NY	02/10/2002	Electronic Connectors.
41,249	Getinge Castle, Inc. (Co.)	Rochester, NY	02/15/2002	Sterilizers for Hospitals.
41,250	Tuthill Vacuum System (Wkrs)	Canton, MA	02/17/2002	Vacuum Pumps.
41,251	American Components (Wkrs)	Dandridge, TN	02/22/2002	Car Seats Supports.
41,252	Rosebar Textile Co. (Co.)	New York, NY	08/21/2001	Textiles.
41,253	Metso Minerals Industries (GMP).	Birmingham, AL	04/01/2002	Pump Parts.
41,254	Cooper Lighting (IBEW)	Elk Grove Villa, IL	02/26/2002	Light Fixtures.
41,255	American Greetings (Wkrs)	Corbin, KY	03/26/2002	Printed Greeting Card Sheets.
41,256	Isfel Co., Inc. (The) (Wkrs)	New York, NY	03/11/2002	Girl's Sportswear—Admin. Services.
41,257	J. Miller Industries (Co.)	Corona, CA	03/09/2002	Fiberglass Tent Poles.
41,258A	Weyerhaeuser Co (WCIW)	Enumclaw, WA	03/01/2001	Logs.
41,258B	Weyerhaeuser Co (WCIW)	Rainier, WA	03/01/2001	Logs.
41,258	Weyerhaeuser Co. (IAM)	Snoqualmie, WA	03/01/2002	Logs.
41,259	Fibermark (PACE)	Rochester, MI	03/14/2002	Filteration Paper.
41,260	Laird Technologies (Co.)	Asheboro, NC	03/14/2002	Tele-Communication Products.
41,261	Dayton Pattern (IAMAW)	Dayton, OH	03/15/2002	Patterns and Related.
41,262	Alexander Garments (Wkrs)	Hialeah, FL	02/15/2002	Boys Pants and Belts.
41,263	CII/Tyco Electronics (Wkrs)	Sabula, IA	03/07/2002	Contact Relays.
41,264	Ilissa Bridals Ltd. (Wkrs)	New York, NY	03/07/2002	Bridal Dresses.
41,265	A.P. Green Industries (Comp)	Middletown, PA	03/07/2002	Precast Refractories.
41,266	Beacon Blankets (Wkrs)	Swannanoa, NC	03/01/2002	Cotton Woven Blankets.
41,267	Limited Edition Shirt (Co.)	Ranshaw, PA	03/05/2002	Police and Security Uniforms.
41,268	Truman Logging (Co.)	Rexford, MT	03/04/2002	Manufacturing Trees into Logs.
41,269	Victoria Vogue (Co.)	Bethlehem, PA	01/10/2002	Cosmetic Applicators.

APPENDIX—Continued

[Petitions instituted on 04/08/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,270	Devil Dog Mfg. (Co.)	Zebulon, NC	03/05/2002	Women and Children Apparel.
41,271A	Koppel Steel Corp (USWA)	Ambridge, PA	03/04/2002	Seamless Oil Country Tubular Goods.
41,271	Koppel Steel Corp. (USWA)	Beaver Falls, PA	03/04/2002	Seamles Oil Country Tubular Goods.
41,272	Amdocs, Inc. (Wkrs)	Hillsboro, OR	03/08/2002	Telecommunications Fraud Detection Sftwr.
41,273	Regal Garment (Wkrs)	New York, NY	03/07/2002	Women's Apparel.
41,274	Azon Corporation (Wkrs)	Johnson City, NY	03/07/2002	Film and Paper.
41,275	Stoltze Aspen Mills (Wkrs)	Sigurd, UT	03/04/2002	Pallet Stock.
41,276	GBC (Wkrs)	Ashland, MS	03/06/2002	Office and School Supplies.
41,277	Cooper Crouse Hinds (Wkrs)	Syracuse, NY	03/01/2002	Tool and Die Makers.
41,278	Siegwerk, Inc. (Wkrs)	Lynchburg, VA	03/05/2002	Gravure Printing Ink.
41,279	Levolor Kirsh Window (Co.)	Shamokin, PA	03/12/2002	Roller-Shades & Mini-Blinds.
41,280	Pat and Rose Dress (Wkrs)	New York, NY	03/06/2002	Womens Sportswear and Dresses.
41,281	Kimberly Clark Technical (PACE).	E. Rygate, VT	03/24/2002	Technical Papers.
41,282	Precision Technologies (Wkrs)	Franklin, PA	03/01/2002	Prototypes, Injection Mold Tooling.
41,283	SEH-America, Inc. (Comp)	Vancouver, WA	04/04/2002	Polished Silicon Wafers.
41,284	Corning Cable Systems (Wkrs).	Hickory, NC	04/04/2002	Fiber Optic Cable.

[FR Doc. 02–14552 Filed 6–10–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,721]

Englehard Corporation, McIntyre, GA; Notice of Negative Determination Regarding Application for Reconsideration

By application of March 21, 2002, the company requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on February 26, 2002 and published in the **Federal Register** on March 20, 2002 (67 FR 13010).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Englehard Corporation, McIntyre, Georgia engaged in the production of paper coating and filling—kaolin, was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. Increased imports did not contribute importantly to worker separations at the subject plant.

The petitioner alleges that the customers they supplied during the initial investigation are located outside the United States. The petitioner further states that these customers switched their purchases from the subject firm in favor of purchasing from sources located in Brazil. In addition the subject firm now has domestic customers that are now purchasing from Brazil and other countries.

A review of the initial investigation shows that the major declining customers were all foreign companies located in Europe. Based on information provided during the initial investigation and recent clarification from the company, the preponderance in the declines in sales and production at the subject plant are related to the declines in purchases from the subject firm's foreign customers located in Europe. Those customers switched their purchases from the subject firm in favor of purchasing Brazilian imports of products ''like or directly competitive'' with what the subject plant produced. The loss of foreign customers, switching their purchasing from subject firm in favor of purchasing from foreign sources does not meet the eligibility requirements under criterion (3) of the Trade Act of 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 16th day of May, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–14597 Filed 6–10–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,235]

Ericsson, Research Triangle Park, NC; Notice of Negative Determination Regarding Application for Reconsideration

By application received on February 22, 2002, the petitioner(s) requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Ericsson, Research Triangle Park, North Carolina, was signed on January 18, 2002, and published in the **Federal Register** on February 5, 2002 (67 FR 5294).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the

determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Ericsson, Research Triangle Park (RTP), North Carolina, were engaged in activities related to the research and development of software (embedded software) to be installed in digital cell phones for a firm which sold digital cell phones. The petition was denied because the petitioning workers did not produce an article within the meaning of Section 222(3) of the Act.

The petitioner alleges that Ericsson, Research Triangle Park, North Carolina produced digital cell phone software.

Information supplied by the company indicates that the workers at Ericsson, Research Triangle Park, North Carolina were primarily engaged in research, development and sales of mobile telephone equipment. This included the designing of mobile phones and the development of software (activities related to the research, and development of embedded software for digital cell phones). Administrative and support-type personnel were also located at the site performing finance, IT, legal, facilities management and human resource functions. There was no manufacturing performed at the subject facility.

The investigation further revealed that the major contributing factors to the layoffs at the subject plant were related to a decline in the demand for cell phones and a worldwide joint venture agreement between the subject firm and Sony during the relevant period.

The workers at the subject firm do not produce an article within the meaning of Section 222(3) of the Trade Act 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 9th day of May, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–14592 Filed 6–10–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,331]

Georgia-Pacific West, Camas, WA; Notice of Negative Determination on Reconsideration

On April 10, 2002, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on May 2, 2002 (67 FR 22116).

The Department initially denied TAA to workers of Georgia-Pacific West, Camas, Washington because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The investigation revealed that customers did not increase their import purchases of technical specialty paper during the relevant period. The workers at the subject firm were engaged in employment related to the production of technical specialty paper.

On reconsideration, as requested by the Association of Western Pulp Paper Workers, the Department surveyed additional customers of Georgia Pacific-West regarding their purchases of technical specialty paper for 1999, 2000 and 2001. The survey revealed that none of these customers purchased imports of technical specialty paper during the relevant period.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Georgia-Pacific West, Camas, Washington.

Signed at Washington, DC, this 21st day of May 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–14593 Filed 6–10–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,695]

Nolato Shieldmate, Inc., Itasca, IL; Notice of Negative Determination Regarding Application for Reconsideration

By application dated March 14, 2002, the company requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on February 25, 2002, and published in the **Federal Register** on March 20, 2002 (67 FR 13010).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Nolato Shieldmate, Inc., Itasca, Illinois was denied because the ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended; was not met. The denial was based on evidence indicating that customers of the subject firm do not import plastic housings for cellular phones. The relocation by a customer of their cell phone production to a foreign site necessitated a reliance on local sources for the phone housings. Complete cellular phones are not like or directly competitive with the phone housings made by the subject firm and cannot be used as a basis for certification.

The petitioner feels that the eligibility criteria have been met based on the fact that the manufacture of cellular phone housing sub-assemblies (plastic housings) has moved to China, even though the cellular telephone housing sub-assemblies are not imported back to the United States. The petitioner further states that product is a component of a cellular phone that is imported back to the United States.

The imports of any other product by the company or customer is not relevant to this petition that was filed on behalf

of worker(s) producing plastic housing for cell phones. The products imported must be ''like or directly competitive'' with what the subject plant produces to meet the eligibility requirements of section 222(3) of the Trade Act of 1974, as amended.

The petitioner further states that a major customer of the subject firm for whom the subject firm produced plastic housing was certified eligible for TAA and therefore believes the subject plant workers should be certified for TAA.

The certification of a customer is not a basis for TAA certification. The customer would have to demonstrate that a meaningful portion of their imports of products ''like or directly competitive'' with plastic housing increased significantly during the relevant period, contributing importantly to the layoffs at the subject plant. The customer in this case shifted their production of cell phones to China and relied solely on local sources for their plastic housing requirements. The customer imported the complete cell phones back to the United States. Complete cell phones are not ''like or directly competitive'' with the phone housing produced by the subject firm and cannot be used as a basis in meeting the group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 9th day of May, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–14596 Filed 6–10–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor undersection 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 21, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 21, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 22nd day of April, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 04/22/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,348	Sappi Fine Paper (Co.)	Skowhegan, ME	03/18/2002	Light Coated-Groundwood Free paper.
41,349	Fayette Cotton Mill, Inc (Comp)	Fayette, AL	03/11/2002	Men's Ladies' & Children's Underwear.
41,350	TracTech, Inc. (Wkrs)	Warren, MI	03/07/2002	Differentials—Trucks.
41,351	Quitman Mfg. & Barwick (Co.)	Quitman, GA	03/06/2002	Childrens Fleece & Active Wear.
41,352	Dana Corporation (Wkrs)	Richmond, IN	03/22/2002	Cylinder Liners.
41,353	ITT Industries (Wkrs)	Eden Prairie, MN	03/20/2002	Switches, Controls and Panels.
41,354	Gulfstream Aerospace (Wkrs)	Oklahoma City, OK	03/10/2002	Aircraft subassembly and detailed parts.
41,355	Fourply (Co.)	Grants Pass, OR	03/08/2002	Plywood (4*8 Sheets).
41,356	Aspen Trailer, Inc. (Wkrs)	Litchfield, MN	03/19/2002	Heavy Haul Trailers.
41,357	Stream International (Wkrs)	Beaverton, OR	03/20/2002	Phone Production Work.
41,358	Owens Brigam Medical (Co.)	Morganton, NC	03/26/2002	Medical Respiratory Circuits.
41,359	L. Lawrence Products (Co.)	Huntingdon Vall, PA	03/25/2002	Eyeglass and Hearing Aid Products.
41,360	Kay Fay (UNITE)	Nesqueshoning, PA	03/28/2002	Calvin Klein Stone Washed Jeans.
41,361	Vesuvius USA (Wkrs)	South Webster, OH	04/04/2002	Alumino Silicate Refractories.
41,362	Vesuvius USA (Wkrs)	Bettsville, OH	02/06/2002	Refractories for Line Vessels.
41,363	Regal Beloit (Wkrs)	Mitchell, IN	04/03/2002	Cutting Tools.
41,364	Amloid (Co.)	Saddle Book, NJ	03/14/2002	Toys.
41,365	Germantown USA (Co.)	West Chester, PA	03/21/2002	Dry Blending for Dairy Industries.
41,366	Starkey (Wkrs)	Glencoe, MN	10/19/2002	Hearing Aids.
41,367	Schlumberger Limited (Wkrs)	Sugarland, TX	01/04/2002	Wireline Logging.
41,368	Komtek (USWA)	Worcester, MA	03/28/2002	Casting and Forge Parts.Medical Implants.
41,369	Norton (Wkrs)	Worcester, MA	03/21/2002	Grinding Wheels.
41,370	Boeing North American (Wkrs)	El Pase, TX	03/29/2002	Aircrafts and Components.
41,471	Franklin Brass Mfg. Co (IBT)	Rancho Domingue, CA	03/26/2002	Bathroom Accessories.
41,372	XESystems, Inc. (Wkrs)	East Rochester, NY	03/28/2002	Development, Marketing Printers & Copier.
41,373	Springs Window Fashions (Co.)	Montgomery, PA	04/12/2002	Curtains.

APPENDIX—Continued

[Petitions Instituted On 04/22/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,374	Curtis PMC (Co.)	Livermore, CA	03/28/2002	Electronics and Controllers.
41,375	Wolverine (Wkrs)	Fitchburg, MA	04/22/2002	Paper Mill Equipment.
41,376	Techalloy Company (Co.)	Florence, MA	04/04/2002	Steel and Nikel Alloy Wire.
41,377	Levi Strauss and Co. (Co.)	San Francisco, CA	04/11/2002	5-Pocker Jeans and Khakis.
41,378	Tellabs Operations (Co.)	Round Rock, TX	03/28/2002	Optical Networking Equipment.
41,379	Williamson Dickie (Wkrs)	McAllen, TX	04/09/2002	Work Pants.
41,380	American Tissue Mill (Wkrs)	Neenah, WI	03/19/2002	Facial and Bath Tissue, Paper Nap. & Tow.
41,381	Redwing Shoe (Wkrs)	Potosi, MO	04/03/2002	Sneakers.
41,382	Pendleton Woolen Mills (Co.)	Portland, OR	04/09/2002	Upholstry Fabrics, Blankets & Apparel.
41,383	Jabil Circuit (Co.)	Auburn Hills, MI	03/27/2002	Circuit Board Assemblies.
41,384	Chicago Mold and Engineer (Co.)	St. Charles, IL	03/26/2002	Plastic Injection Molds.
41,385	Peck Manufacturing (Co.)	Warrenton, NC	03/12/2002	Garments.
41,386	Ericsson, Inc., (Wkrs)	Lynchburg, VA	01/10/2002	Cellular Phones.
41,387	Contract Embroidery (Wkrs)	El Paso, TX	03/22/2002	Embroidery.
41,388	Fujitsu Network (Wkrs)	Richsradson, TX	03/25/2002	Engineering & Telecommunication Phones.
41,389	Triton Services (Wkrs)	Easton, PA	03/27/2002	Software.
41,390	Mitsubishi Silicon (Wkrs)	Salem, OR	03/16/2002	Silicon Wafers.
41,391	Victor Forstnann (Wkrs)	ublin, GA	03/22/2002	Woolen & Worsted Fabrics.
41,392	White Mountain Stitching (Co.)	Litleton, NH	03/21/2002	Leather Wallets and Handbags.
41,393	TVS—Transylvaia (Co.)	Brevard, NC	03/01/2002	Medical X-Ray Film.
41,394	Watkins Motor Lines (Wkrs)	Charlotte, NC	03/01/2002	Trucking Company.
41,395	H.I. Seagroatt (Co.)	Berlin, NY	03/18/2002	Flowers/Roses.
41,396	Bell Sponging (UNITE)	Allentown, PA	03/28/2002	Cloth.
41,397	American Fashion (UNITE)	Chula Vista, CA	03/26/2002	Men's Suites, Slacks & Sports Coats.
41,398	Acordis Cellulasic Fibers (Wkrs)	Axis, AL	03/06/2002	Rayon.
41,399	BBA Nonwowens (Wkrs)	Lewisburg, PA	02/25/2002	Medical Hygiene and Filteration.
41,400	Howmet Casting of Wichita (Wkrs)	Wichita Falls, TX	03/01/2002	Turbine Engine Airfoil Blades.
41,401	ConAgra Grocery Products (UFCW)	Milton, PA	01/17/2002	Foods and Snacks.
41,402	Instron Sateo Systems (Wkrs)	Grove City, PA	03/18/2002	Universal Testing Machines.
41,403	Tyco Electronics (Wkrs)	Jonestown, PA	03/14/2002	Connectors for Various Areas.

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DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 21, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 21, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, SW., Washington, DC 20210.

Signed at Washington, DC, this 1st day of April, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 04/01/2002]

TA–W	Subject Firm (Petitioners)	Location	Date of petition	Product(s)
41,196	Textile Parts and Machine (Wkrs).	Gastonia, NC	02/27/2002	Machine Parts.
41,197	3M Corporation (Wkrs)	Argo, IL	02/07/2002	Pressure Sensitive Tape.
41,198	Starlo Fashion (Wkrs)	North Bergon, NJ	02/13/2002	Women Clothing.
41,199	Shelby Manufacturing (Wkrs)	Charleston, MS	02/27/2002	Work Gloves.
41,200	Tapetex—Duro Industries (Co.).	Rochester, NY	02/28/2002	Textile Processing for Apparel.

APPENDIX—Continued

[Petitions instituted on 04/01/2002]

TA–W	Subject Firm (Petitioners)	Location	Date of petition	Product(s)
41,201	mansfield Plumbing (Wkrs)	Kilgore, TX	02/14/2002	Plumbing Fixtures.
41,202	Vertflex Products (Comp)	Irwindale, CA	02/20/2002	Computer Furniture.
41,203	Midwest International (Wkrs)	Stanberry, MO	02/13/2002	Flex Plates.
41,204	Carmum International (Wkrs)	San Antonio, TX	02/07/2002	Machined Fittings & Cold Plates.
41,205	Sonoco Products (Wkrs)	Massillon, OH	02/14/2002	Composite Cans.
41,206	ICF Industries (Co.)	New York City, NY	12/07/2001	Imported Apparel.
41,207	Generl Manufacturing (Comp)	Opp, AL	02/22/2002	Denim Jeans.
41,208	Valeo Climate Control (Co.)	Grand Prairie, TX	03/01/2002	Automative Air Conditioning Parts.
41,209	Federal Pipe and Steel (Wkrs)	Blytheville, AR	01/16/2002	Distribution Services.
41,210	Burlington Chemical (Comp)	Burlington, NC	03/19/2002	Dyes & Specialty Chemicals for Textiles.
41,211A	Eagle Picher Technologies (Comp).	Seneca, MO	03/08/2002	Lead-Acid Batteries.
41,211	Eagle Picher Technologies (Comp).	Grove, OK	03/08/2002	Lead-Acid Batteries.
41,212	Ametek Specialty Motors (Co.).	Hudson, WI	02/27/2002	Fractional HP Electric Motors.
41,213	VF Playwear, Inc. (Comp)	Greensboro, NC	03/20/2002	Corporate Office—Children's Platwear.
41,214	Gem Dany (Wkrs)	Madison, NC	02/22/2002	Apparel Accessories.
41,215	Birdair, Inc. (Comp)	Amherst, NY	03/11/2002	Fabric Panels for Roof Systems.
41,216	Tama Manufacturing Corp. (UNITE).	Allentown, PA	03/14/2002	Ladies' Shirts and Sportswear.
41,217	Scotty Fashions Cutting (UNITE).	Pen Argyl, PA	03/14/2002	Ladies Sportswear.
41,218	Scotty Fashions (UNITE)	Little Gap, PA	03/14/2002	Ladies Sportswear.
41,219	Spring Ford Industries (Wkrs)	Gastonia, NC	03/21/2002	Finish Knitted Cloth for Tee Shirts.
41,220	Spring Ford Industries (Wkrs)	Chilhowie, VA	03/11/2002	T-Shirts & Knitted Apparel.
41,221A	Eagle-Picher Technologies Comp).	Senaca, MO	03/08/2002	Lead-Acid Batteries.
41,221	Walls Industries (Wkrs)	Ft. Worth, TX	03/11/2002	Outerwear and Winter Garments.
41,222	Bechtel Jacobs (PACE)	Piketon, OH	03/14/2002	Enriched Uranium Product.
41,223	Mead WestVaco Corp. (PACE).	Chillicothe, OH	03/08/2002	High-End Coated Paper.
41,224	Alox Corp. (Wkrs)	Niagara Falls, NY	03/04/2002	Oil and Gas Additives.
41,225	Jideco of Bardstown (Co.)	Bardstown, KY	03/14/2002	Various Car Parts
41,226	Emerson Tool (IBU)	Menominee, MI	03/21/2002	Vacuum Cleaners.
41,227	Viracon Inc. (Wkrs)	Owatonna, MN	03/04/2002	Architectural Glass.
41,228	Intertape Polymer Group (Wkrs).	Marysville, MI	03/06/2002	Tape—Pressure Sensitive.
41,229	Precision Kidd Steel (Comp)	Aliquippa, PA	04/01/2002	Cold Finished Steel Bar and Wire.

[FR Doc. 02–14550 Filed 6–10–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 21, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 21, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 15th day of April, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 04/15/2002]

TA–W	Subject Firm (petitioners)	Location	Date of petition	Product(s)
41,285	United States Enrichment (PACE).	Piketon, OH	01/11/2002	Enriched Uranium Product.
41,286	Semitool, Inc. (Comp)	Kalispell, MT	03/29/2002	Chemical and Thermal Processing, Equip.
41,287	GretagMacbeth LLC (Wrks)	New Windsor, NY	03/25/2002	Software Made in Italy.
41,288	International Truck (UAW)	Springfield, OH ..	03/26/2002	Medium and Heavy-Duty Trucks.
41,289	TRW, Inc. (Wkrs)	Cleveland, OH	04/03/2002	Engine Valves and Valve Train Components.
41,290	GE Transportation Systems (Wkrs).	Grain Valley, MO	03/12/2002	Circuit Board—Support Services.
41,291	Braden Manufacturing LLC (Comp).	Ft. Smith, AR	03/25/2002	Steel Fabricated Components.
41,292	Aerocell Structures (Wkrs)	Hot Springs, AR	03/24/2002	Aircraft Mechanical Repair Service.
41,293	Radiall, Inc (Wkrs)	Stratford, CT	01/12/2002	Cable—Coaxial, Microwave, Fiber Optic.
41,294	Northwind Outdoor Co (Wrks)	Fergus Falls, MN	12/18/2001	Dog beds, Decoy bags, Collars.
41,295	Multax Systems (Wrks)	Manhattan Beach, CA	04/03/2002	Machine Controlled Media.
41,296	Mullican Lumber Co., LP (Wrks).	Appalachia, VA	03/28/2002	Green Hardwood Lumber.
41,297	Rivoli Mills (Comp)	Chattanooga, TN	03/08/2002	Men's, Ladies', Children's Knit Shirts.
41,298	Komar Manufacturing Co (Wrks).	Claysburg, PA	03/08/2002	Electrical and Small Appliance Cords.
41,299	Smead Manufacturing (Wkrs)	McGregor, TX	03/15/2000	Legal Wallets (Machinery) Office Use.
41,300	L and A Molding Corp (Comp)	Lewiston, ME	03/20/2002	Mold Plastic Heels and Shoe Soles.
41,301	Schlumberger (Wrks)	San Carlos, CA	03/22/2002	Electric Components for PG & E.
41,302	Motorola, Inc. (Wrks)	Arlington Hts, IL	03/15/2002	Cable Modems, Access Units, & Control Frames.
41,303	McKechnie Tooling (Wrks)	Staples, MN	04/04/2002	Plastic Injection Molds.
41,304	Alcatel (Wrks)	Claremont, NC	03/06/2002	Cable Manufacturing.
41,305	Cummins Diesel ReCon (Comp)	Charleston, SC ..	03/13/2002	Gas and Diesel Re-manufacturing Engines.
41,306A	Riverside paper Corp. (AICW)	Appleton, WI	03/18/2002	Groundwood Construction Paper.
41,306	Riverside Paper Corp. (AICP)	Appleton, WI	03/18/2002	GroundwoodConstruction Paper.
41,307	Canton Drop Forge, Inc. (USWA).	Canton, OH	03/08/2002	Stainless and Alloy Steels.
41,308	Simmons Foods, Inc (Wrks)	McAlester, OK	03/08/2002	Chickens—Frozen.
41,309A	Morgan Crucible Co, PLC (IUE).	Elizabethtown, KY	03/13/2002	Low Grade Magnets.
41,309	Morgan Crucible Co, PLC (IUE).	Elizabethtown, KY	03/13/2002	Low Grade Magnets.
41,310	Baldwin Graphic Systems (Wrks).	Shelton, CT	03/15/2002	Accessories for Printing Industry.
41,311	Quickie Manufacturing (Comp)	El Paso, TX	02/15/2002	Manufacturing/Assembly of Cleaning Tools.
41,312	Rohm and Haas Co., (Wrks)	Philadelphia, PA	03/27/2002	Exchange Resins.
41,313	Goodrich Corp (Wrks)	Arkadelphia, AR	03/19/2002	Aircraft Parts.
41,314	Schneider Mills, Inc (Comp)	Forest City, NC	03/18/2002	Apparel Cloth.
41,315	Metal Processing Corp (Comp).	Maple Heights, OH	03/07/2002	Heat Processing and Steel Coil Roads.
41,316	Quality Component, Inc. (Wrks).	Klamath Falls, OR	03/13/2002	Telecommunication/Electronic Connectors.
41,317	Metso Minerals Industries (IAMAW).	Appleton, WI	03/04/2002	Stone Crushing Machinery.
41,318	Specialty Minerals, Inc (Comp).	Oswego, NY	03/05/2002	Minerals.
41,319	Astro Cosmos Metallurgica (UAW).	Wooster, OH	03/06/2002	Fabrication of Pressure Vessels.
41,320	South Coast Lumber Co (Comp).	Brookings, OR	03/13/2002	Dimension Lumber.
41,321	Penn Union Corp (Wrks)	Edinboro, PA	03/10/2002	Electrical Connectors.
41,322	North American Refractori (Wrks).	Pittsburg, PA	03/12/2002	Ladle Slide Components.
41,323	Hoffman Materials, Inc. (Comp).	Carlisle, PA	03/12/2002	Cuptal Quartz.
41,324	Springford Industries (Wrks)	Tucson, AZ	04/01/2002	T-Shirts & Underwear.
41,325	Blue Fox Tackle (Wrks)	Cambridge, MN	03/19/2002	Fishing Products.
41,326	U.S. Electrical Motors (Comp)	Philadelphia, MS	03/13/2002	Electrical Motors.
41,327	MeadWestvaco (PACE)	Rumford, ME	03/22/2002	Coated Paper and Pulp.
41,328	New World Pasta (BCTGM)	Lebanon, PA	03/22/2002	Pasta Products.
41,329	TLD Lantis Corp (Wrks)	Salinas, CA	03/21/2002	Aircraft Ground Support Equipment.
41,330	Tinius Olsen Testing (UE)	Willow Grove, PA	03/20/2002	Universal Testing Machines.
41,331	Ashland Speciality, Chemica (USWA).	Pittsburgh, PA	03/24/2002	Maleic Anhydride.
41,332	A. Stucki Co. (USWA)	Pittsburgh, PA	03/24/2002	Freight Car Suspension Components.

APPENDIX—Continued

[Petitions instituted on 04/15/2002]

TA–W	Subject Firm (petitioners)	Location	Date of petition	Product(s)
41,333	BOC Edwards (Comp)	Philadelphia, PA	03/08/2002	Vacuum Pumps.
41,334	Metaldyne Corp. (Comp)	Troy, OH	04/01/2002	Metal Products.
41,335	Northern Indiana Public (USWA).	Merrillville, IN	01/29/2002	Imported Steel.
41,336	C and W Fabricators, Inc. (Wrks).	Gardner, MA	04/04/2002	Intake Systems.
41,337	Quantum Corp. (Comp)	Colorado Springs, CO	03/20/2002	Desktops, Hard Drives, NAS Appliances etc..
41,338	Eagle Electric—Cooper (Wrks).	L. Island City, NY	03/20/2002	Wired Devices.
41,339	Johnson Garment Corp (Comp).	Marshfield, WI	03/28/2002	Men's Insulated Outerwear.
41,340	Westwood Lighting (Comp)	El Paso, TX	04/02/2002	Lamps—Distribution—Warehouse.
41,341	Clarinda Co (The) (Wrks)	Atlantic, IA	03/26/2002	Textbook Compositor.
41,342	American Furniture Co (Comp).	Chilhowie, VA	03/20/2002	Furniture for Lodging Industries.
41,343	Camfil Farr (Comp)	Jonesboro, AR	03/28/2002	Air Filteration Systems.
41,344	Vision Ease Lens, (Comp)	Azusa, CA	03/22/2002	Polycarbonate Opthaimic Lenses.
41,345	Fuchs Systems, Inc. (Comp)	Salisbury, NC	03/19/2002	Electric Arc Furnaces.
41,346	Electronic Data Systems (Wrks).	Camp Hill, PA	03/18/2001	Software Design.
41,347	Imation Color Technologie (Wrks).	Oakdale, MN	03/18/2002	Color Technologies.

[FR Doc. 02–14551 Filed 6–10–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,692]

Vartec CRM, Incorporated, Waco, TX; Notice of Negative Determination Regarding Application for Reconsideration

By application of March 14, 2002, the petitioner, requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on February 19, 2002 and published in the **Federal Register** on February 28, 2002 (67 FR 9324).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition, filed on behalf of workers at Vartec CRM, Incorporated, Waco, Texas engaged in providing customer relations management was denied because the workers did not produce an article within the meaning of Section 222(3) of the Act.

The petitioner alleges that the subject plant workers manufactured a product and refers to the product as information.

The activities of the customer relations management workers of providing information does not qualify as an article of production, but is considered a service function.

The subject workers do not produce an article within the meaning of Section 222(3) of the Act.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 9th day of May, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–14595 Filed 6–10–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,405 and TA–W–40,405A]

Xerox Corporation (SOHO) Small Office/Home Office Division Canandaigua, NY and Farmington, NY; Notice of Negative Determination Regarding Application for Reconsideration

By application April 8, 2002, the Union of Needletrades, Industrial & Textile Employees, Local 2541 requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on March 8, 2002, and published in the **Federal Register** on March 29, 2002 (67 FR 15226).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Xerox Corporation, (SOHO) Small Office/Home Office Division, Canandaigua, New York (TA–W–40,405) and Xerox Corporation, (SOHO) Small Office/Home Office Division, Farmington, New York (TA–W–40,405A) was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their purchases of imported print heads or ink tanks.

The petitioner states that the ink tanks and print heads made in the United States are shipped overseas and boxed with ink jet printers that were manufactured in foreign countries. The boxed jet printer, which includes the ink tank and print head were then imported to the United States.

The petitioner also states that the Department should examine competitor's imports of ink jet printers.

The importing of a boxed ink jet printer with the ink tanks and print head included is not ''like or directly competitive'' with the product produced (print heads or ink tanks) by the subject firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 14th day of May 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–14594 Filed 6–10–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Federal Economic Statistics Advisory Committee; Notice of Renewal

The Secretary of Labor has determined that renewal of the charter of the Federal Economic Statistics Advisory Committee (FESAC) is necessary and in the public interest in connection with the performance of duties imposed upon the Commissioner of Labor Statistics by 29 U.S.C. 1, 2, 3, 4, 5, 6, 7, 8, and 9. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Federal Economic Statistics Advisory Committee.

Purpose and Objective: The Committee presents advice and makes recommendations to the Department of Labor, Bureau of Labor Statistics and the Department of Commerce, Bureau of Economic Analysis and Bureau of the Census (the Agencies) from the perspective of the professional economics and statistics community. The Committee examines the Agencies' programs and provides advice on statistical methodology, research needed, and other technical matters related to the collection, tabulation, and analysis of Federal economic statistics.

Balanced Membership Plan: The Committee is a technical committee that is balanced in terms of the professional expertise required. It consists of approximately 13 members, appointed by the Agencies. Its members are economists, statisticians, and behavioral scientists who are recognized for their attainments and objectivity in their respective fields.

Duration: Continuing.

Agency Contact: Cheryl Kerr, 202–691–7808.

Signed at Washington, DC, this 26th day of April, 2002.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 02–14548 Filed 6–10–02; 8:45 am]

BILLING CODE 4510–24–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Amendment of Charter

AGENCY: Nuclear Regulatory Commission.

ACTION: This notice is to announce the amendment of the Charter of Advisory Committee on Nuclear Waste (ACNW).

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) is planning to amend the Charter for the Advisory Committee on Nuclear Waste. The changes in the Charter wording are intended to more accurately reflect the Committee's current efforts, as well as prospective activities noted in its Action Plan. The changes recognize the wide range of activities undertaken by the Committee in materials-related issues of interest to the Commission. This action is being taken in accordance with the Federal Advisory Committee Act, after consultation with the Committee Management Secretariat, General Services Administration.

Under the amended charter the Committee's objectives, scope of activities and duties are as follows: (underlined material added, strikeout deleted.)

The Committee shall report to and advise the Nuclear Regulatory Commission (NRC) on nuclear *materials and* waste management. The bases of ACNW reviews include 10 CFR parts 20, 40, 50, 60, 61, 63, 70, 71 and 72, and other *closely related* regulations and legislative mandates. In performing its work, the Committee will examine and report on those areas of concern referred to it by the Commission and may undertake studies and activities on its own initiative, as appropriate. Emphasis will be on protecting the public health and safety in the disposal of nuclear waste *and the handling and processing of nuclear materials.* The Committee will undertake studies and activities related to nuclear *materials and* waste management such as transportation, storage and disposal facilities, the effects of low levels of ionizing radiation, decommissioning, materials safety, application of risk-informed, performance-based regulations, and evaluation of licensing documents, rules and regulatory guidance. The Committee will interact with representatives of the public, NRC, ACRS, other Federal agencies, State and local agencies, Indian Tribes, and private, international and other organizations as appropriate to fulfill its responsibilities.

FOR FURTHER INFORMATION CONTACT: John T. Larkins, Executive Director of the Committee, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7360.

Dated: June 5, 2002.

Andrew L. Bates,

Federal Advisory Committee, Management Officer.

[FR Doc. 02–14621 Filed 6–10–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of telephone conference meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene a telephone conference meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on July 8, 2002. The meeting will take place at the address provided below. At this meeting, the ACMUI will discuss the recommendations from the June 21, 2002, ACMUI subcommittee meeting. The ACMUI subcommittee is charged with formulating recommended changes to the training and experience requirements of authorized users in the revised 10 CFR part 35, Medical Use of Byproduct Material.

DATES: ACMUI will hold a public meeting on Monday, July 8, 2002, from 1 to 5 p.m.

ADDRESS FOR PUBLIC MEETING: U.S. Nuclear Regulatory Commission Auditorium, Two White Flint North Building, 11545 Rockville Pike, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION CONTACT: Linda M. Psyk, telephone (301) 415–0215; e-mail *lmp1@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Conduct of the Meeting

Manuel D. Cerqueira, M.D., will chair the meeting. Dr. Cerqueira will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Linda M. Psyk, U.S. Nuclear Regulatory Commission, Two White Flint North, Mail Stop T8F5, 11545 Rockville Pike, Rockville, MD 20852–2738. Submittals must be postmarked by June 21, 2002, and must pertain to the topics on the agenda for the meeting.

2. Questions from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection on NRC's Web site (*www.nrc.gov*) and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738, telephone (800) 397–4209, on or about August 30, 2002. Minutes of the meeting will be available on or about September 9, 2002.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, U.S. Code of Federal Regulations, part 7.

Dated: June 5, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–14622 Filed 6–10–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on June 26, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, June 26, 2002—8:30 a.m. until the conclusion of business

The Subcommittee will review portions of the Office of Nuclear Regulatory Research's Thermal-Hydraulic Research Program. Specific topics to be discussed include the Phase Separation Test Program being conducted in the Air-Water Test Loop for Advanced Thermal-Hydraulic Studies (''ATLATS'') test facility, and the status of the TRAC-M code consolidation and documentation effort and of the Reflood Test Program being conducted at Pennsylvania State University. The Subcommittee will also review the proposed resolution of Generic Safety Issue (GSI)–185, ''Control of Recriticality Following Small-Break LOCAs in PWRs''. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the Designated Federal Official, Mr. Paul A. Boehnert (telephone 301–415–8065) between 7:30 a.m. and 5 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda that may have occurred.

Dated: June 5, 2002.

Sher Bahadur,

Associate Director for Technical Support.

[FR Doc. 02–14620 Filed 6–10–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from May 17, 2002, through May 30, 2002. The last

biweekly notice was published on May 28, 2002 (67 FR 36924).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By July 11, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov.*

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: May 7, 2002.

Description of amendment request: The proposed amendment would relocate the Boration System Technical Specification (TS) requirements to the Technical Requirements Manual (TRM). Additional TS changes to retain boron dilution analysis restrictions would be made as a result of the relocation of the Boration System TS requirements to the TRM. The proposed amendment would also revise the TS Limiting Condition for Operation, action requirements, and surveillance requirements associated with the Emergency Core Cooling, Containment Spray and Cooling, and Auxiliary Feedwater Systems. The proposed changes would remove redundant testing requirements that are already addressed by the Inservice Testing Program, which is required pursuant to TS 4.0.5. The proposed changes would also increase the allowed outage time and shutdown time for an inoperable train (subsystem) of the Emergency Core Cooling System, consistent with standard industry guidelines and other Millstone Unit No. 2 TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will not alter the way any structure, system, or component functions, and will not alter the manner in which the plant is operated. The proposed changes to the TSs do not impact any system or component that could cause an accident. The ability of the equipment associated with the proposed changes to mitigate the design-basis accidents will not be affected. In addition, the design-basis accidents will remain the same postulated events described in the Millstone Unit No. 2 Final Safety Analysis Report, and the consequences of those events will not be affected. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any unusual operator actions. The proposed changes will not alter the way any structure, system, or component functions, and will not alter the manner in which the plant is operated. There will be no adverse effect on plant operation or accident mitigation equipment. The response of the plant and the operators following an accident will not be different. In addition, the proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes to the TSs do not impact any system or component that could cause an accident and will not result in any change in the operational characteristics of the associated accident mitigation equipment. The equipment associated with the proposed TS changes will continue to be able to mitigate the design-basis accidents as assumed in the safety analysis. In addition, the proposed changes will not affect equipment design and there are no changes being made to the TS-required safety limits or safety system settings. Therefore, the proposed changes will not result in a reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: James W. Clifford.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: April 24, 2002.

Description of amendment request: Entergy Operations, Inc. requests revision of the River Bend Station, Unit 1 licensing basis and Technical Specifications to utilize the alternative accident source term described in NUREG–1465.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed amendment to the River Bend Technical Specifications (TS) revises those specifications affected by the implementation of the alternative source term concepts in accordance with NUREG 1465. In addition, based on the alternative source term, changes are proposed to selected specifications associated with handling irradiated fuel in the primary containment or Fuel Building and CORE ALTERATIONS. The alternative source term changes affect the definitions, and the specifications for the Control Room Fresh Air System, Standby Gas Treatment System, Fuel Building Ventilation System and leakage rates for Primary Containment and the Personnel Airlocks seal air systems.

Entergy Operations, Inc. [Entergy] has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The alternative source term does not require modification of the facility; rather, once the occurrence of an accident has been postulated the new source term is an input to evaluate the potential consequences. The implementation of the alternative source

term has been evaluated in revisions to the analyses of the limiting design basis accidents at River Bend Station. Based on the results of these analyses, it has been demonstrated that, even with the requested Technical Specification changes, the dose consequences of these limiting events are within the regulatory guidance currently approved by the NRC for use with the alternative source term. This guidance is presented in Regulatory Guide 1.183, 10CFR50.67 and Standard Review Plan Section 15.0.1, ''Radiological Consequences Analyses Using Alternative Source Terms.''

Because the equipment affected by the revised operational conditions is not considered an initiator to any previously analyzed accident, inoperability of the equipment cannot increase the probability of any previously evaluated accident. The proposed requirements bound the conditions of the current design basis fuel handling accident analysis which concludes that the radiological consequences are within the acceptance criteria of NUREG 0800, Section 15.7.4 and General Design Criteria 19. As noted above, with the alternative source term implementation, the acceptance criteria are also being revised. The results of the revised Fuel Handling Accident demonstrate that the dose consequences are within the NRC regulatory guidance. This guidance is presented in Regulatory Guide 1.183, 10CFR50.67 and Standard Review Plan Section 15.0.1, ''Radiological Consequences Analyses Using Alternative Source Terms.''

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes using the alternative source term dose methodology are analytical in nature and do not physically alter the facility or of any equipment within the facility. Similarly, the alternative source term does not create any new initiators or precursors of a new or different kind of accident. The proposed changes to the Technical Specifications, while they revise certain performance requirements, do not involve any physical modifications to the plant.

The proposed changes related to shutdown controls based on the alternative source term do not create the possibility of a new or different kind of accident from any previous analyzed.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The changes above are associated with the implementation of a new licensing basis for River Bend Station. Approval of the basis change from the original source term in accordance with TID–14844 to the new alternative source term of NUREG–1465 is requested by this submittal. The results of the accident analyses prepared in support of this submittal are subject to revised acceptance criteria. These analyses have been performed using conservative methodologies as outlined in the regulatory guidance and conservatively represent the requested Technical Specification changes. Safety margins and analytical conservatisms have been evaluated and are well understood. The analyzed events have been carefully selected and margin has been retained to ensure that the analyses adequately bound all postulated event scenarios. The dose consequences of these limiting events are within the acceptance criteria also found in the latest regulatory guidance. This guidance is presented in Regulatory Guide 1.183, 10CFR50.67 and Standard Review Plan Section 15.0.1, ''Radiological Consequences Analyses Using Alternative Source Terms.''

The proposed changes continue to ensure that the doses at the exclusion area and low population zone boundaries as well as control room, are within the corresponding regulatory limits. In a similar way, the results of the existing analyses demonstrated that the dose consequences were within the applicable NRC-specified regulatory limit. Specifically, the margin of safety for these accidents is considered to be that provided by meeting the applicable regulatory limit for Alternate Source Term methodologies, which, for most events, is conservatively set at, or below, the 10CFR50.67 limit. With respect to the control room personnel doses, the margin of safety is the difference between the 10CFR100 limits and the regulatory limit defined by 10CFR50, Appendix A, General Design Criterion (GDC) 19.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, Entergy concludes that the proposed amendment(s) present no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 14, 2002.

Description of amendment request: Entergy Operations, Inc. is proposing that the River Bend Station, Unit 1 Operating License be amended to reflect a 1.7 percent increase in the licensed 100% reactor core thermal power level (an increase in reactor power level from 3,039 megawatts thermal to 3,091 megawatts thermal). These changes result from increased accuracy of the feedwater flow measurement to be achieved by utilizing high accuracy ultrasonic flow measurement instrumentation. The basis for this change is consistent with the revision, issued in June 2000, to appendix K to part 50 of title 10 of the Code of Federal Regulations, allowing operating reactor licensees to use an uncertainty factor of less than 2 percent of rated reactor thermal power in analyses of postulated design basis loss-of-coolant accidents.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The comprehensive analytical efforts performed to support the proposed change included a review of the Nuclear Steam Supply System (NSSS) systems and components that could be affected by this change. All systems and components will function as designed, and the applicable performance requirements have been evaluated and found to be acceptable.

The comprehensive analytical efforts performed to support the proposed uprate conditions included a review and evaluation of all components and systems that could be affected by this change. Evaluation of accident analyses confirmed the effects of the proposed uprate are bounded by the current dose analyses. All systems will function as designed, and all performance requirements for these systems have been evaluated for the uprate conditions and found acceptable. Because the integrity of the plant will not be affected by operation at the new power level conditions, it is concluded that all structures, systems, and components required to mitigate a transient remain capable of fulfilling their intended functions. The reduced uncertainty in the flow input to the power calorimetric measurement allows the current safety analyses to be used, with small changes to the core operating limits, to support operation at a core power of 3,091 megawatts thermal (MWt). As such, all Final Safety Analysis Report (FSAR) Chapter 15 accident analyses continue to demonstrate compliance with the relevant event acceptance criteria. Those analyses performed to assess the effects of mass and energy releases remain valid. The source terms used to assess radiological consequences have been reviewed and determined to either bound operation at the new power level condition, or new analyses were performed to verify all acceptance criteria continue to be met.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety related system.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Operation at the uprated power condition does not involve a significant reduction in a margin of safety. Analyses of the primary fission product barriers have concluded that all relevant design criteria remain satisfied, both from the standpoint of the integrity of the primary fission product barrier and from the standpoint of compliance with the required acceptance criteria. The calculated loads on all affected structures, systems and components have been shown to remain within design criteria for all design basis event categories. No NRC [U.S. Nuclear Regulatory Commission] acceptance criterion is exceeded.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: April 19, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.6.6 surveillance requirement (SR) to verify each spray nozzle on the containment spray ring headers at the top of containment dome is unobstructed. The current TS 3.6.6.8 requirement is to verify each spray nozzle every 10 years. The proposed requirement is to revise the frequency to ''Following maintenance that could result in nozzle blockage OR Following fluid flow through the nozzles.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change revises the Frequency for Technical Specifications (TS) Surveillance Requirement (SR) 3.6.6.8 for verifying each spray nozzle is unobstructed from ''10 years'' to ''Following maintenance that could result in nozzle blockage OR Following fluid flow through the nozzles.''

Analyzed events are initiated by the failure of plant structures, systems, or components. The Containment Spray (CS) system is not considered as an initiator of any analyzed event. The proposed change does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. No active or passive failure mechanisms that could lead to an accident are affected. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The initial conditions of Design Basis Accident (DBA) and transient analyses in the Byron/Braidwood Stations' UFSAR assume the CS system is operable.

The operability of the CS system in accordance with the proposed TS is consistent with the initial assumptions of the accident analyses and is based upon meeting the design basis of the plant. Since plant safety can be ensured at the proposed Frequency, we are proposing to revise the CS system testing provisions to require nozzle testing only after activities that could result in nozzle blockage, i.e., following maintenance that could result in nozzle blockage or following fluid flow through the nozzles. Nozzle blockage is considered unlikely during periods without maintenance or without fluid flow through the nozzles, since the nozzles are of a passive design and the system is kept in a normally dry state, thus minimizing corrosion susceptibility. In addition, the location of the nozzles at the top of the containment dome limits the possibility of the introduction of foreign material from sources external to the CS system. The proposed Frequency will continue to provide confidence that an unobstructed flow path is available, and will preclude the need for unnecessary testing when no activities have occurred that would introduce debris to the spray ring headers, or when no other active degradation mechanism is present. Operability of the CS system will not be affected. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve the use or installation of new equipment. Installed equipment is not operated in a new or different manner. No new or different system interactions are created, and no new processes are introduced. The current foreign material exclusion practices have been reviewed and judged sufficient to provide high confidence that debris will not be introduced during times when the CS system boundary is breached. The design of the CS system at Braidwood and Byron Stations precludes borated water from reaching the spray nozzles, except during a CS actuation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed change does not introduce any new setpoints at which protective or mitigative actions are initiated. No current setpoints are altered by this change. The design and functioning of the CS system is unchanged. Since the system is not susceptible to corrosion induced obstruction nor is the introduction of foreign material from external sources likely, and the design of the CS system at Braidwood and Byron Stations precludes borated water from reaching the spray nozzles except during a CS actuation, the proposed testing Frequency is sufficient to provide high confidence that the CS system will continue to function as designed. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, based on the above evaluation, we have concluded that the proposed change does not involve any significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: February 15, 2002.

Description of amendment request: Exelon proposed to increase the trip setpoints for Items 3.b and 3.c in Table 3.3.2–2, for the Reactor Water Cleanup System (RWCS) steam leak detection temperature isolation actuation instrumentation in the technical specifications.

Basis for proposed no significant hazards consideration determination: As required by Section 50.91(a) the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The RWCS is not required for safety purposes nor is it required to operate after a design-basis accident. The RWCS instrumentation and controls are not required for safe operation of the reactor. They provide a means of monitoring parameters and protecting the system. The increase in the isolation setpoint and allowable value for the RWCS pump room high ambient temperature and high differential temperature will not make any physical changes (modification) to the plant equipment. Therefore, the proposed changes to the RWCS setpoints will not increase the probability of an accident previously evaluated.

This license amendment request (LAR) does not increase the consequences of an accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR). This proposed change has no impact on the high-energy line break or loss-of-coolant accident (LOCA) accident analyses. This LAR does not adversely affect mitigating systems, structures or components (SSCs), and does not adversely affect the initial conditions of any accidents. Affected equipment will remain within the limitations of the Environmental Qualification Program. Redundancy and diversity of mitigating systems are unchanged as a result of this LAR. This LAR does not affect onsite or offsite radiological consequences of any accident previously evaluated in the UFSAR.

Therefore, this LAR does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The increase in the RWCS pump room high ambient temperature and high differential temperature settings proposed by this LAR does not change any SSC. This LAR does not create new operating or failure modes. Existing instruments are not accident initiators in any failure mode and changing settings does not change the instrument's functions. Therefore, this LAR does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. This LAR will allow the plant to operate at higher ambient temperatures in the RWCS pump rooms during normal operation. This change does not create additional heat loads or change the way any of the equipment is operated. No safety-related setpoints are associated with the RWCS system. The RWCS system instrumentation and controls are not required for safe operation of the reactor. They provide a means of monitoring parameters and protecting the system. Therefore, a change to the TSs for RWCS pump room high ambient temperature and high differential temperature limits to the new setpoints is not considered a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward Cullen, Vice President & General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: James W. Clifford.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: April 24, 2002.

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) to relocate to the Seabrook Station Technical Requirements (SSTR) Manual, specific pressure, differential pressure and flow values, as well as specific test methods, contained in Surveillance Requirements (SRs) 4.6.2.1, ''Containment Spray System,'' and 4.7.1.2.1b, ''Auxiliary Feedwater System.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to relocate the specific pump pressure and flow criteria TS SRs to the SSTR are administrative in nature and do not adversely affect accident initiators or precursors, or alter the design assumptions, conditions, and configuration of the facility or the manner in which it is operated. The proposed changes do not alter or prevent the ability of structures, systems, or components to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR).

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not alter the design assumptions, conditions, or configuration of the facility or the manner in which it is operated. The proposed changes have no adverse impact on component or system interactions. Since there are no changes to the design assumptions, parameters, conditions and configuration of the facility, or the manner in which the plant is operated and surveilled, the proposed changes do not create the possibility of a new or different accident from any previously analyzed.

3. The proposed changes do not involve a significant reduction in a margin of safety.

There is no adverse impact on equipment design or operation and there are no changes being made to the TSs themselves that would adversely affect any current margin of safety. The proposed changes are administrative in nature and impose alternative procedural and programmatic controls on these parameter limits.

Therefore, relocation of the specific pump pressure and flow criteria do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William J. Quinlan, Esq. Assistant General Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Section Chief: James W. Clifford.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant (DCPP), Units 1 and 2, San Luis Obispo County, California

Date of amendment requests: April 10, 2002.

Description of amendment requests: The proposed license amendments would revise several of the Required Actions in the DCPP Technical Specifications (TS) that require suspension of operations involving

positive reactivity additions or suspension of operations involving reactor coolant system (RCS) boron concentration reductions. In addition, this license amendment request (LAR) proposes to revise several Limiting Condition for Operation (LCO) Notes that preclude reductions in RCS boron concentration when a reactor coolant pump(s) and/or a residual heat removal pump(s) are removed from operation. The proposed changes would allow small, controlled, safe insertions of positive reactivity, but limit the introduction of positive reactivity to ensure that compliance with the required shutdown margin or refueling boron concentration limits will still be satisfied.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no hardware changes. The reactor trip system instrumentation and reactivity control systems will be unaffected. Protection systems will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request are maintained.

The probability and consequences of accidents previously evaluated in the Final Safety Analysis Report Update (FSAR) are not adversely affected because the changes to the Required Actions and LCO Notes assure the limits on SDM [shutdown margin] and refueling boron concentration continue to be met, consistent with the analysis assumptions and initial conditions included within the safety analysis and licensing basis. The activities covered by this LAR are routine operating evolutions. The proposed changes do not reduce the capability to borate the RCS.

The equipment and processes used to implement RCS boration or dilution evolutions are unchanged and the equipment and processes are commonly used throughout the applicable modes under consideration. There will be no degradation in the performance of or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes or any changes in the method by which any safety-related plant system performs its safety function. This amendment will not affect the normal method of plant operation or change any operating limits. The proposed changes permit the conduct of normal operating evolutions when additional controls over core reactivity are imposed by the TS. The proposed changes do not introduce any new equipment into the plant or alter the manner in which existing equipment will be operated. The changes to operating procedures are minor, with clarifications provided that required limits must continue to be met. No performance requirements or response time limits will be affected. These changes are consistent with assumptions made in the safety analysis and licensing basis regarding limits on SDM and refueling boron concentration.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this LAR. There will be no adverse effect or challenges imposed on any safety-related system as a result of this LAR.

This LAR does not alter the design or performance of the reactor protection system, nuclear instrumentation system, or solid state protection system used in the plant protection systems.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not alter the limits on SDM or refueling boron concentration. These limits continue to assure that core parameters remain within the bounds of the accident analysis. The nominal trip setpoints specified in the TS and the safety analysis limits assumed in the transient and accident analyses are unchanged. None of the acceptance criteria for any accident analysis is changed.

The proposed changes do not affect the manner in which safety limits or limiting safety system settings are determined, nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. Also, the proposed changes do not impact the overpower limit, departure from nucleate boiling ratio limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor ($F\Delta H$), loss of coolant accident peak cladding temperature, peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria will continue to be met.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant (DCPP), Units 1 and 2, San Luis Obispo County, California

Date of amendment requests: April 15, 2002.

Description of amendment requests: The proposed license amendments would approve changes in the implementation of the DCPP Control of Heavy Loads Program and other analyses, design and procedure changes required to implement a dry cask Independent Spent Fuel Storage Installation (ISFSI) at DCCP.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

With the Holtec International (Holtec) HI-STORM 100 System and the associated design and handling procedures, most cask drops and other events, which could damage other spent fuel, have been precluded through redundant handling systems, control system upgrades, and mechanical stops/electrical interlocks that preclude crane movement over spent fuel, meeting PG&E's commitments to the guidelines of NUREG–0612, ''Control of Heavy Loads at Nuclear Power Plants.'' For those remaining cases where a cask drop is still credible, the impact-limiter design ensures the deceleration of the contained spent fuel remains below fuel design limits, preventing damage to the contained fuel assemblies (and associated structures), and meeting the analysis guidance of NUREG–0612. As a result of this design approach, a cask-handling accident that results in a significant offsite radiological release is not considered credible.

Other Diablo Canyon Power Plant (DCPP) licensing-basis events, such as the drop of a spent fuel assembly, have not been affected by these changes and remain bounding events for potential radiological consequences.

Revision of the DCPP Control of Heavy Loads Program ensures that PG&E's commitments to NUREG–0612 guidelines will protect the new fuel storage locations and the new transfer cask/multi-purpose canister (MPC) loading/unloading activities.

The addition of restraint structures and use of impact limiters preclude adverse effects from seismic events and/or cask drops or tipovers, assuring that the fuel, MPC, transfer cask, and other potentially affected 10 CFR 50 structures remain within their design bases. The addition and installation of this equipment will be done after necessary evaluation and analysis is performed, to ensure the equipment does not introduce any unacceptable effect (e.g., seismic interaction).

The proposed design of the dry cask system, the handling system, and associated procedural controls provide assurance that (1) operational errors and mishandling events, and (2) support system malfunctions will not result in an increase in the probability or consequence of an accident previously analyzed.

The proposed changes to use the Holtec HI-STORM 100 system have been evaluated for seismic events and tornado missile impacts and it has been determined that these changes will not result in an increase in the probability or consequences of an accident previously evaluated.

The Fire Protection Program will ensure that the combustible materials are properly controlled such that the total combustibles meet the current program commitments.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The engineering design measures and the handling procedures preclude the possibility of new or different kinds of accidents. Damage to 10 CFR 50 SSCs [structures, systems and components] from the cask handling and associated activities, and events resulting from possible damage to contained fuel, have been carefully considered in the following safety analyses. Both the types of accidents and the results remain within the envelope of existing analyses, as demonstrated by the PG&E and Holtec analyses.

In Supplement No. 2 to the Safety Evaluation of DCPP (Reference 7.18 [of the April 15, 2002, license amendment request]), the NRC reviewed and accepted Amendment 27 of the original DCPP Final Safety Analysis Report (FSAR) analysis of a cask-drop accident. Amendment 22 to Facility Operating License No. DPR–80 and Amendment 21 to Facility Operating License No. DPR–82 allowed expansion of the spent fuel pool (SFP) storage capacity. In the safety evaluation for these amendments, the NRC reviewed the cask-drop accident and noted that the licensee had proposed administrative controls that would preclude the movement of a spent-fuel shipping cask in an exclusion zone over, and in the vicinity of, stored spent fuel that could result in a cask drop or tipping accident damaging stored spent fuel.

Supplement No. 27 to the Safety Evaluation Report for DCPP Unit 1 (Reference 7.19 [of the April 15, 2002, license amendment request]) and in Supplement No. 31 to the Safety Evaluation Report for Unit 2 (Reference 7.20 [of the April 15, 2002, license amendment request]) included the review and acceptance of the DCPP Control of Heavy Loads Program.

The rupture of MPC dewatering, vacuum, forced helium dehydration or related closure system lines or the malfunction of equipment during cask handling operations resulting in radiological consequences are bounded by the DCPP Final Safety Analysis Report (FSAR) Update fuel-handling accident analysis.

Other design considerations, such as SFP [spent fuel pool] thermal, water chemistry and clarity, criticality, and structural, were evaluated and determined not to introduce the possibility of a new or different kind of accident from any previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

With the Holtec HI-STORM 100 System, and the associated design and handling procedures, most cask drops and other events have been completely precluded through redundant load-handling systems, providing defense-in-depth as described in NUREG–0612, and meeting PG&E's commitments to the guidance of NUREG–0612. In those remaining cases where a cask drop is still credible, impact limiter design ensures that the deceleration of the contained spent fuel remains below fuel design limits, preventing damage to the contained fuel assemblies (and associated structures), and meeting the analysis guidelines of NUREG–0612. As a result of this design approach, the margin of safety has been maintained through the elimination of certain drops and the associated structural challenges.

Other DCPP licensing-basis events, such as the drop of a spent fuel assembly, have not been affected by these changes and remain bounding events.

Revision of DCPP Control of Heavy Loads Program to incorporate the additional restrictions on heavy loads movement will not affect the procedures or methodology used and will, therefore, not affect margins.

The addition of restraint structures and use of impact limiters preclude adverse effects from seismic events and/or cask drops or tipovers, assuring that the fuel, MPC, transfer cask, and other potentially affected 10 CFR 50 structures remain within their design bases. Since design-basis criteria are fully satisfied, there is no impact on the margin of safety.

The Fire Protection Program will continue to ensure that the combustible materials are properly controlled such that the total combustibles meet the current program commitments. Thus, there are no significant reductions in margin of safety associated with these changes.

Other design considerations, such as SFP thermal, water chemistry, criticality, and structural, were evaluated and determined to not involve a reduction in a margin of safety.

Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: April 8, 2002.

Brief description of amendments: The proposed change would revise Technical Specification (TS) 3.4.16, ''RCS [Reactor Coolant System] Specific Activity,'' to lower the Limiting Condition For Operation and associated Surveillance Requirements for Dose Equivalent Iodine-131 in the Reactor Coolant System from a specific activity of 1.0 μCi/gm to 0.45 μCi/gm. The change also includes approval of proposed changes to Technical Specification Bases for Main Steam Line Break post-accident radiological dose consequences analysis that was previously approved for implementing the Comanche Peak Steam Electric Station Steam Generator Alternate Repair Criteria.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to revise Technical Specification (TS) 3.4.16 ''Reactor Coolant System Specific Activity'' to reduce the Limiting Condition For Operation (LCO) for Dose Equivalent I–131 in the reactor coolant from a specific activity of 1.0 μCi/gm to 0.45 μCi/gm and the revised main steam line break (MSLB) radiological consequence analysis are used to determine post-accident dose. They are not related to any accident initiator. Therefore, this change cannot increase the probability of an accident.

The revised MSLB offsite and control room radiological consequences analysis dose results are within 10 CFR Part 100 and 10 CFR Part 50, Appendix A Criterion 19 limits and the NUREG–0800 SRP [Standard Review Plan] section 15.1.5 and section 6.4 guideline values.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to revise TS 3.4.16 ''Reactor Coolant System Specific Activity'' to reduce the LCO for Dose Equivalent I–131 in the reactor coolant from a specific activity of 1.0 μCi/gm to 0.45 μCi/gm and the revised MSLB radiological consequence analysis do not involve any physical plant changes. The change does not involve changes in operation of the plant that could introduce a new failure mode for creating an accident or affect the mitigation of an accident.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed change to revise TS 3.4.16 ''Reactor Coolant System Specific Activity'' to reduce the LCO for Dose Equivalent I–131 in the reactor coolant from a specific activity of 1.0 μCi/gm to 0.45 μCi/gm is a conservative change in that this reduced TS limit, when used in applicable plant radiological dose consequence analysis models with all other input parameters held constant, calculates decreased dose consequences to the thyroid. The change, with all other analysis input parameters held constant, increases the margin to acceptance limits. Therefore, this change does not result in a significant reduction in the margin provided by TS 3.4.16.

The revised MSLB offsite and control room radiological consequences analysis dose results are within 10 CFR Part 100 and 10 CFR Part 50, Appendix A Criterion 19 limits and the NUREG–0800 SRP section 15.1.5 and section 6.4 guideline values.

Therefore the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: January 31, 2002.

Brief description of amendments: The amendments revised Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of ''* * * up to 24 hours, or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours, or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement is added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Date of issuance: May 22, 2002.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 253 and 229.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 19, 2002 (67 FR 12600). The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated May 22, 2002.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: August 1, 2001, as supplemented by letters dated November 28, 2001, December 17, 2001, January 24, 2002, February 4, 2002 (two letters), April 25, 2002, May 10, 2002 and May 28, 2002.

Description of amendment request: The amendments changed the Technical Specifications (TS) to replace the current accident source term used in design basis radiological analyses with an alternative source term pursuant to 10 CFR 50.67, ''Accident Source Term.'' License Conditions were added to the Unit 2 Operating License.

Date of issuance: May 30, 2002.

Effective date: Unit 1, upon issuance. Unit 2, upon completion of Refueling Outage 15.

Amendment Nos: 221 and 246.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments changed the Technical Specifications and added License Conditions to DPR–62 only.

Date of initial notice in ***Federal Register:*** September 5, 2001 (66 FR 46477). The supplements contained clarifying information only, and did not change the initial no significant hazards consideration determination or expand the scope of the initial **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 30, 2002.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: August 24, 2002, as supplemented March 26, 2002.

Brief description of amendment: The amendment revises the Technical Specifications to delete Required Action 3.3.1.1.J.2, which specifies that the oscillation power range monitor upscale trip function be restored to operable status within 120 days when it is determined to be inoperable.

Date of issuance: May 24, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 146.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 28, 2001 (66 FR 59503). The March 26, 2002, supplemental letter provided additional clarifying information that was within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 24, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: September 20, 2001, as supplemented on January 25 and April 29, 2002.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.8, ''Refueling, Fuel Storage and Operations with the Reactor Vessel Head Bolts Less Than Fully Tensioned,'' TS Table 4.1–2, ''Frequencies for Sampling Tests,'' and TS 5.4, ''Fuel Storage,'' to allow credit for soluble boron in the criticality analysis for the spent fuel pit (SFP). The amendment also incorporates changes to the SFP rack layout by dividing it into sub-regions and specifying requirements for fuel assembly burnup and soluble boron concentration for various loading configurations in these sub-regions.

Date of issuance: May 29, 2002.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 227.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55012). The January 25 and April 29, 2002, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 29, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York County, Pennsylvania

Date of application for amendments: November 30, 2001.

Brief description of amendments: These amendments revised Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement is added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Date of issuance: May 23, 2002.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendments Nos.: 243, 247.

Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 19, 2002 (67 FR 7417). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 23, 2002.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Beaver County, Pennsylvania

Date of application for amendments: May 22, 2001.

Brief description of amendments: The amendments allowed the relocation of the Technical Specification (TS) sections associated with the curie content limit for liquid and gaseous waste storage and the TS sections associated with the explosive gas concentration limits to licensee controlled documents. In addition, the amendments allow for revisions to the reporting requirements of TS 6.9.3, ''Annual Radioactive Release Report.''

Date of issuance: May 21, 2002.

Effective date: Effective as of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 250, 130.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 3, 2001 (66 FR 50467). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 21, 2002.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Beaver County, Pennsylvania

Date of application for amendment: November 8, 2000, as supplemented February 6, May 7, and November 21, 2001.

Brief description of amendment: The amendment changed the technical specifications associated with the deletion of TS 3/4.4.1.6, ''Reactor Coolant Pump—Startup.''

Date of issuance: May 30, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No: 131.

Facility Operating License No. NPF–73: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 27, 2000 (65 FR 81917). The February 6, May 7, and November 21, 2001, letters provided additional information that clarified the application but did not expand the scope of the application as originally noticed or change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 2002.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: April 9, 2002, as supplemented April 25, 2002.

Brief description of amendments: The amendments consist of changes to the Technical Specifications (TSs) in response to the application dated April 9, 2002, as supplemented April 25, 2002. In the April 25, 2002, supplemental letter, the licensee requested that the portion of the original application dealing with the Unit 2 AB and CD train batteries for Unit 2 only be processed on an emergency basis. By letter dated April 26, 2002, the Nuclear Regulatory Commission issued Amendment No. 249 for Unit 2. The amendments revise the Surveillance Requirement (SR) for the Train AB, and CD batteries in TS 4.8.2.3.2.c.1 for Unit 1 and SR TS 4.8.2.5.2.c.1 for the N train batteries in both Units 1 and 2. The amendments modify the requirements to verify that battery cells, cell plates and racks show no visual indication of physical damage or abnormal deterioration. The amendments would allow the operability of batteries exhibiting damage or deterioration to be determined by an evaluation. The amendments are consistent with an NRC-approved change to the Standard Technical Specifications for Westinghouse plants (NUREG 1431, Revision 1) as documented in Technical Specification Task Force Standard Technical Specification.

Date of issuance: May 30, 2002.

Effective date: As of the date of issuance and shall be implemented within 7 days.

Amendment Nos.: 269 and 250.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 25, 2002 (67 FR 20552). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 30, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: March 28, 2002.

Brief description of amendment: Amendment changes Technical Specification 3.0.3 to allow a longer time before entering a limiting condition for operation in the event of a missed surveillance and adds requirements to (1) perform a risk evaluation for any surveillance delayed greater than 24 hours and (2) manage the risk impact.

Date of issuance: May 30, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 246.

Facility Operating License No. DPR–49: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 30, 2002 (67 FR 21290). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 2002.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 14, 2001, as supplemented by letters dated January 15 and April 15, 2002.

Brief description of amendment: The amendment revises Technical Specification (TS) 2.10.4(5)(a)(iii), ''DNBR [departure from nucleate boiling ratio] Margin During Power Operation Above 15% Rated Power,'' to decrease the minimum required reactor coolant system flow rate from 206,000 gallons per minute (gpm) to 202,500 gpm. In addition, the Bases section for TS 2.10.4 has been revised to be consistent with the approved change to the TS.

Date of issuance: May 24, 2002.

Effective date: May 24, 2002 , and to be implemented within 30 days from the date of issuance.

Amendment No.: 209.

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 22, 2002 (67 FR 2927). The January 15 and April 15, 2002, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 24, 2002.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: December 10, 2001.

Description of amendment request: The proposed amendments revised the Technical Specifications (TSs) to incorporate the Nuclear Regulatory Commission (NRC)-approved generic change Technical Specification Task Force–287, Revision 5, to the ''Standard Technical Specifications for General Electric Plants (BWR/4),'' NUREG–1433, Revision 1. Specifically, the changes: (a) Inserted a note in the Limiting Condition for Operation (LCO) in TS 3.7.3 to state that the control room habitability envelope boundary may be opened intermittently under administrative control; (b) inserted a new LCO Action B in TS 3.7.3 to allow 24 hours to restore the control room habitability envelope boundary to operable status if two control room emergency outside air supply (CREOAS) subsystems should become inoperable due to an inoperable control room habitability envelope boundary in Modes 1, 2 and 3; (c) re-labeled the

existing LCO Actions B, C, D, and E to C, D, E, and F respectively; and (d) revised the existing LCO Action D to require immediate entry into LCO 3.0.3 when two CREOAS subsystems are inoperable for situations other than when the inoperability is due to an inoperable control room habitability envelope boundary. Minor formatting and editorial changes were also made.

Date of issuance: May 17, 2002.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment Nos.: 203, 177.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 5, 2002 (67 FR 10014). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 17, 2002.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: March 11, 2002.

Brief description of amendments: The amendments revise TS Section 1.1, Definitions, to change the definition of response time testing as it is applied to the Engineered Safety Features, and the Reactor Protective System, based on approved Technical Specification Task Force (TSTF) Traveler TSTF–368, Revision 0, ''Incorporate Combustion Engineering Owners Group (CEOG) Topical Report to Eliminate Pressure Sensor Response Time Testing.''

Date of issuance: 1 May 22, 2002.

Effective date: May 22, 2002, to be implemented within 60 days of issuance.

Amendment Nos.: Unit 2–188; Unit 3–179.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 16, 2002 (67 FR 18648). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 22, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: August 31, 2001, as supplemented by letter dated November 15, 2001, February 20 (two letters), dated February 21, and March 14, 2002.

Brief description of amendments: The amendments revised the Technical Specifications to extend the completion times for the required actions associated with restoring an inoperable emergency diesel generator.

Date of issuance: May 17, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 231 and 172.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 17, 2001 (66 FR 52803). The supplements dated November 15, 2001, February 20 (two letters), February 21, and March 14, 2002, provided clarifying information that did not change the scope of the August 31, 2001, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 17, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of application for amendment: May 21, 2001.

Brief description of amendment: The amendment revised the Technical Specifications to eliminate the response time testing requirements for the reactor protection system signals of reactor high steam dome pressure and reactor vessel water level low.

Date of issuance: May 17, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 173.

Renewed Facility Operating License No. NPF–5: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 12, 2001 (66 FR 31713). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 2002.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public

comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Assess and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document room (PDR) Reference staff at 1–800–397–4209, 304–415–4737 or by email to *pdr@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By July 11, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests

for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: May 29, 2002.

Brief description of amendment: This amendment revises the Technical Specification (TS) 3/4.3.3.6 ''Accident Monitoring Instrumentation'' and associated Bases for Reactor Vessel Level and In Core Temperature monitoring to be consistent with NUREG–1431, Revision 2, ''Standard Technical Specifications Westinghouse Plants.''

Date of issuance: May 30, 2002.

Effective date: May 30, 2002.

Amendment No. 110.

Facility Operating License No. NPF–63. Amendment revises the TS.

Public comments requested as to proposed no significant hazards consideration (NSHC):

No. The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a Safety Evaluation dated May 30, 2002.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Thomas Koshy, Acting.

Dated at Rockville, Maryland, this 3rd day of June, 2002.

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–14339 Filed 6–10–02; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Notice of Extension of Comment Period for Draft Information Quality Guidelines

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice.

SUMMARY: On May 1, 2002, the Pension Benefit Guaranty Corporation (PBGC) published a notice in the **Federal Register** (67 FR 21779) announcing the availability of its draft information quality guidelines on the PBGC's Web site (*http://www.pbgc.gov*), and inviting public comments on the draft guidelines by May 31, 2002. This notice announces an extension of the May 31, 2002, comment deadline to June 30, 2002.

DATES: Comments must be received on or before June 30, 2002.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments also may be sent by Internet e-mail to *reg.comments@pbgc.gov*. Copies of comments may be obtained by writing the PBGC's Communications and Public Affairs Department (CPAD) at Suite 240 at the above address or by visiting or calling CPAD during normal business hours (202–326–4040).

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or James L. Beller, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: On February 22, 2002, the Office of Management and Budget (OMB) published ''Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication'' in the **Federal Register** (67 FR 8452). In accordance with these OMB guidelines, the PBGC posted draft information quality guidelines on its Web site and, in a **Federal Register** notice (67 FR 21779, May 1, 2002), announced the availability of those draft guidelines and invited public comment by May 31, 2002.

Under OMB guidelines, agencies were to consider any public comments, make appropriate revisions, and submit draft information quality guidelines for OMB review no later than July 1, 2002. In response to public requests to some agencies to extend their comment deadline, OMB has informed the PBGC that it intends to extend the deadline for agencies to submit their draft guidelines for OMB review to August 1, 2002. Consistent with OMB's extension, the PBGC is extending the May 31, 2002, comment deadline to June 30, 2002.

Issued in Washington, DC, on this 6th day of June, 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–14658 Filed 6–10–02; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 15c1–5, SEC File No. 270–422, OMB Control No. 3235–0471

Rule 15c1–6, SEC File No. 270–423, OMB Control No. 3235–0472

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 USC 3501 *et seq.*), the Securities and Exchange Commission (Commission) is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 15c1–5 (17 CFR 240.15c1–5) states that any broker-dealer controlled by, controlling, or under common control with the issuer of a security that the broker-dealer is trying to sell to or buy from a customer must give the customer written notification disclosing the control relationship at or before completion of the transaction. The Commission estimates that 360 respondents collect information annually under Rule 15c1–5 and that approximately 3,600 hours would be required annually for these collections.

Rule 15c1–6 (17 CFR 240.15c1–6) states that any broker-dealer trying to sell to or buy from a customer a security in a primary or secondary distribution in which the broker-dealer is participating or is otherwise financially interested must give the customer written notification of the broker-dealer's participation or interest at or before completion of the transaction. The Commission estimates that 725 respondents collect information annually under Rule 15c1–6 and that approximately 7,250 hours would be required annually for these collections.

Written comments are invited on: (a) Whether the existing collection of information is necessary for the proper performance of the functions of the agency, including whether the

information continues to have practical utility; (b) the accuracy of the agency's estimate of the burden of the existing collection of information; (c) ways to enhance the quality, utility, and clarity of the information being collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: June 4, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14572 Filed 6–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 17f–2(e), SEC File No. 270–37, OMB Control No. 3235–0031.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17f–2(e) requires members of national securities exchanges, brokers, dealers, registered transfer agents, and registered clearing agencies claiming exemption from the fingerprinting requirements of Rule 17f–2 to prepare and maintain a statement supporting their claim for exemption. This requirement assists the Commission and other regulatory agencies with ensuring compliance with Rule 17f–2.

Notices prepared pursuant to Rule 17f-2(e) must be maintained for as long as the covered entity claims an exemption from the fingerprinting requirements of Rule 17f–2. The recordkeeping requirement under Rule 17f–2(e) is mandatory to assist the Commission and other regulatory agencies with ensuring compliance with the Rule 17f–2. Approximately 75 respondents incur an annual total burden of 37.5 hours complying with the requirements of Rule 17f–2(e). This rule does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW. Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 5, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14611 Filed 6–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 10, 2002:

Open Meetings will be held on Wednesday, June 12, 2002, at 10:00 a.m. and Thursday, June 13, 2002 at 10:00 a.m., in Room 1C30, the William O. Douglas Room, and a closed meeting will be held on Thursday, June 13, 2002, immediately following the Open Meeting.

Commissioner Hunt, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (8), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (8), (9)(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the open meeting scheduled for Wednesday, June 12, 2002, will be:

1. The Commission will consider whether to issue an order approving the application by E.ON AG (''E.ON''), a German corporation that is a utility holding company exempt by rule 5 under the Public Utility Holding Company Act of 1935 (''Act''), to acquire Powergen plc, a British corporation that is a registered holding company. Powergen is subject to the Act because of its ownership of Louisville Gas & Electric and Kentucky Utilities, two utility subsidiaries that operate primarily in Kentucky. The acquisition involves novel issues under the Act, including permitting a registered holding company with foreign utility operations to retain ownership of a foreign water utility, permitting E.ON to invest additional money in businesses that the Act requires them to divest in order to increase the price at which those businesses will likely be sold, requiring a registered holding company to divest nonconforming companies within five years rather than the typical two or three years, and permitting E.ON to invest in equity securities of third parties in an amount designed to allow it to meet future pension liabilities and nuclear decommissioning costs without making those investments through a separate entity.

The Commission will also consider whether to issue an order approving a related application by E.ON to engage in financing transactions to be entered into subsequent to the acquisition of Powergen. E.ON and its subsidiaries, upon approval of the acquisition of Powergen, propose to issue equity and debt securities in an aggregate amount of up to $75 billion. E.ON and its subsidiaries also propose to engage in financing activities including interest rate and currency risk management devices, profit and loss transfer agreements, money pools, and various additional transactions. E.ON and its subsidiaries propose to use the proceeds of these financing transactions to support existing businesses, to make further acquisitions of Exempt Wholesale Generators, Foreign Utility Companies, and Energy Related Companies, as well as possible future acquisitions of public utility companies regulated under the Act.

2. The Commission will consider whether to adopt final amendments to Exchange Act Rules 15c3–3, 17a–3, 17a–4, 17a–5, 17a–7, 17a–11, and 17a–13. These amendments are designed to avoid duplicative or conflicting

regulations applicable to firms that are fully-registered with the Commodity Futures Trading Commission (''CFTC'') as a futures commission merchant and fully-registered with the SEC as a broker-dealer relating to the treatment of customer funds, securities or property, maintenance of books and records, financial reporting or other financial responsibility rules involving security futures products (''SFPs''), as directed by the Commodity Futures Modernization Act of 2000. The amendments are also designed to avoid certain conflicting or duplicative recordkeeping, reporting, telegraphic notice, and quarterly count requirements involving SFPs for firms that are ''notice'' registered with the Commission under Exchange Act Section 15(b)(11)(A). These amendments were developed in consultation with the CFTC.

3. The Commission will consider whether to issue, jointly with the CFTC, an order to permit the listing of security futures based on shares of exchange-traded funds, trust issued receipts, or shares of a closed-end management investment company.

4. The Commission will consider whether to issue an order granting exemptive relief pursuant to Sections 15(a)(2) and 36(a)(1) of the Exchange Act in response to an application from Evangelical Christian Credit Union for an exemption to permit it to offer to sweep account balances into no-load money market funds on the same terms and conditions that would be applicable to banks when the Gramm-Leach-Bliley Act amendments to the definition of ''broker'' become effective. In light of an informal request for similar relief on behalf of other credit unions, the Commission also will consider whether to make such relief applicable to all credit unions with deposits insured by the National Credit Union Share Insurance Fund. In addition, the Commission will consider whether to request public comment on the issues such an exemption would raise for review in connection with consideration of amendments to the May 11, 2001 interim final rules implementing the functional regulation exceptions from broker-dealer registration of the Gramm-Leach-Bliley Act.

5. The Commission will consider whether to propose amendments to Form 8–K under the Securities Exchange Act of 1934 to add several new disclosure items to Form 8–K, amend many of the existing Form 8–K disclosure items, shorten the Form 8–K filing deadline to two business days, and reorganize the disclosure items into logical categories. These proposed amendments are part of the series of initiatives to change the corporate disclosure rules that the Commission announced its intention to consider in Press Release 2002–22 on February 13, 2002.

6. The Commission will consider whether to issue proposed rules that would require a company's principal executive officer and principal financial officer to certify the company's quarterly and annual reports. In addition, the proposed rules would require companies to regularly review and evaluate their procedures that enable them to fulfill their periodic reporting obligations.

The subject matter of the Open Meeting scheduled for Thursday, June 13, 2002, will be:

1. The Commission will hear oral argument on an appeal by George J. Kolar from the decision of an administrative law judge. The law judge found that Kolar failed to exercise reasonable supervision over a salesman in Dean Witter's Troy, Michigan branch office, who violated registration and antifraud provisions of the securities laws. The law judge ordered that Kolar be suspended for six months from acting in a supervisory capacity with any registered broker or dealer, and fined him $20,000.

The subject matter of the Closed Meeting scheduled for Thursday, June 13, 2002, will be:

Regulatory matter regarding a financial institution;

Formal orders of investigation;

Institution and settlement of injunctive actions;

Report of investigation;

Institution and settlement of administrative proceedings of an enforcement nature; and a

Post argument discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: June 6, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14712 Filed 6–6–02; 4:32 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46026; File No. SR–Amex–2002–12]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto To Retroactively Apply Amended Options Trading Fees

June 4, 2002.

On March 1, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to retroactively apply options trading fees that were amended in SR-Amex–2002–11.[3] Specifically, the Exchange proposes to impose the fee change as of December 1, 2001. The Amex filed Amendment No. 1 to the proposed rule change on April 16, 2002.[4]

The proposed rule change, as amended, was published for comment in the **Federal Register** on April 26, 2002.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act [6] and the rules and regulations thereunder applicable to a national securities exchange.[7] The Commission finds specifically that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45783 (April 18, 2002), 67 FR 20851 (April 26, 2002) for a description of these fees changes. These fee amendments were filed pursuant to Section 19(b)(3)(A)(ii) of the Act and were effective upon filing on April 16, 2002.

[4] *See* letter from Claire P. McGrath, Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 12, 2002 (''Amendment No. 1''). In Amendment No. 1, the Amex amended the proposal to incorporate the Exchange's reasons for not charging specialists and registered options traders the recent increase in transaction, comparison and floor brokerage fees for accommodation trades or trades executed pursuant to reversals and conversions, dividend spreads, and box spreads. Amex also provided an explanation of the December 1, 2001 implementation date for the elimination of the fee cap.

[5] *See Securities Exchange Act Release No. 45784 (April 18, 2002), 67 FR 20847.*

[6] 15 U.S.C. 78f.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Act[8], which requires, among other things, that the rules of a national securities exchange be designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange proposes not to apply the prior fee increases to accommodation transactions in order to encourage specialists and registered options traders, by keeping fees low, to provide liquidity as an accommodation to investors seeking to close out worthless option positions. The Exchange further proposes not to apply the fee increases to reversals, conversions, dividend spreads and box spreads in order to encourage specialists and registered options traders, by keeping fees low, to provide liquidity for these types of financing strategies. The Exchange has stated that it wants to keep fees for accommodation transactions and spread strategies comparable with the fees charged by other options exchanges for these types of transactions, and given that the Exchange has increased a number of fees to its membership in recent months, it believes that the implementation of any type of reduction in fees should be put in place as of December 1, 2001.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[9], that the proposed rule change (File No. SR-Amex–2002–12), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14571 Filed 6–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46028; File No. SR–DTC–2002–06]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to the Use of the Federal Reserve Banks' Net Settlement System by Settling Banks

June 4, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 7, 2002, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change relates to DTC's End-of-Day Settlement Process for settling bank participants of DTC.[2] Currently settling banks can use the Net Settlement Service (''NSS'') of the Federal Reserve Banks (the ''FRBs'') as one method to satisfy their net-net debit balances at DTC. NSS permits DTC to submit an instruction to a FRB to have the account of the settling bank charged for their DTC end-of-day net-net debit balance. Utilization of NSS serves to eliminate the need for a settling bank to initiate a wire to DTC's account at a FRB in satisfaction of a net-net debit balance. As a result, the risk that a settling bank may incur a late payment fee due to a delay in wiring funds to DTC is reduced. Under the proposed rule change, as described more fully below, (i) all settling banks will be required to use NSS and (ii) any settling bank that only settles for its own account using NSS may opt to not acknowledge its net-net balance at the end of the day.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to reduce settlement risk. In February 2001, DTC adopted NSS as an alternative method for settling banks to satisfy their end-of-day net-net debits.[4] To date, 31 of the 83 DTC settling banks are using NSS.

NSS eliminates the need for a settling bank to initiate a wire to DTC's FRB account in satisfaction of its end-of-the-day net-net balance and reduces the risk that the settling bank will be delayed in wiring funds to DTC. By reducing the likelihood of late payments, usage of NSS should reduce the likelihood that settling banks will be assessed a late payment fee and that the completion of DTC settlement will be delayed.

The importance of settling banks being able to wire funds to DTC became obvious during the week of September 11, 2001. Completion of settlement at DTC is at risk if all settling banks that are in a net-net debit position cannot initiate a wire to DTC's FRB account. Although DTC expects additional settling banks to begin to use NSS over the next year, DTC believes it is important that the net-net debits of all DTC settling banks are collected using NSS. Therefore DTC proposes to require all settling banks to use NSS to pay their DTC end-of-the-day net-net debit balances by August 31, 2001.

Prior to using NSS, settling banks are required to sign a Settler Agreement with an FRB which incorporates a requirement that settling banks agree to the terms of the Fed's Operating Circular No. 12.[5] The signed Settler Agreement must be submitted to a FRB through DTC. The Settler Agreement must be on the settling bank's letterhead and must be signed by an authorized signer recognized by the FRB.

DTC proposes that settling banks use of NSS will be governed by DTC's procedures, including its End-of-Day Settlement Process section of DTC's Settlement Service Guide, as amended by this filing.[6] Fees connected with the End-of-Day Settlement Process remain unchanged.

Under Section 6.4 of Operating Circular No. 12, the settlement agent (in this case, DTC) has certain responsibilities regarding the allocation among settling banks using NSS of a claim for indemnity by a FRB. In making such an allocation, DTC will attempt to apply the same loss allocation procedures found in Section

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[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] A copy of the text of DTC's proposed rule change and the attached exhibits are available at the Commission's Public Reference Section or through DTC.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] Exchange Act Release No. 44176 (April 11, 2001), 66 FR 19821 (April 17, 2001) [File No. SR–DTC–2001–02]. *See also* Important Notice to Participants Nos. 0842 (November 20, 2000) and 2728 (May 2, 2002) and DTC's memorandum (April 14, 2000). DTC's current and proposed use of NSS, all of which are attached as part of DTC's filing.

[5] The Settler Agreement and Operating Circular No. 12 is attached as part of DTC's filing.

[6] An amended version of this section of the Settlement Service guide is attached as part of DTC's filing.

4 and 9 of DTC's Rules and Procedures as it would with respect to losses included in DTC's settlement system.

Currently all settling banks are required to acknowledge their net-net debit balances, and settling banks that also settle for others are required to acknowledge their net-net credit balances. As part of its End-of-the-Day Settlement Process and use of NSS, DTC does not send a settling bank's net-net debit balance to a FRB for collection until the settling bank has acknowledged its balance. Some settling banks have requested that the acknowledgement step no longer be required. Therefore, DTC proposes to permit any settling bank that settles only for its own account using NSS to opt to not acknowledge its balance by signing the NSS Settling Bank Acknowledgement Option Form.[7] This option does not apply to settling banks that settle for others, as the acknowledgement process includes the option to refuse to pay for a participant for whom that settling bank provides settlement services.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder applicable to DTC because it will reduce settlement risk. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since the new operation of DTC's settlement processes, as modified by the proposed rule change, will enhance the current operation of the function.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any material adverse impact on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change has been developed through discussions with several participants. However, DTC has received a letter from one participant expressing concerns regarding the FRB's NSS, and DTC has had subsequent conversations with that participant regarding that letter.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–2002–06 and should be submitted by July 2, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14612 Filed 6–10–02; 8:45 am]

BILLING CODE 8010–01–P

[7] The form is attached as to DTC's filing. In addition, DTC has made changes to its Settling Bank Failure to Settling Procedures to reflect that certain settling banks may opt out of the acknowledgement requirements. *See* Exchange Act Release No. 41879 (September 15, 1999), 64 FR 51360 (September 22, 1999) [File No. SR–DTC–99–15].

[8] 15 U.S.C. 78q–1.

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before August 12, 2002.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Cecilia Hoppenjans, Financial Analyst, Office of Investment Division,Small Business Administration, 409 3rd Street, SW., Suite 6300, Washington DC 20416

FOR FURTHER INFORMATION CONTACT: Cecilia Hoppenjans, Financial Analyst, (202) 205–7520 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Disclosure Statement Leveraged Licensees & Disclosure Statement, Non-Leveraged Licensees.

Form No's: 856 & 856A.

Description of Respondents: Small Business Investment Companies.

Annual Responses: 400.

Annual Burden: 187.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–14588 Filed 6–10–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3418]

State of Illinois (Amendment #2)

In accordance with a notice received from the Federal Emergency Management Agency, dated May 23, 2002, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning April 21, 2002 and continuing through May 23, 2002.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 20, 2002 and for economic injury the deadline is February 21, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 4, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–14587 Filed 6–10–02; 8:45 am]

BILLING CODE 8025–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503.

(SSA)

Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Petition To Obtain Approval Of A Fee For Representing A Claimant Before The Social Security Administration—0960–0104.* A representative of a claimant for Social Security benefits must file either a fee petition or a fee agreement with SSA in order to charge a fee for representing a claimant in proceedings before the SSA. The representative uses Form SSA–1560 to petition SSA for authorization to charge and collect a fee. A claimant may also use the form to agree or disagree with the requested fee amount or other information the representative provides on the form. SSA uses the information to determine a reasonable fee that a representative may charge and collect for his or her services. The respondents are claimants, their attorneys and other persons representing them.

Number of Respondents: 34,624.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Average Burden: 17,312 hours.

2. *Coverage of Employees of State and Local Governments—0960–0425.* In order for State and local employees working in positions covered by Social Security to get credit for their covered wages, States and Interstate Instrumentalities are required to provide wage and deposit contribution information (for Pre-1987 periods) to SSA. The information collected is needed to post wages to individuals' Social Security earnings records and to perform audit and Trust Fund accounting functions. The respondents are State and Local Governments, or Interstate Instrumentalities, that are required to provide SSA with wage and deposit contribution information for Pre-1987 periods.

Number of Respondents: 55.

Frequency of Response: varies.

Average Burden Per Response: varies (.5–5 hours).

Estimated Annual Burden: 434 hours.

3. *Application for Mother's or Father's Insurance Benefits-0960—0003.* SSA uses the information collected on the Form SSA–5-F6 or during a personal interview with a claimant to entitle an individual to mother's or father's insurance benefits. The respondents are applicants for Mother's or Father's insurance Benefits.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 12,500 hours.

4. *Marriage Certification—0960–0009.* Form SSA–3–F6 is used by SSA to determine if the claimant filing for spouse's benefits has the necessary relationship to the worker as required by section 216(h)(1) of the Social Security Act. The respondents are applicants for spouse's benefits.

Number of Respondents: 180,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 15,000 hours.

5. *Claimant's Work Background—0960–0300.* SSA uses the information collected on Form HA–4633 to provide claimant's their statutory right to a hearing and decision under the Social Security Act. A completed form provides an updated summary of a claimant's past relevant work and helps the Administrative Law Judge to decide whether or not the claimant is disabled. The respondents are claimants requesting hearings on entitlement to benefits based on disability under titles II and/or XVI of the Act.

Number of Respondents: 120,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 60,000 hours.

II. The information collection listed below has been submitted to OMB for clearance. Your comments on the information collection would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–0454, or by writing to the address listed above.

Disability Hearing Officer's Decision—Title XVI Disabled Child Continuing Disability Review—0960–NEW. The information collected on form SSA–1209 will be used by State Disability Hearing Officers (DHO) to formalize disability decisions. The form will aid the DHO in addressing the crucial elements of the case in a sequential and logical fashion. The form is used as the official determination of the DHO's decision and the personalized portion of the notice to the claimant.

Number of Respondents: 35,000.

Frequency of Response: 1.

Average Burden Per Response: 1¼ hours.

Estimated Annual Burden: 43,750 hours.

Dated: June 5, 2002.

Elizabeth Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 02–14671 Filed 6–10–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–12413]

Chemical Transportation Advisory Committee; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for appointment to membership on the Chemical Transportation Advisory Committee (CTAC). CTAC provides advice and makes recommendations to the Coast Guard on matters relating to the safe transportation and handling of hazardous materials in bulk on U.S.-flag vessels in U.S. ports and waterways.

DATES: Application forms should reach the Coast Guard on or before October 1, 2002.

ADDRESSES: You may request an application form by writing to Commandant (G–MSO–3), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling (202) 267–1217/0081; or by faxing (202) 267–4570. Submit application forms to the same address. This notice and the application form are available on the Internet at *http://dms.dot.gov.* The application form is also available at *http://www.uscg.mil/hq/g-m/advisory/ctac/ctac.htm.*

FOR FURTHER INFORMATION CONTACT: Commander James M. Michalowski, Executive Director of CTAC, or Ms. Sara S. Ju, Assistant to the Executive Director, telephone (202) 267–1217/0081, fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: The Chemical Transportation Advisory Committee (CTAC) is a Federal advisory committee constituted under 5 U.S.C. App. 2. It provides advice and makes recommendations to the Commandant through the Assistant Commandant for Marine Safety, Security and Environmental Protection on matters relating to the safe transportation and handling of hazardous materials in bulk on U.S.-flag vessels in U.S. ports and waterways. The advice and recommendations of CTAC also assist the U.S. Coast Guard in formulating the position of the United States on hazardous material transportation issues prior to meetings of the International Maritime Organization.

CTAC meets at least once a year at Coast Guard Headquarters in Washington, DC. It may meet more often than once a year as necessary. CTAC's subcommittees and working groups may meet to perform specific assignments as required.

The Coast Guard will consider applications for eight positions that expire in December 2002. To be eligible, applicants should have experience in chemical manufacturing, vessel design and construction, marine transportation of chemicals, occupational safety and health, or marine environmental protection issues associated with chemical transportation. Each member serves for a term of 3 years. Some members may serve consecutive terms. All members serve at their own expense, and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the policy of the Department of Transportation on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and members of minority groups.

Dated: June 3, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 02–14554 Filed 6–10–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Arenac and Iosco Counties, MI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to withdraw Environmental Impact Statement.

SUMMARY: The FHWA is issuing this notice to advise the public of its intent to withdraw a proposed US–23 freeway project in Arenac and Iosco Counties, Michigan, from further environmental studies and select a NO BUILD alternative.

FOR FURTHER INFORMATION CONTACT: James Kirschensteiner, Assistant Division Administrator, Federal Highway Administration, 315 West Allegan Street, Room 207, Lansin, Michigan 48933, Telephone 517–702–1835.

SUPPLEMENTARY INFORMATION: The FHWA issued a Draft Environmental Impact Statement on September 14, 1995, for the proposed construction of a new US–23 freeway from the vicinity of Standish, Michigan, notherly to the vicinity of Tawas, Michigan. A public hearing was conducted on October 25 and 26, 1995, to solicit public comments on the proposed freeway. Comments were also solicited from environmental resource agencies, permitting agencies, and others interested in the proposed freeway. Based on comments received from this process coupled with limited funding for a proposed new freeway, the Michigan Department of Transportation and FHWA have decided to select the NO BUILD alternative at this time. Limited traffic improvements along existing roadways will be pursued in lieu of a freeway or new alignment.

Issued on: May 21, 2002.

James J. Steele,

Division Administrator, Lansing, Michigan.

[FR Doc. 02–14544 Filed 6–10–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Hernando and Citrus County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Hernando and Citrus Counties, Florida, concerning the Suncoast Parkway.

FOR FURTHER INFORMATION CONTACT: Mr. Marvin L. Williams, District Transportation Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301–2015, Telephone: (850) 942–9650 extension 3029 or Ms. Catherine J. Bradley, Project Development Engineer, Florida's Turnpike, P.O. Box 613069, Ocoee, Florida 34761.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation, will prepare an EIS for a proposal to extend the Suncoast Parkway (SR 589) into Citrus County, Florida. The proposed project would involve the extension of the Suncoast Parkway from its present terminus at U.S. 98 in Hernando County to U.S. 19, south of the Citrus-Levy County line, a distance of approximately 30 miles. The project is considered a vital link in the Florida intrastate Highway System (FIHS).

Alternatives under consideration include (1) taking no action; and (2) the construction of a four-lane divided limited access highway on new alignment.

Coordination with appropriate Federal, State, and local agencies, and private organizations and citizens who have expressed interest in this proposal has been undertaken and will continue. Representative private organizations and citizen groups are being included in the Suncoast Parkway Advisory Group, which will meet periodically throughout the study. A series of public meetings will be held in Citrus County, Florida beginning in late 2002. In

addition, a public hearing will be held. Public notice will be given of the date, time and place of the meetings and hearing. The Draft EIS will be made available for public and agency review and comment. A formal scoping meeting is planned for the project on July 25, 2002 at 1:30 PM at the Citrus County Government Building, 3600 West Sovereign Path, Lecanto, Florida 34461.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 4, 2002.

Deborah A. Wolfe,

Environmental Specialist, Tallahassee, Florida.

[FR Doc. 02–14586 Filed 6–10–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 24, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 11, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0094.

Form Number: IRS Form 1041–A.

Type of Review: Extension.

Title: U.S. Information Return-Trust Accumulation of Charitable Amounts.

Description: Form 1041–A is used to report the information required in 26 U.S.C. 6034 concerning accumulation and distribution of charitable amounts. The data is used to verify that amounts for which a charitable deduction was allowed are used for charitable purposes.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 18,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—24 hr., 9 min.
Learning about the law or the form—3 hr., 25 min.
Preparing the form—8 hr., 37 min.
Copying, assembling, and sending the form to the IRS—1 hr., 20 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 675,900 hours.

OMB Number: 1545–1204.

Form Number: IRS Form 8823.

Type of Review: Extension.

Title: Low-Income Housing Credit Agencies Report of Noncompliance of Building Disposition.

Description: Form 8823 is used by housing agencies to report noncompliance with the low-income housing provisions of Code section 42.

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 20,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—7 hr., 39 min.
Learning about the law or the form—30 min.
Preparing and sending the form to the IRS—39 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 175,800 hours.

OMB Number: 1545–1385.

Regulation Project Number: GL–238–88 Final.

Type of Review: Extension.

Title: Preparer Penalties—Manual Signature Requirement.

Description: The reporting requirements affect returns preparers of fiduciary returns. They will be required to submit a list of the names and identifying numbers of all fiduciary returns which are being filed with a facsimile signature of the returns preparer.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 20,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour, 17 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 25,825 hours.

OMB Number: 1545–1485.

Regulation Project Number: PS–4–96 Final.

Type of Review: Extension.

Title: Sale of Residence From Qualified Personal Residence Trust.

Description: Internal Revenue Code section 2702(a)(3) provides special favorable valuation rules for valuing the gift of a personal residence trust. Regulation section 25.2702–5(a)(2) provides that if the trust fails to comply with the requirements contained in the regulations, the trust will be treated as complying if a statement is attached to the gift tax return reporting the gift stating that a proceeding has been commenced to reform the instrument to comply with the requirements of the regulations.

Respondents: Individuals or households.

Estimated Number of Respondents: 200.

Estimated Burden Hours Per Respondent: 3 hours and 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 625 hours.

OMB Number: 1545–1493.

Regulation Project Number: PS–7–89 Final.

Type of Review: Extension.

Title: Treatment of Gain From the Disposition of Interest in Certain Natural Resource Recapture Property by S Corporations and Their Shareholders.

Description: The regulation prescribes rules under section 1254 relating to the treatment by S corporations and their shareholders of gain from the disposition of natural resource recapture property and from the sale or exchange of S corporation stock.

Shareholders that sell or exchange stock may submit a statement to rebut presumption of gain treatment.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,000 hours.

OMB Number: 1545–1643.

Regulation Project Number: REG–209484–87 Final.

Type of Review: Extension.

Title: Federal Insurance Contributions Act (FICA) Taxation of Amounts Under Employee Benefit Plan.

Description: This regulation provides guidance as to when amounts of deferred under or paid from a nonqualified deferred compensation plan are taken into account as wages for

purposes of the employment taxes imposed by the Federal Insurance Contributions Act (FICA). Section 31.3121(v)(2)–1(a)(2) requires that the material terms of a plan be set forth in writing.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 2,500.

Estimated Burden Hours Per Respondent/Recordkeeper: 5 hours.

Frequency of Response: On occasion, Other (once).

Estimated Total Reporting/ Recordkeeping Burden: 12,500 hours.

OMB Number: 1545–1759.

Form Number: IRS Form 720X.

Type of Review: Extension.

Title: Amended Quarterly Federal Excise Tax Return.

Description: Representatives of the motor fuel industry, statement governments, and the Federal government are working to ensure compliance with excise taxes on motor fuels. This joint effort has resulted in a system to track the movement of all product to and from terminals. Form 720-TO is an information return that will be used by terminal operators to report their monthly receipts and disbursements of products.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 5,500.

Estimated Burden Hours Per Respondent/Recordkeeper: 4 hours, 59 minutes.

Frequency of Response: Quarterly.

Estimated Total Reporting/ Recordkeeping Burden: 152,460 hours.

OMB Number: 1545-1763.

Form Number: IRS Form 8302.

Type of Review: Extension.

Title: Direct Deposit of Refund of $1 Million or More.

Description: This form is used to request a deposit of a tax refund of $1 million or more directly into an account at any U.S. bank or other financial institution.

Respondents: Business or other for-profit, Individual or households.

Estimated Number of Respondents/ Recordkeepers: 400.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—1 hr., 25 min.
Learning about the law or the form—30 min.
Preparing, copying, assembling, and sending the form to the IRS—33 min.

Frequency of Response: On occasion, Annually.

Estimated Total Reporting/ Recordkeeping Burden: 988 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–14641 Filed 6–10–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 3, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 11, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0014.

Form Number: IRS Form 637.

Type of Review: Extension.

Title: Application for Registration (For Certain Excise Tax Activities).

Description: Form 637 is used to apply for excise tax registration. The registration applies to a person required to be registered under Internal Revenue Code (IRC) section 4101 for purposes of the federal excise tax on taxable fuel imposed by IRC 4041 and 4081; and to certain manufacturers or sellers and purchasers that must register under IRC 4222 to be exempt from the excise tax on taxable articles. The data is used to determine if the applicant qualifies for exemption. Taxable fuel producers are required by IRC 4101 to register with the Service before incurring any tax liability.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 2,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—10 hr., 17 min.
Learning about the law or the form—1 hr., 41 min.
Preparing and sending the form to the IRS—1 hr., 56 min.

Frequency of Response: Other (one time only).

Estimated Total Reporting/ Recordkeeping Burden: 27,800 hours.

OMB Number: 1545–1381.

Regulation Project Number: CO–49–88 Final.

Type of Review: Extension.

Title: Limitations on Corporate Net Operating Loss.

Description: This regulation provides rules for the allocation of a loss corporation's taxable income or net operating loss between the periods before and after an ownership changes under section 382 of the Code, including an election to make the allocation based on a closing of the books as of the change date.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: On occasion, Other (when needed).

Estimated Total Reporting Burden: 200 hours.

OMB Number: 1545–1496.

Regulation Project Number: REG–209673–93 Final.

Type of Review: Extension.

Title: Mark to Market for Dealers in Securities.

Description: Under section 1.475(b)–4, the information required to be recorded is required by the IRS to determine whether exemption from mark-to-market treatment is properly claimed, and will be used to make that determination upon audit of taxpayer's books and records. Also, under section 1.475(c)–1(a)(3)(iii), the information is necessary for the Service to determine whether a consolidated group has elected to disregard inter-member transactions in determining a member's status as a dealer in securities.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 3,400.

Estimated Burden Hours Per Respondent/Recordkeeper: 52 minutes.

Frequency of Response: Other (once).

Estimated Total Reporting/ Recordkeeping Burden: 2,950 hours.

OMB Number: 1545–1774.

Regulation Project Number: REG–123305–02 (formerly REG–102305–02) NPRM and Temporary; REG–102740–02 NPRM and Temporary Final.

Type of Review: Extension.

Title: Loss Limitation Rules.

Description: The information is necessary to allow the taxpayer to make certain elections to determine the amount of allowable loss under § 1.337(d)–2T, § 1.1502–20 as currently in effect or under § 1.1502–20 as modified; to allow the taxpayer to waive loss carryovers up to the amount of the § 1.1502–20(g) election; and to ensure that loss is not disallowed under § 1.337(d)–2T and basis is not reduced under § 1.337(d)–2T to the extent the taxpayer establishes that the loss or basis is not attributable to the recognition of built in gain on the disposition of an asset.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 15,000.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: Other (once per transition).

Estimated Total Reporting Burden: 30,000 hours.

OMB Number: 1545–1776.

Form Number: IRS Form 1041–N.

Type of Review: Revision.

Title: U.S. Income Tax Return for Electing Alaska Native Settlement Trusts.

Description: An Alaska Native Settlement Trust (ANST) may elect under section 646 to have the special income tax treatment of that section apply to the trust and its beneficiaries. This one-time election is made by filing Form 1041–N and the form is used by the ANST to report its income, etc., and to compute and pay any income tax. Form 1041–N is also used for the special information reporting requirements that apply to ANSTs.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 20.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—32 hr., 45 min.
Learning about the law or the form—1 hr., 57 min.
Preparing the form—3 hr., 30 min.
Copying, assembling, and sending the form to the IRS—16 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 770 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–14642 Filed 6–10–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 4, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 11, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1005.

Regulation Project Number: PS–62–87 Final.

Type of Review: Extension.

Title: Low-Income Housing Credit for Federally-Assisted Buildings.

Description: The rule requires the taxpayer (low-income building owner) to seek a waiver in writing from the IRS concerning low-income buildings acquired during a special 10-year period in order to avert a claim against a Federal mortgage insurance fund.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 3 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,000 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 02–14643 Filed 6–10–02; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 67, No. 112

Tuesday, June 11, 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 AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02-002N]

International Standard-Setting Activities

Correction

In notice document 02–13527 beginning on page 37760 in the issue of Thursday, May 30, 2002, make the following corrections:

On page 37766, in the third column, 5th and 6th paragraphs should read:

'' Alternate Delegate''

'' Dr. Richard L. Ellis, Special Assistant, Office of the Deputy Administrator, Office of Public Health and Science, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 322 Aerospace Center, 1400 Independence Ave. SW, Washington, DC 20250–3700, Phone: (202) 690–6474; Fax: (202) 690–6557, E-mail: *richard.ellis@usda.gov*''

''*Codex Committee on Food Additives and Contaminants(Host Government—The Netherlands)* ''

''U.S. Delegate''

''Dr. Terry C. Troxell, Director, Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (301) 436–1700; Fax: (301) 436–2632, E-mail: *Terry.Troxell@cfsan.fda.gov*''

[FR Doc. C2–13527 Filed 6–10–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
June 11, 2002

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Cellulose Products Manufacturing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7214–8]

RIN 2060–AH11

National Emission Standards for Hazardous Air Pollutants: Cellulose Products Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for cellulose products manufacturing. Cellulose products manufacturing includes both the Miscellaneous Viscose Processes source category and the Cellulose Ethers Production source category. The Miscellaneous Viscose Processes source category comprises the cellulose food casing, rayon, cellulosic sponge, and cellophane manufacturing industries. The Cellulose Ethers Production source category comprises the methyl cellulose, hydroxypropyl methyl cellulose, hydroxypropyl cellulose, hydroxyethyl cellulose, and carboxymethyl cellulose manufacturing industries. The EPA has identified the Miscellaneous Viscose Processes source category and the Cellulose Ethers Production source category as including major sources of emissions of hazardous air pollutants (HAP), such as carbon disulfide (CS_2), carbonyl sulfide, ethylene oxide, methanol, methyl chloride, propylene oxide, and toluene. The final rule will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The final rule will reduce HAP emissions by approximately 1,600 megagrams per year (Mg/yr) (1,700 tons per year (tpy)). In addition, the final rule will reduce hydrogen sulfide (H_2S) emissions by approximately 410 Mg/yr (450 tpy).

EFFECTIVE DATE: June 11, 2002.

ADDRESSES: Docket No. A–99–39 contains supporting information used in developing the promulgated standards. The docket is available for public inspection between 8:30 a.m. and 5:30 p.m., Monday through Friday, excluding Federal holidays, at the following address: U.S. EPA, Air and Radiation Docket and Information Center (6102), 401 M Street SW., Washington, DC 20460, telephone number (202) 260–7548. The docket is located at the above address in room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For further information concerning applicability and rule determinations, contact the appropriate State or local agency representative. If no State or local representative is available, contact the EPA Regional Office staff listed in 40 CFR 63.13. For information concerning the analyses performed in developing this rule, contact Mr. William Schrock, U.S. EPA, Office of Air Quality Planning and Standards, Organic Chemicals Group (Mail Code C504–04), Research Triangle Park, North Carolina 27711, telephone number (919) 541–5032, facsimile number (919) 541–3470, electronic mail address schrock.bill@epa.gov.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include those listed in the following table.

Category	NAICS code	Examples of regulated entities . . .
Industry	326121	cellulose food casing operations.
	325221	rayon operations.
	326199, 325211	cellulosic sponge operations.
	326199	cellophane operations.
	325199	cellulose ether operations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your operation is regulated by this action, you should examine the applicability criteria in § 63.5481 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. The NESHAP for cellulose products manufacturing was proposed on August 28, 2000 (65 FR 52166). Today's action announces EPA's final decisions on the rule. Under section 307(b)(1) of the CAA, judicial review of the final rule is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by August 12, 2002. Only those objections to the rule which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's final rule may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements. *World Wide Web (WWW).* In addition to being available in the docket, an electronic copy of today's final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or final rules at http://www.epa.gov/ttn/oarpg/t3pfpr.html. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN Help Line at (919) 541–5384. *Outline.* The information presented in this preamble is organized as follows:

I. Background and Public Participation
II. Summary of Major Changes Since Proposal
  A. All Affected Sources
  B. Viscose Process Affected Sources
  C. Cellulose Ether Affected Sources
III. Summary of Responses to Major Comments
  A. Emission Limits, Operating Limits, and Work Practice Standards
  B. Testing and Initial Compliance Requirements
  C. Continuous Compliance Requirements
  D. Notifications and Reports
IV. Summary of Impacts
  A. Air Quality Impacts
  B. Cost Impacts
  C. Economic Impacts
  D. Non-Air Environmental Impacts
  E. Energy Impacts
V. Administrative Requirements
  A. Executive Order 12866, Regulatory Planning and Review
  B. Executive Order 13132, Federalism
  C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
  D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
  E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
  F. Unfunded Mandates Reform Act of 1995

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act of 1995
J. Congressional Review Act

I. Background and Public Participation

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. A major source of HAP is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.1 Mg/yr (10 tpy) or more or any combination of HAP at a rate of 23 Mg/yr (25 tpy) or more.

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

On July 16, 1992 (57 FR 31576), we published an initial list of source categories slated for regulation under section 112(c) of the CAA. That initial list included the Cellulose Food Casings, Rayon, Cellophane, Methyl Cellulose, Carboxymethyl Cellulose, and Cellulose Ethers Production source categories. The Cellulose Ethers Production source category on the initial list included the hydroxyethyl cellulose, hydroxypropyl cellulose, and hydroxypropyl methyl cellulose manufacturing industries.

In developing the proposed rule for cellulose products manufacturing, we identified another cellulose products manufacturing industry, cellulosic sponge manufacturing, that was not on the initial source category list. We added Cellulosic Sponges to the source category list on November 18, 1999 (64 FR 63026) in accordance with section 112(c) of the CAA.

We proposed the standards for cellulose products manufacturing on August 28, 2000 (65 FR 52166). In the proposal, we combined the various cellulose products manufacturing source categories on the initial source category list with the Cellulosic Sponge source category to create two new source categories. Specifically, we combined the existing Cellulose Food Casing, Rayon, Cellulosic Sponge, and Cellophane source categories to create a new source category which is called ''Miscellaneous Viscose Processes.'' We combined the existing Methyl Cellulose, Carboxymethyl Cellulose, and Cellulose Ethers Production source categories to create a newly expanded ''Cellulose Ethers Production'' source category. On February 12, 2002 (67 FR 6521), we published an updated source category list that includes the Miscellaneous Viscose Processes and Cellulose Ethers Production source categories.

As in the proposal, the final standards for cellulose products manufacturing give most existing sources 3 years from the date of promulgation to comply. The final standards also give existing rayon operations 8 years from the date of promulgation to comply with the 40 percent reduction emission limit for their viscose process vents. Sources that begin construction or reconstruction after August 28, 2000 must comply with the standards for new sources by June 11, 2002 or upon startup, whichever is later.

Emission limits, operating limits, and work practice standards, as well as initial and continuous compliance requirements, and notification, reporting, and recordkeeping requirements are included in the final rule. All of these components are necessary to ensure that sources comply with the standards both initially and over time. However, we have made every effort to simplify the requirements in the rule.

The preamble for the proposed standards described the rationale for the proposed standards. Public comments were solicited at the time of proposal. The public comment period lasted from August 28, 2000 to October 27, 2000. Industry representatives, regulatory agencies, environmental groups, and the general public were given the opportunity to comment on the proposed rule and to provide additional information during and after the public comment period. Although we offered at proposal the opportunity for oral presentation of data, views, or arguments concerning the proposed rule, no one requested a hearing, and a hearing was not held.

We received a total of 23 letters containing comments on the proposed rule during and after the public comment period. Commenters included individual cellulose products manufacturing companies, industry trade associations, and an association of State and local regulatory agencies. Today's final rule reflects our full consideration of all of the comments received. Major public comments on the proposed rule, along with our responses to those comments, are summarized in this preamble. See the Summary of Public Comments and Responses memorandum for a more detailed discussion of public comments and our responses (Docket No. A–99–39).

II. Summary of Major Changes Since Proposal

The major changes made to the proposed rule based on public comments are described in the sections below. A more comprehensive summary of changes can be found in Docket No. A–99–39.

A. All Affected Sources

In today's final rule, we have added an exemption for research and development facilities. We have revised the definition for ''process vent'' to include exemptions for small vents with very low concentrations and flow rates. We have added a section that discusses the overlap between the requirements of the final rule and the requirements of other rules.

We have added definitions for ''process unit'' and revised definitions for ''operation'' for the various viscose process and cellulose ether industries to provide greater clarification of what is covered under the final rule. Each process unit includes all equipment used to manufacture the respective products and any associated storage vessels, liquid streams in open systems, and equipment components. Each operation includes the collection of the

respective process units and other equipment, including heat exchanger systems, wastewater and waste management units, and cooling towers.

Consistent with the revised definitions for ''operation'' for the various viscose process and cellulose ether industries, we have adopted work practice standards for heat exchanger systems from 40 CFR 63.104. For all affected sources with a closed-vent system containing a bypass line that could divert a vent stream away from a control device, we have adopted work practice standards for bypass lines from 40 CFR 63.148. In order to provide this exemption, we have adopted the related work practice standards for closed-vent systems from 40 CFR 63.148. We have also adopted the applicable initial and continuous compliance provisions, reporting and recordkeeping provisions, and definitions associated with heat exchanger systems, bypass lines, and closed-vent systems from 40 CFR part 63, subparts F and G of the Hazardous Organic NESHAP (HON).

We have reduced the number of biofilter operating limits to three (pressure drop, inlet gas temperature, and effluent pH), which would be less burdensome and more easily measurable than the eight operating limits at proposal. We have also added alternative parameters for condensers (outlet liquid temperature) and scrubbers (conductivity and alkalinity).

We have clarified the proposed performance test requirements to require that all affected sources conducting a performance test only test the inlet and outlet of their control device. We are not requiring sources to test their uncontrolled stacks. We have revised the batch process vent testing provisions, replacing the worst-case testing provisions adopted from 40 CFR 63.1257 with alternative testing provisions adopted from 40 CFR 63.490. We have added two voluntary consensus standards as alternatives to EPA Methods 3B and 18. We have added performance test exemptions for boilers, process heaters, and hazardous waste incinerators that meet certain conditions specified in the final rule. We have clarified the initial compliance requirements to state that sources are not required to conduct a performance test to determine the flare control efficiency, based on the assumption that a properly operated flare will achieve an emission reduction of 98 percent.

We have changed the deadline for conducting the initial compliance demonstration from 180 days before to 180 days after the compliance date. To enable affected sources to demonstrate compliance between the compliance date and the date of the initial compliance demonstration, we have added a provision requiring sources to maintain an operation and maintenance (O&M) log of the process and emissions control equipment during this period.

We have adopted the methods in 40 CFR 63.505 for determining operating limits to allow sources to establish operating limits for batch process vents based on the average of all values obtained during the compliance demonstration and to establish operating limits for continuous process vents (and combined batch and continuous process vents) based on the average of the maximum (or minimum) values of the parameter.

For those sources that decide to use continuous emissions monitoring systems (CEMS) to demonstrate compliance, we have added CEMS performance specifications, recordkeeping and reporting provisions, and monitoring installation, operation, and maintenance provisions. We have replaced the proposed requirement for 3-hour averages of recorded readings with daily averages. We have changed the proposed data availability requirement for valid hourly data from 66 percent of every averaging period (e.g., two valid hourly values for a 3-hour averaging period) to 75 percent of the hours during an operating day. A valid hour of data means that sources must have data for all 15-minute periods that were not excluded for no flow.

We have revised the submittal date for the notification of compliance status (NOCS) report to require that it be submitted 240 days after the compliance date, rather than 60 days after completion of the initial performance test or 30 days after completion of the initial compliance demonstration. In this way, if sources conduct more than one test or other compliance demonstration, they would not have to submit multiple NOCS reports at different times.

We have also replaced the requirement that sources submit immediate startup, shutdown, and malfunction (SSM) reports if they take actions inconsistent with this SSM plan. Now, sources must submit those reports with the next semiannual compliance report.

We have extended the report filing deadline for semiannual compliance reports from 30 to 60 days after the end of the compliance period, consistent with 40 CFR part 63, subpart G HON, because some sources are subject to several NESHAP.

B. Viscose Process Affected Sources

We have revised the proposed 55 percent reduction emission limit for viscose process vents at existing rayon operations. In today's final rule, we are requiring existing rayon operations to meet a two-stage emission reduction requirement—35 percent reduction within 3 years after the effective date and 40 percent reduction within 8 years after the effective date. We have revised the compliance dates for existing rayon operations accordingly. We have also revised the proposed 85 percent reduction emission limit for viscose process vents at cellophane operations. In today's final rule, we are requiring cellophane operations to meet a 75 percent reduction emission limit.

We have added a fourth alternative standard for CS_2 unloading and storage operations that allows affected sources to comply by installing a nitrogen unloading system and obtaining a 0.045 percent reduction from viscose process vents. We have also added initial and continuous compliance provisions and recordkeeping provisions that correspond to this alternative. We have clarified that the 83 percent reduction emission limit, and the corresponding initial and continuous compliance provisions, for CS_2 unloading and storage operations apply to affected sources using an alternative control technique not listed in the final rule.

We have revised the initial compliance demonstration requirements to require viscose process affected sources to conduct a month-long compliance demonstration to demonstrate initial compliance, as opposed to the 3-hour performance test specified at proposal. The sources would report the results of the initial compliance demonstration in the NOCS report and keep records of the initial compliance demonstration. The sources would also establish their operating limits over the period of the month-long compliance demonstration.

Affected sources that use recovery devices and/or process changes to meet the applicable emission limit would demonstrate initial compliance during the month-long compliance demonstration using information on raw material receipts, measured CS_2 recovered, etc., in their material balance calculations to determine their overall percent reduction in emissions. No recovery device testing would be necessary.

Affected sources that must use non-recovery control devices to meet the applicable emission limit would be required to conduct a performance test to determine the control efficiency of

their non-recovery control device. The sources would incorporate this control efficiency information into their material balance calculations, which they would use during the month-long compliance demonstration to determine their overall percent reduction in emissions.

C. Cellulose Ether Affected Sources

In today's final rule, we have revised the definition for ''cellulose ether process'' to specifically exclude solids handling steps downstream of the drying process. We have replaced 40 CFR part 65, subpart F (Consolidated Air Rule), with 40 CFR part 63, subpart UU (Generic MACT NESHAP), as an alternative to 40 CFR part 63, subpart H (HON), for equipment leak provisions. We have added work practice standards for maintenance wastewater from 40 CFR 63.105 and liquid streams in open systems from 40 CFR 63.149. We have also adopted the applicability provisions, initial and continuous compliance provisions, reporting and recordkeeping provisions, and definitions associated with equipment leaks, wastewater, and liquid streams in open systems from 40 CFR part 63, subparts F, G, and H of the HON.

We have eliminated the proposed requirement for cellulose ether affected sources to demonstrate continuous compliance by complying with an ongoing 99 percent reduction determination. However, these sources must still comply with the applicable operating limits to demonstrate continuous compliance. We have added initial and continuous compliance requirements and recordkeeping requirements for sources using extended cookout to comply with the 99 percent reduction emission limit. We have added a voluntary consensus standard as an alternative to EPA Method 624.

III. Summary of Responses to Major Comments

This section summarizes major comments we received on the proposed rule and our responses to those comments. Only those major comments that resulted in an appreciable change to the proposed rule are included. A more comprehensive summary of comments and responses can be found in Docket No. A–99–39.

A. Emission Limits, Operating Limits, and Work Practice Standards

Comment: One commenter did not support the process vent MACT floor for rayon operations (55 percent reduction). The commenter stated that selecting the highest CS_2 recovery operation as the MACT floor is not appropriate because both rayon operations have control equipment in place. The commenter stated that the fairest, most equitable approach would be to average the 25 and 55 percent control levels of the two rayon operations, resulting in an average 40 percent MACT floor control level which the commenter felt their rayon operation could meet with available technology. The commenter estimated that, because of their fragile business environment, a 35 percent reduction is the maximum that their rayon operation could achieve in the next 3 years, and they requested an additional 5 years (8 years total) to make the additional investment to meet a 40 percent MACT floor control level.

Response: Due to the shutdown of the MACT floor rayon operation, the commenter's lesser-controlled rayon operation is the only remaining rayon operation in the United States. Because the shutdown occurred after proposal, we have the option of keeping the current 55 percent reduction as the MACT floor or establishing a less stringent MACT floor. In light of the shutdown of the only other rayon operation providing information regarding available control technology, we have decided to establish a less stringent MACT floor (40 percent), which the commenter stated would be achievable with available technology. This less stringent MACT floor is higher than the 25 percent control level achieved by the commenter's rayon operation at proposal. Based on the information provided by the commenter, we have decided to implement a staged reduction strategy to facilitate the remaining rayon operation's achieving the 40 percent MACT floor control level. In today's final rule, we are requiring the remaining rayon operation to achieve a 35 percent reduction by 3 years after the effective date and achieve a 40 percent reduction 5 years later (8 years after the effective date).

Comment: One commenter stated that the 85 percent MACT floor control rate for viscose process vents at cellophane operations is overstated. The commenter stated that because theirs is the only cellophane operation in the United States, the MACT floors for the cellophane industry should be based on the information that they submitted and should reflect their source's current operational status. The commenter noted that the 85 percent control rate was based on information that they submitted in their response to EPA's section 114 information collection request (ICR), and their company had been operating the cellophane operation for only a few months when the ICR was issued. The commenter stated that they did not have long-term data on sulfide control rates or operational parameters at the time, so they determined the sulfide control rate for their section 114 ICR response using annualized engineering estimates based on their best estimate of actual operating conditions at the source. Based on new data, which they provided to EPA, the commenter calculated that their cellophane operation actually controls approximately 75 to 80 percent of total uncontrolled sulfide emissions. The commenter recommended that the MACT floor control rate be reduced to 75 percent to accurately reflect their source's current operational status, taking into account variability in the emission control rate.

Response: We agree with the commenter that the proposed MACT floor control rate is overstated. We have examined the corroborating data provided by the commenter, agree with the findings, and have revised the process vent MACT floor and emission limit for the cellophane industry to require 75 percent control of sulfide emissions.

Comment: Two commenters noted that, in establishing MACT standards for CS_2 unloading and storage operations, EPA failed to address the situation in which a nitrogen control system includes CS_2 unloading but not CS_2 storage. One of the commenters requested that EPA add a fourth compliance option to account for this situation and allow the reduction of emissions from the process vents by the appropriate amount. The commenter noted that their source has installed a nitrogen system for CS_2 unloading but is keeping the existing water system for CS_2 storage. The commenter stated that EPA should provide appropriate credit for this nitrogen unloading system. Analyses by the commenter on the amount of CS_2 emitted from their storage tanks during tank car unloading suggested that the additional reduction of emissions from the process vents should be 0.045 percent.

Response: We agree with the request from the commenter for a fourth alternative for sources with nitrogen unloading but no nitrogen padding for CS_2 storage. The fourth alternative requires affected sources to install a nitrogen unloading system and reduce emissions from process vents by 0.045 percent, which, based on the commenter's data, is equivalent to the emission reduction achieved by converting from water padding to nitrogen padding for CS_2 storage.

B. Testing and Initial Compliance Requirements

Comment: Several commenters from the viscose process industry objected to the initial performance testing requirements in the proposed rule. Pointing out that their operations have multiple stacks, process vents, and control devices, the commenters stated that performing tests on all of these simultaneously would be impractical and expensive. Commenters noted that the low flow and high humidity typical of viscose process vents would make it difficult to obtain a flow sufficient for testing. Commenters also pointed out that EPA's testing approach would yield a highly concentrated CS_2 emission stream, but EPA's test method (EPA Method 15 in Appendix A of 40 CFR part 60) is designed for relatively low pollutant concentrations. One commenter stated that the inlet/outlet testing approach is irrelevant where the entire operation serves as the control device, and CS_2 is being removed throughout the process. Commenters also stated that the initial performance testing requirements in the proposed rule would be dangerous to implement. They pointed out that EPA Method 15 would require drilling holes and inserting a heated probe into the lines before and after the control device; these procedures would allow leakage of air into the system and invite the risk of fire and explosion because of CS_2's wide flammable range, very low autoignition temperature, and very low autoignition energy.

Three commenters indicated that the initial performance testing requirements are also inconsistent with the material balance approach which is the method EPA used to establish the cellulose MACT standards and the required method for viscose process affected sources to demonstrate ongoing compliance with the cellulose MACT standards. The commenter stated that it would make sense to require the demonstration of initial compliance to be on the same basis as the demonstration of ongoing compliance.

Two commenters stated that it would also be difficult to get a meaningful range of monitoring parameter values from three short tests. One of the commenters stated that monitoring parameter values should be established based on data from performance tests conducted over a longer period, such as 1 month. The two commenters stated that a longer test period is necessary, particularly since continuous compliance with the various percent emission reduction requirements in the rule is based on a 6-month rolling average.

Response: We acknowledge that the initial compliance requirements should be revised for greater clarity. For today's final rule, we are requiring viscose process affected sources to demonstrate their initial compliance with the applicable percent reduction emission limit by conducting a month-long compliance demonstration using a material balance for their sources. This approach is consistent with the material balance approach presented by the commenters. This material balance requirement would not apply to cellulose ether affected sources. For those viscose process affected sources that use recovery devices (e.g., carbon adsorbers, condensers, or oil absorbers) and/or process changes to meet the applicable emission limit, initial compliance would be demonstrated during the month-long compliance demonstration with material balance calculations using raw material receipts, measured CS_2 recovered, etc. No recovery device testing would be necessary. For those viscose process affected sources that must use non-recovery control devices (e.g., biofilters, flares, scrubbers, or thermal oxidizers) to meet the applicable emission limit, testing would be required at the inlet and outlet of the non-recovery control devices to determine the control efficiency of the non-recovery control devices. Testing would not be required at uncontrolled stacks. The viscose process affected sources would incorporate the control efficiency information from the performance test into their material balance calculations, which they would then use during the month-long compliance demonstration to determine their overall percent reduction in emissions.

We disagree with the commenters' assumption that they would need to test everything at their operations simultaneously. We also disagree with the commenters' assertions that EPA Method 15 cannot be used on viscose process streams because of the high concentration of CS_2 in the streams. Sources should be able to simply dilute the emission stream sample prior to the analysis. Regarding the commenters' other concerns about using EPA Method 15, viscose process affected sources are not limited to using EPA Method 15 to measure the emissions at the inlet and outlet of the control device. Sources are being given the option to use an EPA-approved alternative test method or emissions monitoring devices such as CEMS to measure the inlet and outlet emissions and determine the control efficiency.

Comment: Three commenters questioned EPA's use of provisions from 40 CFR part 63, subpart GGG (Pharmaceuticals NESHAP) regarding worst-case testing conditions for batch process vents. Noting that this requirement applies only to vents with control devices, two of the commenters argued that the concept of a worst-case scenario is not appropriate for the viscose process industries, where the vents are uncontrolled. One of these two commenters also noted that, because CS_2 is emitted during only certain portions of the production cycle, the worst-case emission scenario lasts only for a matter of minutes, so extrapolating from this scenario would result in a very elevated, artificial emission level. The two commenters stated that measuring the total amount of HAP emitted over a cycle is the only appropriate way to measure CS_2 emissions from viscose process vents, rather than some artificial worst-case scenario. According to one of the commenters, variations inherent in the viscose process make it impossible to identify a representative cycle in advance, but these variations could be accounted for more effectively over a longer period, such as a month-long compliance determination.

A third commenter stated that in order to generate the absolute worst-case conditions required under 40 CFR part 63, subpart GGG, they would have to change the way their processes run, which could include running at maximum production rates, making the highest-HAP recipe, or changing process variables to generate the highest-HAP emission stream. According to the commenter, these situations could result in substantial amounts of unordered or off-spec product, causing severe financial hardship as well as environmental impacts from the disposal of the unwanted product and the artificially increased HAP emissions from performing the test. Finally, putting their equipment under unusual stress could result in expensive breakdowns or even hazards to safety or the environment. As one alternative, the commenter suggested that EPA defer entirely to 40 CFR part 63, subpart U (Group I Polymers and Resins (P&R I) NESHAP) or subpart JJJ (Group IV Polymers and Resins (P&R IV) NESHAP) for all batch process vent testing requirements. The commenter stated that these provisions would still require them to conduct the test during the most rigorous conditions but would not damage their equipment or make unwanted products.

Response: In response to the various comments, we have decided to replace the worst-case testing provisions in 40

CFR part 63, subpart GGG (Pharmaceuticals NESHAP), with alternative batch process vent testing provisions in 40 CFR part 63, subpart U (P&R I NESHAP). Similar to the approach in subpart GGG, this approach would still require industry to conduct the performance test during the most rigorous conditions. This change should address the concerns voiced by all of the commenters.

As we have already noted in another response, viscose process affected sources that use recovery devices and/or process changes to meet the applicable emission limit would demonstrate initial compliance during the month-long compliance demonstration with material balance calculations, using information about raw material receipts, measured CS_2 recovered, etc. No recovery device testing would be necessary.

Comment: Several commenters stated that the testing requirements during the initial compliance demonstration create problems with establishing operating limits. Two of the commenters (viscose process operations) stated that it would not be possible to determine suitable ranges for the operating limits during only 3 hours of testing in the initial performance test. One commenter stated that operating limits should be determined over a variety of operating scenarios in order to define the boundaries of monitoring parameter values upon which to demonstrate compliance. The other commenter stated that a test conducted over a longer period, such as 1 month, using their operation's proposed material balance method, would identify the full acceptable range of parameter values to monitor.

A third commenter (a cellulose ether operation) recommended that a minimum or maximum operating limit be established based on the monitoring parameter values measured during the performance test and extended beyond those values if it can be demonstrated by engineering assessments and/or manufacturer's recommendations that the unit will still meet the proposed standard. The commenter stated that performance testing should not be required to be conducted over the source's entire operational range. The commenter also stated that affected sources would have a very narrow window of compliance if monitored parameter data are collected during ''normal'' operating conditions and further ''normalized'' by averaging all the data points. The commenter stated that it must be clear that all data points measured during the performance test are acceptable. The commenter also stated that the source should not be required to retest every time there is some normal variation in production relative to the conditions of the initial performance test.

Response: In response to the first two commenters (viscose process operations), we have decided to revise the cellulose rule to allow viscose process affected sources to establish their operating limits over the month-long initial compliance demonstration, which should provide the sources sufficient time to establish their operating limits.

In response to one comment by the third commenter (a cellulose ether operation), we have decided to revise the procedures for determining operating limits consistent with the approach taken in 40 CFR part 63, subpart U (P&R I NESHAP). For batch process vents, we are requiring that sources establish the operating limit based on the average of all monitoring values obtained during the performance test (or month-long compliance demonstration for viscose process affected sources), consistent with the approach in 40 CFR 63.505(b)(3). For continuous process vents, we are requiring that the sources establish the operating limit based on the average of the maximum (or minimum) values of the monitoring parameter for the three test runs (or daily averages during the compliance demonstration for viscose process affected sources), consistent with the approach in 40 CFR 63.505(b)(2). If sources combine their batch and continuous process vents, we are requiring that they establish their operating limit using the continuous process vent approach.

In response to another comment by the third commenter, testing would not be required over their source's entire operational range. We disagree with the third commenter's suggestion to supplement or extend the values from the test as in the HON. The HON was written that way because we were trying to have the owner/operator justify a range, not establish a limit. We have also clarified that affected sources would establish what are considered ''normal'' operating conditions for continuous operation during the initial performance test. The sources would then be required to meet the operating limits established during the initial performance test.

Comment: Several commenters objected to the proposed requirement for sources to conduct the initial performance test at least 180 days before the compliance date. Commenters argued that EPA had provided no justification, as required, for this deviation from EPA's past practice. With the notification of performance test due at least 60 days before the performance test, commenters stated that this would require sources to start preparing for the performance test 240 to 360 days prior to the compliance date in order to be confident that the test can be passed. Two commenters noted that requests for an alternative monitoring method may have to occur even earlier, making it unrealistic for an affected source to apply for EPA approval to use the alternative method because of insufficient time to obtain EPA approval and purchase and install the alternative equipment. One commenter stated that it makes more technical sense to conduct a performance test after the unit is required to be in compliance rather than before. Therefore, the commenters recommended that EPA revise the deadline for performance testing consistent with 40 CFR 63.7(a), which requires an initial performance test be conducted within 180 days after the compliance date.

Response: Based on these comments, we have decided to revise the proposed requirement and allow sources to complete their performance test or other initial compliance demonstration no later than 180 days after the compliance date. Our intention for requiring the earlier date was to ensure that sources would be in compliance by the compliance date and allow sources to avoid severe penalties for noncompliance if they found themselves out of compliance based on a test conducted 180 days after the compliance date. To ensure that a record of compliance is kept between the compliance date and the date that operating limits are set (i.e., date of the performance test or other initial compliance demonstration), today's final rule also requires sources to maintain an O&M log of the process and emissions control equipment during this period.

C. Continuous Compliance Requirements

Comment: One commenter suggested that EPA allow outlet liquid temperature as an alternative operating limit to outlet gas temperature for condensers, stating that this variable is directly related to outlet gas temperature and is the control point for changing air temperature. Noting that the pH of caustic liquids used in a wet scrubber may be on the extreme end of the pH scale, a second commenter suggested that EPA allow either a pH or conductivity measuring device for determining compliance with the operating limit for wet scrubbers. A

third commenter stated that their operation measures the available alkalinity, not the pH, in the circulating system for their wet scrubbers, and stated that pH meters would not be as reliable as the current system. A fourth commenter stated that liquid flow rate and pressure drop measurements do not always indicate the required wet scrubber performance. The commenter stated that it is possible for a scrubber to meet required control efficiencies and still sustain a pressure or liquid flow reduction. The commenter noted that other parameters, such as adequate pack height and liquid distribution, are technically more accurate indicators of scrubber performance.

Response: In response to these comments, we have revised the proposed requirements to include some of the additional parameters requested by commenters (i.e., condenser liquid outlet temperature for condensers and conductivity and alkalinity for wet scrubbers). However, we have not added adequate pack height and liquid distribution as additional wet scrubber parameters because we are not convinced that they are good parameters. Adequate pack height is a characteristic of the control device, not the kind of parameter that could be monitored continuously, and liquid distribution is a difficult type of parameter to monitor. Nonetheless, sources have the option under the rule to apply to the Administrator for approval to use alternative parameters.

Comment: One commenter stated that the proposed rule lacks the following essential provisions, developed for other MACT standards, regarding the proper use of parameter monitoring data for purposes of enforcement: (1) Specify that excursions violate an operating limit, not an emission limit; (2) base excursions on a 24-hour daily average to account for short-term fluctuations, which typically self-correct so that the daily average reading is normal; (3) allow a number of excused excursions in each semiannual reporting period to account for periods when something goes wrong despite how carefully an emission control device is designed, operated, and maintained (according to the commenter, without excused excursions, sources would be unable to ensure compliance); (4) exclude data from certain periods (e.g., startups, shutdowns, malfunctions, calibrations, periods of nonoperation of all or part of the process) from daily averages because those data are of questionable validity; (5) require no monitoring when the process is shut down and there are no emissions, and, if sources do monitor, specify that the data do not constitute an excursion; (6) specify that only one excursion will be assigned if two or more parameters go beyond their limits at the same time for the same control device; (7) clearly define what constitutes an excursion; and (8) specify that some limited percentage of data points can be missing or fail to meet applicable criteria without that being an excursion.

The commenter requested that EPA revise the data availability requirement to match 40 CFR part 63, subpart G (HON), for continuous vents and wastewater vents and 40 CFR part 63, subpart U (P&R I NESHAP) or subpart JJJ (P&R IV NESHAP), for batch vents and storage vessel vents. The commenter noted that because the daily average in 40 CFR part 63, subpart G, is based on having valid data points for 75 percent of the operating day, the actual operating day for a batch process could be adjusted for periods when the unit was not operating or not sending vents to the control device. The commenter contrasted this with the 3-hour averages required in the proposed rule, which may or may not coincide accurately with the operational time of a batch process.

In separate comments, two other commenters recommended that EPA insert data availability language similar to 40 CFR 60.48b(f) (Performance Standard for Industrial-Commercial-Institutional Steam Generating Units). According to the commenters, this subpart requires that data must be available for a minimum of 75 percent of the operating hours for each control device operating day in at least 22 out of 30 successive control device operating days. The commenters stated that this change would allow EPA to account for the realities of operating computerized systems, which require periodic backup and occasionally break down and cannot be repaired in 1 hour in order to comply with the proposed 66 percent data availability requirement (e.g., two valid hourly values for a 3-hour averaging period).

Response: Regarding the first requested provision, the proposed rule does not link deviations in operating limits with violations of emission limits.

Regarding the second provision, the concept of a 24-hour average would be consistent with other rules and seems reasonable. Therefore, we have made the requested change to today's final rule.

Regarding the third provision, we are not allowing excused excursions (deviations) in today's final rule. Excused excursions were allowed in the HON to give sources time to become familiar with the new monitoring provisions in the HON. The excursions were not meant to be precedent-setting for all future rules. We believe that industry in general has had sufficient time to develop strategies for complying with monitoring requirements, and that excused excursions are no longer necessary. Other recent rules also have been issued without excused excursions.

Regarding the fourth and fifth provisions, there is no problem with including the requested exemption for periods of nonoperation for all or part of a source, and we have made the requested change to today's final rule. However, we are not adding exemptions to today's final rule for startups, shutdowns, and malfunctions. According to 40 CFR 63.6(e)(1)(i) of the NESHAP General Provisions, sources are required to minimize emissions during periods of startup, shutdown, or malfunction. If the daily average parameter value (including data from the startup, shutdown, or malfunction period) does not exceed the specified limit, then there is no deviation to report. However, deviations on days when you have startup, shutdown, or malfunction events would not be violations if you follow the procedures in your SSM plan.

Regarding the sixth provision, we have not included the requested exemption to allow sources only one excursion when two or more parameters go beyond their limits at the same time for the same control device. We do not want to specify in each rule exactly how we are going to assess penalties.

Regarding the eighth provision, we agree with the requests from the three commenters that the data availability requirements be revised. Consistent with the approach taken in 40 CFR part 63, subpart GGG (Pharmaceuticals NESHAP) and subpart MMM (Pesticide Active Ingredients NESHAP), we are requiring that at least 75 percent of the hours during an operating day be valid. We are including a 100 percent data availability requirement for a valid hour of data. A valid hour of data means that sources must have data for all 15-minute periods that were not excluded for no flow. For batch vents, if there is no flow at the time when a monitoring reading is taken, then that reading does not count in the average. In this way, we are able to take into account both batch and continuous vents, with a clear definition of what constitutes an excursion in each case, which was requested in the seventh provision. However, we do not agree with the request by two of the commenters for data to be available in at least 22 out of 30 successive operating days. We believe that such a

requirement could create a problem under some situations, such as if a source were to shut down for maintenance for an extended period of time.

D. Notifications and Reports

Comment: One commenter recommended that EPA revise the proposed cellulose rule to require that all NOCS reports be due on the same date following the compliance date, rather than after a certain number of days following the initial performance test or the initial compliance demonstration. According to the commenter, multiple performance tests for a process unit would make the original requirement to submit based on the performance test date very confusing, possibly requiring sources to submit multiple NOCS reports at various times, making it very easy to miscalculate a date and create inadvertent noncompliance. The commenter stated that there should also be no difference in the timeframe to submit the NOCS reports based on whether or not a performance test is required. According to the commenter, it would be more efficient for sources to send, and for EPA to receive, one set of NOCS reports. The commenter recommended that EPA take a standardized approach to NOCS reports by adding text similar to 40 CFR 63.152(b) and deleting references to 40 CFR 63.9(h) and 63.10(d)(2), which address the submittal dates for NOCS reports.

Response: We agree with the commenter that requiring sources to submit NOCS reports at various times could be confusing. To eliminate this source of confusion, we have decided to tie the date to submit all initial NOCS reports to the compliance date rather than the test date. Sources would be required to submit the NOCS reports no later than 240 days after the compliance date. This submittal date is based on the requirements in 40 CFR part 63, subpart A (NESHAP General Provisions), to conduct the initial performance test no later than 180 days after the compliance date and submit the NOCS report no later than 60 days after the performance test (180 days plus 60 days equals 240 days). To accomplish this standardized schedule, we have, as suggested, adapted text from 40 CFR 63.152(b) for today's final rule and excluded the provisions of 40 CFR 63.9(h) and 63.10(d)(2) regarding the submittal date for NOCS reports.

IV. Summary of Impacts

A. Air Quality Impacts

We have determined nationwide baseline HAP emissions from existing sources in the Miscellaneous Viscose Processes source category and Cellulose Ethers Production source category to be approximately 12,800 Mg/yr (14,100 tpy) at the current level of control. We have determined that the promulgated standards will reduce total HAP emissions from these sources by approximately 1,600 Mg/yr (1,700 tpy).

In addition to reducing emissions of HAP, the promulgated standards will also reduce emissions of non-HAP, such as H_2S. We have determined that the promulgated standards will reduce H_2S emissions from existing sources by approximately 410 Mg/yr (450 tpy) from a baseline level of approximately 2,800 Mg/yr (3,100 tpy).

We have determined that the promulgated standards will increase secondary emissions of criteria pollutants (particulate matter, sulfur dioxide, carbon monoxide, and nitrogen oxides) by approximately 190 Mg/yr (210 tpy). Secondary emissions were assumed to be generated from the utility boilers that produce the electricity and the industrial boilers that produce the steam for the control devices.

B. Cost Impacts

We have determined that the capital costs of the promulgated standards for existing sources will be approximately $30.8 million for emission control and $0.6 million for monitoring, which results in a total capital cost of approximately $31.4 million. The capital costs include the costs to purchase and install the emission control and monitoring equipment.

We have determined that the total annual costs for the rule will be approximately $9.7 million. Specifically, we have determined that the incremental annual costs of the promulgated standards for existing sources will be approximately $9.2 million for emission control and $0.4 million for monitoring. The annual costs include the direct annual costs (comprised of labor, materials, and utilities) plus the indirect annual costs (comprised of overhead, taxes, insurance, administrative charges, and capital recovery).

In addition, we expect that the total annual costs for recordkeeping and reporting required by the promulgated standards for existing sources will average approximately $67,900 over the first 3 years after implementation of the standards. We project no new sources over the first 3 years after implementation of the standards.

C. Economic Impacts

Because of the variability in end products in cellulose products manufacturing, we assessed impacts on five separate market segments. We treated the Cellulose Ethers Production source category as one segment, and divided the Miscellaneous Viscose Processes source category into four segments: cellulose food casing, rayon, cellulosic sponge, and cellophane. The total annualized social cost (in 1998 dollars) of the final rule on the industry is $6.0 million, with costs to the firms affected by the final rule ranging from 0.01 to 1 percent of sales.

For individual facilities, the cost-to-sales ratios ranged from less than 0.01 to 8.2 percent of sales. Since the higher facility cost-to-sales ratios were found among the cellulose food casing, rayon, and cellulosic sponge segments, we performed a market analysis, using 1998 as the baseline. The results indicated less than 1.5 percent change in both the market prices and in the quantity produced for the cellulose food casing and cellulosic sponge segments.

One of the two rayon firms has left the market since the proposal of this rule. For this reason, the remaining firm was modeled assuming full absorption of the control costs. This firm was already operating with a negative profit. It is possible that the closure of the other rayon firm may increase sales and profitability for the remaining firm. However, this is uncertain given the decline in the rayon industry since 1998. Available economic data suggest that an additional facility in this source category has experienced negative profits since 1998, so two facilities could reasonably close if current trends in the industry continue, even if they did not incur compliance costs from the final rule. The impact of the promulgated standards may be that the closures may occur sooner than they would otherwise.

D. Non-Air Environmental Impacts

We have determined that wastewater generation for existing sources will increase by approximately 8.1 million liters per year (L/yr) (2.1 million gallons per year (gal/yr)) relative to a baseline level of approximately 23 billion L/yr (6.2 billion gal/yr), and solid waste generation will increase by approximately 420 Mg/yr (460 tpy). We determined these impacts based on the additional wastewater and solid waste generated by control devices (e.g., Lo-Cat® scrubbers and carbon adsorbers) installed to meet the promulgated

standards for existing sources. We do not expect these increased impacts to adversely affect the ability of sources to comply with the promulgated standards.

E. Energy Impacts

We have determined that the overall energy demand (electricity plus steam) for existing sources in the Miscellaneous Viscose Processes source category and Cellulose Ethers Production source category will increase by approximately 300 million megajoules per year (284 billion British thermal units per year) under the promulgated standards. We determined this net increase based on the additional energy demand for control devices (e.g., scrubbers, carbon adsorbers, condensers, and oil absorbers) installed or upgraded to meet the promulgated standards for existing sources. We do not expect this increased energy demand to adversely affect the ability of sources to comply with the promulgated standards.

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action'' because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under 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 regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, it must include a certification from EPA's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to the rule.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

The final rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the rule.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives that EPA considered.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the rule. Today's rule is not subject to Executive Order 13045 because it is based solely on technology performance. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, the rule has been determined not to be ''economically significant'' as defined under Executive Order 12866.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Today's final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for

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

The EPA has determined that today's final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The capital cost of the rule has been determined to be approximately 31.4 million. The maximum total annual cost of the final rule for any year has been determined to be approximately $9.7 million. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's final rule is not subject to the requirements of section 203 of the UMRA.

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

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, a small entity is defined as: (1) A small business that has fewer than 1,000 employees for NAICS codes 325221, 325188, and 325199; fewer than 750 employees for NAICS code 325211; or fewer than 500 employees for NAICS codes 326121 and 326199; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, it has been determined that this action will not have a significant economic impact on a substantial number of small entities. We have determined that only one firm meets one of the definitions of small entity—a small business that has fewer than 500 employees for NAICS code 326199. This firm owns only 1 of the 13 operations subject to today's final rule. There are several firms subject to today's final rule whose costs will be a greater percentage of sales than this small business. Furthermore, the market impacts on this firm are minimal and are in line with impacts experienced by other firms subject to today's final rule.

H. Paperwork Reduction Act

The information collection requirements in the final rule will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has prepared an Information Collection Request (ICR) document (ICR No. 1974.02), and you may obtain a copy from Sandy Farmer by mail at the Office of Environmental Information, Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by electronic mail at *farmer.sandy@epa.gov;* or by calling (202) 260–2740. You may also download a copy off the Internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in 40 CFR part 63, subpart A (NESHAP General Provisions), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA's policies set forth in 40 CFR part 2, subpart B.

Today's final rule would require maintenance inspections of the control devices but would not require any notifications or reports beyond those required by 40 CFR part 63, subpart A (NESHAP General Provisions). The recordkeeping requirements require only the specific information needed to determine compliance.

The annual recordkeeping and reporting burden for this collection (averaged over the first 3 years after the effective date of the rule) has been determined to be approximately 1,400 labor hours per year, at a total annual cost of approximately $67,900. This burden estimate includes one-time notifications of applicability and performance test, reading instructions, training personnel, and developing a record system, SSM plan, and site-specific monitoring plan. The total annualized capital cost for monitoring equipment and for file cabinets used for storing collected data and reports averages approximately $56,600 over the 3-year period of the ICR. The total annual O&M cost for file storage, photocopying, and postage for notifications and reports averages approximately $200 over the 3-year period of the ICR.

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: (1) Review instructions; (2) 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; (3) adjust the existing ways to comply with any previously applicable instructions and

requirements; (4) train personnel to be able to respond to a collection of information; (5) search data sources; (6) complete and review the collection of information; and (7) 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.

I. National Technology Transfer and Advancement Act of 1995

As noted in the proposed rule, 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) 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.

Today's final rule involves the following technical standards: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 15, 18, 21, 22, 25, and 25A (40 CFR part 60, appendix A); Performance Specification 7 (PS–7), PS–8, PS–9, and PS–15 (40 CFR part 60, appendix B); and the applicable wastewater test methods and procedures in 40 CFR 63.144 and 63.145. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods and performance specifications. The search and review results were documented and placed in the docket for today's final rule (Docket No. A–99–39).

No applicable voluntary consensus standards were identified as alternatives to EPA Methods 1A, 2A, 2D, 2F, 2G, 22, PS–7, PS–8, PS–9, and PS–15 for the purposes of the rule. However, three voluntary consensus standards were identified as acceptable alternatives to EPA Methods 3B, 18, and 624 for the purposes of the rule. The three standards are ASME Performance Test Code (PTC) 19.10–1981—Part 10 (Flue and Exhaust Gas Analysis), ASTM D6420–99 (Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS)), and ASTM D5790–95 (Standard Test Method for Measurement of Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography-Mass Spectrometry).

The voluntary consensus standard ASME PTC 19.10–1981—Part 10 is cited in today's final rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ASME PTC 19.10–1981—Part 10 is an acceptable alternative to EPA Method 3B.

The voluntary consensus standard ASTM D6420–99 is appropriate in certain cases as an alternative to EPA Method 18 for the measurement of toluene and total organic HAP. Similar to EPA Method 18, ASTM D6420–99 is also a performance-based method for measuring gaseous organic compounds. However, ASTM D6420–99 was written to support the specific use of highly portable and automated GC/MS. While offering advantages over the traditional EPA Method 18, the ASTM method does allow some less stringent criteria for accepting GC/MS results than required by EPA Method 18. Therefore, ASTM D6420–99 is a suitable alternative to EPA Method 18 only where: (1) The target compound(s) are those listed in Section 1.1 of ASTM D6420–99, and (2) the target concentration is between 150 parts per billion by volume and 100 parts per million by volume. For target compound(s) not listed in Section 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, today's final rule specifies that the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble. For target compound(s) not listed in Section 1.1 of ASTM D6420–99 and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply. As a result, EPA will cite ASTM D6420–99 in today's final rule. The EPA will also cite EPA Method 18 as a gas chromatography (GC) option in addition to ASTM D6420–99, which will allow the continued use of GC configurations other than GC/MS.

The voluntary consensus standard ASTM D5790–95 is a ''purge and trap'' method that is acceptable as an alternative analytical procedure for the wastewater test methods and procedures in 40 CFR 63.144 and 63.145 for the analysis of total organic HAP in wastewater samples. As a result, EPA will cite ASTM D5790–95 in today's final rule. However, this ASTM method should be used with the sampling procedures of EPA Method 25D or an equivalent method in order to be a complete alternative for the purposes of this rule, as per 40 CFR 63.144. The standard ASTM D5790–95 is similar to EPA Method 624, which is also a ''purge and trap'' procedure. The standard ASTM D5790–95 is validated for all of the 21 volatile organic HAP targeted by EPA Method 624, but it is also validated for an additional 14 HAP not targeted by the EPA method.

In addition to the three voluntary consensus standards EPA uses in the rule, the search for emissions measurement procedures identified 14 other voluntary consensus standards as potential alternatives to EPA Methods 1, 2, 2C, 3, 3A, 3B, 4, 15, 18, 21, 25, and 25A. The EPA determined that 12 of the 14 standards identified for measuring emissions of the HAP or surrogates subject to emission limits in today's final rule were impractical alternatives to EPA test methods for the purposes of the rule. Two of the 14 standards identified in the search were not available at the time the review was conducted because they are under development by a voluntary consensus body. For these reasons, EPA does not intend to adopt these 14 standards for today's final rule.

Sections 63.5535 and 63.5545 and Table 4 to Subpart UUUU of 40 CFR part 63 list the EPA test methods and performance specifications included in today's final rule. Under 40 CFR 63.7(f) and 63.8(f) of the NESHAP General Provisions, an affected source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA test methods, performance specifications, or procedures.

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J. Congressional Review Act

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

Register. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule is effective June 11, 2002.

List of Subjects in 40 CFR Part 63

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

Dated: May 15, 2002.

Christine Todd Whitman,

Administrator.

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

PART 63—[AMENDED]

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

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

2. Part 63 is amended by adding subpart UUUU to read as follows:

Subpart UUUU—National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing

Sec.

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What This Subpart Covers

§ 63.5480 What is the purpose of this subpart?

This subpart establishes emission limits, operating limits, and work practice standards for hazardous air pollutants (HAP) emitted from cellulose products manufacturing operations. Carbon disulfide, carbonyl sulfide, ethylene oxide, methanol, methyl chloride, propylene oxide, and toluene are the HAP emitted in the greatest quantities from cellulose products manufacturing operations. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limits, operating limits, and work practice standards.

§ 63.5485 Am I subject to this subpart?

You are subject to this subpart if you own or operate a cellulose products manufacturing operation that is located at a major source of HAP emissions.

(a) Cellulose products manufacturing includes both the Miscellaneous Viscose Processes source category and the Cellulose Ethers Production source category. The Miscellaneous Viscose Processes source category includes all of the operations that use the viscose process. These operations include the cellulose food casing, rayon, cellulosic sponge, and cellophane operations, as defined in § 63.5610. The Cellulose Ethers Production source category includes all of the cellulose ether operations, as defined in § 63.5610, that use the cellulose ether process.

(b) A major source of HAP is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.1 megagrams per year (Mg/yr) (10 tons per year (tpy)) or more or any combination of HAP at a rate of 23 Mg/yr (25 tpy) or more.

(c) The provisions of this subpart do not apply to research and development facilities, as defined in section 112(b)(7) of the Clean Air Act (CAA), regardless of whether the facilities are located at the same plant site as an operation subject to the provisions of this subpart.

(d) For cellulose ether operations, the applicability provisions in paragraph (d)(1) or (2) of this section apply.

(1) The applicability provisions in §§ 63.100(a) through (f) and 63.160 apply if you are complying with the equipment leak provisions of subpart H of this part.

(2) The applicability provisions in § 63.1019 apply if you are complying with the equipment leak provisions in subpart UU of this part.

(e) For cellulose ether operations, the applicability provisions in §§ 63.100(a) through (f) and 63.110(a), (e) and (h) apply if you are complying with the wastewater provisions in subparts F and G of this part.

§ 63.5490 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source for the Miscellaneous Viscose Processes and Cellulose Ethers Production source categories.

(b) The affected source for the Miscellaneous Viscose Processes source category is each cellulose food casing, rayon, cellulosic sponge, or cellophane operation, as defined in § 63.5610. The affected source for the Cellulose Ethers Production source category is each

cellulose ether operation, as defined in § 63.5610.

(c) You must consider storage vessels to be part of your process unit, as defined in § 63.5610, under either of the conditions described in paragraphs (c)(1) and (2) of this section. Otherwise, you may assign your storage vessels according to paragraph (c)(3) or (4) of this section.

(1) The input to the storage vessel from your viscose process or cellulose ether process (either directly or through other storage vessels assigned to your process unit) is greater than or equal to the input from any other process.

(2) The output from the storage vessel to your viscose process or cellulose ether process (either directly or through other storage vessels assigned to your process unit) is greater than or equal to the output to any other process.

(3) If the greatest input to and/or output from a shared storage vessel is the same for two or more processes, including at least one viscose process or cellulose ether process, you may assign the storage vessel to any process unit that has the greatest input or output.

(4) If the use varies from year to year, then you must base the determination on the utilization that occurred during the year preceding June 11, 2002 or, if the storage vessel was not operating during that year, you must base the use on the expected use for the first 5-year period after startup. You must include this determination in the Notification of Compliance Status Report specified in Table 7 to this subpart.

(d) An affected source is a new affected source if you began construction of the affected source after August 28, 2000 and you meet the applicability criteria in § 63.5485 at the time you began construction.

(e) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(f) An affected source is existing if it is not new or reconstructed.

(g) For the purposes of this subpart, the definitions of new and existing affected source in paragraphs (d) through (f) of this section supersede the definitions of new and existing affected source in subparts F, G, H, U and UU of this part.

§ 63.5495 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, then you must comply with this subpart according to the requirements in paragraphs (a)(1) and (2) of this section.

(1) If you start up your affected source before June 11, 2002, then you must comply with the emission limits, operating limits, and work practice standards for new and reconstructed sources in this subpart no later than June 11, 2002.

(2) If you start up your affected source after June 11, 2002, then you must comply with the emission limits, operating limits, and work practice standards for new and reconstructed sources in this subpart upon startup of your affected source.

(b) If you have an existing affected source, then you must comply with this subpart according to the requirements in paragraphs (b)(1) and (2) of this section.

(1) Cellulose food casing, cellulosic sponge, cellophane, and cellulose ether operations must comply with the emission limits, operating limits, and work practice standards for existing sources in this subpart no later than June 13, 2005.

(2) Rayon operations must comply with this subpart according to the requirements in paragraphs (b)(2)(i) through (iii) of this section.

(i) Rayon operations must comply with the 35 percent reduction emission limit and associated operating limits and work practice standards for existing sources in this subpart no later than June 13, 2005.

(ii) Rayon operations must comply with the work practice standard for carbon disulfide unloading and storage operations for existing sources in this subpart no later than June 13, 2005.

(iii) Rayon operations must comply with the 40 percent reduction emission limit and associated operating limits and work practice standards for existing sources in this subpart no later than June 11, 2010.

(c) If you have an area source that increases its emissions or its potential to emit so that it becomes a major source of HAP and an affected source subject to this subpart, then the requirements in paragraphs (c)(1) and (2) of this section apply.

(1) An area source that meets the criteria of a new affected source, as specified in § 63.5490(d), or a reconstructed affected source, as specified in § 63.5490(e), must be in compliance with this subpart upon becoming a major source.

(2) An area source that meets the criteria of an existing affected source, as specified in § 63.5490(f), must be in compliance with this subpart no later than 3 years after it becomes a major source.

(d) You must meet the notification requirements in § 63.5575 and in subpart A of this part. Some of the notifications must be submitted before you are required to comply with the emission limits, operating limits, and work practice standards in this subpart.

(e) For the purposes of this subpart, the compliance dates in this section supersede the compliance dates in subparts F, G, H, U and UU of this part.

Emission Limits, Operating Limits, and Work Practice Standards

§ 63.5505 What emission limits, operating limits, and work practice standards must I meet?

(a) You must meet each emission limit and work practice standard in Table 1 to this subpart that applies to you.

(b) You must meet each operating limit in Table 2 to this subpart that applies to you.

(c) As provided in § 63.6(g), you may apply to EPA for permission to use an alternative to the work practice standards in this section.

(d) Opening of a safety device, as defined in § 63.5610, is allowed at any time that conditions require venting to avoid unsafe conditions.

(e) The emission limits in Table 1 to this subpart used to control emissions from storage vessels do not apply during periods of planned routine maintenance. Periods of planned routine maintenance of each control device, during which the control device does not meet the emission limit specified in Table 1 to this subpart, must not exceed 240 hours per year.

General Compliance Requirements

§ 63.5515 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limits, operating limits, and work practice standards in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(1) During the period between the compliance date specified for your affected source in § 63.5495 and the date upon which continuous monitoring systems (CMS) have been installed and validated and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) You must develop and implement a written startup, shutdown, and malfunction (SSM) plan according to the provisions in § 63.6(e)(3).

(d) After you treat a wastewater stream according to the provisions of

subparts F and G of this part, it is no longer subject to this subpart.

(e) If you use a boiler or process heater to comply with an emission limit or work practice standard in Table 1 to this subpart, then the vent stream must be introduced into the flame zone of the boiler or process heater.

(f) You are not required to conduct a performance test when you use any of the units specified in paragraphs (f)(1) through (5) of this section to comply with the applicable emission limit or work practice standard in Table 1 to this subpart. You are also exempt from the continuous compliance, reporting, and recordkeeping requirements specified in Tables 5 through 9 to of this subpart for any of these units. This exemption applies to units used as control devices or wastewater treatment units.

(1) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(2) A boiler or process heater into which the vent stream is introduced with the primary fuel or is used as the primary fuel;

(3) A boiler or process heater burning hazardous waste that meets the requirements in paragraph (f)(3)(i) or (ii) of this section.

(i) The boiler or process heater has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or

(ii) The boiler or process heater has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(4) A hazardous waste incinerator that has been issued a final permit under 40 CFR part 270 and that complies with the requirements of 40 CFR part 264, subpart O, or that has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(5) A control device for which a performance test was conducted for determining compliance with a rule promulgated by EPA and the test was conducted using the same test methods specified in Table 4 to this subpart and either you have made no deliberate process changes since the test, or you can demonstrate that the results of the performance test with or without adjustments, reliably demonstrate compliance despite process changes.

(g) For purposes of meeting any of the emission limits in Table 1 to this subpart, you may use either a single control technique or any combination of control techniques, as defined in § 63.5610.

(h) You must be in compliance with the provisions of subpart A of this part, except as noted in Table 10 to this subpart.

Testing and Initial Compliance Requirements

§ 63.5530 How do I demonstrate initial compliance with the emission limits and work practice standards?

(a) You must demonstrate initial compliance with each emission limit and work practice standard that applies to you according to Table 3 to this subpart. You must also install and operate the monitoring equipment according to the requirements in § 63.5545 that apply to you.

(b) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you according to the requirements in § 63.5535 and Table 4 to this Subpart UUUU.

(c) You must submit the Notification of Compliance Status Report containing the results of the initial compliance demonstration according to the requirements in § 63.5575 and Table 7 to this Subpart UUUU.

§ 63.5535 What performance tests and other procedures must I use?

(a) You must conduct each performance test in Table 4 to this Subpart UUUU that applies to you.

(b) You must conduct each performance test for continuous process vents and combinations of batch and continuous process vents according to the requirements in § 63.7(e)(1) and under the specific conditions in Table 4 to this Subpart UUUU. Normal operating conditions will be defined by the affected source. You must conduct each performance test for batch process vents under the specific conditions in Table 4 to this subpart and not under normal operating conditions as specified in § 63.7(e)(1).

(c) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(d) You must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(e) You must use the equations in paragraphs (e)(1) through (3) of this section to determine the control efficiency for each performance test.

(1) The total organic HAP emission rate is the sum of the emission rates of the individual HAP components. You must calculate the total organic HAP emission rate at the inlet and outlet of each control device for each test run using Equation 1 of this section:

$$ER_{HAP_t} = \sum_{j=1}^{m} ER_{HAP_j} \qquad \text{(Eq. 1)}$$

Where:

ER_{HAPt} = total emission rate of organic HAP in vent stream, kilograms per hour (kg/hr) (pounds per hour (lb/hr)).

ER_{HAPj} = emission rate of individual organic HAP in vent stream, kg/hr (lb/hr).

j = individual HAP.

m = number of individual HAP sampled in each test run.

(2) The total sulfide emission rate is the sum of the emission rates of the individual sulfide components, expressed as carbon disulfide. You must calculate the total sulfide emission rate at the inlet and outlet of each control device for each test run using Equation 2 of this section:

$$ER_{sulf_t} = ER_{CS_2} + \left(ER_{H_2S^*} \frac{M_{CS_2}}{M_{H_2S}} \right) + \left(ER_{COS^*} \frac{M_{CS_2}}{M_{COS}} \right) \qquad \text{(Eq. 2)}$$

Where:

ER_{sulf_t} = total emission rate of sulfide in vent stream, kg/hr (lb/hr), as carbon disulfide.

ER_{CS_2} = emission rate of carbon disulfide in vent stream, kg/hr (lb/hr).

ER_{H_2S} = emission rate of hydrogen sulfide in vent stream, kg/hr (lb/hr).

M_{CS_2} = mass of carbon disulfide per mole of carbon disulfide, 76 kilograms per kilogram-mole (kg/kg-mol) (76 pounds per pound-mole (lb/lb-mol)).

M_{H_2S} = mass of hydrogen sulfide per mole of carbon disulfide, 68 kg/kg-mol (68 lb/lb-mol).

ER_{COS} = emission rate of carbonyl sulfide in vent stream, kg/hr (lb/hr).

M_{COS} = mass of carbonyl sulfide per mole of carbon disulfide, 120 kg/kg-mol (120 lb/lb-mol).

(3) You must calculate the control efficiency for each control device for each test run using Equation 3 of this section:

$$CE = \frac{ER_i - ER_o}{ER_i}(100\%) \qquad \text{(Eq. 3)}$$

Where:

CE = control efficiency, percent.

ER_i = total emission rate of organic HAP (ER_{HAP_i}) or sulfide (ER_{sulf_i}) in the inlet vent stream of the control device, kg/hr (lb/hr).

ER_o = total emission rate of organic HAP (ER_{HAP_i}) or sulfide (ER_{sulf_i}) in the outlet vent stream of the control device, kg/hr (lb/hr).

(f) When a flare is used to comply with the applicable emission limit or work practice standard in Table 1 to this subpart, you must comply with the requirements in paragraphs (f)(1) through (3) of this section. You are not required to conduct a performance test to determine the control efficiency of the flare or the outlet organic HAP concentration. If you have previously conducted a compliance demonstration for a flare using the techniques specified in paragraphs (f)(1) through (3) of this section, you may use that compliance demonstration to satisfy the requirements of this paragraph if either no deliberate process changes have been made since the compliance demonstration, or the results of the compliance demonstration reliably demonstrate compliance despite process changes.

(1) Conduct a visible emission test using the techniques specified in § 63.11(b)(4);

(2) Determine the net heating value of the gas being combusted using the techniques specified in § 63.11(b)(6); and

(3) Determine the exit velocity using the techniques specified in either § 63.11(b)(7) or (b)(8), as appropriate.

(g) Viscose process affected sources must conduct a month-long initial compliance demonstration according to the requirements in paragraphs (g)(1) through (5) of this section and Table 3 to this subpart.

(1) Viscose process affected sources that must use non-recovery control devices to meet the applicable emission limit in Table 1 to this subpart must conduct an initial performance test of their non-recovery control devices according to the requirements in Table 4 to this subpart to determine the control efficiency of their non-recovery control devices and incorporate this information in their material balance.

(2) Viscose process affected sources that use recovery devices to meet the applicable emission limit in Table 1 to this subpart must determine the quantity of carbon disulfide fed to the process and the quantity of carbon disulfide recovered using the recovery device and incorporate this information in their material balance.

(3) Viscose process affected sources that use viscose process changes to meet the applicable emission limit in Table 1 to this subpart must determine the quantity of carbon disulfide used before and after the process change and incorporate this information in their material balance.

(4) Cellophane operations that use recovery devices to meet the 95 percent toluene emission limit in Table 1 to this subpart must determine the quantity of toluene fed to the process and the toluene recovered using the solvent recovery device and incorporate this information in their material balance.

(5) Using the pertinent material balance information obtained according to paragraphs (g)(1) through (4) of this section, viscose process affected sources must calculate the monthly average percent reduction for their affected source over the month-long period of the compliance demonstration.

(h) During the period of each compliance demonstration, you must establish each site-specific operating limit in Table 2 to this subpart that applies to you according to the requirements in paragraphs (h)(1) through (10) of this section.

(1) For continuous process vents and combinations of batch and continuous process vents, establish your site-specific operating limit using the procedures in § 63.505(b)(2), except that, if you demonstrate initial compliance using a month-long compliance demonstration, references to ''compliance testing'' and ''1-hour runs'' mean ''compliance demonstration'' and references to ''three test runs'' mean ''daily averages during the compliance demonstration'' for purposes of this subpart.

(2) For batch process vents, establish your site-specific operating limit using the procedures in § 63.505(b)(3), except that, if you demonstrate initial compliance using a month-long compliance demonstration, references to ''compliance testing'' and ''performance test'' mean ''compliance demonstration'' for purposes of this subpart.

(3) For condensers, record the outlet (product side) gas or condensed liquid temperature averaged over the same period as the compliance demonstration while the vent stream is routed and constituted normally. Locate the temperature sensor in a position that provides a representative temperature.

(4) For thermal oxidizers, record the firebox temperature averaged over the same period as the compliance demonstration. Locate the temperature sensor in a position that provides a representative temperature.

(5) For water scrubbers, record the pressure drop and flow rate of the scrubber liquid averaged over the same time period as the compliance demonstration while the vent stream is routed and constituted normally. Locate the pressure and flow sensors in positions that provide representative measurements of these parameters.

(6) For caustic scrubbers, record the pressure drop, flow rate of the scrubber liquid, and either the pH, conductivity, or alkalinity of the scrubber liquid averaged over the same time period as the compliance demonstration while the vent stream is routed and constituted normally. Locate the pressure sensors, flow sensors, and pH, conductivity, or alkalinity sensors in positions that provide representative measurements of these parameters. Ensure the sample is properly mixed and representative of the fluid to be measured.

(7) For flares, record the presence of a pilot flame. Locate the pilot flame sensor in a position that provides an accurate and continuous determination of the presence of the pilot flame.

(8) For biofilters, record the pressure drop across the biofilter beds, inlet gas temperature, and effluent pH, averaged over the same time period as the compliance demonstration while the vent stream is routed and constituted normally. Locate the pressure, temperature, and pH sensors in positions that provide representative measurement of these parameters. Ensure the sample is properly mixed and representative of the fluid to be measured.

(9) For carbon adsorbers, record the total regeneration stream mass or volumetric flow during each carbon bed regeneration cycle during the period of the compliance demonstration. Record the temperature of the carbon bed after each carbon bed regeneration cycle during the period of the compliance demonstration (and within 15 minutes of completion of any cooling cycle(s)). Record the operating time since the end of the last carbon bed regeneration cycle and the beginning of the next carbon bed regeneration cycle during the period of the compliance demonstration. Locate the temperature and flow sensors in positions that provide representative measurement of these parameters.

(10) For oil absorbers, record the flow of absorption liquid through the absorber, the temperatures of the absorption liquid before and after the

steam stripper, and the steam flow through the steam stripper averaged during the same period of the compliance demonstration. Locate the temperature and flow sensors in positions that provide representative measurement of these parameters.

§ 63.5540 By what date must I conduct a performance test or other initial compliance demonstration?

(a) You must conduct performance tests or other initial compliance demonstrations no later than 180 calendar days after the compliance date that is specified for your source in § 63.5495 and according to the provisions in § 63.7(a)(2).

§ 63.5545 What are my monitoring installation, operation, and maintenance requirements?

(a) For each CMS required in this section, you must develop and make available for inspection by the permitting authority, upon request, a site-specific monitoring plan that addresses the provisions in paragraphs (a)(1) through (3) of this section.

(1) Installation of the CMS sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (e.g., on or downstream of the last control device);

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system; and

(3) Performance evaluation procedures and acceptance criteria (e.g., calibrations).

(b) In your site-specific monitoring plan, you must also address the provisions in paragraphs (b)(1) through (3) of this section.

(1) Ongoing operation and maintenance procedures in accordance with the general requirements of §§ 63.8(c)(1), (3), (4)(ii) and 63.5580(c)(6);

(2) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d)(2); and

(3) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of §§ 63.10(c), (e)(1), (e)(2)(i) and 63.5585.

(c) You must conduct a performance evaluation of each CMS in accordance with your site-specific monitoring plan.

(d) You must operate and maintain the CMS in continuous operation according to the site-specific monitoring plan.

(e) For each continuous emissions monitoring system (CEMS), you must meet the requirements in paragraphs (e)(1) through (6) of this section.

(1) Each CEMS must be installed, operated, and maintained according to the applicable performance specification (PS) listed in paragraphs (e)(1)(i) through (iv) of this section:

(i) PS–7 of 40 CFR part 60, appendix B, for CEMS used to measure hydrogen sulfide emissions;

(ii) PS–8 of 40 CFR part 60, appendix B, for CEMS used to measure volatile organic compound emissions;

(iii) PS–9 of 40 CFR part 60, appendix B, for CEMS that use gas chromatography to measure organic HAP emissions; and

(iv) PS–15 of 40 CFR part 60, appendix B, for CEMS that use Fourier transform infrared spectroscopy to measure organic HAP emissions.

(2) You must conduct a performance evaluation of each CEMS according to the requirements in § 63.8 and according to the applicable performance specification listed in paragraphs (e)(1)(i) through (iv) of this section.

(3) As specified in § 63.8(c)(4)(ii), each CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(4) The CEMS data must be reduced to operating data averages computed using valid data from at least 75 percent of the hours during the averaging period. To have a valid hour of data, you must have four or more data points equally spaced over the 1-hour period (or at least two data points during an hour when calibration, quality assurance, or maintenance activities are being performed), except as specified in paragraph (a)(5) of this section.

(5) The CEMS data taken during periods in which the control devices are not functioning in controlling emissions, as indicated by periods of no flow for all or a portion of an affected source, must not be considered in the averages.

(6) Determine the daily average of all recorded readings for each operating day during the semiannual reporting period described in Table 8 to this subpart.

(f) For each continuous parameter monitoring system (CPMS), you must meet the requirements in paragraphs (f)(1) through (9) of this section.

(1) Satisfy all requirements of performance specifications for CPMS upon promulgation of such performance specifications.

(2) Satisfy all requirements of quality assurance (QA) procedures for CPMS upon promulgation of such QA procedures.

(3) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period.

(4) To calculate a valid hourly average, there must be at least four equally spaced values for that hour, excluding data collected during the periods described in paragraph (f)(6) of this section.

(5) Have valid hourly data for at least 75 percent of the hours during the averaging period.

(6) The CPMS data taken during periods in which the control devices are not functioning in controlling emissions, as indicated by periods of no flow for all or a portion of an affected source, must not be considered in the averages.

(7) Calculate a daily average using all of the valid hourly averages for each operating day during the semiannual reporting period.

(8) Record the results of each inspection, calibration, and validation check.

(9) Except for redundant sensors, any device that is used to conduct an initial validation or accuracy audit of a CPMS must meet the accuracy requirements specified in paragraphs (f)(9)(i) and (ii) of this section.

(i) The device must have an accuracy that is traceable to National Institute of Standards and Technology (NIST) standards.

(ii) The device must be at least three times as accurate as the required accuracy for the CPMS.

(g) If flow to a control device could be intermittent, you must install, calibrate, and operate a flow indicator at the inlet or outlet of the control device to identify periods of no flow.

Continuous Compliance Requirements

§ 63.5555 How do I demonstrate continuous compliance with the emission limits, operating limits, and work practice standards?

(a) You must demonstrate continuous compliance with each emission limit, operating limit, and work practice standard in Tables 1 and 2 to this subpart that applies to you according to methods specified in Tables 5 and 6 to this subpart.

(b) You must report each instance in which you were not in continuous compliance (as specified in Tables 5 and 6 to this subpart) with each emission limit, each operating limit, and each work practice standard that apply to you. This includes periods of startup, shutdown, and malfunction. These instances are deviations from the emission limits, operating limits, and work practice standards in this subpart. These deviations must be reported

according to the requirements in § 63.5580.

(c) During periods of startup, shutdown, and malfunction, you must operate according to the SSM plan.

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating according to the SSM plan.

§ 63.5560 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) Except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating, including periods of startup, shutdown, and malfunction.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, required quality assurance or control activities, and periods of no flow for all or a portion of an affected source in data averages and calculations used to report emission or operating levels, nor may such data be used in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

(d) All terms in this subpart that define a period of time for completing required tasks (e.g., weekly, monthly, quarterly, or annually) refer to the standard calendar periods.

(1) You may change time periods specified in this subpart for completing required tasks by mutual agreement with the Administrator, as specified in subpart A of this part. For example, a period could begin on the compliance date or another date, rather than on the first day of the standard calendar period. For each time period that is changed by agreement, the revised period must remain in effect until it is changed. A new request is not necessary for each recurring period.

(2) Where the period specified for compliance is a standard calendar period, if the initial compliance date occurs after the beginning of the period, then you must comply according to the schedule specified in paragraph (d)(2)(i) or (ii) of this section, as appropriate.

(i) You must comply before the end of the standard calendar period within which the compliance deadline occurs, if there remain at least 3 days for tasks that must be performed weekly, at least 2 weeks for tasks that must be performed monthly, at least 1 month for tasks that must be performed quarterly, or at least 3 months for tasks that must be performed annually; or

(ii) In all instances where a provision of this subpart requires completing a task during each of multiple successive periods, you may perform the required task at any time during the specified period, provided that the task is conducted at a reasonable interval after completion of the task during the previous period.

Notifications, Reports, and Records

§ 63.5575 What notifications must I submit and when?

You must submit each notification in Table 7 to this subpart that applies to you by the date specified in Table 7 to this subpart.

§ 63.5580 What reports must I submit and when?

(a) You must submit each report in Table 8 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submitting reports under § 63.10, you must submit each compliance report by the date in Table 8 to this subpart and according to the requirements in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.5495 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.5495.

(2) The first compliance report must be postmarked or delivered no later than August 31 or February 28, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.5495.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than August 31 or February 28, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information in paragraphs (c)(1) through (6) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying that, based on information and belief formed after reasonable inquiry, the statements and information in the report are true, accurate, and complete.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there are no deviations from any emission limits, operating limits, or work practice standards that apply to you (see Tables 5 and 6 to this subpart), the compliance report must contain a statement that there were no deviations from the emission limits, operating limits, or work practice standards during the reporting period.

(6) If there were no periods during which the CMS was out-of-control, the compliance report must contain a statement that there were no periods during which the CMS was out-of-control during the reporting period. You must include specifications for out-of-control operation in the quality control plan required under § 63.8(d)(2).

(d) For each deviation from an emission limit or work practice standard that occurs at an affected source where you are not using a CMS to demonstrate continuous compliance with the emission limits or work practice standards in this subpart (see Table 5 to this subpart), the compliance report must contain the information in paragraphs (c)(1) through (4) and (d)(1) and (2) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations

(including unknown cause, if applicable), as applicable, and the corrective action taken.

(e) For each deviation from an emission limit or operating limit occurring at an affected source where you are using a CMS to demonstrate continuous compliance with the emission limit or operating limit in this subpart (see Tables 5 and 6 to this subpart), you must include the information in paragraphs (c)(1) through (4) and (e)(1) through (13) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The date and time that each malfunction started and stopped.

(2) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time, and duration that each CMS was out-of-control.

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(5) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CMS downtime during the reporting period and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(8) An identification of each HAP that is known to be in the emission stream at the affected source.

(9) A brief description of the process units.

(10) A brief description of the CMS.

(11) The date of the latest CEMS certification or audit or CPMS inspection, calibration, or validation check.

(12) A description of any changes in CMS, processes, or controls since the last reporting period.

(13) The operating day average values of monitored parameters.

(f) If you have obtained a title V operating permit according to 40 CFR part 70 or 40 CFR part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report according to Table 8 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limit, operating limit, or work practice standard in this subpart, then submitting the compliance report will satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submitting a compliance report will not otherwise affect any obligation you may have to report deviations from permit requirements to the permit authority.

§ 63.5585 What records must I keep?

You must keep the records in Table 9 to this subpart that apply to you.

§ 63.5590 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record onsite for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

(d) You may keep records in hard copy or computer-readable form including, but not limited to, paper, microfilm, computer, floppy disk, magnetic tape, or microfiche.

Other Requirements and Information

§ 63.5595 What compliance options do I have if part of my affected source is subject to both this subpart and another subpart?

(a) For any Group 1 or Group 2 wastewater stream that is subject to the wastewater provisions in this subpart and the wastewater provisions in 40 CFR parts 260 through 272, you must comply with the requirements of either paragraph (a)(1) or (2) of this section.

(1) You must comply with more stringent control, testing, monitoring, recordkeeping, and reporting requirements that overlap between the provisions of this subpart and the provisions of 40 CFR parts 260 through 272. You must keep a record of the information used to determine which requirements were the most stringent and submit this information if requested by the Administrator.

(2) You must submit, no later than 4 months before the applicable compliance date specified in § 63.5495, a request for a case-by-case determination of requirements. The request must include the information specified in paragraphs (a)(2)(i) and (ii) of this section.

(i) Identification of the wastewater streams that are subject to this subpart and to provisions in 40 CFR parts 260 through 272, determination of the Group 1/Group 2 status of those streams, determination of whether or not those streams are listed or exhibit a characteristic as specified in 40 CFR part 261, and determination of whether the waste management unit is subject to permitting under 40 CFR part 270.

(ii) Identification of the specific control, testing, monitoring, recordkeeping, and reporting requirements that overlap between the provisions of this subject and the provisions of 40 CFR parts 260 through 272.

(b) If any combustion device, recovery device, or recapture device, as defined in § 63.111, subject to this subpart is also subject to the monitoring, recordkeeping, and reporting requirements in 40 CFR part 264, subpart AA or CC, or is subject to monitoring and recordkeeping requirements in 40 CFR part 265, subpart AA or CC, and you comply with the periodic reporting requirements under 40 CFR part 264, subpart AA or CC, that would apply to the device if the affected source had final-permitted status, you may elect to comply either with the monitoring, recordkeeping, and reporting requirements of this subpart, or with the monitoring, recordkeeping, and reporting requirements in 40 CFR parts 264 and/or 265, as described in this paragraph (b), which will constitute compliance with the monitoring, recordkeeping, and reporting requirements of this subpart. You must identify which option has been selected in the Notification of Compliance Status Report required in § 63.5575 and Table 7 to this subpart.

§ 63.5600 What other requirements apply to me?

(a) Table 10 to this subpart shows which provisions of the General Provisions in §§ 63.1 through 63.15 apply to you.

(b) For the purposes of this subpart, the applicable subpart A requirements in Table 10 to this subpart supersede the applicable subpart A requirements in subparts F, G, H, U and UU of this part.

§ 63.5605 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the US Environmental Protection Agency

(EPA), or a delegated authority, such as your State, local, or tribal agency. If the Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the Administrator keeps the authorities contained in paragraphs (b)(1) through (4) of this section and does not delegate such authorities to a State, local, or tribal agency.

(1) Approval of alternatives to the non-opacity emission limits, operating limits, and work practice standards in § 63.5505(a) through (c) and under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.5610 What definitions apply to this subpart?

(a) For all affected sources complying with the batch process vent testing provisions in § 63.490(c) and the operating limit provisions in § 63.505(b), the terms used in this subpart and in subpart U of this part are defined in § 63.482 and paragraph (g) of this section.

(b) For all affected sources complying with the closed-vent system and bypass line requirements in § 63.148, the terms used in this subpart and in subpart G of this part are defined in § 63.111 and paragraph (g) of this section.

(c) For all affected sources complying with the heat exchanger system requirements in § 63.104, the terms used in this subpart and in subpart F of this part are defined in § 63.101 and paragraph (g) of this section.

(d) For cellulose ether affected sources complying with the maintenance wastewater, process wastewater, and liquid stream in open system requirements of subparts F and G of this part, the terms used in this subpart and in subparts F and G of this part are defined in §§ 63.101 and 63.111 and paragraph (g) of this section.

(e) For cellulose ether affected sources complying with the equipment leak requirements of subpart H of this part, the terms used in this subpart and in subpart H of this part are defined in § 63.161 and paragraph (g) of this section.

(f) For cellulose ether affected sources complying with the equipment leak requirements of subpart UU of this part, the terms used in this subpart and in subpart UU of this part are defined in § 63.1020 and paragraph (g) of this section.

(g) All other terms used in this subpart have the meaning given them in § 63.2 and this paragraph (g). If a term is defined in § 63.2, 63.101, 63.111, 63.161, or 63.1020 and in this paragraph (g), the definition in this paragraph (g) applies for purposes of this subpart.

Bottoms receiver means a tank that collects distillation bottoms before the stream is sent for storage or for further downstream processing.

Carbon disulfide unloading and storage operation means a system at an affected source that includes unloading of carbon disulfide from a railcar using nitrogen or water displacement and storage of carbon disulfide in a storage vessel using nitrogen or water padding.

Cellophane means a thin, transparent cellulose material, which is manufactured using the viscose process and used in food packaging (e.g., candy, cheese, baked goods), adhesive tapes, and membranes for industrial uses, such as batteries.

Cellophane operation means the collection of the cellophane process unit and any other equipment, such as heat exchanger systems, wastewater and waste management units, or cooling towers, that are not associated with an individual cellophane process unit, but are located at a cellophane operation for the purpose of manufacturing cellophane and are under common control.

Cellophane process unit means all equipment which collectively function to manufacture cellophane and any associated storage vessels, liquid streams in open systems (as defined in § 63.149), and equipment (as defined in § 63.161) that are used in the manufacturing of cellophane.

Cellulose ether means a compound, such as carboxymethyl cellulose, hydroxyethyl cellulose, hydroxypropyl cellulose, methyl cellulose, or hydroxypropyl methyl cellulose, which is manufactured using the cellulose ether process and used mainly as a thickener, viscosifier, or binder in a wide variety of consumer and other products.

Cellulose ether operation means the collection of the cellulose ether process unit and any other equipment, such as heat exchanger systems, wastewater and waste management units, or cooling towers, that are not associated with an individual cellulose ether process unit, but are located at a cellulose ether operation for the purpose of manufacturing a particular cellulose ether and are under common control.

Cellulose ether process means the following:

(1) A manufacturing process that includes the following process steps:

(i) Reaction of cellulose (e.g., wood pulp or cotton linters) with sodium hydroxide to produce alkali cellulose;

(ii) Reaction of the alkali cellulose with a chemical compound(s), such as ethylene oxide, propylene oxide, methyl chloride, or chloroacetic acid, to produce a particular cellulose ether;

(iii) Washing and purification of the cellulose ether; and

(iv) Drying of the cellulose ether.

(2) Solids handling steps downstream of the drying process are not considered part of the cellulose ether process.

Cellulose ether process change means a change to the cellulose ether process that occurred no earlier than January 1992 that allows the recovery of organic HAP, reduction in organic HAP usage, or reduction in organic HAP leaving the reactor. Includes extended cookout.

Cellulose ether process unit means all equipment which collectively function to manufacture a particular cellulose ether and any associated storage vessels, liquid streams in open systems (as defined in § 63.149), and equipment (as defined in § 63.161 or 63.1020) that are used in the manufacturing of a particular cellulose ether.

Cellulose Ethers Production source category means the collection of operations that use the cellulose ether process to manufacture a particular cellulose ether.

Cellulose food casing means a cellulose casing, which is manufactured using the viscose process, used in forming meat products (e.g., hot dogs, sausages) and, in most cases, removed from the meat products before sale.

Cellulose food casing operation means the collection of the cellulose food casing process unit and any other equipment, such as heat exchanger systems, wastewater and waste management units, or cooling towers, that are not associated with an individual cellulose food casing process unit, but are located at a cellulose food casing operation for the purpose of manufacturing cellulose food casings and are under common control.

Cellulose food casing process unit means all equipment which collectively function to manufacture cellulose food casings and any associated storage vessels, liquid streams in open systems (as defined in § 63.149), and equipment

(as defined in § 63.161) that are used in the manufacturing of cellulose food casings.

Cellulosic sponge means a porous cellulose product, which is manufactured using the viscose process and used mainly for consumer use (e.g., for cleaning).

Cellulosic sponge operation means the collection of the cellulosic sponge process unit and any other equipment, such as heat exchanger systems, wastewater and waste management units, or cooling towers, that are not associated with an individual cellulosic sponge process unit, but are located at a cellulosic sponge operation for the purpose of manufacturing cellulosic sponges and are under common control.

Cellulosic sponge process unit means all equipment which collectively function to manufacture cellulosic sponges and any associated storage vessels, liquid streams in open systems (as defined in § 63.149), and equipment (as defined in § 63.161) that are used in the manufacturing of cellulosic sponges.

Closed-loop system means a system wherein the emission stream is not normally vented to the atmosphere but is recycled back to the process.

Control technique means any equipment or process control used for capturing, recovering, treating, or preventing HAP emissions. The equipment includes recovery devices and non-recovery control devices, as defined in this paragraph. The process control includes cellulose ether process changes and viscose process changes, as defined in this paragraph.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including, but not limited to, any emission limit, operating limit, or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission point means an individual process vent, storage vessel, waste management unit, or equipment leak.

Extended cookout (ECO) means a cellulose ether process change that reduces the amount of unreacted ethylene oxide, propylene oxide, methyl chloride, or chloroacetic acid leaving the reactor. This is accomplished by allowing the product to react for a longer time, thereby leaving less unreacted ethylene oxide, propylene oxide, methyl chloride, or chloroacetic acid and reducing emissions of ethylene oxide, propylene oxide, methyl chloride, or chloroacetic acid that might have occurred otherwise.

Miscellaneous Viscose Processes source category means the collection of operations that use the viscose process to manufacture a particular cellulose product. These cellulose products include cellulose food casings, rayon, cellulosic sponges, and cellophane.

Nitrogen storage system means a system of padding the carbon disulfide storage vessels with nitrogen to prevent contact with oxygen.

Nitrogen unloading and storage system means the combination of a nitrogen unloading system for unloading carbon disulfide and a nitrogen storage system for storing carbon disulfide.

Nitrogen unloading system means a system of unloading carbon disulfide from railcars to storage vessels using nitrogen displacement to prevent gaseous carbon disulfide emissions to the atmosphere and to preclude contact with oxygen.

Non-recovery control device means an individual unit of equipment capable of and normally used for the purpose of capturing or treating HAP emissions. Examples of equipment that may be non-recovery control devices include, but are not limited to, biofilters, caustic scrubbers, flares, thermal oxidizers, and water scrubbers.

Oil absorber means a packed-bed absorber that absorbs pollutant vapors using a type of oil (e.g., kerosene) as the absorption liquid.

Onsite means that records are stored at a location within a major source which encompasses the affected source. Onsite includes, but is not limited to, storage at the affected source or process unit to which the records pertain or storage in central files elsewhere at the major source.

Process vent means a point of discharge to the atmosphere (or the point of entry into a control device, if any) of a HAP-containing gas stream from the process operation. Process vents do not include vents with a flow rate less than 0.005 standard cubic meter per minute or with a concentration less than 50 parts per million by volume (ppmv), vents on storage tanks, vents on wastewater emission sources, or pieces of equipment regulated under equipment leak standards.

Rayon means cellulose fibers, which are manufactured using the viscose process and used in the production of either textiles (e.g., apparel, drapery, upholstery) or non-woven products (e.g., feminine hygiene products, wipes, computer disk liners, surgical swabs).

Rayon operation means the collection of the rayon process unit and any other equipment, such as heat exchanger systems, wastewater and waste management units, or cooling towers, that are not associated with an individual rayon process unit, but are located at a rayon operation for the purpose of manufacturing rayon and are under common control.

Rayon process unit means all equipment which collectively function to manufacture rayon and any associated storage vessels, liquid streams in open systems (as defined in § 63.149), and equipment (as defined in § 63.161) that are used in the manufacturing of rayon.

Recovery device means an individual unit of equipment capable of and normally used for the purpose of recovering HAP emissions for fuel value (i.e., net positive heating value), use, reuse, or for sale for fuel value, use, or reuse. Examples of equipment that may be recovery devices include, but are not limited to, absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units.

Responsible official means responsible official as defined in 40 CFR 70.2.

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purposes of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in responses to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operation and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable

regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, combustible, explosive, reactive, or hazardous materials.

Solvent coating process means a manufacturing process in which cellophane film is coated (e.g., with Saran® or nitrocellulose) to impart moisture impermeability to the film and to make it printable. Both Saran and nitrocellulose use the same solvents—tetrahydrofuran and toluene.

Storage vessel means a tank or other vessel used to store liquids that contain one or more HAP. Storage vessels do not include the following:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals (30 pounds per square inch) and without emissions to the atmosphere;

(3) Vessels with capacities smaller than 38 cubic meters (10,000 gallons);

(4) Vessels and equipment storing and/or handling material that contains no HAP or contains HAP as impurities only;

(5) Bottoms receiver tanks;

(6) Surge control vessels;

(7) Wastewater storage vessels; and

(8) Storage vessels assigned to another process unit regulated under another subpart of part 63.

Surge control vessel means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within a process unit when in-process storage, mixing, or management of flow rates or volumes is needed to assist in production of a product.

Total HAP means the sum of organic HAP emissions measured using EPA Method 18.

Total sulfide means the sum of emissions for carbon disulfide, hydrogen sulfide, and carbonyl sulfide reported as carbon disulfide. Total sulfide, as defined for the purposes of this subpart, does not include other sulfur compounds, such as sulfur dioxide.

Viscose process means the following:

(1) A manufacturing process that includes the following process steps:

(i) Reaction of cellulose (e.g., wood pulp) with sodium hydroxide to produce alkali cellulose;

(ii) Reaction of alkali cellulose with carbon disulfide to produce sodium cellulose xanthate;

(iii) Combination of sodium cellulose xanthate with additional sodium hydroxide to produce viscose solution;

(iv) Extrusion of the viscose into various shapes (e.g., hollow casings, thin fibers, thin sheets, molds);

(v) Regeneration of the cellulose product;

(vi) Washing of the cellulose product; and

(vii) Possibly acid or salt recovery.

(2) The cellulose products manufactured using the viscose process include cellulose food casings, rayon, cellulosic sponges, and cellophane.

Viscose process change means a change to the viscose process that occurred no earlier than January 1992 that allows either the recovery of carbon disulfide or a reduction in carbon disulfide usage in the process.

Wastewater means water that:

(1) Contains either:

(i) An annual average concentration of organic HAP (listed in Table 9 to subpart G of this part) of at least 5 parts per million by weight (ppmw) and has an annual average flow rate of 0.02 liter per minute or greater; or

(ii) An annual average concentration of organic HAP (listed in Table 9 to subpart G of this part) of at least 10,000 ppmw at any flow rate.

(2) Is discarded from a cellulose food casing, rayon, cellulosic sponge, cellophane, or cellulose ether process unit that is part of an affected source. Wastewater is process wastewater or maintenance wastewater.

Water storage system means a system of padding the carbon disulfide storage vessels with water to prevent contact with oxygen. The water, which is saturated with carbon disulfide, is later sent to wastewater treatment.

Water unloading and storage system means the combination of a water unloading system for unloading carbon disulfide and a water storage system for storing carbon disulfide.

Water unloading system means a system of unloading carbon disulfide from railcars to storage vessels using water displacement to prevent gaseous carbon disulfide emissions to the atmosphere and to preclude contact with oxygen.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

Tables to Subpart UUUU of Part 63

TABLE 1 TO SUBPART UUUU OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS

[As required in § 63.5505(a), you must meet the appropriate emission limits and work practice standards in the following table]

For . . .	at . . .	you must . . .
1. the sum of all viscose process vents	a. each existing cellulose food casing operation.	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 25% based on a 6-month rolling average; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems.
	b. each new cellulose food casing operation.	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 75% based on a 6-month rolling average; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems.

TABLE 1 TO SUBPART UUUU OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS—Continued

[As required in § 63.5505(a), you must meet the appropriate emission limits and work practice standards in the following table]

For . . .	at . . .	you must . . .
	c. each existing rayon operation	i. (1) reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 35% within 3 years after the effective date based on a 6-month rolling average; (2) for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and (3) comply with the work practice standard for closed-vent systems; and ii. (1) reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 40% within 8 years after the effective date based on a 6-month rolling average; (2) for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and (3) comply with the work practice standard for closed-vent systems.
	d. each new rayon operation	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 75% based on a 6-month rolling average; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems.
	e. each existing or new cellulosic sponge operation.	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 75% based on a 6-month rolling average; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems.
	f. each existing or new cellophane operation.	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 75% based on a 6-month rolling average; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems.
2. the sum of all solvent coating process vents.	a. each existing or new cellophane operation.	i. reduce uncontrolled toluene emissions by at least 95% based on a 6-month rolling average; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems.
3. the sum of all cellulose ether process vents.	a. each existing or new cellulose ether operation.	i. reduce total uncontrolled organic HAP emissions by at least 99%; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems.
4. closed-loop systems	each existing or new cellulose ether operation.	comply by operating the closed-loop system.

TABLE 1 TO SUBPART UUUU OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS—Continued

[As required in § 63.5505(a), you must meet the appropriate emission limits and work practice standards in the following table]

For . . .	at . . .	you must . . .
5. each carbon disulfide unloading and storage operation.	a. each existing or new viscose process affected source.	i. reduce uncontrolled carbon disulfide emissions by at least 83% from unloading and storage operations based on a 6-month rolling average if you use an alternative control technique not listed in this table source for carbon disulfide unloading and storage operations; if using a control device to reduce emissions, route emissions through a closed-vent system to the control device; and comply with the work practice standard for closed-vent systems; ii. reduce uncontrolled carbon disulfide emissions by at least 0.14% from viscose process vents based on a 6-month rolling average; for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and comply with the work practice standard for closed-vent systems; iii. install a nitrogen unloading and storage system (as defined in § 63.5610); or iv. install a nitrogen unloading system (as defined in § 63.5610); reduce uncontrolled carbon disulfide emissions by at least 0.045% from viscose process vents based on a 6-month rolling average; for each vent stream that you control, route the vent stream through a closed-vent to the control device; and comply with the work practice standard for closed-vent systems.
6. each toluene storage vessel	a. each existing or new cellophane operation.	i. reduce uncontrolled toluene emissions by at least 95% based on a 6-month rolling average; ii. if using a control device to reduce emissions, route the emissions through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems.
7. equipment leaks	a. each existing or new cellulose ether operation.	i. comply with the applicable equipment leak standards of §§ 63.162 through 63.179, except that references to ''process unit'' mean ''cellulose ether process unit'' for the purposes of this subpart; or ii. comply with the applicable equipment leak standards of §§ 63.1021 through 63.1037, except that references to ''process unit'' mean ''cellulose ether process unit'' for the purposes of this subpart.
8. all sources of wastewater emissions	each existing or new cellulose ether operation.	comply with the applicable wastewater provisions of §§ 63.105 and 63.132 through 63.140.
9. liquid streams in open system 2	each existing or new cellulose ether operation.	comply with the applicable provisions of § 63.149, except that references to ''chemical manufacturing process unit'' mean ''cellulose ether process unit'' for the purposes of this subpart.
10. closed-vent system used to route emissions to a control device.	each existing or new affected source	conduct annual inspections, repair leaks, and maintain records as specified in § 63.148.
11. closed-vent system containing a bypass line that could divert a vent stream away from a control device, except for equipment needed for safety purposes (described in § 63.148(f)(3)).	each existing or new affected source	i. install, calibrate, maintain, and operate a flow indicator as specified in § 63.148(f)(1); or ii. secure the bypass line valve in the closed position with a car-seal or lock-and-key type configuration and inspect the seal or closure mechanism at least once per month as specified in § 63.148(f)(2).
12. heat exchanger system that cools process equipment or materials in the process unit.	each existing or new affected source	monitor and repair the heat exchanger system according to § 63.104(a) through (e), except that references to ''chemical manufacturing process unit'' mean ''cellulose food casing, rayon, cellulosic sponge, cellophane, or cellulose ether process unit'' for the purposes of this subpart.

TABLE 2 TO SUBPART UUUU OF PART 63.—OPERATING LIMITS

[As required in § 63.5505(b), you must meet the appropriate operating limits in the following table]

For the following control technique . . .	you must . . .
1. condenser	maintain the daily average condenser outlet gas or condensed liquid temperature no higher than the value established during the compliance demonstration.

TABLE 2 TO SUBPART UUUU OF PART 63.—OPERATING LIMITS—Continued

[As required in § 63.5505(b), you must meet the appropriate operating limits in the following table]

For the following control technique . . .	you must . . .
2. thermal oxidizer	maintain the daily average thermal oxidizer firebox temperature no lower than the value established during the compliance demonstration.
3. water scrubber	maintain the daily average scrubber pressure drop and scrubber liquid flow rate within the operating values established during the compliance demonstration.
4. caustic scrubber	maintain the daily average scrubber pressure drop, scrubber liquid flow rate, and scrubber liquid pH, conductivity, or alkalinity within the operating values established during the compliance demonstration.
5. flare	maintain the presence of a pilot flame.
6. biofilter	maintain the daily average biofilter inlet gas temperature, biofilter effluent pH, and pressure drop within the operating values established during the compliance demonstration.
7. carbon absorber	maintain the regeneration frequency, total regeneration adsorber stream mass or volumetric flow during carbon bed regeneration, and temperature of the carbon bed after regeneration (and within 15 minutes of completing any cooling cycle(s)) for each regeneration cycle within the values established during the compliance demonstration.
8. oil absorber	maintain the daily average absorption liquid flow, absorption liquid temperature, and steam flow within the values established during the compliance demonstration.
9. any of the control techniques specified in this table.	if using a CEMS, maintain the daily average control efficiency of each control device no lower than the value established during the compliance demonstration.
10. any of the control techniques specified in this table.	a. if you wish to establish alternative operating parameters, submit the application for approval of the alternative operating parameters no later than the notification of the performance test or CEMS performance evaluation or no later than 60 days prior to any other initial compliance demonstration; b. the application must include: information justifying the request for alternative operating parameters (such as the infeasibility or impracticality of using the operating parameters in this final rule); a description of the proposed alternative control device operating parameters; the monitoring approach; the frequency of measuring and recording the alternative parameters; how the operating limits are to be calculated; and information documenting that the alternative operating parameters would provide equivalent or better assurance of compliance with the standard; c. install, operate, and maintain the alternative parameter monitoring systems in accordance with the application approved by the Administrator; d. establish operating limits during the initial compliance demonstration based on the alternative operating parameters included in the approved application; and e. maintain the daily average alternative operating parameter values within the values established during the compliance demonstration.
11. alternative control technique	a. submit for approval no later than the notification of the performance test or CEMS performance evaluation or no later than 60 days prior to any other initial compliance demonstration a proposed site-specific plan that includes: a description of the alternative control device; test results verifying the performance of the control device; the appropriate operating parameters that will be monitored; and the frequency of measuring and recording to establish continuous compliance with the operating limits; b. install, operate, and maintain the parameter monitoring system for the alternative control device in accordance with the plan approved by the Administrator; c. establish operating limits during the initial compliance demonstration based on the operating parameters for the alternative control device included in the approved plan; and d. maintain the daily average operating parameter values for the alternative control technique within the values established during the compliance demonstration.

TABLE 3 TO SUBPART UUUU OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS AND WORK PRACTICE STANDARDS

[As required in §§ 63.5530(a) and 63.5535(g), you must demonstrate initial compliance with the appropriate emission limits and work practice standards according to the requirements in the following table]

For . . .	at . . .	for the following emission limit or work practice standard . . .	you have demonstrated initial compliance if . . .
1. the sum of all viscose process vents.	a. each existing cellulose food casing operation.	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 25% based on a 6-month rolling average; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems.	(1) the average uncontrolled total sulfide emissions, measured during the month-long compliance demonstration, are reduced by at least 25%; (2) you have a record of the average operating parameter values over the month-long compliance demonstration during which the average uncontrolled total sulfide emissions were reduced by at least 25%; (3) you prepare a material balance that includes the pertinent data used to determine the percent reduction of total sulfide emissions; and (4) you comply with the initial compliance requirements for closed-vent systems.
	b. each new cellulose food casing operation.	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 75% based on a 6-month rolling average; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems.	(1) the average uncontrolled total sulfide emissions, measured during the month-long compliance demonstration, are reduced by at least 75%; (2) you have a record of the average operating parameter values over the month-long compliance demonstration during which the average uncontrolled total sulfide emissions were reduced by at least 75%; (3) you prepare a material balance that includes the pertinent data used to determine the percent reduction of total sulfide emissions; and (4) you comply with the initial compliance requirements for closed-vent systems.
	c. each existing rayon operation ..	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 35% within 3 years after the effective date based on a 6-month rolling average; for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and comply with the work practice standard for closed-vent systems; and	(1) the average uncontrolled total sulfide emissions, measured during the month-long compliance demonstration, are reduced by at least 35% within 3 years after the effective date; (2) you have a record of the average operating parameter values over the month-long compliance demonstration during which the average uncontrolled total sulfide emissions were reduced by at least 35%; (3) you prepare a material balance that includes the pertinent data used to determine the percent reduction of total sulfide emissions; and (4) you comply with the initial compliance requirements for closed-vent systems; and

TABLE 3 TO SUBPART UUUU OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS AND WORK PRACTICE STANDARDS—Continued

[As required in §§ 63.5530(a) and 63.5535(g), you must demonstrate initial compliance with the appropriate emission limits and work practice standards according to the requirements in the following table]

For . . .	at . . .	for the following emission limit or work practice standard . . .	you have demonstrated initial compliance if . . .
		ii. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 40% within 8 years after the effective date based on a 6-month rolling average; for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and comply with the work practice standard for closed-vent systems.	(1) the average uncontrolled total sulfide emissions, measured during the month-long compliance demonstration, are reduced by at least 40% within 8 years after the effective date; (2) you have a record of the average operating parameter values over the month-long compliance demonstration during which the average uncontrolled total sulfide emissions were reduced by at least 40%; (3) you prepare a material balance that includes the pertinent data used to determine the percent reduction of the total sulfide emissions; and (4) you comply with the initial compliance requirements for closed-vent systems.
	d. each new rayon operation	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 75%; based on a 6-month rolling average; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems.	(1) the average uncontrolled total sulfide emissions, measured during the month-long compliance demonstration, are reduced by at least 75%; (2) you have a record of the average operating parameter values over the month-long compliance demonstration during which the average uncontrolled total sulfide emissions were reduced by at least 75%; (3) you prepare a material balance that includes the pertinent data used to determine the percent reduction of total sulfide missions; and (4) you comply with the initial compliance requirements for closed-vent systems.
	e. each existing or new cellulosic sponge operation.	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 75% based on a 6-month rolling average; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems.	(1) the average uncontrolled total sulfide emissions, measured during the month-long compliance demonstration, are reduced by at least 75%; (2) you have a record of the average operating parameter values over the month-long compliance demonstration during which the average uncontrolled total sulfide emissions were reduced by at least 75%; (3) you prepare a material balance that includes the pertinent data used to determine and the percent reduction of total sulfide emissions; and (4) you comply with the initial compliance requirements for closed-vent systems.

TABLE 3 TO SUBPART UUUU OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS AND WORK PRACTICE STANDARDS—Continued

[As required in §§ 63.5530(a) and 63.5535(g), you must demonstrate initial compliance with the appropriate emission limits and work practice standards according to the requirements in the following table]

For . . .	at . . .	for the following emission limit or work practice standard . . .	you have demonstrated initial compliance if . . .
	f. each existing or new cellophane operation.	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 75% based on a 6-month rolling average; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems.	(1) the average uncontrolled total sulfide emissions, measured during the month-long compliance demonstration, are reduced by at least 75%; (2) you have a record of the average operating parameter values over the month-long compliance demonstration during which the average uncontrolled total sulfide emissions were reduced by at least 75%; (3) you prepare a material balance that includes the pertinent data used to determine the percent reduction of total sulfide emissions; and (4) you comply with the initial compliance requirements for closed-vent systems.
2. the sum of all solvent coating process vents.	a. each existing or new cellophane operation.	i. reduce uncontrolled toluene emissions by at least 95% based on a 6-month folling average; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems.	1. the average uncontrolled toluene emissions, measured during the month-long compliance demonstration, are reduced by at least 95%; 2. you have a record of the average operating parameter values over the month-long compliance demonstration during which the average uncontrolled toluene emissions were reduced by at least 95%; 3. you prepare a material balance that includes the pertinent data used to determine the percent reduction of toluene emissions; and 4. you comply with the initial compliance requirements for closed-vent systems.
3. the sum of all cellulose ether process vents.	a. each existing or new cellulose ether operation.	i. reduce total uncontrolled organic HAP emissions by at least 99%; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems.	(1) average uncontrolled total organic HAP emissions, measured during the 3-hour performance test are reduced by at least 99%; (2) you have a record of the average operating parameter values over the 3-hour performance test during which the average uncontrolled total organic HAP emissions were reduced by at least 99%; (3) you comply with the initial compliance requirements for closed-vent systems; and (4) if you use extended cookout to comply, you measure the HAP charged to the reactor, record the grade of product produced, and then calculate reactor emissions prior to extended cookout by taking a percentage of the total HAP charged, with the percentage determined by the grade of product being produced.

TABLE 3 TO SUBPART UUUU OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS AND WORK PRACTICE STANDARDS—Continued

[As required in §§ 63.5530(a) and 63.5535(g), you must demonstrate initial compliance with the appropriate emission limits and work practice standards according to the requirements in the following table]

For . . .	at . . .	for the following emission limit or work practice standard . . .	you have demonstrated initial compliance if . . .
4. closed-loop systems	each existing or new cellulose ether operation.	operate and maintain the closed-loop system for cellulose ether operations.	you have a record certifying that a closed-loop system is in use for cellulose ether operations.
5. each carbon disulfide unloading and storage operation.	a. each existing or new viscose process affected source.	i. reduce uncontrolled carbon disulfide emissions by at least 83% from unloading and storage operations based on a 6-month rolling average if you use an alternative control technique not listed in this table for carbon disulfide unloading and storage operations; if using a control device to reduce emissions, route emissions through a closed-vent system to the control device; and comply with the work practice standard for closed-vent systems;	(1) you have a record documenting the 83% reduction in uncontrolled carbon disulfide emissions; and (2) if venting to a control device to reduce emissions, you comply with the initial compliance requirements for closed-vent systems;
		ii. reduce uncontrolled carbon disulfide by at least 0.14% from viscose process vents based on a 6-month rolling average; for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and comply with the work practice standard for closed-vent systems;.	(1) you comply with the initial compliance requirements for viscose process vents at existing or new cellulose food casing, rayon, cellulosic sponge, or cellophane operations, as applicable; (2) the 0.14% reduction must be in addition to the reduction already required for viscose process vents at existing or new cellulose food casing, rayon, cellulosic sponge, or cellophane operations, as applicable; and (3) you comply with the initial compliance requirements for closed-vent systems;
		iii. install a nitrogen unloading and storage system; or	you have a record certifying that a nitrogen unloading and storage system is in use; or
		iv. install a nitrogen unloading system; reduce uncontrolled carbon disulfide by at least 0.045% from viscose process vents based on a 6-month rolling average; for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and comply with the work practice standard for closed-vent systems.	(1) you have a record certifying that a nitrogen unloading system is in use; (2) you comply with the initial compliance requirements for viscose process vents at existing or new cellulose food casing, rayon, cellulosic sponge, or cellophane operations, as applicable; (3) the 0.045% reduction must be in addition to the reduction already required for viscose process vents at cellulose food casing, rayon, cellulosic sponge, or cellophane operations, as applicable; and (4) you comply with the initial compliance requirements for closed-vent systems.

TABLE 3 TO SUBPART UUUU OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS AND WORK PRACTICE STANDARDS—Continued

[As required in §§ 63.5530(a) and 63.5535(g), you must demonstrate initial compliance with the appropriate emission limits and work practice standards according to the requirements in the following table]

For . . .	at . . .	for the following emission limit or work practice standard . . .	you have demonstrated initial compliance if . . .
6. each toluene storage vessel	a. each existing or new cellophane operation.	i. reduce uncontrolled toluene emissions by at least 95% based on a 6-month rolling average; ii. if using a control device to reduce emissions, route the emissions through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems.	(1) the average uncontrolled toluene emissions, measured during the month-long compliance demonstration, are reduced by at least 95%; (2) you have a record of the average operating parameter values over the month-long compliance demonstration during which the average uncontrolled toluene emissions were reduced by at least 95%; (3) you prepare a material balance that includes the pertinent data used to determine the percent reduction of toluene emissions; and (4) if venting to a control device to reduce emissions, you comply with the initial compliance requirements for closed-vent systems.
7. equipment leaks	a. each existing or new cellulose ether operation.	i. comply with the applicable equipment leak standards of §§ 63.162 through 63.179; or	you comply with the applicable requirements described in the Notification of Compliance Status Report provisions in § 63.182(a)(2) and (c)(1) through (3), except that references to the term ''process unit'' mean ''cellulose ether process unit'' for the purposes of this subpart; or
		ii. comply with the applicable equipment leak standards of §§ 63.1021 through 63.1027.	you comply with the applicable requirements described in the Initial Compliance Status Report provisions of § 63.1039(a), except that references to the term ''process unit'' mean ''cellulose ether process unit'' for the purposes of this subpart.
8. all sources of wastewater emissions.	each existing or new cellulose ether operation.	comply with the applicable wastewater provisions of § 63.105 and §§ 63.132 through 63.140.	you comply with the applicability and Group 1/Group 2 determination provisions of § 63.144 and the initial compliance provisions of §§ 63.105 and 63.145.
9. liquid streams in open systems ..	each existing or new cellulose ether operation.	comply with the applicable provisions of § 63.149, except that references to ''chemical manufacturing process unit'' mean ''cellulose ether process unit'' for the purposes of this subpart.	you install emission suppression equipment and conduct an initial inspection according to the provisions of to §§ 63.133 through 63.137.
10. closed-vent system used to route emissions to a control device.	a. each existing or new affected source.	i. conduct annual inspections, repair leaks, and maintain records as specified in § 63.148.	(1) you conduct an initial inspection of the closed-vent system and maintain records according to § 63.148; (2) you prepare a written plan for inspecting unsafe-to-inspect and difficult-to-inspect equipment according to § 63.148(g)(2) and (h)(2); and (3) you repair any leaks and maintain records according to § 63.148.

TABLE 3 TO SUBPART UUUU OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS AND WORK PRACTICE STANDARDS—Continued

[As required in §§ 63.5530(a) and 63.5535(g), you must demonstrate initial compliance with the appropriate emission limits and work practice standards according to the requirements in the following table]

For . . .	at . . .	for the following emission limit or work practice standard . . .	you have demonstrated initial compliance if . . .
11. closed-vent system containing a bypass line that could divert a vent stream away from a control device, except for equipment needed for safety purposes (described in § 63.148(f)(3)).	a. each existing or new affected source.	i. install, calibrate, maintain, and operate a flow indicator as specified in § 63.148(f)(1); or.	you have a record documenting that you installed a flow indicator as specified in Table 1 to this subpart; or
		ii. secure the bypass line valve in the closed position with a car-seal or lock-and-key type configuration and inspect the seal or closure mechanism at lease once per month as specified in § 63.148(f)(2).	you have record documenting that you have secured the bypass line valve as specified in Table 1 to this subpart.
12. heat exchanger system that cools process equipment or materials in the process unit.	a. each existing or new affected source.	i. monitor and repair the heat exchanger system according to § 63.104(a) through (e), except that references to ''chemical manufacturing process unit'' mean ''cellulose food casing, rayon, cellulosic sponge, cellophane, or cellulose ether process unit'' for the purposes of this subpart.	(1) you determine that the heat exchanger system is exempt from monitoring requirements because it meets one of the conditions in § 63.104(a)(1) through (6), and you document this finding in your Notification of Compliance Status Report; or (2) if your heat exchanger system is not exempt, i. you identify in your Notification of Compliance Status Report the HAP or other representative substance that you will monitor, or ii. you prepare and maintain a site-specific plan containing the information required by § 63.104(c)(1) (i) through (iv) that documents the procedures you will use to detect leaks by monitoring surrogate indicators of the leak.

TABLE 4 TO SUBPART UUUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

[As required in §§ 63.5530(b) and 63.5535(a), (b), and (g)(1), you must conduct performance tests, other initial compliance demonstrations, and CEMS performance evaluations and establish operating limits according to the requirements in the following table]

For . . .	at . . .	you must . . .	using . . .	according to the following requirements . . .
1. the sum of all process vents	a. each existing or new affected source.	i. select sampling port's location and the number of traverse points;	EPA Method 1 or 1A of 40 CFR part 60, appendix A; § 63.7(d)(1)(i);	sampling sites must be located at the inlet and outlet to each control device;
		ii. determine velocity and volumetric flow rate;	EPA Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A to part 60 of this chapter;	you may use EPA Method 2A, 2C, 2D, 2F, or 2G as an alternative to using EPA Method 2, as appropriate;
		iii. conduct gas analysis; and	(1) EPA Method 3, 3A, or 3B in appendix A to part 60 of this chapter; or (2) ASME PTC 19.10–1981—Part 10; and	you may use EPA Method 3A or 3B as an alternative to using EPA Method 3; or you may use ASME PTC 19.10–1981—Part 10 (available for purchase from Three Park Avenue, New York, NY 10016–5990) as an alternative to using EPA Method 3B.

TABLE 4 TO SUBPART UUUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As required in §§ 63.5530(b) and 63.5535(a), (b), and (g)(1), you must conduct performance tests, other initial compliance demonstrations, and CEMS performance evaluations and establish operating limits according to the requirements in the following table]

For . . .	at . . .	you must . . .	using . . .	according to the following requirements . . .
		iv. measure moisture content of the stack gas.	EPA Method 4 in appendix A to part 60 of this chapter.	
2. the sum of all viscose process vents.	a. each existing or new viscose process source.	i. measure total sulfide emissions.	(1) EPA Method 15 in Appendix A to part 60 of this chapter; or	(a) you must conduct testing of emissions at the inlet and outlet of each control device; (b) you must conduct testing of emissions from continuous viscose process vents and combinations of batch and continuous viscose process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535; (c) you must conduct testing of emissions from batch viscose process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and (d) you must collect CPMS data during the period of the initial compliance demonstration and determine the CPMS operating limit during the period of the initial compliance demonstration; or
			(2) carbon disulfide and/or hydrogen sulfide CEMS, as applicable.	(a) you must measure emissions at the inlet and outlet of each control device using CEMS; (b) you must install, operate, and maintain the CEMS according to the applicable performance specification (PS–7, PS–8, PS–9, or PS–15) of 40 CFR part 60, appendix B; and (c) you must collect CEMS emissions data at the inlet and outlet of each control device during the period of the initial compliance demonstration and determine the CEMS operating limit during the period of the initial compliance demonstration.

TABLE 4 TO SUBPART UUUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As required in §§ 63.5530(b) and 63.5535(a), (b), and (g)(1), you must conduct performance tests, other initial compliance demonstrations, and CEMS performance evaluations and establish operating limits according to the requirements in the following table]

For . . .	at . . .	you must . . .	using . . .	according to the following requirements . . .
			3. the sum of all solvent coating process vents.	a. each existing or new cellophane operation i. measure toluene emissions (1) EPA Method 18 in appendix A to part 60 of this chapter; or (a) you must conduct testing of emissions at the inlet and outlet of each control device; (b) you may use EPA Method 18 to determine the control efficiency of any control device for organic compounds; for a combustion device, you must use only HAP that are present in the inlet to the control device to characterize the percent reduction across the combustion device; (c) you must conduct testing of emissions from continuous solvent coating process vents and combinations of batch and continuous solvent coating process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535; (d) you must conduct testing of emissions from batch solvent coating process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and (e) you must collect CPMS data during the period of the initial compliance demonstration and determine the CPMS operating limit during the period of the initial compliance demonstration; or
			(2) ASTM D6420–99	(a) you must conduct testing of emissions at the inlet and outlet of each control device;

TABLE 4 TO SUBPART UUUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As required in §§ 63.5530(b) and 63.5535(a), (b), and (g)(1), you must conduct performance tests, other initial compliance demonstrations, and CEMS performance evaluations and establish operating limits according to the requirements in the following table]

For . . .	at . . .	you must . . .	using . . .	according to the following requirements . . .
				(b) you may use ASTM D6420–99 (available for purchase from at least one of the following addresses: 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106) as an alternative to EPA Method 18 only where: the target compound(s) are those listed in Section 1.1 of ASTM D6420–99; and the target concentration is between 150 parts per billion by volume (ppbv) and 100 ppmv; for target compound(s) not listed in Section 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble; and for target compound(s) not listed in Section 1.1 of ASTM D6420–99 and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply; (c) you must conduct testing of emissions from continuous solvent coating process vents and combinations of batch and continuous solvent coating process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535;

TABLE 4 TO SUBPART UUUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As required in §§ 63.5530(b) and 63.5535(a), (b), and (g)(1), you must conduct performance tests, other initial compliance demonstrations, and CEMS performance evaluations and establish operating limits according to the requirements in the following table]

For . . .	at . . .	you must . . .	using . . .	according to the following requirements . . .
				(d) you must conduct testing of emissions from batch solvent coating process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and (e) you must collect CPMS data during the period of the initial compliance demonstration and determine the CPMS operating limit during the period of the initial compliance demonstration.
4. the sum of all cellulose ether process vents.	a. each existing or new cellulose ether operation.	i. measure total organic HAP emissions.	(1) EPA Method 18 in appendix A to part 60 of this chapter;	(a) you must conduct testing of emissions at the inlet and outlet of each control device; (b) you may use EPA Method 18 to determine the control efficiency of any control device for organic compounds; for a combustion device, you must use only HAP that are present in the inlet to the control device to characterize the percent reduction across the combustion device; (c) you must conduct testing of emissions from continuous cellulose ether process vents and combinations of batch and continuous cellulose ether process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535; (d) you must conduct testing of emissions from batch cellulose ether process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and

TABLE 4 TO SUBPART UUUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As required in §§ 63.5530(b) and 63.5535(a), (b), and (g)(1), you must conduct performance tests, other initial compliance demonstrations, and CEMS performance evaluations and establish operating limits according to the requirements in the following table]

For . . .	at . . .	you must . . .	using . . .	according to the following requirements . . .
			(2) ASTM D6420–99	(e) you must collect CPMS data during the period of the initial performance test and determine the CPMS operating limit during the period of the initial performance test; (a) you must conduct testing of emissions at the inlet and outlet of each control device; (b) you may use ASTM D6420–99 (available for purchase from at least one of the following addresses: 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI (48106) as an alternative to EPA Method 18 only where: the target compound(s) are those listed in Section 1.1 of ASTM D6420–99; and the target concentration is between 150 ppbv and 100 ppmv; for target compound(s) not listed in Section 1.1 of ASTM D6420–99, but pontentially detected by mass spectrometry, the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble; and for target compound(s) not listed in Section 1.1 of ASTM D6420–99 and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply;

TABLE 4 TO SUBPART UUUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As required in §§ 63.5530(b) and 63.5535(a), (b), and (g)(1), you must conduct performance tests, other initial compliance demonstrations, and CEMS performance evaluations and establish operating limits according to the requirements in the following table]

For . . .	at . . .	you must . . .	using . . .	according to the following requirements . . .
				(c) you must conduct testing of emissions from continuous cellulose ether process vents and combinations of batch and continuous cellulose ether process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535; (d) you must conduct testing of emissions from batch cellulose ether process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and (e) you must collect CPMS data during the period of the initial performance test and determine the CPMS operating limit during the period of the initial performance test;
			(3) EPA Method 25 in appendix A to part 60 of this chapter; or	(a) you must conduct testing of emissions at the inlet and outlet of each control device; (b) you may use EPA Method 25 to determine the control efficiency of combustion devices for organic compounds; you may not use EPA Method 25 to determine the control efficiency of noncombustion control devices;

TABLE 4 TO SUBPART UUUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As required in §§ 63.5530(b) and 63.5535(a), (b), and (g)(1), you must conduct performance tests, other initial compliance demonstrations, and CEMS performance evaluations and establish operating limits according to the requirements in the following table]

For . . .	at . . .	you must . . .	using . . .	according to the following requirements . . .
				(c) you must conduct testing of emissions from continuous cellulose ether process vents and combinations of batch and continuous cellulose ether process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535; (d) you must conduct testing of emissions from batch cellulose ether process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and (e) you must collect CPMS data during the period of the initial performance test and determine the CPMS operating limit during the period of the initial performance test; or
			(4) EPA Method 25A in appendix A to part 60 of this chapter.	(a) you must conduct testing of emissions at the inlet and outlet of each control device; (b) you may use EPA Method 25A if: an exhaust gas volatile organic matter concentration of 50 ppmv or less is required in order to comply with the emission limit; the volatile organic matter concentration at the inlet to the control device and the required level of control are such as to result in exhaust volatile organic matter concentrations of 50 ppmv or less; or because of the high control efficiency of the control device, the anticipated volatile organic matter concentration at the control device exhaust is 50 ppmv or less, regardless of the inlet concentration;

TABLE 4 TO SUBPART UUUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As required in §§ 63.5530(b) and 63.5535(a), (b), and (g)(1), you must conduct performance tests, other initial compliance demonstrations, and CEMS performance evaluations and establish operating limits according to the requirements in the following table]

For . . .	at . . .	you must . . .	using . . .	according to the following requirements . . .
				(c) you must conduct testing of emissions from continuous cellulose ether process vents and combinations of batch and continuous cellulose ether process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535; (d) you must conduct testing of emissions from batch cellulose ether process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and (e) you must collect CPMS data during the period of the initial performance test and determine the CPMS operating limit during the period of the initial performance test.
5. each toluene storage vessel	a. each existing or new cellophane operation.	i. measure toluene emissions.	(1) EPA Method 18 in appendix A to part 60 of this chapter; or	(a) if venting to a control device to reduce emissions, you must conduct testing of emissions at the inlet and outlet of each control device; (b) you may use EPA Method 18 to determine the control efficiency of any control device for organic compounds; for a combustion device, you must use only HAP that are present in the inlet to the control device to characterize the percent reduction across the combustion device; (c) you must conduct testing of emissions from continuous storage vessel vents and combinations of batch and continuous storage vessel vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535 for continuous process vents;

TABLE 4 TO SUBPART UUUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As required in §§ 63.5530(b) and 63.5535(a), (b), and (g)(1), you must conduct performance tests, other initial compliance demonstrations, and CEMS performance evaluations and establish operating limits according to the requirements in the following table]

For . . .	at . . .	you must . . .	using . . .	according to the following requirements . . .
				(d) you must conduct testing of emissions from batch storage vessel vents as specified in § 63.490(c) for batch process vents, except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and (e) you must collect CPMS data during the period of the initial compliance demonstration and determine the CPMS operating limit during the period of the initial compliance demonstration; or
			(2) ASTM D6420–99	(a) if venting to a control device to reduce emissions, you must conduct testing of emissions at the inlet and outlet of each control device;

TABLE 4 TO SUBPART UUUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As required in §§ 63.5530(b) and 63.5535(a), (b), and (g)(1), you must conduct performance tests, other initial compliance demonstrations, and CEMS performance evaluations and establish operating limits according to the requirements in the following table]

For . . .	at . . .	you must . . .	using . . .	according to the following requirements . . .
				(b) you may use ASTM D6420–99 (available for purchase from at least one of the following addresses: 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106) as an alternative to EPA Method 18 only where: the target compound(s) are those listed in Section 1.1 of ASTM D6420–99, and the target concentration is between 150 ppbv and 100 ppmv; for target compound(s) not listed in Section 1.1 of ASTM D6420-99, but potentially detected by mass spectrometry, the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble; and for target compound(s) not listed in Section 1.1 of ASTM D6420–99 and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply; (c) you must conduct testing of emissions from continuous storage vessel vents and combinations of batch and continuous storage vessel vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535 for continuous process vents;

TABLE 4 TO SUBPART UUUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As required in §§ 63.5530(b) and 63.5535(a), (b), and (g)(1), you must conduct performance tests, other initial compliance demonstrations, and CEMS performance evaluations and establish operating limits according to the requirements in the following table]

For . . .	at . . .	you must . . .	using . . .	according to the following requirements . . .
				(d) you must conduct testing of emissions from batch storage vessel vents as specified in § 63.490(c) for batch process vents, except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and (e) you must collect CPMS data during the period of the initial compliance demonstration and determine the CPMS operating limit during the period of the initial compliance demonstration.
6. the sum of all process vents controlled using a flare.	each existing or new affected source.	measure visible emissions.	EPA Method 22 in appendix A to part 60 of this chapter.	you must conduct the flare visible emissions test according to § 63.11(b).
7. equipment leaks	a. each existing or new cellulose ether operation.	i. measure leak rate	(1) applicable equipment leak test methods in § 63.180; or	you must follow all requirements for the applicable equipment leak test methods in § 63.180; or
			(2) applicable equipment leak test methods in 63.1023.	you must follow all requirements for the applicable equipment leak test methods in § 63.1023.
8. all sources of wastewater emissions.	a. each existing or new cellulose ether operation.	i. measure wastewater HAP emissions.	(1) applicable wastewater test methods and procedures in §§ 63.144 and 63.145; or	You must follow all requirements for the applicable wastewater test methods and procedures in §§ 63.144 and 63.145; or

TABLE 4 TO SUBPART UUUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As required in §§ 63.5530(b) and 63.5535(a), (b), and (g)(1), you must conduct performance tests, other initial compliance demonstrations, and CEMS performance evaluations and establish operating limits according to the requirements in the following table]

For . . .	at . . .	you must . . .	using . . .	according to the following requirements . . .
			(2) applicable wastewater test methods and procedures in §§ 63.144 and 63.145, using ASTM D5790–95 as an alternative to EPA Method 624 in appendix A to part 163 of this chapter.	you must follow all requirements for the applicable waste water test methods and procedures in §§ 63.144 and 63.145, except that you may use ASTM D5790–95 (available for purchase from at least one of the following addresses: 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106) as an alternative to EPA Method 624, under the condition that this ASTM method be used with the sampling procedures of EPA Method 25D or an equivalent method.
9. any emission point	a. each existing or new affected source using a CEMS to demonstrate compliance.	i. conduct a CEMS performance evaluation.	(1) applicable requirements in § 63.8 and applicable performance specification (PS–7, PS–8, PS–9, or PS–15) in appendix B to part 60 of this chapter.	(a) you must conduct the CEMS performance evaluation during the period of the initial compliance demonstration according to the applicable requirements in § 63.8 and the applicable performance specification (PS–7, PS–8, PS–9, or PS–15) of 40 CFR part 60, appendix B; (b) you must install, operate, and maintain the CEMS according to the applicable performance specification (PS–7, PS–8, PS–9, or PS–15) of 40 CFR part 60, appendix B; and (c) you must collect CEMS emissions data at the inlet and outlet of each control device during the period of the initial compliance demonstration and determine the CEMS operating limit during the period of the initial compliance demonstration.

TABLE 5 TO SUBPART UUUU OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS AND WORK PRACTICE STANDARDS

[As required in § 63.5555(a), you must demonstrate continuous compliance with the appropriate emission limits and work practice standards according to the requirements in the following table]

For . . .	at . . .	for the following emission limit or work practice standard . . .	you must demonstrate continuous compliance by . . .
1. the sum of all viscose process vents.	a. each existing or new viscose process affected source.	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least the specified percentage based on a 6-month rolling average; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and c. comply with the work practice standard for closed-vent systems.	(1) maintaining a material balance that includes the pertinent data used to determine the percent reduction of total sulfide emissions; (2) documenting the percent reduction of total sulfide emissions using the pertinent data from the material balance; and (3) complying with the continuous compliance requirements for closed-vent systems.
2. the sum of all solvent coating process vents.	a. each existing or new cellophane operation.	i. reduce uncontrolled toluene emissions by at least 95% based on a 6-month rolling average; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems.	(1) maintaining a material balance that includes the pertinent data used to determine the percent reduction of toluene emissions; (2) documenting the percent reduction of toluene emissions using the pertinent data from the material balance; and (3) complying with the continuous compliance requirements for closed-vent systems.
3. the sum of all cellulose ether process vents.	a. each existing or new cellulose ether operation.	i. reduce total uncontrolled organic HAP emissions by at least 99%; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems.	(1) complying with the continuous compliance requirements for closed-vent systems; and (2) if using extended cookout to comply, monitoring reactor charges and keeping records to show that extended cookout was employed.
4. closed-loop systems	each existing or new cellulose ether operation.	operate and maintain a closed-loop system.	keeping a record certifying that a closed-loop system is in use for cellulose ether operations.
5. each carbon disulfide unloading and storage operation.	a. each existing or new viscose process affected source.	i. (1) reduce uncontrolled carbon disulfide emissions by at least 83% based on a 6-month rolling average if you use an alternative control technique not listed in this table for carbon disulfide unloading and storage operations; (2) if using a control device to reduce emissions, route emissions through a closed-vent system to the control device; and (3) comply with the work practice standard for closed-vent systems;	(a) keeping a record documenting the 83% reduction in carbon disulfide emissions; and (b) if venting to a control device to reduce emissions, complying with the continuous compliance requirements for closed-vent systems;
		ii. (1) reduce total uncontrolled sulfide emissions by at least 0.14% from viscose process vents based on a 6-month rolling average; (2) for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and (3) comply with the work practice standard for closed-vent systems;	(a) maintaining a material balance that includes the pertinent data used to determine the percent reduction of total sulfide emissions; (b) documenting the percent reduction of total sulfide emissions using the pertinent data from the material balance; and (c) complying with the continuous compliance requirements for closed-vent systems;

TABLE 5 TO SUBPART UUUU OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS AND WORK PRACTICE STANDARDS—Continued

[As required in § 63.5555(a), you must demonstrate continuous compliance with the appropriate emission limits and work practice standards according to the requirements in the following table]

For . . .	at . . .	for the following emission limit or work practice standard . . .	you must demonstrate continuous compliance by . . .
		iii. install a nitrogen unloading and storage system; or	Keeping a record certifying that a nitrogen unloading and storage system is in use; or
		iv. (1) install a nitrogen unloading system; (2) reduce total uncontrolled sulfide emissions by at least 0.045% from viscose process vents based on a 6-month rolling average; (3) for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and (4) comply with the work practice standard for closed-vent systems.	(a) keeping a record certifying that a nitrogen unloading system is in use; (b) maintaining a material balance that includes the pertinent data used to determine the percent reduction of total sulfide emissions; (c) documenting the percent reduction of total sulfide emissions using the pertinent data from the material balance; and (d) complying with the continuous compliance requirements for closed-vent systems.
6. each toluene storage vessel	a. each existing or new cellophane operation.	i. reduce uncontrolled toluene emissions by at least 95% based on a 6-month rolling average; ii. if using a control device to reduce emissions, route the emissions through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems.	(1) maintaining a material balance that includes the pertinent data used to determine the percent reduction of toluene emissions; (2) documenting the percent reduction of toluene emissions using the pertinent data from the material balance; and (3) if venting to a control device to reduce emissions, complying with the continuous compliance requirements for closed-vent systems.
7. equipment leaks	a. each existing or new cellulose ether operation.	i. applicable equipment leak standards of §§ 63.162 through 63.179; or ii. applicable equipment leak standards of §§ 63.1021 through 63.1037.	complying with the applicable equipment leak continuous compliance provisions of §§ 63.162 through 63.179; or complying with the applicable equipment leak continuous compliance provisions of §§ 63.1021 through 63.1037.
8. all sources of wasstewater emissions.	each existing or new cellulose ether operation.	applicable wastewater provisions of § 63.105 and §§ 63.132 through 63.140.	complying with the applicable wastewater continuous compliance provisions of §§ 63.105, 63.143, and 63.148.
9. liquid streams in open systems ..	each existing or new cellulose ether operation.	comply with the applicable provisions of § 63.149, except that references to ''chemical manufacturing process unit'' mean ''cellulose ether process unit'' for the purposes of this subpart.	conducting inspections, repairing failures, documenting delay of repair, and maintaining records of failures and corrective actions according to §§ 63.133 through 63.137.
10. closed-vent system used to route emissions to a control device.	each existing or new affected source.	conduct annual inspections, repair leaks, maintain records as specified in § 63.148.	conducting the inspections, repairing leaks, and maintaining records according to § 63.148.
11. closed-vent system containing a bypass line that could divert a vent stream away from a control device, except for equipment needed for safety purposes (described in § 63.148(f)(3).	a. each existing or new affected source.	i. install, calibrate, maintain, and operate a flow indicator as specified in § 63.148(f)(1); or	(1) taking readings from the flow indicator at least once every 15 minutes; (2) maintaining hourly records of flow indicator operation and detection of any diversion during the hour, and (3) recording all periods when the vent stream is diverted from the control stream or the flow indicator is not operating; or

TABLE 5 TO SUBPART UUUU OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS AND WORK PRACTICE STANDARDS—Continued

[As required in § 63.5555(a), you must demonstrate continuous compliance with the appropriate emission limits and work practice standards according to the requirements in the following table]

For . . .	at . . .	for the following emission limit or work practice standard . . .	you must demonstrate continuous compliance by . . .
		ii. secure the bypass line valve in the closed position with a car-seal or lock-and-key type configuration and inspect the seal or mechanism at least once per month as specified in § 63.148(f)(2).	(1) maintaining a record of the monthly visual inspection of the seal or closure mechanism for the bypass line; and (2) recording all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out.
12. heat exchanger system that cools process equipment or materials in the process unit.	a. each existing or new affected source.	i. monitor and repair the heat exchanger system according to § 63.104(a) through (e), except that references to ''chemical manufacturing process unit'' mean ''cellulose food casing, rayon, cellulosic sponge, cellophane, or cellulose ether process unit'' for the purposes of this subpart.	(1) monitoring for HAP compounds, other substances, or surrogate indicators at the frequency specified in § 63.104(b) or (c); (2) repairing leaks within the time period specified in § 63.104(d)(1); (3) confirming that the repair is successful as specified in § 63.104(d)(2); (4) following the procedures in § 63.104(e) if you implement delay of repair; and (5) recording the results of inspections and repair according to § 63.104(f)(1).

TABLE 6 TO SUBPART UUUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS

[As required in § 63.5555(a), you must demonstrate continuous compliance with the appropriate operating limits according to the requirements in the following table:]

For the following control technique . . .	for the following operating limit . . .	you must demonstrate continuous compliance by . . .
1. condenser	maintain the daily average condenser outlet gas or condensed liquid temperature no higher than the value established during the compliance demonstration.	collecting the condenser outlet gas or condensed liquid temperature data according to § 63.5545; reducing the condenser outlet gas temperature data to daily averages; and maintaining the daily average condenser outlet gas or condensed liquid temperature no higher than the value established during the compliance demonstration.
2. thermal oxidizer	maintain the daily average thermal oxidizer firebox temperature no lower than the value established during the compliance demonstration.	collecting the thermal oxidizer firebox temperature data according to § 63.5545; reducing the thermal oxidizer firebox temperature data to daily averages; and maintaining the daily average thermal oxidizer firebox temperature no lower than the value established during the compliance demonstration.
3. water scrubber	maintain the daily average scrubber pressure drop and scrubber liquid flow rate within the values established during the compliance demonstration.	collecting the scrubber pressure drop and scrubber liquid flow rate data according to § 63.5545; reducing the scrubber parameter data to daily averages; and maintaining the daily scrubber parameter values within the values established during the compliance demonstration.
4. caustic scrubber	maintain the daily average scrubber pressure drop, scrubber liquid flow rate, and scrubber liquid pH, conductivity, or alkalinity within the values established during the compliance demonstration.	collecting the scrubber pressure drop, scrubber liquid flow rate, and scrubber liquid pH, conductivity, or alkalinity data according to § 63.5545; reducing the scrubber parameter data to daily averages; and maintaining the daily scrubber parameter values within the values established during the compliance demonstration.
5. flare	maintain the presence of a pilot flame	collecting the pilot flame data according to § 63.5545; and maintaining the presence of the pilot flame.

TABLE 6 TO SUBPART UUUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

[As required in § 63.5555(a), you must demonstrate continuous compliance with the appropriate operating limits according to the requirements in the following table:]

For the following control technique . . .	for the following operating limit . . .	you must demonstrate continuous compliance by . . .
6. biofilter	maintain the daily average biofilter inlet gas temperature, biofilter effluent pH, and pressure drop within the values established during the compliance demonstration.	collecting the biofilter inlet gas temperature, biofilter effluent pH, and biofilter pressure drop data according to § 63.5545; reducing the biofilter parameter data to daily averages; and maintaining the daily biofilter parameter values within the values established during the compliance demonstration.
7. carbon absorber	maintain the regeneration frequency, total regeneration stream mass or volumetric flow during carbon bed regeneration and temperature of the carbon bed after regeneration (and within 15 minutes of completing any cooling cycle(s)) for each regeneration cycle within the values established during the compliance demonstration.	collecting the data on regeneration frequency, total regeneration stream mass or volumetric flow during carbon bed regeneration and temperature of the carbon bed after regeneration (and within 15 minutes of completing any cooling cycle(s)) for each regeneration cycle according to § 63.5545; and maintaining carbon absorber parameter values for each regeneration cycle within the values established during the compliance demonstration.
8. oil absorber	maintain the daily average absorption liquid flow, absorption liquid temperature, and steam flow within the values established during the compliance demonstration.	collecting the absorption liquid flow, absorption liquid temperature, and steam flow data according to § 63.5545; reducing the oil absorber parameter data to daily averages; and maintaining the daily oil absorber parameter values within the values established during the compliance demonstration.
9. any of the control techniques specified in this table.	if using a CEMS, maintain the daily average control efficiency for each control device no lower than the value established during the compliance demonstration.	collecting CEMS emissions data at the inlet and outlet of each control device according to § 63.5545; determining the control efficiency values for each control device using the inlet and outlet CEMS emissions data; reducing the control efficiency values for each control device to daily averages; and maintaining the daily average control efficiency for each control device no lower than the value established during the compliance demonstration.

TABLE 7 TO SUBPART UUUU OF PART 63.—NOTIFICATIONS

[As required in §§ 63.5490(c)(4), 63.5530(c), 63.5575, and 63.5595(b), you must submit the appropriate notifications specified in the following table]

If you . . .	then you must . . .
1. are required to conduct a performance test	submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin, as specified in §§ 63.7(b)(1) and 63.9(e).
2. wish to use an alternative monitoring method	submit a request to use alternative monitoring method no later than the notification of the initial performance test or CEMS performance evaluation or 60 days prior to any other initial compliance demonstration, as specified in § 63.8(f)(4).
3. start up your affected source before June 11, 2002	submit an initial notification no later than 120 days after June 11, 2002, as specified in § 63.9(b)(2).
4. start up your new or reconstructed source on or after June 11, 2002.	submit an initial notification no later than 120 days after you become subject to this subpart, as specified in § 63.9(b)(3).
5. cannot comply with the relevant standard by the applicable compliance date.	submit a request for extension of compliance no later than 120 days before the compliance date, as specified in §§ 63.9(c) and 63.6(i)(4).
6. are subject to special requirements as specified in § 63.6(b)(3) and (4).	notify the Administrator of your compliance obligations no later than the initial notification dates established in § 63.9(b) for new sources not subject to the special provisions, as specified in § 63.9(d).
7. are required to conduct visible emission observations to determine the compliance of flares as specified in § 63.11(b)(4).	notify the Administrator of the anticipated date for conducting the observations specified in § 63.6(h)(5), as specified in §§ 63.6(h)(4) and 63.9(f).
8. are required to conduct a performance test or other initial compliance demonstration as specified in Table 3 to this subpart.	a. submit a Notification of Compliance Status Report, as specified in § 63.9(h); and b. submit the Notification of Compliance Status Report, including the performance test, CEMS performance evaluation, and any other initial compliance demonstration results within 240 calendar days following the compliance date specified in § 63.5495.

TABLE 7 TO SUBPART UUUU OF PART 63.—NOTIFICATIONS—Continued

[As required in §§ 63.5490(c)(4), 63.5530(c), 63.5575, and 63.5595(b), you must submit the appropriate notifications specified in the following table]

If you . . .	then you must . . .
9. comply with the equipment leak requirements of subpart H of this part for existing or new cellulose ether affected sources.	comply with the notification requirements specified in § 63.182(a)(1) and (2), (b), and (c)(1) through (3) for equipment leaks, with the Notification of Compliance Status Reports required in subpart H included in the Notification of Compliance Status Report required in this subpart.
10. comply with the equipment leak requirements of subpart UU of this part for existing or new cellulose ether affected sources.	comply with the notification requirements specified in § 63.1039(a) for equipment leaks, with the Notification Compliance Status Reports required in subpart UU of this part included in the Notification of Compliance Status Report required in this subpart.
11. comply with the wastewater requirements of subparts F and G of this part for existing or new cellulose ether affected sources.	comply with the notification requirements specified in §§ 63.146(a) and (b), 63.151, and 63.152(a)(1) through (3) and (b)(1) through (5) for wastewater, with the Notification of Compliance Status Reports required in subpart G of this part included in the Notification of Compliance Status Report required in this subpart.

TABLE 8 TO SUBPART UUUU OF PART 63.—REPORTING REQUIREMENTS

[As required in § 63.5580, you must submit the appropriate reports specified in the following table]

You must submit a compliance report, which must contain the following information . . .	and you must submit the report . . .
1. if there are no deviations from any emission limit, operating limit, or work practice standard during the reporting period, then the report must contain the information specified in § 63.5580(c);	semiannually as specified in § 63.5580(b).
2. if there were no periods during which the CMS was out-of-control, then the report must contain a statement that there were no periods during which the CMS was out-of-control during the reporting period; you must develop and include specifications for out-of-control operation in the CMS quality control plan required under § 63.8(d)(2);	
3. if there is a deviation from any emission limit, operating limit, or work practice standard during the reporting period, then the report must contain the information specified in § 63.5580(c) and (d);	
4. if there were periods during which the CMS was out-of-control, then the report must contain the information specified in § 63.5580(e);	
5. if you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your SSM plan, then the report must contain the information specified in § 63.10(d)(5)(i);	
6. if you had a startup, shutdown, or malfunction during the reporting period and you took actions that are not consistent with your SSM plan, then the report must contain the information specified in § 63.10(d)(5)(ii);	
7. the report must contain any change in information already provided, as specified in § 63.9(j);	
8. for cellulose ether affected sources complying with the equipment leak requirements of subpart H of this part, the report must contain the information specified in § 63.182(a)(3) and (6) and (d)(2) through (4);	
9. for cellulose ether affected sources complying with the equipment leak requirements of subpart UU of this part, the report must contain the information specified in § 63.1039(b);	
10. for cellulose ether affected sources complying with the wastewater requirements of subparts F and G of this part, the report must contain the information specified in §§ 63.146(c) through (e) and 63.152(a)(4) and (5) and (c) through (e);	
11. for affected sources complying with the closed-vent system provisions in § 63.148, the report must contain the information specified in § 63.148(j)(1);	
12. for affected sources complying with the bypass line provisions in § 63.148(f), the report must contain the information specified in § 63.148(j)(2) and (3);	
13. for affected sources invoking the delay of repair provisions in § 63.104(e) for heat exchanger systems, the next compliance report must contain the information in § 63.104(f)(2)(i) through (iv); if the leak remains unrepaired, the information must also be submitted in each subsequent compliance report until the repair of the leak is reported; and	
14. for storage vessels subject to the emission limits and work practice standards in Table 1 to Subpart UUUU, the report must contain the periods of planned routine maintenance during which the control device does not comply with the emission limits or work practice standards in Table 1 to this subpart	

TABLE 9 TO SUBPART UUUU OF PART 63.—RECORDKEEPING REQUIREMENTS

[As required in § 63.5585, you must keep the appropriate records specified in the following table]

If you operate . . .	then you must keep . . .	and the record(s) must contain . . .
1. an existing or new affected source.	a copy of each notification and report that you submitted to comply with this subpart.	all documentation supporting any Initial Notification or Notification of Compliance Status Report that you submitted, according to the requirements in § 63.10(b)(2)(xiv), and any compliance report required under this subpart.

TABLE 9 TO SUBPART UUUU OF PART 63.—RECORDKEEPING REQUIREMENTS—Continued

[As required in § 63.5585, you must keep the appropriate records specified in the following table]

If you operate . . .	then you must keep . . .	and the record(s) must contain . . .
2. an existing or new affected source.	a. the records in § 63.6(e)(3)(iii) through (iv) related to startup, shutdown, and malfunction.	i. SSM plan; ii. when actions taken during a startup, shutdown, or malfunction are consistent with the procedures specified in the SSM plan, records demonstrating that the procedures specified in the plan were followed; iii. records of the occurrence and duration of each startup, shutdown, or malfunction; and iv. when actions taken during a startup, shutdown, or malfunction are not consistent with the procedures specified in the SSM plan, records of the actions taken for that event.
3. an existing or new affected source.	a. a site-specific monitoring plan ..	i. information regarding the installation of the CMS sampling source probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (e.g., on or downstream of the last control device); ii. performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system; iii. performance evaluation procedures and acceptance criteria (e.g., calibrations); iv. ongoing operation and maintenance procedures in accordance with the general requirements of §§ 63.8(c)(1), (3), and (4)(ii) and 63.5580(c)(6); v. ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d)(2); and vi. ongoing recordkeeping and reporting procedures in accordance with the general requirements of §§ 63.10(c), (e)(1), and (e)(2)(i) and 63.5585.
4. an existing or new affected source.	records of performance tests and CEMS performance evaluations, as required in § 63.10(b)(2)(viii) and any other initial compliance demonstrations.	all results of performance tests, CEMS performance evaluations, and any other initial compliance demonstrations, including analysis of samples, determination of emissions, and raw data.
5. an existing or new affected source.	a. records for each CEMS	i. records described in § 63.10(b)(2)(vi) through (xi); ii. previous (superseded) versions of the performance evaluation plan as required in § 63.8(d)(3); iii. request for alternatives to relative accuracy test for CEMS as required in § 63.8(f)(6)(i); iv. records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period; and v. records required in Table 6 to Subpart UUUU to show continuous compliance with the operating limit.
6. an existing or new affected source.	a. records for each CPMS	i. records required in Table 6 to Subpart UUUU to show continuous compliance with each operating limit that applies to you; and ii. results of each CPMS calibration, validation check, and inspection required by § 63.5545(b)(4).
7. an existing or new cellulose ether affected ether source.	records of closed-loop systems	records certifying that a closed-loop system is in use for cellulose ether operations.
8. an existing or new viscose process affected source.	records of nitrogen unloading and storage systems or nitrogen unloading systems.	records certifying that a nitrogen unloading and storage system or nitrogen unloading system is in use.
9. an existing or new viscose process affected source.	records of material balances	all pertinent data from the material balances used to estimate the 6-month rolling average percent reduction in HAP emissions.
10. an existing or new viscose process affected source.	records of calculations	documenting the percent reduction in HAP emissions using pertinent data from the material balances.
11. an existing or new cellulose ether affected source.	a. extended cookout records	i. the amount of HAP charged to the reactor; ii. the grade of product produced; iii. the calculated amount of HAP remaining before extended cookout; and iv. information showing that extended cookout was employed.
12. an existing or new cellulose ether affected source.	a. equipment leak records	i. the records specified in § 63.181 for equipment leaks; or ii. the records specified in 63.1038 for equipment leaks.
13. an existing or new cellulose ether affected source.	wastewater records	the records specified in §§ 63.105, 63.147, and 63.152(f) and (g) for wastewater.
14. an existing or new affected source.	closed-vent system records	the records specified in § 63.148(i).

TABLE 9 TO SUBPART UUUU OF PART 63.—RECORDKEEPING REQUIREMENTS—Continued

[As required in § 63.5585, you must keep the appropriate records specified in the following table]

If you operate . . .	then you must keep . . .	and the record(s) must contain . . .
15. an existing or new affected source.	a. bypass line records	i. hourly records of flow indicator operation and detection of any diversion during the hour and records of all periods when the vent stream is diverted from the control stream or the flow indicator is not operating; or ii. the records of the monthly visual inspection of the seal or closure mechanism and of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out and records of any car-seal that has broken.
16. an existing or new affected source.	heat exchanger system records	records of the results of inspections and repair according to source § 63.104(f)(1).
17. an existing or new affected source.	control device maintenance records.	records of planned routine maintenance for control devices used to comply with the percent reduction emission limit for storage vessels in Table 1 to Subpart UUUU.
18. an existing or new affected source.	safety device records	a record of each time a safety device is opened to avoid unsafe conditions according to § 63.5505(d).

TABLE 10 TO SUBPART UUUU OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART UUUU

[As required in §§ 63.5515(h) and 63.5600, you must comply with the appropriate General Provisions requirements specified in the following table]

Citation	Subject	Brief description	Applies to Subpart UUUU
§ 63.1	Applicability	Initial applicability determination; applicability after standard established; permit requirements; extensions, notifications.	Yes.
§ 63.2	Definitions	Definitions for part 63 standards	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards.	Yes.
§ 63.4	Prohibited Activities	Prohibited activities; compliance date; circumvention, severability.	Yes.
§ 63.5	Construction and Reconstruction	Applicability; applications; approvals	Yes.
§ 63.6(a)	Applicability	General provisions apply unless compliance extension; general provisions apply to area sources that become major.	Yes.
§ 63.6(b)(1) through(4)	Compliance Dates for New and Reconstructed sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for CAA section 112(f).	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§ 63.6(b)(6)	[Reserved].		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source and standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	Yes.
§ 63.6(c)(1) and (2)	Compliance Dates for Existing Sources.	Comply according to date in subpart, which must be no later than 3 years after effective date; for CAA section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes, except that existing rayon operations are given 8 years to comply with 40% reduction emission limit, as specified in § 63.5495(b)(2)(iii).
§ 63.6(c)(3) and (4)	[Reserved].		
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (e.g., 3 years).	Yes.
§ 63.6(d)	[Reserved].		

TABLE 10 TO SUBPART UUUU OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART UUUU—Continued

[As required in §§ 63.5515(h) and 63.5600, you must comply with the appropriate General Provisions requirements specified in the following table]

Citation	Subject	Brief description	Applies to Subpart UUUU
§ 63.6(e)(1) and (2)	Operation and Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan.	Requirement for startup, shutdown, and malfunction and SSM plan; content of SSM plan.	Yes.
§ 63.6(f)(1)	Compliance Except During SSM	You must comply with emission standards at all times except during SSM.	Yes.
§ 63.6(f)(2) and (3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)(1) through (3)	Alternative Standard	Procedures for getting an alternative standard.	Yes.
§ 63.6(h)	Opacity and Visible Emission (VE) Standards.	Requirements for opacity and visible emission limits.	Yes, but only for flares for which EPA Method 22 observations are required under § 63.11(b).
§ 63.6(i)(1) through (14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption	President may exempt source category from requirement to comply with subpart.	Yes.
§ 63.7(a)(1) and (2)	Performance Test Dates	Dates for conducting initial performance test; testing and other compliance demonstrations; must conduct 180 days after first subject to subpart.	Yes.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA Section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test	Must notify Administrator 60 days before the test.	Yes.
§ 63.7(b)(2)	Notification of Rescheduling	If rescheduling a performance test is necessary, must notify Administrator 5 days before scheduled date of rescheduled test.	Yes.
§ 63.7(c)	Quality Assurance and Test Plan	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	No.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	Yes, except that performance tests for batch process vents must be conducted under other conditions, as specified in Table 4 to this subpart.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to this subpart and EPA test methods unless Administrator approves alternative.	Yes.
§ 63.7(e)(3)	Test Run Duration	Must have three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; conditions when data from an additional test run can be used.	Yes.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes.

TABLE 10 TO SUBPART UUUU OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART UUUU—Continued

[As required in §§ 63.5515(h) and 63.5600, you must comply with the appropriate General Provisions requirements specified in the following table]

Citation	Subject	Brief description	Applies to Subpart UUUU
§ 63.7(g)	Performance Test Data Analysis	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the Notification of Compliance Status Report; keep data for 5 years.	Yes.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard.	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance specifications in Appendix B of 40 CFR part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Monitoring with Flares	Unless your subpart says otherwise, the requirements for flares in § 63.11 apply.	Yes.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(2) and (3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise; if more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)	Routine and Predictable SSM	Follow the SSM plan for routine repairs; keep parts for routine repairs readily available; reporting requirements for SSM when action is described in SSM plan.	Yes.
§ 63.8(c)(1)(ii)	SSM Not in SSM plan	Reporting requirements for SSM when action is not described in SSM plan.	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	How Administrator determines if source complying with operation and maintenance requirements; review of source operation and maintenance procedures, records; manufacturer's instructions, recommendations; inspection.	Yes.
§ 63.8(c)(2) and (3)	Monitoring System Installation	Must install to get representative emission of parameter measurements; must verify operational status before or at performance test.	Yes.
§ 63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.	CMS must be operating except during breakdown, out-of control, repair, maintenance, and high-level calibration drifts.	No. Replaced with language in § 63.5560.
§ 63.8(c)(4)(i) and (ii)	Continuous Monitoring System (CMS) Requirements.	Continuous opacity monitoring systems (COMS) must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period; CEMS must have a minimum of one cycle of operation for each successive 15-minute period.	Yes, except that § 63.8(c)(4)(i) does not apply because subpart UUUU does not require COMS.

TABLE 10 TO SUBPART UUUU OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART UUUU—Continued

[As required in §§ 63.5515(h) and 63.5600, you must comply with the appropriate General Provisions requirements specified in the following table]

Citation	Subject	Brief description	Applies to Subpart UUUU
§ 63.8(c)(5)	COMS Minimum Procedures	COMS minimum procedures	No. Subpart UUUU does not require COMS.
§ 63.8(c)(6)	CMS Requirements	Zero and high level calibration check requirements; out-of-control periods.	No. Replaced with language in § 63.5545.
§ 63.8(c)(7) and (8)	CMS Requirements	Out-of-control periods, including reporting.	No. Replaced with language in § 63.5580(c)(6).
§ 63.8(d)	CMS Quality Control	Requirements for CMS quality control, including calibration, etc.; must keep quality control plan on record for 5 years; keep old versions for 5 years after revisions.	No, except for requirements in § 63.8(d)(2).
§ 63.8(e)	CMS Performance Evaluation	Notification, performance evaluation test plan, reports.	Yes, except that § 63.8(e)(5)(ii) does not apply because subpart UUUU does not require COMS.
§ 63.8(f)(1) through (5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring.	Yes, except that no site-specific test plan is required. The request to use an alternative monitoring method must be submitted with the notification of performance test or CEMS performance evaluation or 60 days prior to any initial compliance demonstration.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	Yes.
§ 63.8(g)(1) through (4)	Data Reduction	COMS 6-minute averages calculated over at least 36 evenly spaced data points; CEMS 1-hour averages computed over at least four equally spaced data points; data that cannot be used in average.	No. Replaced with language in § 63.5545(e).
§ 63.8(g)(5)	Data Reduction	Data that cannot be used in computing averages for CEMS and COMS.	No. Replaced with language in § 63.5560(b).
§ 63.9(a)	Notification Requirements	Applicability and State delegation	Yes.
§ 63.9(b)(1) through (5)	Initial Notifications	Submit notification subject 120 days after effective date; notification of intent to construct or reconstruct; notification of commencement of construction or reconstruction; notification of startup; contents of each.	Yes.
§ 63.9(c)	Request for Compliance Extension	Can request if cannot comply by date or if installed BACT/LAER.	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE or Opacity Test	Notify Administrator 30 days prior	Yes, but only for flares for which EPA Method 22 observations are required as part of a flare compliance assessment.
§ 63.9(g)	Additional Notifications When Using CMS.	Notification of performance evaluation; notification using COMS data; notification that exceeded criterion for relative accuracy.	Yes, except that § 63.9(g)(2) does not apply because subpart UUUU does not require COMS.
§ 63.9(h)(1) through (6)	Notification of Compliance Status Report.	Contents; due 60 days after end of performance test or other compliance demonstration, except for opacity or VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes, except that Table 7 to this subpart specifies the submittal date for the notification. The contents of the notification will also include the results of EPA Method 22 observations required as part of a flare compliance assessment.

TABLE 10 TO SUBPART UUUU OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART UUUU—Continued

[As required in §§ 63.5515(h) and 63.5600, you must comply with the appropriate General Provisions requirements specified in the following table]

Citation	Subject	Brief description	Applies to Subpart UUUU
§ 63.9(i)	Adjustment of Submittal Deadlines	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information	Must submit within 15 days after the change.	Yes, except that the notification must be submitted as part of the next semiannual compliance report, as specified in Table 8 to this subpart.
§ 63.10(a)	Recordkeeping and Reporting	Applies to all, unless compliance extension; when to submit to Federal vs. State authority; procedures for owners of more than one source.	Yes.
§ 63.10(b)(1)	Recordkeeping and Reporting	General requirements; keep all records readily available; keep for 5 years.	Yes.
§ 63.10(b)(2)(i) through (iv)	Records Related to Startup, Shutdown, and Malfunction.	Occurrence of each of operation (process equipment); occurrence of each malfunction of air pollution equipment; maintenance on air pollution control equipment; actions during startup, shutdown, and malfunction.	Yes.
§ 63.10(b)(2)(vi), (x), and (xi)	CMS Records	Malfunctions, inoperative, out-of-control; calibration checks, adjustments, maintenance.	Yes.
§ 63.10(b)(2)(vii) and (ix)	Records	Measurements to demonstrate compliance with emission limits; performance test, performance evaluation, and VE observation results; measurements to determine conditions of performance tests and performance evaluations.	Yes, including results of EPA Method 22 observations required as part of a flare compliance assessment.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	Yes.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting Initial Notification and Notification of Compliance Status Report.	Yes.
§ 63.10(b)(3)	Records	Applicability determinations	Yes.
§ 63.10(c)(1) through (6), (9) through (15).	Records	Additional records for CMS	Yes.
§ 63.10(c)(7) and (8)	Records	Records of excess emissions and parameter monitoring exceedances for CMS.	No. Replaced with language in Table 9 to this subpart.
§ 63.10(d)(1)	General Reporting Requirements	Requirement to report	Yes.
§ 63.10(d)(2)	Report of Performance Test Results	When to submit to Federal or State authority.	Yes, except that Table 7 to this subpart specifies the submittal date for the Notification of Compliance Status Report.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.	What to report and when	Yes, but only for flares for which EPA Method 22 observations are required as part of a flare compliance assessment.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Contents and submission	Yes, except that the immediate SSM report must be submitted as part of the next semiannual compliance report, as specified in Table 8 to this subpart.
§ 63.10(e)(1) and (2)	Additional CMS Reports	Must report results for each CEMS on a unit; written copy of performance evaluation; three copies of COMS performance evaluation.	Yes, except that § 63.10(e)(2)(ii) does not apply because subpart UUUU does not require COMS.
§ 63.10(e)(3)	Reports	Excess emission reports	No. Replaced with language in § 63.5580.

TABLE 10 TO SUBPART UUUU OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART UUUU—Continued

[As required in §§ 63.5515(h) and 63.5600, you must comply with the appropriate General Provisions requirements specified in the following table]

Citation	Subject	Brief description	Applies to Subpart UUUU
§ 63.10(e)(3)(i) through (iii) ...	Reports	Schedule for reporting excess emissions and parameter monitor exceedance (now defined as deviations).	No. Replaced with language in § 63.5580.
§ 63.10(e)(3)(iv) through (v)	Excess Emissions Reports	Requirement to revert to quarterly submission if there is an excess emissions and parameter monitor exceedance (now defined as deviations); provision to request semiannual reporting after compliance for 1 year; submit report by 30th day following end of quarter or calendar half; if there has not been an exceedance or excess emission (now defined as deviations), report contents is a statement that there have been no deviations.	No. Replaced with language in § 63.5580.
§ 63.10(e)(3)(iv) and (v)	Excess Emissions Reports	Must submit report containing all of the information in § 63.10(c)(5) through (13), § 63.8(c)(7) and (8).	No. Replaced with language in § 63.5580.
§ 63.10(e)(3)(vi) through (viii)	Excess Emissions Report and Summary Report.	Requirements for reporting excess emissions for CMS (now called deviations); requires all of the information in § 63.10(c)(5) through (13), § 63.8(c)(7) and (8).	No. Replaced with language in § 63.5580.
§ 63.10(e)(4)	Reporting COMS data	Must submit COMS data with performance test data.	No. Subpart UUUU does not require COMS.
§ 63.10(f)	Waiver for Recordkeeping or Reporting.	Procedures for Administrator to waive.	Yes.
§ 63.11	Flares	Requirements for flares	Yes.
§ 63.12	Delegation	State authority to enforce standards	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are sent.	Yes.
§ 63.14	Incorporation by Reference	Test methods incorporated by reference.	Yes.
§ 63.15	Availability of Information	Public and confidential information ..	Yes.

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June 11, 2002

Part III

Department of Transportation

Federal Transit Administration

49 CFR Part 624
Clean Fuels Formula Grant Program; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 624

[Docket No. FTA–2001–9877]

RIN 2132–AA64

Clean Fuels Formula Grant Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: On June 9, 1998, the Transportation Equity Act for the 21st Century (TEA–21) was enacted requiring the Federal Transit Administration (FTA) to establish a new grant program entitled the Clean Fuels Formula Grant Program. This rule establishes the procedures eligible recipients must use to apply for this new program. Although the FY 1999, FY 2000, FY 2001 and FY 2002 appropriations bills did not make funding available for this program, legislation was enacted each of these fiscal years, which provided that the guaranteed funds for this new program be made available to the bus and bus facilities categories of the Capital Investment Grants and Loans program of 49 U.S.C. 5309. FTA is publishing this final rule to ensure application procedures are available should funding be made available for this program.

DATES: The effective date of this final rule is July 11, 2002.

ADDRESSES: Comments and material received from the public, as well as any documents indicated in the preamble as being available in the docket, are part of docket FTA–2001–9877 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room Pl–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For program issues: Nancy Grubb, Office of Resource Management and State Programs, (202) 366–2053; for program evaluation issues, Abbe Marner, Office of Planning, (202)366–4317; and Christina Gikakis, Office of Research, Demonstration, and Innovation, FTA, (202)366–2637. For legal issues: Scheryl Portee, Office of Chief Counsel, FTA, (202) 366–1936 (telephone) or (202) 366–3809 (fax). Electronic access to this and other rules may be obtained through the FTA World Wide Web home page at *http://www.fta.dot.gov/library/legal/frootoc.htm.* Comments may be reviewed via the Internet at *http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 28, 2001, FTA published a notice of proposed rulemaking (NPRM) entitled ''Clean Fuels Formula Grant Program'' in the **Federal Register** (66 FR 45552). We received sixteen letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Clean Fuels Formula Grant Program is a transit grant program contained in section 3008 of the Transportation Equity Act for the 21st Century (TEA–21) as amended, Pub. L. 105–178, (codified at 49 U.S.C. 5308). This program has a two-fold purpose. First, the program is intended to assist nonattainment and maintenance areas in achieving or maintaining air quality attainment status. Second, the program seeks to support emerging clean fuel and advanced propulsion technologies for transit buses and to create markets for these technologies.

As the legislation establishes the basic parameters of the program, the focus of this rulemaking is application procedures. While the program is a formula program, the amount of funds available to individual grantees cannot be calculated in advance of the receipt of applications. The formula is applied to the universe of eligible applications subsequent to receiving and screening all applications in each Federal fiscal year.

The formula provides two-thirds of the funds to urban areas over one million in population and one-third of the funds to urban areas less than one million in population. In addition, TEA–21 provides weighting factors based on the severity of nonattainment for ozone and carbon monoxide (CO).

TEA–21 provides authorization levels of up to $200,000,000 per year and guaranteed levels at $100,000,000 per year. However, in FYs 1999, 2000, 2001, and 2002 no funds were made available to the program. Rather, Congress, enacted legislation in each of these fiscal years, which provided that the $100,000,000 in guaranteed funds for the Clean Fuels Formula Grant program be made available to the bus and bus facilities categories of the Capital Investment Grants and Loans program of 49 U.S.C. 5309.

FTA will make the funding levels for the Clean Fuels program available in the annual **Federal Register** notice that announces each fiscal year's appropriations and allocations when funds are made available.

Section 5308 of title 49, United States Code, defines eligibility and provides both minimum and maximum percentages of funds for certain clean fuel technologies. With respect to the second purpose of promoting new clean fuel technologies for transit buses, section 3015(d) of TEA–21 also authorized a new Joint Partnership Program for Deployment of Innovation (JPP), which was announced in a separate **Federal Register** notice on October 2, 1998. Projects determined eligible for funding under the Clean Fuels Formula Grant Program, meeting the requirements of section 3015(d) and FTA's JPP guidelines, may also be considered for inclusion under that program.

With respect to the weighting factors for severity of nonattainment, it appears that Congressional intent was to use the same weighting that had been developed for the Congestion Mitigation and Air Quality Improvement (CMAQ) Program under the Intermodal Surface Transportation Efficiency Act (ISTEA). However, it appears that errors were made in section 5308 regarding the carbon monoxide (CO) nonattainment classification terms. To properly apply the weighting factors for ''severity of nonattainment,'' FTA is making certain interpretations concerning the statutory language in section 5308(d)(2). The statute uses the nonattainment classification terms ''marginal,'' ''moderate,'' ''serious,'' ''severe,'' and ''extreme'' for both ozone and carbon monoxide. However, the Clean Air Act Amendments of 1990 only use the terms ''moderate'' and ''serious'' to classify CO nonattainment areas. Thus, FTA will use those two classifications for CO and disregard the other CO classifications and associated weighting factors.

The CMAQ weighting factors for ozone and CO nonattainment areas are laid out in 23 U.S.C. 104(b). Both ozone and CO areas are also given weighting factors in 49 U.S.C. 5308(d)(2)(A). Section 5308(d)(2)(B) provides additional weighting to CO areas. FTA believes that the drafters of this legislation did not intend double weighting for CO nonattainment areas. Thus, FTA will use the higher of the weighting factors for ozone and CO in section 5308(d)(2)(A), and then apply the additional adjustment of 1.2 in areas classified as both nonattainment for CO and either nonattainment or maintenance for ozone as described in section 5308(d)(2)(B). Section 5308(d)(2)(A) indicates that the number

of clean fuel vehicles will be a multiplier; however, FTA believes that the multiplier should be the number of buses in the bus fleet as laid out in section 5308(d)(1).

TEA–21 provides limitations on the use of funds and the maximum amount of grants. In general, the amount of a grant to a designated recipient for an eligible project shall not exceed the lesser of: (1) $15,000,000 in areas with a population under 1,000,000 or $25,000,000 in areas with a population of at least 1,000,000; or (2) 80 percent of the eligible project's total project cost. Additionally, at least five percent of the total program funding must be used for the purchase of hybrid electric or battery-powered buses or construction of facilities designed to service those buses. No more than 35 percent of the amount made available each fiscal year may be available to fund clean diesel buses. No more than five percent of the amount made available each fiscal year may be available to fund retrofitting or replacement of the engines of buses that do not meet the clean air standards of the Environmental Protection Agency (EPA).

TEA–21 requires that FTA issue a rule describing the application procedures it proposes to use to implement this new grant program. The purpose of this rulemaking is to comply with that requirement.

Electronic Access

Electronic access to this and other documents is available through FTA's home page on the World Wide Web, at *http://www.fta.dot.gov.*

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, via the Docket Management System (DMS) on the DOT home page, at *http://dms.dot.gov.* The DMS is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page, at *http://www.nara.gov/fedreg,* and the GPO database, at *http://www.access.gpo.gov/nara.*

Discussion of Comments and Changes

FTA received a total of sixteen comments to this rulemaking. We discuss the comments received and explain any changes made to the regulations in the following paragraphs. FTA considered all comments filed in a timely manner.

Each commenter expressed support for the rulemaking while offering recommendations to improve FTA's interpretation to implement this statutory program. A written copy of each comment is available at the DOT Docket Manager's Web site: *http://www.dms.dot.gov*

A. Comments Received

1. Bi-State Development Agency recommended that the incremental cost of biodiesel fuel should be included as an eligible project.

2. Georgia Regional Transportation Authority (GRTA) requested clarification on the role of the designated recipient and also believes that the program lends itself to congressional earmarking.

3. The Big Blue Bus (the Bus) expressed support for the simple format of the pre-application worksheet and the decentralized review process that allows applicants to work with their respective FTA Regional Office; however, the Bus recommends that all [project] eligibility issues should be resolved during the pre-application process.

4. Electric Vehicle Association of the Americas (EVAA) believes that although the pre-application process is stream-lined and does not impose unduly burdensome paperwork requirements, it recommends that the final application either be waived or stream-lined with the elimination of significant portions that are already submitted with the pre-application. EVAA is also concerned with potential statutory Buy America requirements. Another recommendation by EVAA regarding data collection is for FTA to review and use policies, procedures and systems in ongoing FTA funded projects, such as the project administered by EVAA and the Electric Power Research Institute (EPRI), but establishing a separate database for the information collected for the Clean Fuels program. To evaluate the success of the Clean Fuels Program, EVAA recommends that actual vehicle miles traveled should also be collected to assist with determining the program's impact on air quality in a particular area.

5. The Texas Department of Transportation (TxDOT) indicated that this program might cause FTA to discourage the use of 49 U.S.C. 5308 funds for the conversion of newer conventionally fueled transit vehicles. TxDOT also recommended that liquefied petroleum gas (LPG) be added to the rule. Regarding the pre-application worksheet, TxDOT recommends clarification of the information that new agencies will be required to submit since these agencies will not have the benefit of two years of historical data submitted in the National Transit Database (NTD).

6. The Metropolitan Transit Authority of Harris County, Texas (METRO) recommended that FTA also consider a project's contribution to emissions reductions during the selection process. METRO also recommended that projects be evaluated on merit without regard to the type of fuel a project will use. Although METRO agrees that FTA should compile basic inventory and operational data over a three-year reporting period, it recommends that annual reporting instead of quarterly reporting by transit agencies is more appropriate.

7. SunLine Transit Agency recommended that the Clean Fuels Program be limited to vehicles powered by alternatives to clean diesel, such as renewable energy or domestically produced clean natural gas, because the purchase of clean diesel buses is sufficiently funded by other programs. SunLine also recommended that clean diesel projects be subject to testing to ensure that traps are used on vehicles using this fuel. In addition, SunLine proposed these additionaland priority-weighting factors; experience with earlier generation clean fuel vehicles/infrastructure development, including technical training, priority for renewable energy development and use. SunLine also recommended that FTA pursue the addition of particulate matter nonattainment to the CMAQ statutory language for this program. In regard to the reporting requirements, SunLine recommends that all projects be required to report on vehicle operations, performance and maintenance so that head-to-head comparisons can be made. SunLine also encourages FTA to provide funds directly to grantees and not allocate funds through air districts or similar state agencies.

8. The Los Angeles County Metropolitan Transportation Authority (METRO) recommended the following revisions to enhance the program. METRO believes that FTA would have all necessary information to estimate the amount of funds potentially available for regions prior to the January pre-application deadline date; therefore, this information should be released to all applicants prior to the January deadline date. METRO also requested that FTA clarify how the weighting for carbon monoxide nonattainment areas will occur. METRO believes that the definition of eligible applicants is inconsistent with the statutory language of section 5308 (a)(2). METRO recommends that FTA provide a definition for ''clean diesel'' fuels and

that retrofitted engines must use particulate traps that have been certified by the State or other appropriate regulatory agency(ies). In regard to the application process, METRO recommended that FTA require the most recent audited National Transit Data NTD since at any given time previously collected NTD data may be three years old. METRO also recommended that the apportioning formula be amended to factor in the difference in size and technology of various transit vehicles.

9. Laketran, the regional transit authority for Lake County Ohio, recommended that the rule be revised to include the incremental cost of clean fuels such as Purinox.

10. The San Francisco Municipal Railway (Muni) noted that the legislation for the Clean Fuels Program is only authorized for one more year and questioned the efficacy of issuing a final rule at this time. Muni noted that the level of funding is insufficient as an incentive for transit operators to launch program's in untested technologies; therefore, the program is more likely to supplement existing clean fuel efforts, such as its alternative fuels program, hence FTA should develop less burdensome reporting requirements. In regard to the apportionment formula, MUNI recommended that FTA consider alternative measures such as bus passengers per revenue hour of service to assist in determining eligible projects in areas with populations over 1 million.

11. The American Public Transportation Association (APTA) recommended that additional incremental cost of purchasing clean fuel be eligible for funding under the program. APTA also recommended that FTA Regional Offices be given greater flexibility during the pre-application period to provide guidance to the transit agencies earlier in the process. Although APTA recognizes FTA's need to collect data from the successful applicants, it believes that information already reported in the TEAM system should be sufficient to evaluate the program's effectiveness. APTA also recommends that FTA amend its proposed mandatory reporting and make it voluntary or in the alternative permit the cost of the reporting requirements as an eligible grant activity.

12. The Missouri Soybean Association recommended that the incremental cost of biodiesel fuels be included as an eligible project cost.

13. The Orange County Transportation Authority (OCTA) noted that for purposes of consistency with 49 U.S.C. 5308, section 624.3(b)(1) of the proposed rule should include the following; ''(ix) other low or zero emissions technology''. OCTA also recommended that the proposed regulation should include a subsection identifying the maximum grant amount available to any designated recipient based on the population of the project area.

14. The National Biodiesel Board (NBB) recommended that FTA identify eligible biodiesel projects in the final application procedures, suggesting that this will allow applicants to know that certain biodiesel projects can qualify for funding. NBB also recommended that the incremental cost of biodiesel blends be included as an eligible project cost in the final application procedures. As to the pre-application and evaluation process, NBB recommended that the amount of biodiesel fuel along with the number of buses that would be fueled by biodiesel be included in the pre-application worksheet.

15. The Natural Gas Vehicle Coalition (NGVC) believes that grants should only be awarded to transit agencies that use vehicles that exceed Federal and California performance levels; hence, FTA should provide clear definitions of the ''sufficient'' emissions reductions necessary to qualify for program funds. NGVC also stated that FTA should provide additional guidance on what is considered ''clean diesel'', since an industry definition doesn't exist. Regarding data collection criteria, NGVC recommended that FTA require successful applicants to establish control buses and report data on the control buses and those funded under the program.

16. The Chicago Transit Authority (CTA) supports the establishment of the Clean Fuels Grant Program; however, it disagrees with FTA's interpretation of the statutory weighting factors. CTA takes exception to the proposed section 624.9(d), which provides for an additional adjustment to the bus passenger miles and bus counts for areas with both ozone and carbon monoxide. CTA believes the proposed formula provides a disproportionately larger amount of funds to a smaller number of urbanized areas that qualify for the extra weight factor. CTA recommended that FTA define the criteria that will be used to fund an eligible development project. Regarding the Letters of Interest in section 624.5(b)(1), CTA concurred with FTA's proposed rule. CTA also recommended that FTA require mandatory reporting from all successful applicants.

B. FTA Response

A. § 624.1 *Eligible Applicant.* As noted in the NPRM (66 FR 4552) section 624.1 notes that eligible applicants are state or local governmental authorities (designated recipients) that provide mass transportation services. A commenter recommended that FTA amend this section to reflect the language of the clean fuels statute. FTA agrees, section 624.1 of the final rule is amended to reflect the statute, which states in part that designated recipients are the same as noted in title 49, United States Code (U.S.C.), section 5307(a). (*See* 49 U.S.C. 5308(a)(2)). The role of the designated recipient is discussed in section 5307 Circular FTA C 9030.1C.

As was recommended by one commenter, the statute requires FTA to provide funds to the designated recipient instead of air districts. As with many FTA programs, the regional offices will provide direct assistance and guidance regarding the application process, once funds are appropriated for this program.

B. § 624.3 *Eligible Activities.* Title 49, U.S.C., section 5308 sets forth the criteria that FTA must use for determining eligible activities. Some comments indicated that additional criteria not found in the statute should also be considered. FTA is not permitted to expand the selection criteria beyond that found in the statute. For similar reasons, FTA may not restrict vehicles that use clean diesel as an eligible activity as recommended by a commenter.

However, we agree with those comments that indicated that the clean fuel definition in section 624.3 should include other low or zero emissions technology as noted in the statute. The final rule will include this provision. (*See* 49 U.S.C. 5308(a)(1)(A)(ix)).

(i) *Alternative Fuel Cost.* FTA received a number of comments stating that the incremental cost of bio-diesel and other alternative fuels should be an eligible expense under this program. Proponents believe that many of these fuels are readily usable in existing diesel engines without requiring modifications to these engines. Similar comments were made regarding Purinox, an emulsified diesel fuel. FTA agrees that many of these fuels may assist in emission reductions; however, it is important to note that fuel purchases are not defined as eligible projects under the clean fuels statute (*see* 49 U.S.C. 5308(a)).

The Clean Fuels Program funds the purchase or lease of buses and related facilities, but does not cover the incremental cost of fuel; therefore, FTA

is not permitted to fund this cost under this program. However, the purchase or lease of vehicles using these fuel technologies may be eligible for funding under the program.

(ii) For purposes of this program, FTA will use the Environmental Protection Agency (EPA) emissions standards and certification for determining clean diesel vehicle eligibility. We also clarify that ''after-market treatment technology'' refers only to those products that are EPA certified.

C. § 624.5 *Pre-application-Application.* As noted in the preamble of the NPRM, FTA cannot determine the available funding amounts for applicants until after the total number of eligible applicants has been determined and the specific formula funding ceilings have been applied. The pre-application process will provide the necessary data to make these determinations; therefore, a two-step process is required.

FTA's regional offices will provide assistance to pre-applicants regarding the eligibility of projects during the pre-application process. Operators not required to submit NTD data should provide data from two years prior (*e.g.,* if applying in FY 2003, provide data from 2001). Those applicants without two or more years of service will be required to submit data from the previous years. Since the pre-application and worksheet only provides baseline information regarding the pool of potential applicants and proposed projects, a final application will be required once the funding allotment has been determined based on the formula. However, FTA is committed to streamlining the application process as much as possible with the use of electronic filing.

D. § 624.9 *Formula.* As noted in the NPRM, FTA determined that the statutory intent of the formula is to reflect the Congestion Mitigation and Air Quality Improvement (CMAQ) program; hence, FTA has narrowly interpreted the statute to be consistent with the provisions of CMAQ. FTA is not permitted to consider other factors that were not within the statute (*e.g.,* size and technology). Neither is FTA permitted to disregard other requirements noted in the statute.

One commenter indicated that FTA's statutory interpretation, which provides for additional weighting for carbon monoxide nonattainment advantages a smaller number of urbanized areas. However, we note that the statute provides for additional adjustment for areas that are nonattained for ozone and carbon monoxide. (*See* 49 U.S.C. 5308 (d)(2)(b)). FTA does not believe that the additional weight factor will provide for a disproportionately larger amount of funds to a smaller number of urbanized areas. We note that other variables such as bus passenger miles and number of buses are also factored in the formula.

Regarding clarification on how the weighting for CO nonattainment areas will occur, applicants will be asked on the pre-application worksheet to identify the county or counties in which they provide transit service. If they serve a county which contains all or part of a nonattainment (or maintenance) area, they are eligible under this program. Prior to apportioning the funds, FTA will obtain from EPA an up-to-date list of classified ozone and CO nonattainment and maintenance areas. This list, known as the Greenbook, is available on the Internet at: *www.epa.gov/oar/oaqps/greenbk/index.html.* We note that ozone nonattainment areas, in particular, cover large geographic areas. They commonly include an urbanized area at the center and suburban and rural area on the periphery. Within the apportionment formula, there is a basic breakdown for apportioning the program funds between urban areas greater than one million population and urban areas less than one million population. It is possible, then, for transit agencies operating in the same nonattainment area to be placed in different categories under the apportionment formula based on the population of the jurisdiction they serve.

As recommended, section 624.9 of the final rule will reflect the maximum grant amount available to a designated recipient. (*See* 49 U.S.C. 5308(d)(3)).

E. § 624.11 *Reporting.* FTA received a number of comments on the issue of data collection and reporting requirements. As noted in the NPRM, FTA is interested in collecting relevant information on the operations and performance of clean fuel technology buses in revenue service to help assess the reliability, benefits, and costs of these technologies compared to conventional vehicles.

Although FTA considered modifying the submission of reports, we maintain that quarterly reporting provides the best opportunity for FTA and other interested parties to spot trends that would not be apparent with annual or bi-annual reporting. FTA does not believe that quarterly reporting on data elements that are typically collected by a transit agency would impose an undue burden. However, FTA is reviewing APTA's recommendation that any incremental cost associated with mandatory reporting be included as part of the capital expense for purposes of funding. We note that if this expense is included it will not increase the aggregate amount of formula funds.

FTA has chosen to focus specifically on more advanced technologies (*e.g.,* battery electric, hybrid electric, and fuel cell powered vehicles) since the least amount of transit data is currently available for these technologies. FTA believes that a significant amount of data is currently available for vehicles that use alternative fuels; therefore, only projects to purchase or lease buses powered by advanced propulsion technologies will have mandatory reporting requirements; all others will be on a voluntary basis. However, FTA will attempt to minimize these requirements by using existing electronic reporting procedures. Further guidance on reporting procedures will be issued as this program is implemented.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. We expect the economic impact of the final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We reached this conclusion based on the fact this final rule provides grant application procedures for designated recipients that are interested in applying for Federal funds to acquire buses that use clean fuel technology.

This rule is a significant regulation as defined by the Department's Regulatory Policies and Procedures. The rule is significant because it is expected to generate substantial public interest, although it only involves grant application procedures.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612, FTA has evaluated the effects of this rule on small entities. This rule will not have a significant effect on a substantial number of small entities because it merely establishes application procedures for the Clean Fuels Formula Grant Program.

Paperwork Reduction Act

This rule includes information collection requirements subject to the Paperwork Reduction Act. The Office of Management and Budget (OMB) has approved FTA's new information collection request. The affected public would be mass transit operators that

apply for Federal funds under this program. Any burden associated with this rule would be added to the current information collection package, Clean Fuels Formula Grant Program, OMB approval number 2132–0560. Comments solicited during the NPRM indicated that any cost associated with the paperwork requirements, should be considered a capital expense. FTA has determined that collection of information is necessary for the proper performance of the FTA grant process, and any cost associated with this rule is minimal; however, FTA is reviewing the recommendation to include any incremental data collection cost in the grant. FTA will also minimize the burden of the collection of information on the applicants, through the use of automated collection techniques (*e.g.,* filing applications via facsimile (fax), electronic mail or other forms of information technology).

The Government Paperwork Elimination Act (GPEA) of 1998 requires all Federal agencies to have an electronic means of reporting to the government as an alternative to reporting on paper by October 2003. Because of logistical difficulties, all means of electronic filing are not immediately available. However, FTA intends to develop the authentication infrastructure to receive worksheets through additional electronic means, such as web-based forms and electronic file transfer by October 2003.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 and it has been determined that the proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment because it sets forth application procedures for a discretionary grant program.

Environment

This program will have a positive impact on the environment. It promotes the alternative use of clean fuels in vehicles used for mass transportation.

Energy Effects

Mass transit has a positive impact on energy consumption as it promotes an alternative to the single occupant vehicle.

Unfunded Mandates Reform Act

This program is a voluntary grant program and will not result in the expenditure by state, local and tribal governments, in the aggregate, of $100,000,000 or more in any one year.

List of Subjects in 49 CFR Part 624

Grant Programs—Transportation, Mass transportation, Reporting and recordkeeping requirements.

Accordingly, for the reasons cited above, the FTA amends title 49 of the CFR by adding a new part 624, as set forth below:

PART 624—CLEAN FUELS FORMULA GRANT PROGRAM

Sec.

624.1 Eligible applicant.
624.3 Eligible activities.
624.5 Application process.
624.7 Certification.
624.9 Formula.
624.11 Reporting.

Appendix A to Part 624—Pre-Application Worksheet

Authority: 49 U.S.C. 5308; 49 CFR 1.51.

§ 624.1 Eligible applicant.

(a) An eligible applicant is a designated recipient (designated recipient has the same meaning as in 49 U.S.C. 5307(a)(2)) in either an:

(1) Ozone and carbon monoxide nonattainment areas that have the specific classifications established by the 1990 Clean Air Act Amendments [Public Law 101–549], or

(2) Ozone and carbon monoxide (CO) ''maintenance'' areas that, before they were redesignated to attainment by the Environmental Protection Agency (EPA), had these same classifications.

(b) The nonattainment classifications for ozone are ''marginal,'' ''moderate,'' ''serious,'' ''severe,'' and ''extreme.'' The nonattainment classifications for CO are ''moderate'' and ''serious.''

§ 624.3 Eligible activities.

(a) Eligible activities include the purchase or lease of clean fuel buses and facilities, repowering or retrofitting buses to operate on clean fuels, and the improvement of existing facilities to accommodate clean fuel buses.

(b)The term ''clean fuel vehicle'' means a vehicle that—

(1) Is powered by —

(i) Compressed natural gas;

(ii) Liquefied natural gas;

(iii) Biodiesel fuels;

(iv) Batteries;

(v) Alcohol-based fuels;

(vi) Hybrid electric;

(vii) Fuel cells;

(viii) Clean diesel, to the extent allowed under this section; or

(ix) Other low or zero emissions technology; and

(2) The Administrator of the Environmental Protection Agency has certified sufficiently reduces harmful emissions.

(c) Eligible projects are the following:

(1) Purchasing or leasing clean fuel buses, including buses that employ a lightweight composite primary structure, and vans for use in revenue service. The purchase or lease of non-revenue vehicles is not an eligible project.

(2) Constructing or leasing clean fuel bus facilities or electrical recharging facilities and related equipment. Facilities and related equipment for clean diesel buses are not eligible.

(3) Improving existing mass transportation facilities to accommodate clean fuel buses.

(4) Repowering pre-1993 engines with clean fuel technology that meets the current urban bus emission standards. Repowering means the removal of an engine from a bus followed by the installation of another engine and applies to engines that are replaced with new, previously unused, engines as well as those exchanged from an inventory of rebuilt engines.

(5) Retrofitting or rebuilding pre-1993 engines if before half life (*e.g.,* prior to six years of bus life) to rebuild; ''retrofit'' means use of the latest after-market technology such as ''upgrade kits,'' or after-treatment devices that treat the exhaust after it has left the engine, such as catalytic converters and particulate filters.

(6) At the discretion of FTA, projects relating to clean fuel, biodiesel, hybrid electric, or zero emissions technology vehicles that achieve emissions reductions equivalent or superior to existing clean fuel or hybrid electric technologies.

§ 624.5 Application process.

(a) Pre-applications must be submitted to the appropriate FTA regional office no later than January 1 of each fiscal year. Subject to the availability of funds, FTA will apportion the funds based on the formula and the pool of applicants, no later than February 1 of each year. Once the applicant has been notified of the apportionment of funds and the eligibility of its application, it should proceed to complete and file the final application. The final application must be submitted electronically if the grantee is using the electronic application process (*i.e.,* TEAM).

(b) The pre-application consists of a Letter of Interest and a Pre-application Worksheet as described as follows:

(1) *Letter of interest.* This letter serves as the cover letter for the Pre-application Worksheet, expressing interest in submitting an application. It describes the overall clean fuel technology program of the agency,

including the technology selected, describes the necessary infrastructure to support the program and the long-range objectives of the program including the eventual size of the clean fuel fleet. It summarizes the eligible activities for which the agency is applying and the amount of funds that the agency is seeking.

(2) *Pre-application worksheet.* Applicants must use the worksheet found in Appendix A to this part.

§ 624.7 Certification.

The applicant must use the certification contained in the Annual Notice of Assurances and Certifications published in the **Federal Register** each October.

§ 624.9 Formula.

(a) *Areas with population 1,000,000 and above.* Two thirds of the funds available each fiscal year shall be apportioned to applicants with eligible projects in urban areas with a population of 1,000,000 and above. Of this, 50 percent shall be apportioned so that each applicant receives a grant in an amount equal to the ratio between:

(1) The number of vehicles in the bus fleet of the eligible applicant, weighted by the severity of nonattainment for the area in which the eligible applicant is located; and

(2) The total number of vehicles in the bus fleets of all eligible applicants in areas with a population of 1,000,000 and above, weighted by the severity of nonattainment for all areas in which those eligible projects are located as provided in paragraphs (c) and (d) of this section. The remaining 50 percent shall be apportioned such that each designated recipient receives a grant in an amount equal to the ratio between:

(i) The number of bus passenger miles of the eligible designated recipient, weighted by the severity of nonattainment of the area in which the eligible applicant is located as provided in paragraphs (c) and (d) of this section.

(ii) The total number of bus passenger miles of all eligible applicants in areas with a population of 1,000,000 and above, weighted by the severity of nonattainment of all areas in which those eligible applicants are located as provided in paragraphs (c) and (d) of this section.

(b) *Areas under 1,000,000 population.* The formula for areas under 1,000,000 in population is the same as paragraph (a) of this section, except the formula removes the pool of eligible applicants in areas with a population of 1,000,000 and above and replaces it with the pool of eligible applicants in areas with populations under 1,000,000.

(c) *Weighting factors.* (1) The weighting factor for ozone shall be determined based on the following factors.

(i) 1.0 if, at the time of the apportionment, the area is a maintenance area for ozone;

(ii) 1.1 if, at the time of the apportionment, the area is classified as a marginal ozone nonattainment area;

(iii) 1.2 if, at the time of the apportionment, the area is classified as a moderate ozone nonattainment area;

(iv) 1.3 if, at the time of the apportionment, the area is classified as a serious ozone nonattainment area;

(v) 1.4 if, at the time of the apportionment, the area is classified as a severe ozone nonattainment area;

(vi) 1.5 if, at the time of the apportionment, the area is classified as an extreme ozone nonattainment area;

(2) The weighting factor for CO shall be determined based on the factors:

(i) 1.0 if, at the time of the apportionment, the area is a maintenance area for carbon monoxide;

(ii) 1.2 if, at the time of the apportionment, the area is classified as a moderate carbon monoxide nonattainment area;

(iii) 1.3 if, at the time of the apportionment, the area is classified as a serious carbon monoxide nonattainment area.

(3) The number of buses in the fleet and the bus passenger miles shall be multiplied by the higher of the ozone or CO factors.

(d) *Additional adjustment.* The number of buses in the fleet and the bus passenger miles shall be further multiplied by a factor of 1.2 if the area is both nonattainment for CO and either nonattainment or maintenance for ozone.

(e) *Limitation on uses.* (1) Not less than 5 percent of the amount made available by or appropriated under 49 U.S.C. 5338 in each fiscal year to carry out this section shall be available for any eligible projects for which an application is received from a designated recipient for the purchase or construction of hybrid electric or battery-powered buses or facilities specifically designed to service those buses.

(2) Not more than 35 percent of the amount made available by or appropriated under 49 U.S.C. 5338 in each fiscal year to carry out this section may be made available to fund clean diesel buses.

(3) Not more than 5 percent of the amount made available by or appropriated under 49 U.S.C. 5338 in each fiscal year to carry out this section may be made available to fund 21 retrofitting or replacement of the engines of buses that do not meet the clean air standards of the Environmental Protection Agency, as in effect on the date on which the application for such retrofitting or replacement is submitted under § 624.5.

Note to § 624.9. Maximum grant amount. The amount of a grant made to a designated recipient under this section shall not exceed the lesser of—for an eligible project in an area with a population of less than 1,000,000, $15,000,000,—and for an eligible project in an area with a population of at least 1,000,000, $25,000,000; or 80 percent of the total cost of the eligible project. Any amounts that would otherwise be apportioned to a designated reciipient under this Note that exceed the amount described in this Note shall be reapportioned among other designated recipients in accordance with this section.

The Clean Fuels Formula funds will be apportioned according to the following formula:

§ 624.11 Reporting.

(a) Recipients of financial assistance under 49 U.S.C. 5308 who purchase or lease hybrid electric, battery electric and fuel cell vehicles must report to the appropriate FTA regional office on a quarterly basis for the first three years of the useful life of the vehicle with the following information:

(1) Vehicle miles traveled;

(2) Fuel/energy costs;

(3) Vehicle fuel/energy consumption and oil consumption;

(4) Number of road calls or breakdowns resulting from clean fuel and advanced propulsion technology systems, and

(5) Maintenance costs associated with the clean fuels or advanced propulsion system.

(b) Recipients of financial assistance under 49 U.S.C. 5308 who purchase or lease compressed natural gas (CNG), liquefied natural gas (LNG), and liquefied petroleum gas (LPG) vehicles may report the information described in paragraph (a) of this section, but this reporting is voluntary.

(c) Recipients of financial assistance under 49 U.S.C. 5308 who purchase or lease clean diesel vehicles should not report information beyond the normal FTA quarterly reporting requirements.

APPENDIX A TO PART 624—PRE–APPLICATION WORKSHEET

The following are instructions for completing the pre-application worksheet:

(1) *Requesting Agency.* Fill in the name of the applicant. The applicant must be a designated recipient.

(2) *UZA (or Urban Area).* List the name of the urbanized area if the applicant is located in an urbanized area. Otherwise, indicate the name of the city or town.

(3) *Nonattainment or Maintenance Area Name.* List the name of the nonattainment or maintenance area in which your agency provides service.

(4) *Classification for Ozone.* List the current EPA nonattainment classification for your service area. (The classification must be of the following terms: marginal, moderate, serious, severe, or extreme.)

(5) *Classification for Carbon Monoxide.* List the current EPA nonattainment classification for your service area. (The classification must be either moderate or serious.)

I. Proposed activity.

(1) *New Bus Purchase/Lease.* Enter the number of vans or buses by fuel category in the pre-application. For hybrid electric vehicles, include fuel types. Indicate whether the structure is lightweight composite or traditional structure and weight. Enter the total and Federal amount for each fuel type.

(2) *Construct/Lease New Clean Fuel Facility and Related Equipment.* Indicate the Federal and total amount for a clean fuels facility, related equipment or electrical recharging facility. Enter any descriptive or explanatory information on the lines for additional information, including what fuel type is being accommodated. Facilities to accommodate clean diesel are not eligible.

(3) Indicate the Federal amount and total amount for improvements to existing facilities to accommodate clean fuel buses. Enter any descriptive or explanatory information on the line for additional items, including what fuel type is being accommodated.

(4) Indicate the Federal amount and total amount for repowering/replacing pre-1993 engines with engines that meet current emissions standards when installed. Please include a separate entry for each fuel type. For the purposes of this program, repowering/replacement means the removal of an engine from the bus followed by the installation of another engine. This applies to engines that are replaced with new, previously unused engines, as well as those exchanged from an inventory of rebuilt engines.

(5) Enter a quantity, Federal amount, and total amount by fuel type for retrofit/rebuild of pre-1993 engines to comply with latest EPA-certified emissions standards. For the purposes of this program, ''retrofit'' means the use of the latest after-market technology such as ''upgrade kits,'' or after-treatment device(s) that treat the exhaust after it has left the engine, such as catalytic converters or particulate filters. ''Before the half-life rebuild'' means that the retrofitting would need to occur before the bus is six years old. Since this provision applies to pre-1993 engines, this provision is of limited time availability.

(6) This section should describe any proposed clean fuel project not included in the categories above. Since any project not included above requires approval at the discretion of FTA, projects included here should also be described in the letter of interest. Include the Federal amount and total.

(7) *Summary.* Indicate the Totals for the Federal and Total Amounts requested for all projects listed in this Section I.

II. Data

This section contains the active bus fleet and annual bus passenger miles information that is required to run the Clean Fuels formula.

(1) Enter the number of buses in the active fixed route fleet. For this purpose, ''bus'' includes articulated motorbus, Class A bus (>35 seats), Class B bus (25–35 seats), Class C bus (<25 seats), double-decked bus, school bus, and electric trolley bus. Use NTD data that was reported 2 years prior (*e.g.,* if applying in FY 2003, use data from FY 2001). For UZAs that have already submitted information to the National Transit Database (NTD), add the data from column H of Form 408 for the following vehicle types: AB, BA, BB, BC, DD, SB, and TB. (These vehicle types are defined in reporter's guidance for the NTD.)

(2) Enter the fixed route annual bus passenger miles for 2 years prior (*e.g.,* if applying in FY 2003, use data from FY 2001. This may include motorbus (see types above) or trolley bus. For UZAs that have submitted NTD data, add the information from column I of line 25 of Form 406 for the modes MB and TB.

III. Projects Subject to Minimum/Maximum Apportionments

This section provides a dollar total for the areas that are affected by either maximum or minimum constraints. These constraints apply to the entire program and not to individual applicants. However, in order to comply with these constraints, FTA must know how much each applicant is applying for in each of these areas.

(1) Enter the total Federal dollar amount for the purchase/lease of clean diesel vehicles.

(2) Enter the total Federal dollar amount for project elements that fall into the category of purchasing hybrid electric or battery-powered buses or constructing facilities designed to service them.

(3) Enter the total Federal dollar amount for project elements that fall into the category of retrofitting or replacing bus engines that do not meet the clean air standards of the EPA.

Note: Because of the uncertainty of how many grantees will apply, the actual amount that a grantee receives in an apportionment may be different from the amount requested in the application that was submitted. Furthermore, because clean diesel and retrofit/replacement of bus engines are subject to maximum constraints, the amounts specifically apportioned for those purposes may not resemble the proportionality of the application. For example, suppose Grantee A's application included $500,000 for clean diesel and $100,000 for a compressed natural gas bus. If the 35 percent ceiling for clean diesel is exceeded by the total applications, Grantee A may only be allowed $50,000 to be used specifically for clean diesel because of the ceiling. The remainder of the funds apportioned to Grantee A (say, $300,000) would have to be used in areas without a maximum constraint, *i.e.,* in areas other than clean diesel or retrofit/replacement of bus engines if applied for.

IV. Certification

The chief executive officer or the general manager of the transit agency should sign this certification.

Appendix A to Part 624 - CLEAN FUELS FORMULA PROGRAM Pre-Application Worksheet

Agency Name _____ Non-Attainment or Maintenance Area Name _____

UZA (or Urban Area) _____ Classification For Ozone _____

Classification For Carbon Monoxide _____

I. PROPOSED ACTIVITY

1) New Bus Purchase/Lease

Fuel Type	Quantity	Composite or Traditional	Federal Amount	Total Amount
CNG			$	$
LNG			$	$
Biodiesel			$	$
Batteries			$	$
Alcohol-based			$	$
Hybrid elec.			$	$
Fuel cell			$	$
Clean diesel			$	$
Other (Specify) _____			$	$

2) Construct/Lease New Clean Fuel Facility & Related Equipment (Indicate The Federal and Total Amounts For Each Category)

	Federal Amount	Total Amount
Electrical Recharging Facility	$	$
Clean Fuels Facility (Specify fuel type _____)	$	$
Related Equipment	$	$

Description _____

_____

3) Improvements To Existing Facilities To Accommodate Clean Fuel Buses

	Federal Amount	Total Amount
Facility Improvements (Specify fuel type _____)	$	$

Description _____

_____

4) Re-power/Replace Pre-1993 Engines With Engines That Meet Emissions Standards When Installed In The Respective Vehicle. (Separate Entry For Each Fuel Type)

Fuel Type	Quantity	Federal Amount	Total Amount
CNG		$	$
LNG		$	$
Biodiesel		$	$
Batteries		$	$
Alcohol-based		$	$
Hybrid elec.		$	$
Fuel cell		$	$
Clean diesel		$	$
Other (Specify) _____		$	$

5) Retrofit/Rebuild Pre-1993 Engines To Comply With Latest Emissions Standards

Fuel Type	Quantity	Federal Amount	Total Amount
CNG		$	$
LNG		$	$
Biodiesel		$	$
Batteries		$	$
Alcohol-based		$	$
Hybrid elec.		$	$
Fuel cell		$	$
Clean diesel		$	$
Other (Specify) _____		$	$

6) Other

Description _____

_____

Federal Amount $ _____ Total Amount $ _____

7) Summary

Total Requested For All Projects $ _____

Federal Requested For All Projects $ _____

II. DATA

1) Total Active Year 20___ Bus Fleet (number of buses) _____
(Motor Bus & Trolley Bus)

2) Year 20___ Bus Passenger Miles _____
(Motor Bus & Trolley Bus)

III. FEDERAL DOLLAR AMOUNT FOR THE PROJECTS LISTED ABOVE SUBJECT TO MINIMUM OR MAXIMUM APPORTIONMENTS

Purchase/Lease Clean Diesel Buses	$
Hybrid Electrical or Battery Powered Buses/Facilities	$
Retrofit or Replace Engines That Meet EPA Clean Air Standards	$

IV. CERTIFICATION

I understand that the Clean Fuels Formula Grant Program funds will be apportioned based on the information in this pre-application worksheet. I certify that to the best of my knowledge the information contained on this pre-application worksheet is true and correct. In addition, I understand that since funds have been apportioned on the basis of the information contained in this worksheet, we are limited in our ability to make any revisions to the final application.

_____

CEO or General Manager

_____

Date

Issued: June 4, 2002.

Jennifer L. Dorn,

Administrator, Federal Transit Administration.

[FR Doc. 02–14547 Filed 6–10–02; 8:45 am]

BILLING CODE 4910–57–P

Federal Register

Tuesday,
June 11, 2002

Part IV

Department of the Treasury

Community Development Financial Institutions Fund

Allocation Availability Inviting Applications for the New Markets Tax Credit Program; Notice

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Allocation Availability Inviting Applications for the New Markets Tax Credit Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of allocation availability (NOAA) inviting applications for the New Markets Tax Credit Program.

SUMMARY: Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act), as enacted by section 1(a)(7) of the Consolidated Appropriations Act, 2001 (Public Law 106–554, December 21, 2000), amended the Internal Revenue Code (IRC) by adding IRC section 45D, New Markets Tax Credit. Section 45D requires the Secretary of the Treasury (Treasury) to establish a program that will provide an incentive to investors in the form of a tax credit over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in low-income communities. Section 121(f) of the Act, among other things, requires the Secretary to issue guidance on how entities may apply to receive allocations of New Markets Tax Credits (NMTCs), the competitive procedure through which such allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities. The Secretary delegated such authority to the Under Secretary (Domestic Finance), who in turn delegated such authority to the Director of the Community Development Financial Institutions Fund (the Fund).

On April 20, 2001, the Fund issued guidance (which was published in the **Federal Register** on May 1, 2001 at 66 FR 21846) (the General Guidance) that provided general information on: (i) how an entity may apply to become certified as a ''qualified community development entity'' (CDE); (ii) how a CDE may apply to receive an allocation of NMTCs; (iii) the competitive procedure through which such allocations will be made; and (iv) the actions that will be taken to ensure that proper allocations are made to appropriate entities. In addition, through the General Guidance, the Fund sought written comments from the public as to certain application and allocation issues.

On December 20, 2001, the Fund issued additional guidance in the **Federal Register** (at 66 FR 65806) (CDE Certification Guidance) which (i) summarized written public comments submitted to the Fund pursuant to the General Guidance, with respect to the Fund's certification of entities as CDEs, and (ii) provided specific guidance on how an entity may apply to become certified as a CDE. On December 26, 2001, the Internal Revenue Service (IRS) published temporary regulations in the **Federal Register** (at 66 FR 66307) that provide guidance to taxpayers claiming NMTCs, including, but not limited to: (i) How the proceeds from Qualified Equity Investments must be used; (ii) what constitutes a Qualified Low-Income Community Investment; and (iii) what events will trigger a recapture of the NMTC.

This document (i) summarizes many, but not all, of the written public comments submitted to the Fund pursuant to the General Guidance, specifically with respect to application and allocation issues, and (ii) provides, in accordance with IRC section 45D(f), specific guidance on how an entity may apply to receive an allocation of NMTCs, the competitive procedure through which such allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities. More detailed application content requirements are found in the application packet related to this NOAA. In the event of any inconsistency between the contents of the application packet or this NOAA and the Act or the IRS temporary regulations for the NMTC Program, the provisions of the Act and the temporary regulations shall govern.

For calendar year 2002, the Fund expects to allocate to CDEs the authority to issue to their investors up to the aggregate amount of $2.5 billion in equity as to which NMTCs may be claimed (the authority will include the aggregated amounts of $1 billion for calendar year 2001 and $1.5 billion for calendar year 2002, as permitted under IRC sections 45D(f)(1) and 45D(f)(3)). The Fund reserves the right to allocate said authority to any, all or none of the entities that submit an application in response to this NOAA, and in amounts determined by the Fund. This NOAA provides guidance for the application for and allocation of NMTCs for calendar year 2002. The Fund encourages all entities proposing to make Qualified Low-Income Community Investments, as hereinafter defined, to apply for an allocation of NMTCs.

DATES: Simultaneously with the publication of this NOAA, the Fund has made the calendar year 2002 NMTC Allocation Application available on its website at *http://www.cdfifund.gov.* The application is currently available in a read-only format. However, applicants are expected to submit completed applications electronically to the Fund using a web-based application. The Fund anticipates that this web-based application will be available on the Fund's website commencing no later than July 17, 2002. Applicants will need access to Internet Explorer 5.5 or higher or Netscape Navigator 6.0 or higher and at least a 56Kbps Internet connection in order to meet the electronic application submission requirements. Electronic applications must be submitted solely by using the format made available at the Fund's website for the NMTC Program. The deadline for receipt of electronic applications is 5 p.m. ET on August 29, 2002. Applications received electronically after 5 p.m. ET on August 29, 2002 will not be accepted for consideration. Additional deadlines relating to the submission of signature forms and general supporting documentation will be further detailed in the electronic application.

The Fund expects applicants to submit NMTC allocation applications electronically. Submission of an electronic application will facilitate the processing and review of applications and the selection of allocatees; further, it will assist the Fund in the implementation of electronic reporting requirements for entities that receive NMTC allocations. If an applicant is unable to submit an electronic application, it must notify the Fund by 5 p.m. ET on August 9, 2002 for information on the procedures for submission of a paper application. The deadline for receipt of a paper application at the designated location is 5 p.m. ET on August 29, 2002. Paper applications received after that date and time will not be accepted for consideration and will be returned to the sender.

For purposes of this NOAA, an application for an allocation of NMTCs will not be considered unless: (i) An applicant is certified as a CDE at the time the Fund receives its NMTC allocation application; or (ii) the Fund receives from an applicant an application for certification as a CDE no later than July 25, 2002. The Fund will not award allocations of NMTCs to applicants that are not certified as CDEs.

FOR FURTHER INFORMATION CONTACT: Applications and other information regarding the Fund and its programs

may be obtained from the Fund's website at *http://www.cdfifund.gov.* The Fund will post on its website answers to questions of general applicability regarding the NMTC Program. If you have any questions about the programmatic requirements or application procedures for this program, contact Linda Davenport, the Fund's NMTC Program Manager. The NMTC Program Manager may be reached by e-mail at *cdfihelp@cdfi.treas.gov,* by telephone at (202) 622–7373, by facsimile at (202) 622–8911, or by mail at CDFI Fund, 601 13th Street, NW, Suite 200 South, Washington, DC 20005. For questions regarding the tax aspects of the NMTC Program, contact Paul Handleman, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS, by telephone at (202) 622–3040, by facsimile at (202) 622–4753, or by mail at 1111 Constitution Avenue, NW, Attn: CC:PSI:5, Washington, DC 20224. These are not toll free numbers. Applicants are strongly encouraged to review the IRS temporary regulations for the NMTC Program. The IRS temporary regulations, the General Guidance, and the CDE Certification Guidance are available on the Fund's website at *http://www.cdfifund.gov.*

SUPPLEMENTARY INFORMATION:

I. Definitions

(a) *Affiliate* means any legal entity that Controls, is Controlled by, or is under common Control with an applicant.

(b) *Allocation Agreement* means an agreement between the Fund and a CDE relating to a NMTC allocation under IRC section 45D(f)(2).

(c) *Community Development Entity or CDE:* See Qualified Community Development Entity, below.

(d) *Community Development Financial Institution* or *CDFI* means an entity that has been certified by the Fund as meeting the criteria set forth in section 103 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702). For further details, refer to the CDFI Program regulations set forth at 12 CFR 1805.201.

(e) *Control* means (i) Ownership, control, or power to vote more than 50 percent of the outstanding shares of any class of voting securities of any entity, directly or indirectly or acting through one or more other persons; (ii) control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any other entity; or (iii) the power to exercise, directly or indirectly, a controlling influence over the management policies or investment decisions of another entity, as determined by the Fund.

(f) *Controlling Entity* means an entity that Controls an applicant.

(g) *Low-Income Community* means, under IRC section 45D(e)(1), any population census tract if (A) the poverty rate for such tract is at least 20 percent, or (B)(i) in the case of a tract not located within a Metropolitan Area (as hereinafter defined), the median family income for such tract does not exceed 80 percent of statewide median family income, or (ii) in the case of a tract located within a Metropolitan Area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the Metropolitan Area median family income. With respect to IRC section 45D(e)(1)(B), possession-wide median family income shall be used (in lieu of statewide income) in assessing the status of census tracts located within a possession of the United States. Upon application by an entity for certification as a CDE, the Fund may designate under IRC section 45D(e)(2) an area within a census tract as a Low-Income Community if (A) the boundary of the area is continuous; (B) the area would otherwise meet the definition of a Low-Income Community under IRC section 45D(e)(1) if it were a census tract; and (C) there is inadequate access to investment capital in the area (as demonstrated by studies, surveys, or other analyses provided by the applicant). Under IRC section 45D(e)(3), in the case of an area that is not tracted for population census tracts, the equivalent county divisions (as defined by the Bureau of the Census for purposes of determining poverty areas) shall be used for purposes of defining poverty rates and median family incomes.

(h) *Low-Income Persons* means individuals having an income of not more than (A) for non-Metropolitan Areas, 80 percent of the statewide median family income; and (B) for Metropolitan Areas, the greater of (i) 80 percent of the statewide median family income or (ii) 80 percent of the Metropolitan Area median family income.

(i) *Metropolitan Area* means an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR 1949–1953 Comp., p. 758), as amended.

(j) *Qualified Community Development Entity or CDE* means, under IRC section 45D(c)(1), any domestic corporation or partnership if (A) the primary mission of the entity is serving, or providing investment capital for, Low-Income Communities or Low-Income Persons; (B) the entity maintains accountability to residents of Low-Income Communities through their representation on any governing board of the entity or on any advisory board to the entity; and (C) the entity is certified by the Fund as a CDE. Specialized Small Business Investment Companies (SSBICs), as hereinafter defined, and CDFIs will be deemed to be CDEs in the manner set forth in the CDE Certification Guidance.

(k) *Qualified Equity Investment* means, under IRC section 45D(b)(1), any equity investment in a CDE if (A) such investment is acquired by the investor at its original issue (directly or through an underwriter) solely in exchange for cash; (B) substantially all of such cash is used by the CDE to make Qualified Low-Income Community Investments; and (C) the investment is designated by the CDE as a Qualified Equity Investment. Qualified Equity Investment also includes an equity investment purchased from a prior holder, to the extent provided in IRC section 45D(b)(4). Qualified Equity Investment does not include any equity investment issued by a CDE more than five years after the date the CDE receives a NMTC allocation. Under IRC 45D(b)(6), ''equity investment'' means (A) any stock (other than nonqualified preferred stock as defined in IRC section 351(g)(2)) in an entity that is a corporation and (B) any capital interest in an entity that is a partnership.

(l) *Qualified Low-Income Community Investment* means, under IRC section 45D(d)(1), (A) any capital or equity investment in, or loan to, any qualified active low-income community business (as defined in IRC section 45D(d)(2)); (B) the purchase from a CDE of any loan made by such entity that is a Qualified Low-Income Community Investment; (C) financial counseling and other services to businesses located in, and residents of, Low-Income Communities; and (D) any equity investment in, or loan to, any CDE.

(m) *Specialized Small Business Investment Company or SSBIC* is defined in IRC section 1044(c)(3).

(n) *Subsidiary* means a legal entity that is owned or Controlled directly or indirectly by an applicant.

(o) *Unrelated:* means for purposes of IRC section 45D(f)(2), those persons who are not related within the meaning of IRC section 267(b) or IRC section 707(b)(1).

II. Background

By providing an incentive in the form of a tax credit over seven years, NMTCs are intended to stimulate the provision of $15 billion of private investment capital in CDEs that, in turn, will make investments in eligible businesses in low-income urban and rural communities, thus facilitating economic and community development. The goal is to address limitations of financial markets by facilitating the flow of equity capital into areas not being adequately served by conventional lenders and investors. This can be achieved by deploying investments in products or services that: (a) Service creditworthy borrowers or investees not served by conventional sources of capital; (b) provide a catalyst for large-scale, self-generating flows of investments (for example, the increased provision of critical public services); or (c) serve borrowers or investees who may present greater risks than would be assumed by conventional providers of capital in order to generate benefits distributed broadly throughout the community.

Through the NMTC Program, an entity may apply to the Fund to be certified as a CDE. Nonprofit entities and for-profit entities may be certified as CDEs by the Fund. Both for-profit and non-profit entities may apply to the Fund for an allocation of NMTCs, but only CDEs that are for-profit entities are eligible to issue Qualified Equity Investments with respect to which investors will be entitled to claim NMTCs. A taxpayer that makes a Qualified Equity Investment in a CDE that has received a NMTC allocation from the Fund may claim a five percent tax credit on the investment amount as of the date on which the investment is initially made and on each of the next two anniversary dates and a six percent tax credit for each of the next four anniversary dates.

In this NOAA, the Fund addresses specifically how an entity may apply to receive an allocation of NMTCs, the competitive procedure through which such allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities. Applicants should consult the temporary regulations issued by the IRS for the NMTC Program to obtain guidance on tax issues related to the NMTC Program.

III. Comments Submitted by the Public on the General Guidance

On April 20, 2001, the Fund issued the General Guidance which described certain aspects of the NMTC Program. The Fund received numerous comments from organizations and individuals. The Fund reviewed and considered all of the comments and in the CDE Certification Guidance published in the **Federal Register** on December 20, 2001, the Fund responded to the significant and most frequently commented upon issues related to CDE certification. In this NOAA, the Fund responds to the significant and most frequently commented upon issues related to other application and allocation issues presented in the General Guidance.

A. Business Strategy

Several commenters recommended that in evaluating applicants for NMTCs, the Fund should consider an applicant's ability to create products and services that it can successfully market to eligible investees under the NMTC Program. Specifically, the commenters suggested that the Fund consider the following items when evaluating an applicant's business investment strategy: (1) An applicant's experience in accurately assessing the demand for, and marketing of, its proposed investment products and services; (2) an applicant's experience in making investments in the proposed Low-Income Community in which it will deploy investments related to the NMTC Program, including how an applicant's prior investment activities will complement its proposed activities; and (3) the extent to which an applicant has already established a pipeline of identified or potential investees.

IRC section 45D(f)(2) provides Treasury with the authority to determine how entities shall apply for an allocation of NMTCs. The Fund agrees that an applicant's business investment strategy is a critical component of the evaluation criteria for NMTC allocations and has determined that it will evaluate an applicant's business investment strategy for making Qualified Low-Income Community Investments. In assessing an applicant's business investment strategy, the Fund will consider, among other things: (1) An applicant's proposed products, services, and investment criteria; (2) an applicant's (or its Controlling Entity's) prior performance in deploying investments or providing services; (3) an applicant's (or its Controlling Entity's) prior performance in providing capital or technical assistance to disadvantaged businesses or communities; (4) the quality and projected level of an applicant's pipeline of potential investments; and (5) the extent to which an applicant intends to make Qualified Low-Income Community Investments in one or more businesses in which persons unrelated to the entity hold a majority equity interest. As described further under paragraph E below, applicants may receive priority points for each of items number 3 and 5 above.

Several commenters also recommended that in evaluating the track record of an applicant's prior investment activities, the Fund should consider: (1) The track record of an applicant's Affiliates in making investments in Low-Income Communities; (2) the type, volume, overall performance and impact of prior investments; (3) the historical financial performance of an applicant; and (4) quantitative as well as qualitative indicators.

In evaluating the track record of an applicant's investment activities, the Fund has determined that it will consider whether an applicant, and/or its Controlling Entity, has a track record of making successful investments that are similar to the investments an applicant contemplates making with the proceeds of Qualified Equity Investments. The Fund will require information on an applicant's and, if applicable, its Controlling Entity's investment portfolio, and the status and overall performance of the reported investment activities, including those investments which have been targeted to disadvantaged communities or businesses.

B. Capitalization Strategy

Two commenters suggested that the Fund not require applicants to indicate at the time of application the specific commitments of investors to whom an applicant plans to offer NMTCs. Another commenter recommended that the Fund focus on an applicant's track record for raising capital from the private sector. The Fund has considered these comments and has determined that information on an applicant's track record (or that of its Controlling Entity) of obtaining investors in the past and its present investor commitments as of the date of application submission are essential for purposes of evaluating allocation applications. An applicant's track record of raising capital from investors as well as the status of any current investor commitments provides the Fund with valuable information on whether an applicant can successfully raise capital in exchange for any NMTC allocations it receives. Therefore, the Fund will require, at the time of application, that applicants indicate their (or their Controlling Entity's) prior performance with raising capital from investors as well as the nature of investor commitments for NMTCs to date.

One commenter suggested that the Fund require that applicants provide an outline of their strategies for raising capital related to the NMTC Program. The Fund agrees with this comment and will require that all applicants submit a description of their strategy to raise capital from potential NMTC investors. The Fund will also request information on the experience of an applicant's staff, board members, and consultants with raising capital from investors, with or without the use of tax credit incentives, and how these individuals will be involved in the implementation of an applicant's capitalization strategy. Applicants will also be required to explain how an allocation of NMTCs fits into an applicant's entire capitalization plan. The Fund will also consider the extent to which an applicant intends to invest the proceeds from the aggregate amount of its Qualified Equity Investments at a level that exceeds the requirements of IRC section 45D(b)(1)(B).

C. Management Capacity

Several commenters suggested that in evaluating an applicant's business strategy and capitalization strategy, the Fund should consider the experience of an applicant's management team, board of directors, and advisory board. The Fund agrees with this comment and will assess an applicant's management capacity by considering, among other things, the qualifications of an applicant's principals, its board members, its management team, and other essential staff and contractors, with specific focus on: Experience in deploying capital or technical assistance, including activities similar to those described in an applicant's business strategy; experience in raising capital; asset management and risk management experience; and experience with fulfilling compliance requirements of other governmental programs, including other tax programs. The Fund will also consider the extent to which an applicant has protocols in place to ensure ongoing compliance with NMTC program requirements.

D. Community Impact

Numerous commenters suggested that the Fund consider the level of community development impact demonstrated in an applicant's past and proposed investment activities. The commenters recommended that the Fund consider a number of community development impact criteria, including, but not limited to: Income levels of people served by prior investments; the location of prior investments; social impact criteria used in the underwriting process; benefits to the local labor market and business owners; creation and retention of new jobs; effects on hourly wages and tax base of residents in the community; prevention of residential displacement; improvements to the provision of services to community residents; coordination with local government economic development plans; improvements in availability of affordable housing; reuse of blighted structures; impact of investments on historic properties; and the extent to which an applicant has sought the input of community members in the eligible Low-Income Community related to an applicant's proposed investment strategy.

The Fund has considered these comments and will be evaluating the effect of the NMTC Program in many of the areas outlined above as part of the Fund's compliance and monitoring and evaluation processes. The Fund has also included in the allocation application a section which asks that applicants provide information on the role that community representatives and residents will play in the design, implementation or monitoring of the applicant's investment strategy for the use of a potential allocation of NMTCs. In addition, the allocation application requires applicants to provide information pertaining to the extent to which its products and services will benefit Low-Income Communities through the coordination or use of NMTCs in concert with existing Federal, state or local government or community economic development plans or programs which focus on Low-Income Communities (e.g., Empowerment Zones, Enterprise Communities, and Renewal Communities).

E. Statutory Priorities

IRC section 45D(f)(2) requires that, in making allocations of NMTCs, the Fund must give a priority to any entity with a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities; or to any entity which intends to meet the requirement of IRC section 45D(b)(1)(B) by making Qualified Low-Income Community Investments in one or more businesses in which persons unrelated to the entity hold a majority equity interest.

One commenter suggested that the priorities should be implemented by assigning additional points for each category. A few commenters recommended that applicants meeting the requirements of both or either priority be awarded NMTC allocations before all other applicants. Several commenters suggested that more weight should be given to the investment in unrelated entities priority over the investment track record priority. One commenter suggested that more weight should be given to those applicants with a track record of providing investments in Low-Income Communities. Another commenter also suggested that in evaluating newly formed entities that are CDEs, the record of the entity that controls the newly formed entity should be considered for purposes of determining priority treatment. Several commenters proposed that the Fund provide a priority to CDEs that commit to using NMTC allocations to attract most of their investments from unrelated sources. Another commenter suggested that a preference be given to those applicants with a demonstrated track record of successful compliance with other tax credit programs. Other commenters also recommended that the Fund give priority treatment in its allocation of NMTCs to SSBICs, New Markets Venture Capital (NMVC) Companies designated by the Small Business Administration, community development banks and bank holding companies.

A few commenters also proposed that the Fund give priority treatment for certain types of investment activities by CDEs, such as for: Business start-up or expansion costs; businesses located in historic commercial districts; rehabilitation projects; venture capital investments; and businesses that provide new services to underserved markets. One commenter also suggested that a priority should be given to CDEs that intend to make equity investments as opposed to loans to businesses in Low-Income Communities.

The Fund has considered these comments and will provide up to five (5) priority points to any applicant that meets either of the two statutory priority categories (for a total of up to ten (10) additional priority points). Applicants may obtain points in either, or both, categories. When evaluating the record of an applicant that is newly formed to determine its success in providing capital or technical assistance to disadvantaged businesses or communities, the Fund will also consider the track record of an applicant's Controlling Entity of providing such capital or technical assistance.

The Fund will not provide an automatic priority of NMTC allocations to applicants that are SSBICs, NMVC Companies, or community development banks or bank holding companies since such an organizational form or status is not uniquely qualified to fulfill the purposes of the NMTC Program.

Although the Fund will consider the nature of an applicant's proposed investment activities for purposes of evaluating the applicant's investment strategy, the Fund will not give separate preference or priority treatment to specific categories or types of investments by applicants. Similarly, the Fund will consider an applicant's track record with respect to compliance with other governmental programs in the course of its review of an application, but will not give separate preference or priority treatment to organizations based upon this analysis. The Fund has also decided not to give a priority to applicants that intend to use an allocation of NMTCs to attract investments from unrelated sources.

F. Insured Depository Institutions' Use of NMTCs With the Bank Enterprise Award Program

Several commenters suggested that the Fund allow applicants to benefit from both the NMTC Program and the Bank Enterprise Award (BEA) Program, a community development incentive program administered by the Fund, for making the same investments. Since the NMTC Program does not intend to provide the same set of investors with more than one direct benefit for the same financial investment in a CDE, the Fund will not allow an insured depository institution investor (and its Affiliates and Subsidiaries) to receive NMTCs in addition to a BEA Program award for the same investment in a CDE. Likewise, the Fund will not allow an insured depository institution investor (and its Affiliates and Subsidiaries) to receive a BEA Program award in addition to NMTCs for the same investment in a CDE.

G. Coordination of the NMTC Program and the Community Reinvestment Act

A few commenters recommended that the Fund coordinate the NMTC Program with the requirements of the Community Reinvestment Act (CRA) so that insured depository institutions receive CRA credit for making Qualified Equity Investments in CDEs for purposes of the NMTC Program. The extent to which NMTC related investments made by an insured depository institution could also count towards such institution's CRA requirements will depend on the statutory and regulatory provisions of CRA and the appropriate Federal banking agencies.

H. Limits on Annual Allocations

Several commenters recommended that the Fund not set any specific limits on the NMTC allocation amount that will be available to any one applicant. Instead, the commenters suggested that the Fund should focus on ensuring that CDEs receiving NMTC allocations are diverse in terms of geography, entity type, size, and type of business investees. Conversely, some commenters proposed that the Fund limit an allocation award to a single CDE and its Affiliates to no more than 10 percent of the total amount of NMTCs available per year. Other commenters suggested that limits on allocation awards be based on an applicant's track record of total investments or level of proposed investment activities. The Fund has not decided at this time on a maximum allocation amount per applicant. In making final allocation decisions the Fund reserves the right to set such a maximum award amount if the Fund deems it appropriate.

IV. Eligibility

IRC section 45D specifies the eligibility requirements that each applicant must meet in order to be eligible to apply for an allocation of NMTCs. For purposes of this NOAA, an application for an allocation of NMTCs will not be considered unless: (i) An applicant is certified as a CDE at the time the Fund receives its NMTC allocation application; or (ii) the Fund receives from an applicant an application for certification as a CDE no later than July 25, 2002. The Fund will not provide allocations of NMTCs to applicants that are not certified as CDEs.

Both for-profit and non-profit CDEs may apply to the Fund for an allocation of NMTCs, but only a for-profit CDE is permitted to provide NMTCs to its investors. A non-profit applicant wishing to apply for NMTC allocations will need to demonstrate, prior to entering into an Allocation Agreement with the Fund, that: (1) It controls one or more Subsidiaries that are for-profit entities; and (2) it intends to transfer all allocations of NMTCs it receives to those Subsidiary entities. The transferee must be certified as a CDE and such transfer must be pre-approved by the Fund and incorporated into the Allocation Agreement, in its sole discretion. A for-profit applicant that receives a NMTC allocation may transfer such NMTC allocation to its for-profit Subsidiary or Subsidiaries, provided that said transferees have been certified as CDEs and such transfer is pre-approved by the Fund and incorporated into the Allocation Agreement, in its sole discretion.

An applicant wishing to transfer allocations to a Subsidiary or Subsidiaries is not required to establish these organizations prior to submitting an application for an allocation of NMTCs to the Fund. Rather, the Fund will require an applicant to indicate, in its application for NMTCs, whether it intends to transfer any of its allocations to a Subsidiary entity and its timeline for doing so. As stated above, in no circumstance will the Fund authorize such a transfer until such time as the Fund has certified the Subsidiary entity as a CDE. An applicant and its Subsidiaries may collectively submit only one application for allocations per year under the NMTC Program.

An applicant whose business structure consists of an entity with a series of funds may apply for CDE certification and an allocation of NMTCs as a single entity, or as multiple entities. If such an applicant represents that it is properly classified for Federal income tax purposes as a single partnership or corporation, it may apply for CDE certification as a single entity. If an applicant represents that it is properly classified for Federal income tax purposes as multiple partnerships or corporations, then it may submit a single application on behalf of the entire series of funds, and each fund must be separately certified as a CDE. Applicants should note, however, that receipt of CDE certification as a single entity or as multiple entities is not a determination that an applicant and its related funds are properly classified as a single entity or as multiple entities for Federal income tax purposes. Regardless of whether the series of funds applies as a single partnership or corporation or as multiple partnerships or corporations, an applicant may not transfer any NMTC allocations it receives to one or more of its funds unless the transfer is pre-approved by the Fund and incorporated into the Allocation Agreement, in its sole discretion.

An insured depository institution investor (and its Affiliates and Subsidiaries) may not receive NMTCs in addition to a BEA Program award for the same investment in a CDE. Likewise, an insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a BEA Program award in addition to NMTCs for the same investment in a CDE.

V. Application Packet

An applicant under this NOAA must submit the materials described in the application packet, which is available at the Fund's website at *http://www.cdfifund.gov.*

VI. Evaluation

All applications for allocations of NMTCs will be reviewed for eligibility

and completeness. If determined to be eligible and complete, the Fund will conduct the substantive review of each application in accordance with the criteria and procedures described in this NOAA and the allocation application.

In the first part of the substantive review, each Fund reviewer will evaluate the following application elements:

1. *Business Strategy* (25-point maximum plus up to 5 points for each of the two statutory priority items). In assessing an applicant's business strategy, reviewers will consider, among other things: an applicant's products, services and investment criteria; the prior performance of the applicant or its Controlling Entity, particularly as it relates to making similar kinds of investments as those it proposes to make with the proceeds from Qualified Equity Investments; an applicant's prior performance in providing capital or technical assistance to disadvantaged businesses or communities; the projected level of an applicant's pipeline of potential investments; and the extent to which an applicant intends to make Qualified Low-Income Community Investments in one or more businesses in which persons unrelated to the entity hold a majority equity interest.

In evaluating the business strategy criterion an applicant will generally score well to the extent that it will deploy debt or investment capital in products or services which: (a) Are designed to meet the needs of underserved markets; (b) are flexible or non-traditional in form; and (c) focus on customers or partners that typically lack access to conventional sources of capital. An applicant will also score well to the extent that it: (1) Has a track record of successfully providing products and services similar to those it intends to use with the proceeds of Qualified Equity Investments, generally and in Low-Income Communities in particular; (2) has identified, or has a process for identifying, potential transactions; and (3) intends to invest in unrelated businesses.

In addition, as provided by IRC section 45D(f)(2), the Fund will give up to five (5) additional points to any applicant that has a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities; and five (5) additional points to any applicant that intends to satisfy the requirement of IRC section 45D(b)(1)(B) by making Qualified Low-Income Community Investments in one or more businesses in which persons unrelated to an applicant (within the meaning of IRC section 267(b) or IRC section 707(b)(1)) hold the majority equity interest. Applicants may earn points in either or both categories. Thus, applicants that meet the requirements of both priority categories can receive up to a total of ten (10) additional points. A record of having successfully provided capital or technical assistance to disadvantaged businesses or communities may be demonstrated either by the past actions of an applicant itself or by an entity Controlling an applicant (e.g., where a new CDE is established by a nonprofit corporation with a history of providing assistance to disadvantaged communities). An applicant that receives additional points for intending to make investments in unrelated businesses and obtains an allocation of NMTCs must meet the requirements of IRC section 45D(b)(1)(B) by investing substantially all of the proceeds from the aggregate amount of its Qualified Equity Investments in unrelated businesses.

2. *Capitalization Strategy* (25-point maximum). In assessing an applicant's capitalization strategy, reviewers will consider, among other things: the extent to which an applicant has secured investments, commitments to invest, or indications of interest in investments from investors, commensurate with its requested amount of tax credit allocations; an applicant's strategy for identifying additional investors, if necessary, including an applicant's (or its Controlling Entity's) prior performance with raising equity from investors; the extent to which an applicant intends to invest the proceeds from the aggregate amount of its Qualified Equity Investments at a level that exceeds the requirements of IRC section 45D(b)(1)(B), including the extent to which an applicant has identified the financial resources outside of the NMTC investments necessary to support its operations or finance its activities; and an applicant's timeline for utilizing an NMTC allocation.

An applicant will generally score well under this section to the extent that: (a) It has secured investor commitments, or has a reasonable strategy for obtaining such commitments; (b) its request for allocations is commensurate with both the level of Qualified Equity Investments it is likely to raise and its expected investment strategy to deploy funds raised with NMTCs; (c) it is likely to leverage other sources of funding in addition to NMTC investor dollars; and (d) it intends to invest the proceeds from the aggregate amount of its Qualified Equity Investments at a level that exceeds the requirements of IRC section 45D(b)(1)(B).

3. *Management Capacity* (25-point maximum). In assessing an applicant's management capacity, reviewers will consider, among other things, the qualifications of an applicant's principals, its board members, its management team, and other essential staff or contractors, with specific focus on: experience in deploying capital or technical assistance, including activities similar to those described in an applicant's business strategy; experience in raising capital; asset management and risk management experience; and experience with fulfilling compliance requirements of other governmental programs, including other tax programs. Reviewers will also consider the extent to which an applicant has protocols in place to ensure ongoing compliance with NMTC program requirements.

An applicant will generally score well under this section to the extent that its management team or other essential personnel have experience in: (a) Deploying capital or technical assistance in Low-Income Communities, particularly those likely to be served by the applicant with the proceeds of Qualified Equity Investments; (b) raising capital, particularly from for-profit investors; (c) asset and risk management; and (d) fulfilling government compliance requirements, particularly tax program compliance. An applicant will also score well to the extent to which it has policies and systems in place to ensure ongoing compliance with NMTC Program requirements.

4. *Community Impact* (25-point maximum). In assessing the impact on communities expected to result from an applicant's proposed investments, reviewers will consider, among other things: the level of involvement of community representatives and residents in the design, implementation or monitoring of an applicant's business plan and strategy; whether an applicant is working in economically distressed markets; the degree to which an applicant will target its investments to localities with plans in place to enhance community development impact; and coordination with Federal, state or local government or community economic development plans (e.g., Empowerment Zones, Enterprise Communities, and Renewal Communities).

An applicant will generally score well under this section to the extent that: (a) Its Low-Income Community representatives play an active role in designing or implementing its business plan; (b) it is working in particularly economically distressed or otherwise

underserved communities; (c) it is working in concert with Federal, state or local government or community economic development plans; (d) it shows demonstrable community development and economic impacts that would not be achieved without NMTCs; and (e) it can indicate why the same result could not be achieved at a lower cost using other sources, including federal programs.

Fund reviewers will evaluate and score each application. The Fund will consider the applicant's total score from each reviewer and will award allocations to the most highly qualified applicants; provided, however, that (1) the Fund has not decided at this time on a maximum allocation amount per applicant and the Fund, in its sole discretion, reserves the right to set such a maximum award amount if the Fund deems it appropriate; and (2) the Fund reserves the right to reject an application that receives scores that are exceptionally weak in any one or more of the four application evaluation criteria outlined above and detailed more fully in the application materials.

As a part of the substantive review process, applicants may receive a telephone interview by Fund reviewer(s) for the purpose of obtaining, clarifying or confirming application information. At this point in the process, an applicant may be required to submit additional information about its application in order to assist the Fund with its final evaluation process. The selecting official(s) will make a final allocation determination based on an applicant's file, including without limitation, the reviewers' scores and the amount of allocation authority available. In the case of an applicant (and any of its Affiliates) that has previously received financial or technical assistance from the Fund under the CDFI Program, the Fund will consider an applicant's and its Affiliates' level of success in meeting their performance goals, financial soundness covenants (if applicable), and other requirements contained in their existing assistance agreement(s) with the Fund. The Fund reserves the right to reject any NMTC allocation application in the case of a previous Fund awardee, if such awardee or its Affiliates have failed to comply with the terms and conditions of their previous or existing assistance or award agreement(s) with the Fund. The Fund's allocation award decisions are final.

In the case of CDEs regulated by the Federal government, the Fund's selecting official(s) reserve(s) the right to take into consideration the views of the appropriate Federal banking and other regulatory agencies. In the case of applicants that are also SSBICs or NMVC Companies, the Fund reserves the right to consult with the SBA.

The Fund reserves the right to change these evaluation procedures, if the Fund deems it appropriate.

VII. Use of 1990 Census Data

The Fund recognizes that since the 2000 U.S. census data may not be available in sufficient detail prior to the time that an applicant submits its allocation application to the Fund, some applicants may obtain investor commitments for potential NMTC investments in Low-Income Communities using 1990 census data. The Fund has decided that an applicant may use 1990 census data for any proposed Qualified Low-Income Community Investment: (i) That is closed (meaning all parties are legally committed to funding the investment) by the applicant by December 31, 2002; or (ii) that is specifically identified in its allocation application and is closed by the applicant by December 31, 2003. If an applicant uses 1990 census data for a Qualified Low-Income Community Investment, it must use 1990 census data for the entire period of the specified investment. Other than in such cases as outlined above, all Qualified Low-Income Community Investments must be made using 2000 census data.

VIII. Allocation Agreement

Each applicant that is selected to receive a NMTC allocation must enter into an Allocation Agreement with the Fund. The Allocation Agreement will set forth certain required terms and conditions of the NMTC allocation which may include, but not be limited to, the following: (i) The amount of the awarded NMTC allocation; (ii) the approved uses of the awarded NMTC allocation (e.g., loans or equity investments to Qualified Active Low-Income Businesses or loan or equity investments to other CDEs); (iii) the approved service area(s) in which the proceeds of Qualified Equity Investments may be used; (iv) the CDE's schedule for obtaining Qualified Equity Investments from investors; and (v) reporting requirements for all CDEs receiving NMTC allocations. If a CDE has represented in its NMTC allocation application that it intends to invest substantially all of the proceeds from its investors in businesses in which persons unrelated to the CDE hold a majority equity interest, the Allocation Agreement will contain a covenant whereby said CDE agrees that it will invest substantially all of said proceeds in businesses in which persons unrelated to the CDE hold a majority equity interest.

In addition to entering into an Allocation Agreement, each applicant selected to receive a NMTC allocation must furnish to the Fund an opinion from its legal counsel, the content of which will be further specified in the Allocation Agreement, to include, among other matters, an opinion that an applicant: (i) is duly formed and in good standing in the jurisdiction in which it was formed and/or operates; (ii) has the authority to enter into the Allocation Agreement and undertake the activities that are specified therein; (iii) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Allocation Agreement; and (iv) is not in default of its articles of incorporation, bylaws or other organizational documents, or any agreements with the Federal government.

IX. Monitoring

The Fund will collect information, on at least an annual basis, from all CDEs that are awarded NMTC allocations and/or are recipients of Qualified Low-Income Community Investments, including such audited financial statements and opinions of counsel as the Fund deems necessary or desirable, in its sole discretion. The Fund will use such information to monitor each CDE's compliance with the Fund's requirements for certification as a CDE and to monitor compliance with the provisions of its Allocation Agreement, which will include, among other information, whether the CDE has used substantially all of the proceeds of each Qualified Equity Investment raised through its NMTC allocation to make Qualified Low-Income Community Investments. The Fund may provide such information to the IRS in a manner consistent with IRC section 6103. The Fund will use such information to assess the impact of the NMTC Program in Low-Income Communities. The Allocation Agreement shall further describe the CDE's reporting requirements.

The Fund reserves the right, in accordance with applicable Federal law and if authorized, to charge allocation reservation and/or compliance monitoring fees to all entities receiving NMTC allocations. Prior to imposing any such fee, the Fund will publish additional information concerning the nature and amount of the fee.

X. Information Sessions

In connection with this NOAA, the Fund will conduct Information Sessions

to disseminate information to organizations contemplating applying for, and other organizations interested in learning about, the NMTC Program. The Fund will provide additional information on the dates and locations of the Information Sessions on the Fund's website at *http://www.cdfifund.gov.*

Authority: Consolidated Appropriations Act of 2001, Pub. L. 106–554; 31 U.S.C. 321.

Dated: June 5, 2002.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 02–14570 Filed 6–10–02; 8:45 am]

BILLING CODE 4810–70–P

Federal Register

Tuesday,
June 11, 2002

Part V

Department of Labor

Employment and Training Administration

Workforce Investment Act: Job Corps Program; Selection of Sites for Centers; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act: Job Corps Program; Selection of Sites for Centers

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor requests assistance in identifying sites for locating two new Job Corps Centers. This notice specifies the requirements and criteria for selection.

DATES: Proposals are requested by September 16, 2002.

ADDRESSES: Proposals shall be addressed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N4463, Washington, DC 20210. Attention: Richard C. Trigg, National Director, Office of Job Corps. As a result of the current mail situation in Washington, DC, mail to government offices is delayed. Therefore, we strongly suggest that you FedEx or deliver your proposal by some other overnight service. It must arrive to the Office of Job Corps by 5 p.m. on September 16, 2002.

FOR FURTHER INFORMATION CONTACT: Richard C. Trigg, National Director, Office of Job Corps. Telephone: (202) 693–3000 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Labor (Department) is soliciting proposals for sites to establish two new Job Corps centers. The Job Corps program is designed to serve disadvantaged young women and men, 16 through 24, who are in need of additional educational, vocational, social skills and career development training, and other support services in order to gain meaningful employment, return to school or enter the Armed Forces. The program is primarily a residential program operating 24 hours per day, 7 days per week with non-resident enrollees limited by legislation to 20 percent of national enrollment. However, while the 20 percent level should be used as a guideline, the percentage of non-residents can vary from center to center, depending upon local needs.

Job Corps offers a comprehensive, integrated Career Development Services System which provides services for students from the time they apply through enrollment, career preparation and career development activities, and post-center career transition services. Career preparation and career development activities occur primarily on-center and include academic, vocational, information technology and social skills training; personal and career counseling; medical care; meals and housing; and related support services. Career transition services begin towards the end of the training period and continue for up to 24 months after a student leaves the center and returns home. These services include job placement and transitional support to meet individual students' needs, such as housing, transportation and child care after they leave the Job Corps center.

For this solicitation, the Department intends to select two localities for locating new centers. The centers will be stand-alone facilities of sufficient size to serve about 300 students each. These centers will be primarily residential, and may encompass a small nonresidential component.

This solicitation is for site selection only and not for the operation of these Job Corps centers. A competitive contract procurement for selection of a center operator at each site will be initiated and completed well after the site selection process has been completed.

Congress has authorized this expansion effort by appropriating $10 million in the Fiscal Year 2002 budget for Job Corps to initiate two new centers. Additional funds in the amount of $25 million are being requested for appropriation in Fiscal Year 2003 to proceed with the necessary design and construction work to establish centers on the sites eventually selected. The Department of Labor is initiating a competitive process for selecting these sites.

The Workforce Investment Act provides authorization for the establishment of Job Corps centers and requires that students be assigned to Job Corps centers closest to their homes. The determination of a locality's need for a Job Corps center will be made by analyzing State-level poverty and unemployment rates for youth using standardized uniform data available from federal agencies, such as 2000 census data, Bureau of Labor Statistics publications, and information on existing Job Corps centers, slots, enrollment levels, and locations.

In addition to this analysis, the Department will also assess the facilities at proposed sites. The assessment will focus on property acquisition costs, the cost and suitability of existing structures and the need for, and cost of, new construction and renovation. Priority will be given to proposed sites that offer no-cost or low-cost turnkey facilities (those in move-in condition requiring little or no construction rehabilitation work) which can quickly be made ready for use by Job Corps.

Further, the Department will assess each jurisdiction's plan to use State and local resources, both public and private, through contributions/linkages that reduce the Federal cost of operating a Job Corps center. Such contributions/linkages may include, but not be limited to, the following: The provision of work-based learning sites and donations of training equipment or curriculum by the local employer community; provision of child care services by local jurisdictions, including programs such as Head Start; provision of health services; alcohol and drug counseling; referral of eligible youth to Job Corps, and job placement and other career transition services after students leave Job Corps. Other linkages may include arrangements with public school systems for high school diploma programs; linkages with one-stops and other local workforce development programs and services; community college networks; social service agencies; business and industry; and other training programs to provide such services as classroom training, vocational training, advanced learning opportunities, mentoring, and alcohol and drug counseling. Contributions of this nature will make maximum use of available statewide and community resources in meeting the needs of Job Corps-eligible youth.

Eligible applicants for proposing sites are units of State and/or local governments. A Federal agency also may propose sites to the extent that such sites are located on public land which is under the jurisdiction of the agency. Proposals submitted by Federal agencies must have the support of appropriate State and local governments.

Since Job Corps is primarily a residential program and provides academic education, vocational training, career development and extensive support services, space and facilities suitable for the following types of utilization are required for a Job Corps center.

- Residential—Adequate housing, including bath and lounge facilities, as well as appropriate administrative space.
- Academic Education—Space for classrooms, computer labs, video-conferencing and library resources.
- Vocational Training—Classroom and shop space to satisfy the needs of specific vocational training areas (e.g., carpentry, clerical, painting, culinary arts, information technology,

manufacturing, health education). The configuration of the vocational area is determined by the ultimate vocational mix offered at the center. Heavy trades, such as construction and automotive, require shop areas, while lighter trades, such as clerical and retail sales, require only classroom space.

- Food Services—Cafeteria, including food preparation and food storage areas.
- Medical/Dental—Medical examining rooms, nurses' station, infirmary space for male and female students, and dental facilities.
- Recreation—Gymnasium/multi-purpose recreational facility and large level outdoor area.
- Administration—General office and conference space.
- Storage/Support—Warehousing and related storage including operations and maintenance support.
- Parking—Sufficient for a minimum of 70 vehicles.

Other factors that influence the suitability and cost of facilities necessary to operate a Job Corps center include the following:

Configuration of Facility

The preferred configuration of a facility is a campus-type environment permitting a self-contained center with all space requirements located on-site. Low-rise buildings such as those commonly found in public schools and college settings are preferred.

The Office of Job Corps has developed prototype designs for selected facilities where new construction is necessary. Parties interested in obtaining copies of these designs may do so by contacting the Office of Job Corps at the address shown above.

Location of Facilities

Facilities should be located in areas where neighbors are supportive and no major pervasive community opposition exists. Past experience indicates that commercial, light industrial and rural locations are most desirable, while high-value residential locations are the least conducive to community acceptance. In addition, access to emergency medical services, fire and law enforcement assistance should be within reasonable distances. If non-residential enrollment is planned, direct and easy access to the center by public transportation is an important consideration. Proposed sites should be within reasonable commuting distance of planned linkages with other programs and services, and transportation to these linkages should be easily available. Proposed sites should also be in full compliance with the Americans with Disabilities Act Guidelines of 1990 (28 CFR part 36, revised July 1, 1994) or require minimal renovation to ensure full access by persons with disabilities.

Locations with major environmental issues, zoning restrictions, flood plain and storm drainage requirements, or uncertainty regarding utility connections that cannot be resolved efficiently and in a timely manner are less than desirable. Likewise, a facility with buildings eligible for protection under the National Historical Preservation Act may receive less than favorable consideration, due to restrictions on and costs for renovation.

Communities are encouraged to hold public hearings in close proximity to the facilities being proposed to assess the level of community support for a Job Corps center. The Office of Job Corps has brochures and other descriptive information about the program. Copies may be obtained at the address noted above.

Own/Lease

The Department prefers ownership over leased facilities, particularly if a substantial investment of construction funds is needed to make the site suitable for Job Corps utilization. Exceptions are long-term (e.g., 25 years or longer) leases at a nominal cost (e.g., $1/year).

Size

The following table shows the approximate gross square footage (GSF) required for the various types of buildings needed to operate a residential Job Corps center with 300 students. The substitution of non-resident for resident students will decrease the dormitory space required for a residential center but will not affect other buildings.

Gross Square Feet (GSF) Requirements by Type of Building

Building type	GSF per student	GSF per 300 students
Housing	175	52,500
Education/Vocation	85	25,500
Food Services	44	13,200
Recreation	82	24,600
Medical/Dental	12	3,600
Administration	26	7,800
Storage/Support	57	17,100
Sub-Total	.....	144,300
Child Development Center	[1] 40	[2] 5,760
Total	.....	150,060

[1] Space requirements for child development centers are included in the event on-site child care is proposed.
[2] Children.

Land Requirements

Between 15 and 19 acres of land are needed for a residential center of 300 students.

Availability of Utilities

It is critical that all basic utilities (i.e., sewer, water, electric and gas) are available and in proximity to the site and in accordance with EPA standards.

Safety, Health and Accessibility

Job Corps is required to comply with the requirements of the Occupational Safety and Health Act (OSHA), the Environmental Protection Act (EPA), and the Uniform Federal Accessibility Standards (UFAS), and the Americans with Disabilities Act (ADA) of 1990. The cost involved in complying with these requirements is an important factor in determining the economic feasibility of utilizing a site. For example, a site which contains an excessive amount of asbestos probably would not be cost-effective due to associated removal costs. Further, sites with any environmental hazard that cannot be corrected economically will be at a disadvantage, as will sites requiring substantial rehabilitation to comply with accessibility requirements for persons with disabilities.

Cost

The availability of low-cost facilities is a major consideration in light of resource limitations. In evaluating facility costs, the major items that must be considered are:

- Site acquisition or lease costs;
- Site/utility work;
- Architectural and engineering services;
- New construction requirements;
- Rehabilitation and modifications of existing buildings, and
- Equipment requirements.

An assessment of these initial capital costs and consideration of future repair, maintenance and replacement costs will be used in evaluating the economic feasibility of a particular facility. Preference will be given to existing turnkey facilities that meet Job Corps' standards for a training facility. While not preferable, consideration will be given to the use of raw land which is suitable for a Job Corps center and on which facilities can be constructed economically.

Proposal Submission

In preparing proposals, eligible applicants should identify sites which meet the evaluation criteria and guidelines specified above. Proposals should address each area with as much detail as practicable to enable the

Department to determine the suitability of locating a Job Corps center at the proposed site. In this regard, proposals must contain, at a minimum, the specific information and supporting documentation as described below.

Facilities

Submissions must provide a full description of existing buildings, including a building site layout, square footage, age, and general condition of each structure. Included in the description must be a discussion of the facility's current or previous use, the number of years unoccupied, if applicable, and the condition of sub-systems such as heating, ventilation and air conditioning systems, plumbing, and electrical. Documentation in the nature of photographs of the property and/or facilities must be submitted as well. In addition, a videotaped presentation of the site may be provided. The proposal must identify the extent to which hazardous materials such as asbestos, PCB, and underground storage tanks are present at the site or, if appropriate, confirm that contaminants do not exist. The results of any environmental assessment for the proposed site, if one has been done, must be provided.

The proposal must also address the availability and proximity of utilities to the proposed site, including electrical, water, gas, and sanitary sewer and runoff connections. It must describe whether the water and sewer utilities for existing buildings are connected to the municipal system or operated separately. A statement on current zoning classification and any zoning restrictions for the proposed site must also be included. Use of the site as a Job Corps center should be compatible with surrounding local land use and also with local zoning ordinances. Confirmation must be provided as to whether or not any buildings at the site are on a Federal or State Historical Preservation Register.

The proposal must also describe the available acreage at the site, and the nature of the surrounding environment including whether it is commercial, industrial, light industrial, rural, or residential. In some instances, proposed sites may be part of a substantially larger acreage which has or contemplates having other uses. This type of joint usage may or may not be compatible with providing a quality training environment for young women and men.

Finally, the proposal must address the cost of acquiring the site, which may involve transferring the site to the government at no cost, entering into a low-cost, long-term lease agreement, or arranging for a negotiated purchase price based on a fair market appraisal. Estimated acquisition costs along with the basis for the estimate must be included in the proposal. Any building documents, such as blueprints, should be available for review when a site inspection is conducted by the Department.

Contributions/Linkages

An important aspect of any proposal will be its description of how State and local resources will be used to contribute to enhanced services to Job Corps youth and/or to reduce Federal operating costs or otherwise benefit the program. It is, therefore, essential that precise and comprehensive information about the linkages be provided to ensure that the proposed site receives every opportunity for a thorough and fair evaluation. The proposal should contain the following information for each linkage:

- A comprehensive description of the service to be provided, including projected listing of resources that will be involved such as number of instructors/staff, types of equipment and materials, or other specific service.
- The number of students to be served and over what period of time, as well as the specific benefit to Job Corps students while in Job Corps and/or after leaving the program.
- Whether the service will be provided at no cost to Job Corps or will be available on a shared cost basis with Job Corps.
- Whether the linkage will be provided on-site or off-site.
- Distance to linkage/service, if off-site, and any arrangements for transportation to off-site services, including any cost to Job Corps.
- The estimated annual value of the contribution and the basis on which the estimate was determined (e.g., two full-time staff devoted to Job Corps at an annual salary of $35,000 each for a total annual value of $70,000; one hour or a professional's time per week for 52 weeks at an hourly rate of $20.00 for an annual value of $1,040; 15 computers at a cost of $1,500 each for an annual value of $22,500).
- Any limitations associated with the linkage, such as eligibility restrictions (e.g., age, in-state versus out of state residents, etc.), limited hours of service, and availability over time (e.g., year round versus selected months).
- Long-term prospects for continuation of the commitment (e.g., one time only, one year, ongoing). If dependent on outside funding sources or levels which vary significantly, what is the likelihood that the linkage will be funded?
- Documentation that addresses timeframes and steps involved in firming up the linkage, if appropriate, including obtaining State or local legislation, State or local workforce investment board approval, fitting into other planning cycles, or securing other agreements or arrangements which may be necessary to ensure provision of the service.
- A letter of commitment confirming each aspect of the linkage, including the level of resources and annual value of these resources, from the head of the agency or other entity responsible for delivering the contribution.
- Name of the agency/organizations(s), address, telephone number and contact person.

In providing information on linkages, applicants should keep in mind that Job Corps is an open-entry, open-exit, individualized, self-paced career development services system that operates on a year-round basis. This type of learning environment may have implications for the types of linkages being offered.

- In preparing the linkage/contribution part of their proposals, eligible applicants should provide full information on each linkage/contribution. All items listed above should be addressed for each linkage/contribution, providing as much information as needed to ensure that each proposed linkage receives a fair assessment.

Community Support

This information should include: letters of community support from elected officials, government agencies, local workforce investment boards, community and business leaders and neighborhood associations; availability of and access to cultural/recreation activities in the community; and unique features in the surrounding area which would enhance the location of a Job Corps center at that site. Proposals should also include any other information the applicant believes pertinent to the proposed site for consideration by the Department. It is important that, before proposing the use of any particular location, appropriate clearances are obtained from local and State political leadership.

Other Information

The site selection process for new sites for Job Corps centers normally takes 9 months to complete. This allows sufficient time for eligible applicants to prepare and submit proposals, and for the Department to conduct a

preliminary site assessment of all proposed facilities, as well as a comprehensive site utilization study for those sites determined to have high potential for the establishment of a Job Corps center, based on the preliminary assessment results.

The Department hereby requests eligible proposers to submit an original and two copies of their proposals to be received no later than September 16, 2002, using the guidance provided above.

Signed in Washington, DC, the 4th day of June 2002.

Emily Stover DeRocco,

Assistant Secretary of Labor.

[FR Doc. 02–14549 Filed 6–10–02; 8:45 am]

BILLING CODE 4510–30–P

Federal Register

Tuesday,
June 11, 2002

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations; Notice of Meetings; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI30

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental; reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) proposed in an earlier document to establish annual hunting regulations for certain migratory game birds for the 2002–03 hunting season. This supplement to the proposed rule provides the regulatory schedule; announces the Service Migratory Bird Regulations Committee and Flyway Council meetings; provides Flyway Council recommendations resulting from their April meetings; and provides new information and reopens the comment period on the proposed regulatory alternatives for the 2002–03 duck hunting seasons.

DATES: Comments on the proposed regulatory alternatives for the 2002–03 duck hunting seasons must be submitted by June 21, 2002.

The Service Migratory Bird Regulations Committee will meet to consider and develop proposed regulations for early-season migratory bird hunting on June 19 and 20, 2002, and for late-season migratory bird hunting on July 31 and August 1, 2002. All meetings will commence at approximately 8:30 a.m. You must submit comments on the proposed migratory bird hunting-season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons by July 30, 2002; and for proposed late-season frameworks by August 30, 2002.

ADDRESSES: The Service Migratory Bird Regulations Committee will meet in room 200 of the U.S. Fish and Wildlife Service's Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. Send your comments on the proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert J. Blohm, Acting Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2002

On March 19, 2002, we published in the **Federal Register** (67 FR 12501) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. We will publish proposed early-season frameworks and final regulatory alternatives for the 2002–03 duck hunting seasons in early July and late-season frameworks in early August. We will publish final regulatory frameworks for early seasons on or about August 20, 2002, and those for late seasons on or about September 15, 2002.

Service Migratory Bird Regulations Committee Meetings

The Service Migratory Bird Regulations Committee will meet June 19–20, 2002, to review information on the current status of migratory shore and upland game birds and develop 2002–03 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands. The Committee will also develop regulations recommendations for special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, the Committee will review and discuss preliminary information on the status of waterfowl.

At the July 31 and August 1, 2002, meetings, the Committee will review information on the current status of waterfowl and develop 2002–03 migratory game bird regulations recommendations for regular waterfowl seasons and other species and seasons not previously discussed at the early-season meetings.

In accordance with Departmental policy, these meetings are open to public observation. You may submit written comments to the Service on the matters discussed.

Announcement of Flyway Council Meetings

Service representatives will be present at the individual meetings of the four Flyway Councils this July. Although agendas are not yet available, these meetings usually commence at 8 a.m. on the days indicated.

Atlantic Flyway Council: July 22–26, Sheraton Burlington Hotel & Conference Center, Burlington, Vermont.

Mississippi Flyway Council: July 26–30, Marriott Hotel, Baton Rouge, Louisiana.

Central Flyway Council: July 22–26, DoubleTree Hotel/Downtown, Omaha, Nebraska.

Pacific Flyway Council: July 22–26, Lakeside Lodge, Pinedale, Wyoming.

Review of Public Comments

This supplemental rulemaking describes Flyway Council recommended changes based on the preliminary proposals published in the March 19, 2002, **Federal Register** (67 FR 12501). We have included only those recommendations requiring either new proposals or substantial modification of the preliminary proposals. This supplement does not include recommendations that simply support or oppose preliminary proposals and provide no recommended alternatives. We will consider these recommendations later in the regulations-development process. We will publish responses to all proposals and written comments when we develop final frameworks. In addition, this supplemental rulemaking contains new information relative to the proposed regulatory alternatives for the 2002–03 duck hunting seasons. We have included all Flyway Council recommendations received through May 1, 2002, relating to the development of these alternatives.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items identified in the March 19, 2002, proposed rule. Only those categories requiring your attention or for which we received Flyway Council recommendations are discussed below.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B)

Regulatory Alternatives, including specification of framework dates, season length, and bag limits, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management.

A. General Harvest Strategy

Council Recommendations: The Atlantic Flyway Council recommended that annual changes in regulations should be limited to no more than one step up or down among the regulatory alternatives (e.g., from liberal to moderate, moderate to restrictive).

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the Adaptive Harvest Management (AHM) regulatory alternatives be modified as follows, beginning in 2002–03:

A. Eliminate the very restrictive alternative

B. Limit increments of year-to-year change to single regulation steps

C. Replace closed seasons for some combinations of population size and pond numbers with the restrictive alternative so that seasons could be open at similar mallard population levels that were hunted in the past.

The Pacific Flyway Council recommended that the Service examine how eliminating the closed season and the very restrictive alternative from the set of regulatory alternatives may influence optimal regulations decisions, considering proposed model revisions. If the results of this evaluation are consistent with past analyses conducted by the Mississippi Flyway, the Council would support elimination of the very restrictive alternative. The Council believes closed seasons should not be considered when breeding populations and pond numbers exist at levels at which seasons have been offered in the past.

Service Response: In the March 19 **Federal Register**, we stated our intent to address a number of concerns with the current AHM protocols for mallards that had been identified by the AHM Working Group. The concerns include: (1) Evidence that all models of mallard population dynamics may predict biased annual growth rates; (2) that the method for comparing predicted and observed populations sizes could produce spurious results; and (3) the need for improved survival and reproductive models that more effectively cover the range of possible population dynamics and effects of harvest. These concerns have been investigated by the AHM Working Group for at least 2 years (*see http://migratorybirds.fws.gov/reports/reports.html* for the 2000 and 2001 Adaptive Management Annual Working Group reports), and we decided that remedial measures were necessary in time for the 2002–03 hunting season. The AHM Working Group recently (April 2002) completed its investigations and provided recommendations to the Service and Flyway Councils. The most significant recommendations include: (1) An empirical correction factor for the bias (+11% for midcontinent mallards and +16% for eastern mallards) in estimated survival and reproductive rates; (2) a revision to the procedure for comparing predicted and observed population sizes that accounts for variation in breeding-population size not explained by the models of population dynamics; and (3) continued investigations into methods for better predicting annual survival and reproductive rates, and into possible sources of bias in the monitoring programs used to estimate these vital rates. The last of these recommendations could potentially yield additional proposals for modifications to the AHM protocols next year. For the 2002–03 season, we are proposing to adopt the first two recommendations of the AHM Working Group. As these recommendations have important implications for future duck-hunting regulations, we would like to provide the Flyway Councils, States, and the public adequate opportunity to comment.

The population models and model-updating procedure used last year for midcontinent mallards (i.e., uncorrected for bias) suggested that the best prediction model included the hypotheses of additive hunting mortality and strongly density-dependent reproduction. Based on this evidence, the midcontinent mallard breeding-population size was expected to average about 8.0 million over the long-term, assuming that the optimal regulatory strategy was followed (last year's population size was 8.7 million, which includes the traditional survey area and Minnesota, Michigan, and Wisconsin). The frequency of liberal regulations was expected to be about 86%, with the remaining seasons being either moderate or restrictive . However, after correcting for the positive bias in survival and reproductive rates, and after appropriate revisions were made to the procedure for comparing predicted and observed population sizes, the best predictive model includes the hypothesis of weakly density-dependent reproduction, and there is no clear indication of whether the additive or compensatory mortality hypothesis is favored. Given the correction for bias and revised updating procedure, the midcontinent mallard breeding-population size is expected to average about 7.2 million birds over the long-term. Thus, the corresponding regulatory strategy is more conservative than that used previously, with the liberal regulatory alternative expected in only 52% of all hunting seasons. Moderate, restrictive, and very restrictive alternatives would be expected in about 26% of all hunting seasons, and closed seasons would be expected 22% of the time. (**Note:** Prescriptions for closed seasons in the AHM process result from combinations of population size and habitat conditions that are insufficient to support one of the available open-season regulatory alternatives, given the agreed-upon harvest-management objectives. Except in extreme cases, however, limited harvests under these population and habitat conditions would not be expected to compromise long-term population viability). Clearly, the +11% bias in estimated survival and reproductive rates, if left uncorrected, can lead to spurious conclusions regarding population dynamics and potentially to overly liberal hunting seasons. Moreover, the proposed revisions to the AHM protocol for midcontinent mallards lead to an improved predictive capability, with a mean difference between predicted and observed population sizes of only about 6% since 1996.

With respect to eastern mallards, the evidence for a positive bias in estimated survival and reproductive rates is not as conclusive as that for midcontinent mallards. Therefore, the AHM Working Group has recommended that models with and without the bias-corrections be maintained in the model set. Currently, the best predictive model includes the hypothesis of strongly density-dependent reproduction, which is favored over the weakly density-dependent hypothesis by a margin of 2 to 1. By consensus, hunting mortality is assumed to be additive in eastern mallards. Eastern mallards appear to have considerable potential to absorb harvest without adverse impact to the long-term health of the population. The AHM Working Group predicts that the eastern mallard population could support the liberal regulatory alternative in the Atlantic Flyway in most, if not all, years. The corresponding population size would be expected to average about 900,000 over the long term (last year's population size was 1 million).

Last year in the July 24, 2001, **Federal Register** (66 FR 38494), we stated our intention to review proposed constraints on the use of the closed and very

restrictive regulatory alternatives, and proposed restrictions on the magnitude of the annual change in the selected regulatory alternative for midcontinent mallards (as recommended above by the Flyway Councils). We agreed to consider these recommendations after appropriate analyses were conducted by the AHM Working Group, and the results of those analyses were communicated to all interested parties. Those analyses were completed in April 2002 based on the revised AHM protocols for mallards discussed above. Eliminating consideration of the closed-season alternative above a midcontinent mallard population of 5.5 million (i.e., a record low of 4.5 million in the traditional survey area, plus 1 million in the States of Minnesota, Michigan, and Wisconsin) is expected to result in a negligible change in mean population size. However, such a change probably would reduce the frequency of closed seasons in the Mississippi, Central, and Pacific Flyways from 22% to 10%, with a corresponding increase in the frequency of very restrictive seasons from 9% to 25%. Elimination of the very restrictive alternative also is expected to have a negligible effect on average population size, and the frequency of the restrictive alternative likely would increase from 12% to 19%. Restricting the magnitude of annual change in regulations to one step also appears to have a negligible impact on average population size, but could reduce the frequency of liberal regulations from 52% to 32%. About 45% of all hunting seasons would be expected to be either restrictive or moderate. Incorporation of all three proposed changes would be expected to result in a mean population size of 6.9 million; the expected frequency of closed, restrictive, moderate, and liberal seasons would be 2%, 47%, 21%, and 30%, respectively. With respect to eastern mallards, none of the proposed changes appeared to have an impact on the expected frequency of liberal regulations in the Atlantic Flyway. In light of this recent information, we are requesting additional public comment on the recommendations to place constraints on closed seasons, to eliminate the very restrictive alternative, and to restrict the magnitude of permissible regulatory changes between successive years. Public comment will be accepted until June 21, 2002, and should be sent to the address under the caption **ADDRESSES.**

B. Regulatory Alternatives

Council Recommendations: The Atlantic Flyway Council recommended that regulatory alternatives for duck hunting seasons in the Atlantic Flyway for 2002–03 should be the same as those used in 1997–2001, except that the liberal and moderate regulatory alternatives should have an opening date of the Saturday nearest September 24th and a closing date of the last Sunday in January on an experimental basis.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that duck season framework dates for 2002–03 be the Saturday nearest September 24th and the last Sunday in January in the moderate and liberal regulatory alternatives, as noted in the March 19th **Federal Register**, provided that if the extended framework dates result in a more conservative hunting season, mid-latitude States (all States in the Upper Region except Minnesota, Wisconsin and Michigan) would be allowed an additional 7 days in season length.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the outside framework dates for the regular duck season in the moderate and liberal alternatives be the Saturday nearest September 24 and the last Sunday in January with no penalty in season length, and that this option be available either Statewide or in individual zones.

The Central Flyway Council recommended that the Service adopt the proposed 2002–03 regulatory alternatives and species/sex restrictions for the Central Flyway, except for the following modifications:

A. The opening date will be the Saturday closest to September 24th in the liberal and moderate AHM regulation alternatives. There will be no offset penalties (reduced or restricted bag limits or reduction in season length). The framework closing date in the Central Flyway will remain the Sunday closest to January 20th.

B. If the earlier framework dates are selected, the Central Flyway Council recommends the Special September Teal Season be allowed according to established criteria throughout September without penalty (using regular season days).

The Pacific Flyway Council supports duck season framework extensions and evaluation of their impacts to harvest distribution and rates as outlined in the Service's March 19, 2002, **Federal Register**.

Service Response: The AHM Working Group conducted additional analyses concerning the potential effects of extended framework dates in the moderate and liberal regulatory alternatives based on the revised AHM protocols for midcontinent and eastern mallards described above. The AHM Working Group recommends that the Service adopt standard Bayesian statistical techniques for addressing the uncertainty concerning the changes in mallard harvest rates that might occur as a result of framework-date extensions. Essentially, the AHM Working Group proposed to use existing information about framework dates to develop initial harvest-rate predictions, to make regulatory decisions based on those predictions, and then to estimate harvest rates in future hunting seasons. Those harvest-rate estimates, in turn, are used to update the original predictions. The AHM Working Group has made it clear, however, that no formal evaluation of framework-date extensions is possible in the absence of a rigorous experimental design, including random assignment of experimental controls (i.e., representative areas where extensions would not be offered). The AHM Working Group also is not optimistic about current capabilities to predict or evaluate the effects of framework-date extensions on species other than mallards.

Previous assessments by the Service (*see http://migratorybirds.fws.gov/reports/reports.html*) suggest that harvest rates of mallards could increase by 15% and 5% for midcontinent and eastern mallards, respectively. Those projections were based on previous experience with early opening dates in Iowa and late closing dates in Mississippi, and on a survey of States regarding their intention to use extended framework dates if offered the option. Because these analyses are based on extending the results from only 2 states to all other states, we are uncertain about the magnitude of the projected increase that will result. Therefore, we propose to explicitly recognize this uncertainty in the AHM process. The procedures will include the possibility that extensions will result in no increase in mean harvest rates. If framework-date extensions were implemented, estimates of harvest rate derived from band-recovery data would be used to update the effect of framework-date extensions. For the upcoming hunting season, however, we must rely on the recent assessment conducted by the AHM Working Group. That assessment suggested that nationwide implementation of framework-date extensions could result in reduction of the frequency of liberal seasons in the Mississippi, Central, and Pacific Flyways from 52% to 38%. The frequency of liberal regulations in the Atlantic Flyway would not be expected to change because few of the States

harvesting many eastern mallards appear to be interested in framework-date extensions.

In the March 19, 2002, **Federal Register** (67 FR 12501), we established a May 1, 2002, comment closing date for the proposed regulatory alternatives for the 2002–03 duck hunting seasons. However; in light of this new information, we are seeking additional public comment on the proposed regulatory alternatives. We will announce final regulatory alternatives in early July following the early-season regulations meetings in late June. Public comments will be accepted until June 21, 2002, and should be sent to the address under the caption **ADDRESSES.**

D. Special Seasons/Species Management

i. September Teal Seasons

Council Recommendations: The Central Flyway Council recommended that the geographic boundaries for the September teal season in Colorado be amended to include Lake and Chaffee Counties and all lands east of I–25.

iv. Canvasbacks

Since 1994, the Service has followed a canvasback harvest strategy such that, if population status and production are sufficient to permit a harvest of one canvasback per day nationwide for the entire length of the regular duck season, while attaining a spring population objective of 500,000 birds, the season on canvasbacks should be opened. Otherwise, the season on canvasbacks should be closed nationwide. Last spring, the estimate of canvasback abundance was 580,000 birds, and the number of ponds in Prairie Canada in May (2.7 million) was 20% below the long-term average. The size of the spring population, together with natural mortality and below-average expected production due to the relatively dry conditions, was insufficient to offset expected mortality associated with a canvasback season lasting the entire length of the ''liberal'' regulatory alternative and still attain the population objective of 500,000 canvasbacks in the spring of 2002.

Last year, we indicated that, while we continued to support the harvest strategy and the model adopted in 1994, despite the reduced numbers and below-average production forecast last year, we believed there was still some opportunity to allow a limited harvest last fall without compromising the population's ability to reach 500,000 canvasbacks this spring. Thus, we allowed a very restrictive canvasback season for 2001–02. In the Atlantic and Mississippi Flyways, the season length was 20 days, in the Central Flyway, 25 days, and in the Pacific Flyway, 38 days. Our objective was to provide some hunting opportunity while still maintaining the spring population above the 500,000 objective level.

We also expressed a willingness to revisit the guidelines outlined in the strategy and asked that any proposed changes have broad-based support and reflect the interests of all stakeholders. In addition, we urged the Flyway Councils to begin internal discussions regarding species-specific restrictions in the existing AHM framework. This year, we will again consider the size of the spring population and model-based predictions of production and harvest in development of regulations proposals for canvasbacks. However, we indicated in the March 19 **Federal Register** that absent the broad-based support by the Flyway Councils to revise the strategy, we intend to follow the 1994 model-based prescriptions originally developed for canvasbacks.

Council Recommendations: The Atlantic Flyway Council recommends modifying the 1994 Canvasback Harvest Strategy to allow for a limited canvasback harvest (season within a season) during years when the predicted harvest exceeds the allowable harvest, but can still be achieved by a more restrictive package (restrictive or very restrictive). The season closure threshold would remain at a predicted spring breeding population (BPOP) of 500,000.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommend that the Canvasback Harvest Management Strategy be changed so the hunting season closure threshold is 400,000. The objectives from the 1994 strategy would be modified as follows:

A. The goal for the size of the breeding population should be 500,000 birds;

B. The strategy should permit a greater possibility for a sustained sport harvest than has occurred recently using threshold population sizes, and

C. The amount of harvest in any 1 year should not result in a spring population lower than 400,000, allowing harvest opportunity on this prairie nesting species at reasonable levels above and below long-term population levels.

The Central Flyway Council recommends the Service revise the Canvasback Harvest Strategy adopted in 1994. The Council recommends a 1-bird bag limit for the entire duck hunting season when the model predicted breeding population is 400,000 or higher, and that other harvest options be considered when the predicted breeding population is less than 400,000. These options include a season within a season, aggregate bag with redheads, area closures, or seasonal harvest tag(s).

The Pacific Flyway Council recommends the Canvasback Harvest Strategy be revised to include prescription of a full-length season and a 1-bird daily limit when the BPOP is projected to be at or above 400,000. The Council also supports annotation in the strategy clarifying that Alaska will retain fixed frameworks in lieu of annual prescriptions. The Council requests the Service expedite evaluation of harvest data to assess the effects of short seasons implemented in 2001.

v. Pintails

We presently utilize an interim strategy to manage the harvest of pintails. In the current strategy, the determination of appropriate bag limits is based, in part, on the harvest predicted by a set of models that were developed from historical data relating harvest to bag limit and season length. However, since the interim strategy was implemented in 1997, the predicted harvest has consistently been lower than the estimated harvest from the U.S. and Canadian Federal harvest surveys. In the March 19 **Federal Register**, we expressed a desire to work with the Flyway Councils to review the current method of determining bag limits with the intent of making appropriate adjustments to the strategy to better reflect the realized harvest of pintails.

Council Recommendations: The Atlantic Flyway Council supports the Service's effort to develop new models for predicting harvest that fit the data, disconnecting effects of season length and bag limit, and incorporating recent harvest estimates from Canada and Alaska. Further, they recommend that regulations be based on allocation of harvest with a constraint that bag limits be the same in all flyways.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommend that the harvest models in the interim pintail harvest strategy be revised to incorporate the most recent population and harvest information for these birds.

The Central Flyway Council recommends that the Service's proposed updated regression equations be used to estimate predicted flyway-specific harvest of northern pintails, as described in the February 2002 report, ''Performance Evaluation: Interim Strategy for Northern Pintail Harvest Management'' and be incorporated into the interim harvest strategy for northern pintails.

The Pacific Flyway Council endorses the technical amendments to the existing interim harvest strategy for Northern Pintails to more accurately predict harvests resulting from season frameworks established under AHM for mid-continent mallards. The Council also recommends open seasons when the predictive model constrains the bag limit to less than one bird per day. Further, the Council recommends assessment of the effectiveness of the strategy not be based primarily on sustaining annual growth in the breeding population of at least 6 percent.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended that Georgia and Lake Seminole in Florida be offered an early Canada goose hunting season not to exceed 30 days between September 1–30, with a bag limit not to exceed 5 geese daily (10 in possession). They further recommended that Connecticut's Special September Canada goose season framework be extended from September 25 to September 30.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommend that Minnesota be allowed to continue to hold their special September experimental Canada goose season (the experimental 1-week extension) in 2002 while the 3-year evaluation is being completed.

B. Regular Seasons

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin be September 16, 2002. Further, they recommended that the opening date for regular goose seasons in all States, except Michigan and Wisconsin, be as early as the Saturday nearest September 24 (September 21, 2002) if the duck hunting season framework dates are extended to the Saturday nearest September 24 (September 21, 2002).

The Central Flyway Council recommends that the regular seasons for all species of geese in all Central Flyway States be as early as the Saturday nearest September 24 (September 21, 2002) if the duck hunting season framework dates are extended to that date.

8. Swans

Council Recommendations: The Central Flyway Council recommends that the Ad Hoc Eastern Population Tundra Swan Committee revise the July 1998 Management Plan for the Eastern Population of Tundra Swans (Hunt plan) to allow for additional hunting permits to be issued for this population for the fall 2003 hunting season.

9. Sandhill Cranes

Council Recommendations: The Central Flyway Council recommends accepting the 2002 Rocky Mountain population of sandhill cranes harvest allocation of 833 birds as proposed by the Pacific Flyway. However, during the next revision of the Cooperative Population Management Plan, the Council desires a better definition of what factors will be used to determine when a survey should be considered unreliable.

The Pacific Flyway Councils recommended establishing an experimental hunt for Rocky Mountain Population sandhill cranes for 2002–2003, in Unitah County, Utah. The framework for the 30-day season would be September 1 to January 31, 2003, with a bag limit not to exceed 3 daily and 9 per season. Participants must have a valid permit, issued by the appropriate State, in their possession while hunting. Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils.

14. Woodcock

Council Recommendations: The Atlantic Flyway Council recommends that the hunting regulations framework dates for American woodcock in the Eastern Region be changed back to the pre-1997 dates of October 1 to January 31.

17. White-Winged and White-Tipped Doves

Council Recommendations: The Central Flyway Council recommends that the hunting area for white-winged doves be expanded from its current area in New Mexico and Texas to include the remainder of the Central Flyway States that are in the Central Management Unit. The white-winged dove season should run concurrently with the mourning dove season with an aggregate bag.

Public Comment Invited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, seek the comments and suggestions of the public, other concerned governmental agencies, nongovernmental organizations, and other private interests on these proposals. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations to the address indicated under the caption **ADDRESSES.**

Special circumstances involved in the establishment of these regulations limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified is contrary to the public interest.

Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR

31341). Copies are available from the address indicated under the caption **ADDRESSES.**

In a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new EIS for the migratory bird hunting program.

Endangered Species Act Consideration

Prior to issuance of the 2002–03 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and that the proposed action is consistent with conservation programs for those species.

Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order (E.O.) 12866

While this individual supplemental rule was not reviewed by the Office of Management and Budget (OMB), the migratory bird hunting regulations are economically significant and are annually reviewed by OMB under E.O. 12866.

E.O. 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule? (6) What else could the Service do to make the rule easier to understand?

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail, and a Small Entity Flexibility Analysis (Analysis) was issued by the Service in 1998. The Analysis documented the significant beneficial economic impact on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small businesses in 1998. Copies of the Analysis are available upon request from the Division of Migratory Bird Management.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned control number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned control number 1018–0023 (expires 07/31/2003). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population.

A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards found in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this supplemental proposed rule is not expected to significantly affect energy supplies, distribution, or use, this proposed action is not a significant energy action and no Statement of Energy Effects is required.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate

in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2002–03 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742a–j.

Dated: June 4, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–14664 Filed 6–10–02; 8:45 am]

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Federal Register

Tuesday,
June 11, 2002

Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31
Federal Acquisition Regulation; Training and Education Cost Principle; Amendment; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 2001–021]

RIN 9000–AJ38

Federal Acquisition Regulation; Training and Education Cost Principle; Amendment

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Amendment of a proposed rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are correcting an error in the supplementary information of the proposed rule published in the **Federal Register** on May 15, 2002, at 67 FR 34810. That proposed rule would amend the Federal Acquisition Regulation (FAR) ''Training and Education Costs'' cost principle.

DATES: Interested parties should submit comments on the proposed rule in writing on or before July 15, 2002, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: *farcase.2001–021@gsa.gov.*

Please submit comments only and cite FAR case 2001–021 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAR case 2001–021.

SUPPLEMENTARY INFORMATION: On May 15, 2002, the Councils published a proposed amendment to the Federal Acquisition Regulation (FAR) ''Training and Education Costs'' cost principle, set forth at FAR 31.205–44. The ''Background'' discussion of the **SUPPLEMENTARY INFORMATION** section of the **Federal Register** notice published with the proposed rule mistakenly stated that the proposed amendments would eliminate the job relationship requirement from this cost principle (see 67 FR 34810). Although the Councils considered eliminating this requirement from the cost principle, this change was not adopted. The current policy which requires a relationship between the education and work is retained in the proposed amendments.

Accordingly, the Background discussion in the preamble of the **Federal Register** notice published on May 15, 2002, is corrected to read as follows:

A. Background

Currently, FAR 31.205–44, Training and education costs, is somewhat restrictive in that the cost principle differentiates between vocation training, part-time college level education, full-time education, and specialized programs with numerous specific limitations on the allowability of costs associated with each of these categories. Historically, most of these specific allowability limitations were intended to reflect industry practices, *e.g.*, the 156 hours per year limit on compensation for part-time college level education, the 2-year limitation on full-time graduate education, and the 16 weeks per year limit for specialized programs.

The proposed rule makes the costs associated with training and education generally allowable, subject to five public policy exceptions that are retained from the current cost principle. Except for these five expressly unallowable cost exceptions, the reasonableness of specific contractor training and education costs can best be assessed by reference to FAR 31.201–3, Determining reasonableness.

Dated: June 6, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–14644 Filed 6–10–02; 8:45 am]

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