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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–34–AD; Amendment 39–12786; AD 2002–12–14]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA330F, G, J, and AS332C, L, and L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for specified Eurocopter France (ECF) model helicopters that currently requires inserting statements into the Limitations section of the Rotorcraft Flight Manual (RFM) prohibiting flight under certain atmospheric conditions. This amendment contains the same requirements but corrects, expands, and updates the applicability. This amendment is prompted by an incident in which a Multi-Purpose Air Intake (MPAI) inlet seal deflated after the P2 air system line, which feeds the seal, clogged due to the formation of ice. The actions specified by this AD are intended to prevent clogging of the MPAI seal P2 air system line due to ice formation, which could result in deflation of the MPAI seal, loss of engine power, and subsequent loss of control of the helicopter.

DATES: Effective July 8, 2002.

Comments for inclusion in the Rules Docket must be received on or before August 20, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–34–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Madej, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0111, telephone (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On October 29, 1999, the FAA issued AD 99–23–07, Amendment 39–11403, (64 FR 60336, November 5, 1999), to require inserting statements into the Limitations section of the RFM prohibiting flight under certain atmospheric conditions. That action was prompted by an incident in which an MPAI inlet seal deflated after the P2 air system line, which feeds the seal, clogged due to the formation of ice.

Since the issuance of that AD, the FAA has determined that there are two errors in the applicability section. First, MOD 0723672 should not apply to the ECF Model SA330F or G helicopters. Second, there is an error in the MOD number for the ECF Model SA332C, L, and L1 helicopters; currently, it is stated as MOD 0725855 but it should be stated as MOD 0725885. Additionally, we have determined that, for the ECF Model SA332C, L, and L1 helicopters, the AD should refer to the revised Eurocopter Service Bulletin (SB) No. 30.00.44, Revision 1, dated July 12, 1999, and provide the added option for MOD 0725974 and MOD 0725998 in accordance with SB No. 30.00.46, dated July 12, 1999. For the ECF Model SA330J helicopters, the manufacturer also has issued SB No. 30.16, Revision 1, dated February 3, 2000, and added the option for MOD 0725920 in accordance with SB No. 30.17, dated February 3, 2000, to update that service information.

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on ECF Model SA330F, G, J, and AS332C, L, and L1 helicopters. The DGAC has advised that there was an incident in which an MPAI seal deflated due to ice formation in the P2 air system line. Deflation of an MPAI seal creates an unsafe condition. The DGAC has adopted the manufacturer's service information and issued DGAC AD 1998–201–068(A)R2, dated September 22, 1999, and DGAC AD 1998–202–080(A)R2, dated April 5, 2000, in order to assure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to this bilateral agreement, 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 may be certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other ECF model helicopters of the same type designs. Therefore, this AD supersedes AD 99–23–07 to correct and update the applicability. This AD requires, before further flight, inserting statements into the Limitations section of the RFM which prohibit flight in certain atmospheric conditions, and prohibit flight in specific conditions unless operation of the MPAI seal has been visually checked.

None of the helicopters affected by this action are registered in the U.S. All helicopters included in the applicability of this rule are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Should an affected helicopter be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to insert the statements into the RFM, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $60 per helicopter.

Since this AD action does not affect any helicopter that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in

less than 30 days after publication in the **Federal Register**.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2002–SW–34–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that notice and prior public comment are unnecessary in promulgating this regulation, and therefore it can be issued immediately to correct an unsafe condition since none of these model helicopters are registered in the U.S. It is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 removing Amendment 39–11403 (64 F4 60336, November 5, 1999), and by adding a new airworthiness directive (AD) to read as follows:

2002–12–14 Eurocopter France: Amendment 39–12786. Docket No. 2002–SW–34–AD. Supersedes AD 99–23–07, Amendment 39–11403, Docket No. 99–SW–01–AD.

Applicability:

- Model SA330F and G helicopters with a Multi-Purpose Air Intake (MPAI) installed;
- Model SA330J helicopters with an MPAI installed and not modified by either MOD 0723672 in accordance with Eurocopter Service Bulletin No. 30.16, Revision 1, dated February 3, 2000, or MOD 0725920 in accordance with Eurocopter Service Bulletin No. 30.17, dated February 3, 2000; and
- Model AS332C, L, and L1 helicopters with an MPAI installed and not modified by either MOD 0725885 in accordance with Eurocopter Service Bulletin No. 30.00.44, Revision 1, dated July 12, 1999, or MOD 0725974 and MOD 0725998 in accordance with Eurocopter Service Bulletin No. 30.00.46, dated July 12, 1999, 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 (c) 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 before further flight, unless accomplished previously.

To prevent clogging of the MPAI seal P2 air system line due to ice formation, which could result in deflation of the MPAI seal, loss of engine power, and subsequent loss of control of the helicopter, accomplish the following:

(a) Insert the following statement prohibiting flight in certain atmospheric conditions into the Limitations section of the Rotorcraft Flight Manual (RFM):

''A. Flight under the following conditions is prohibited:

1. Flight in clouds or fog at an OAT equal to or lower than 3 degrees Celsius (37.4 degrees Fahrenheit).

2. Flight in rain at an OAT within the temperature range of −3 degrees to +3 degrees Celsius (26.6 degrees to 37.4 degrees Fahrenheit).

B. Flight under the following conditions is prohibited unless the Multi-Purpose Air Intake seals have been visually checked for proper inflation before flight in the specified atmospheric conditions:

1. Flight in falling or recirculating snow at an OAT equal to or above −3 degrees Celsius (26.6 degrees Fahrenheit).

2. Takeoff after extended ground taxiing or holding in falling snow at an OAT equal to or above −3 degrees Celsius (26.6 degrees Fahrenheit).''

(b) This AD revises the Limitations section in the RFM by prohibiting flight in certain atmospheric conditions and prohibiting flight in other specified atmospheric conditions unless operation of the MPAI seal has been visually checked before flight in the specific atmospheric conditions.

(c) 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, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits will not be issued.

(e) This amendment becomes effective on July 8, 2002.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 1998–201–068(A)R2, dated September 22, 1999, and AD 1998–202–080(A)R2, dated April 5, 2000.

Issued in Fort Worth, Texas, on June 10, 2002.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–15550 Filed 6–20–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 1006 and 1007

[Docket No. FR–4668–C–02]

RIN 2577–AC27

Housing Assistance for Native Hawaiians: Native Hawaiian Housing Block Grant Program and Loan Guarantees for Native Hawaiian Housing; Correction

AGENCY: Office of the General Counsel, HUD.

ACTION: Interim rule, correction.

SUMMARY: On June 13, 2002, HUD published an interim rule to implement HUD's Office of Public and Indian Housing (PIH) procedures and requirements for two new programs to address the housing needs of Native Hawaiians. The preamble did not include the Federalism finding that was made for the rule. This notice provides that information.

FOR FURTHER INFORMATION CONTACT: Sherone Ivey, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 401–7914. Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: HUD published an interim rule on June 13, 2000 (67 FR 40774) that established two new programs to provide affordable housing for Native Hawaiians. The Native Hawaiian Housing Block Grant Program will provide housing block grants to fund affordable housing activities. The Section 184A Loan Guarantees for Native Hawaiian Housing Program will provide Native Hawaiian families with greater access to private mortgage resources by guaranteeing loans for one- to four-family housing located on Hawaiian Home Lands. The preamble of the interim rule inadvertently omitted publication of the finding under Executive Order 13132, Federalism, that was made for the rule. This notice published today provides that information as follows:

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Dated June 17, 2002.

Camille E. Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 02–15649 Filed 6–20–02; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustments—Copper River and Yukon and Kuskokwim River Drainages

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Seasonal adjustments.

SUMMARY: This provides notice of the Federal Subsistence Board's in-seaon management actions to protect salmon escapement in the Yukon and Kuskokwim River drainages and in the Copper River, while still providing for a subsistence harvest opportunity. The regulatory adjustments, fishing schedules, and closures will provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on February 7, 2002. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2002 regulatory year.

DATES: The Kuskokwim and Yukon River drainages action is effective May 20, 2002, through February 28, 2003. The Copper River action is effective May 15, 2002, through July 13, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, part 100 and Title 36, part 242 of the Code of Federal Regulations (CFR). Consistent with subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for subparts A, B, and C, which establish the program structure and determine

which Alaska residents are eligible to take specific species for subsistence uses, and the annual subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2002 fishing seasons, harvest limits, and methods and means were published on February 7, 2002, (67 FR 5890). Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents of as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish and wildlife on Federal lands and waters.

These adjustments (including restricted subsistence fishing schedules) are necessary because of predictions of potentially weak returns of chinook, summer-run chum, and fall-run chum salmon in the Yukon River drainage, poor runs of chinook and chum salmon in the Kuskokwim River drainage, and the need to manage the sockeye salmon run in the Chitina Subdistrict of the Cooper River based on in-season run assessments. These actions are authorized and in accordance with 50 CFR 100.19(d)-(e) and 36 CFR 242.19(d)-(e).

Yukon and Kuskokwim River Drainages

Returns of salmon to the Yukon and Kuskokwim Rivers have been very low in recent years. With the poor runs, a considerable number of in-season fishery management actions have been necessary. In the Yukom River during the 2001 season, 27 Special Actions were initiated by the Federal manager, 26 of these were identical to the State's Emergency Order (EO) actions. There were an additional eight Special Actions for the Kuskokwim River during the 2001 season. Seven of these were identical to the State's EO actions. In both river systems, most of these EO's involved setting fishing schedules or revising methods of harvest that protected spawning escapement while still allowing a subsistence harvest opportunity.

The past two years of active Federal fisheries management have provided an opportunity for the Federal Program to evaluate its approach to enacting Special Actions in concert with the State's EO process. Past procedures required that each change in the fishing schedule take place by Special Action. This resulted in some confusion by various user groups and placed significant administrative and financial burden on the Federal Program, including excessive and frequently outdated publication of notices in the **Federal Register.**

A streamlined approach was suggested by the regional Federal fisheries managers and reviewed by the three affected Regional Councils during their Winter 2002 meetings. The three Regional Councils were very supportive of such an approach. The Board, in public forum and after hearing testimony, considered and adopted, at its May 2002 meeting, a temporary action whereby State EO's would apply to Federal waters in instances where the State and Federal managers are in agreement. The action provides that for the Yukon and Kuskokwim River drainages, Federal subsistence fishing schedules, openings, closings, and fishing methods will be the same as those issued for the subsistence taking of fish under Alaska Emergency Orders (5 AAC 16.05.060), unless superseded by a Federal Special Action. Upon completion of the 2002 fishing season, this administrative streamlining approach will be evaluated and consideration given to including this as a statewide provision in the annual Federal subsistence fishing regulations.

Copper River—Chitina Subdistrict

In December 2001, the Board adopted regulatory proposals establishing a new Federal subsistence fishery in the Chinita Subdistrict of the Copper River. This fishery is open to Federally qualified users having customary and traditional use of salmon in this Subdistrict. The State also conducts a subsistence fishery in this Subdistrict that is open to all Alaska residents.

Management of the fishery is based on the numbers of salmon returning to the Copper River. A larger than predicted salmon run will allow additional fishing time. A smaller than predicted run will require restrictions to achieve upriver passage and spawning escapement goals. A run that approximates the pre-season forecast will allow fishing to proceed similar to the pre-season schedule with some adjustments made to fishing time based on in-season data. Adjustments to the preseason schedule are expected as a normal function of an abundance-based management strategy. State and Federal managers, reviewing and discussing all available in-season information, will make these adjustments.

While Federal and State regulations currently differ for this Subdistrict, the Board indicated that Federal in-season management actions regarding fishing periods were expected to mirror State actions for the 2002 season. The State established a preseason schedule of allowable fishing periods based on daily projected sonar estimates. This preseason schedule is intended to distribute the harvest throughout the salmon run and provide salmon for upriver subsistence fisheries and the spawning escapement. State and Federal subsistence fisheries in this Subdistrict close simultaneously by regulation on September 30, 2002. No deviation from this date is anticipated.

By Special Action, the State preseason schedule is adopted for the Federal subsistence fishery. This Special Action delays the opening for the taking of salmon in the Chitina Subdistrict of the Copper River and replaces that date with a fishing schedule starting June 7, 2002. Separate openings would each week until July 11, 2002, when continuous fishing would be allowed until the regularly scheduled end of the season (September 30, 2002.)

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these emergency closures are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of fish populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska,

Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276).

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wilflife populations. A section 810 analysis was completed as part of the FEIS process. The final section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations may be some local impacts on subsistence users, but the program is not likely to significant restrict subsistence uses.

Paperwork Reduction Act

The adjustment and emergency closures do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the paperwork Reduction Act of 1995.

Other Requirements

The adjustment have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 501 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as boat, fishing gear, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Department certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the measuring of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that the adjustments will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

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

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA—Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: May 28, 2002.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Kenneth E. Thompson,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 02–15735 Filed 6–20–02; 8:45 am]

BILLING CODE 3410–11–M; 4310–55–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7235–1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a petition submitted by Nissan North America, Inc., Smyrna, Tennessee (Nissan), to exclude (or ''delist'') a certain hazardous waste from the lists of hazardous wastes. Nissan will generate the petitioned waste by treating wastewater from Nissan's automobile assembly plant in Smyrna, Tennessee when aluminum is one of the metals used to manufacture automobile bodies. The waste so generated is a wastewater treatment sludge that meets the definition of F019. Nissan petitioned EPA to grant a ''generator-specific'' delisting because Nissan believes that its F019 waste does not meet the criteria for which this type of waste was listed. EPA reviewed all of the waste-specific information provided by Nissan, performed calculations, and determined

that the waste could be disposed in a landfill without harming human health and the environment. This action responds to Nissan's petition to delist this waste on a generator-specific basis from the hazardous waste lists, and to public comments on the proposed rule. EPA took into account all public comments on the proposed rule before setting the final delisting levels. Final delisting levels in the waste leachate are based on the EPA Composite Model for Leachate Migration with Transformation Products as used in EPA, Region 6's Delisting Risk Assessment Software. Today's rule also sets limits on the total concentration of each hazardous constituent in the waste. In accordance with the conditions specified in this final rule, Nissan's petitioned waste is excluded from the requirements of hazardous waste regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The petitioned waste remains subject to all applicable federal, state, and local requirements for nonhazardous waste.

EFFECTIVE DATE: This rule is effective on June 21, 2002.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays.

The reference number for this docket is R4–01–01–NissanF. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies. For copying at the Tennessee Department of Environment and Conservation (TDEC), please see below.

FOR FURTHER INFORMATION CONTACT: For general and technical information concerning this final rule, please contact Judy Sophianopoulos, RCRA Enforcement and Compliance Branch (Mail Code 4WD–RCRA), U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8604, or call, toll free (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call. Questions may also be e-mailed to Ms. Sophianopoulos at *sophianopoulos.judy@epa.gov.* You may also contact Nina Vo, Tennessee Department of Environment and Conservation (TDEC), 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535, (615) 532–9268. If you wish to copy documents at TDEC, please contact Ms. Vo for copying procedures and costs.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background
  A. What Is a Delisting Petition?
  B. What Laws and Regulations Give EPA the Authority to Delist Wastes?
  C. What is the History of this Rulemaking?
II. Summary of Delisting Petition Submitted by Nissan North America, Inc., Smyrna, Tennessee (Nissan)
  A. What Waste Did Nissan Petition EPA to Delist?
  B. What Information Did Nissan Submit to Support This Petition?
III. EPA's Evaluation and Final Rule
  A. What Decision Is EPA Finalizing and Why?
  B. What Are the Terms of This Exclusion?
  C. When Is the Delisting Effective?
  D. How Does This Action Affect the States?
IV. Public Comments Received on the Proposed Exclusion
  A. Who Submitted Comments on the Proposed Rule?
  B. Comments and Responses From EPA
V. Analytical and Regulatory Requirements
  A. Executive Order 12866: Regulatory Planning and Review
  B. What Economic and Equity Analyses Were Completed in Support of the Proposed Delisting for Nissan's Wastewater Treatment Sludge?
  C. What Substantive Comments Were Received on the Cost/Economic Aspects of the Proposed Delisting for Nissan's Wastewater Treatment Sludge?
  D. What Are the Potential Costs and Benefits of Today's Final Rule?
  E. What Consideration Was Given to Small Entities Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.?
  F. Was the Unfunded Mandates Reform Act Considered in this Final Rule?
  G. Were Equity Issues and Children's Health Considered in this Final Rule?
  1. Executive Order 12898: Environmental Justice
  2. Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks''
  H. What Consideration Was Given to Tribal Governments?
  I. Were Federalism Implications Considered in Today's Final Rule?
  J. Were Energy Impacts Considered?
VI. Paperwork Reduction Act
VII. National Technology Transfer and Advancement Act of 1995
VIII. The Congressional Review Act (5 U.S.C. 801 et seq., as Added by the Small Business Regulatory Enforcement Fairness Act of 1996)

I. Background

A. What Is a Delisting Petition?

A delisting petition is a request made by a hazardous waste generator to exclude one or more of his/her wastes from the lists of RCRA-regulated hazardous wastes in Sections 261.31, 261.32, and 261.33 of Title 40 of the Code of Federal Regulations (40 CFR 261.31, 261.32, and 261.33). The regulatory requirements for a delisting petition are in 40 CFR 260.20 and 260.22. EPA, Region 6 has prepared a guidance manual, *Region 6 Guidance Manual for the Petitioner,*[1], which is recommended by EPA Headquarters in Washington, D.C. and all EPA Regions.

B. What Laws and Regulations Give EPA the Authority To Delist Wastes?

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11 (a)(2) or (a)(3). Discarded commercial chemical product wastes which meet the listing criteria are listed in § 261.33(e) and (f).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show, first, that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. Second, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the

[1] This manual may be down-loaded from Region 6's Web Site at the following URL address: http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dlistpdf.htm

hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are ''delisted'' (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their wastes continue to be nonhazardous based on the hazardous waste characteristics (i.e., characteristics which may be promulgated subsequent to a delisting decision.)

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See 40 CFR 261.3 (a)(2)(iv) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the ''mixture/derived-from'' rules and remanded them to the EPA on procedural grounds. Shell Oil Co. v. EPA, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278), and should be consulted for more information regarding waste mixtures and solid wastes derived from treatment, storage, or disposal of a hazardous waste. On May 16, 2001, EPA amended the mixture and derived-from rules for certain types of wastes (66 FR 27218 and 66 FR 27266). The mixture and derived-from rules are codified in 40 CFR 261.3, paragraphs (a)(2)(iv) and (c)(2)(i). EPA plans to address all waste mixtures and residues when the final portion of the Hazardous Waste Identification Rule (HWIR) is promulgated.

On October 10, 1995, the Administrator delegated to the Regional Administrators the authority to evaluate and approve or deny petitions submitted in accordance with Sections 260.20 and 260.22 by generators within their Regions (National Delegation of Authority 8–19) in States not yet authorized to administer a delisting program in lieu of the Federal program. On March 11, 1996, the Regional Administrator of EPA, Region 4, redelegated delisting authority to the Director of the Waste Management Division (Regional Delegation of Authority 8–19).

C. What Is the History of This Rulemaking?

Nissan manufactures light-duty vehicles, and is seeking a delisting for the sludge that will be generated by treating wastewater from its manufacturing operations, when aluminum will be used to replace some of the steel in the vehicle bodies. Wastewater treatment sludge does not meet a hazardous waste listing definition when steel-only automobile bodies are manufactured. However, the wastewater treatment sludge generated at automobile manufacturing plants where aluminum is used as a component of automobile bodies, meets the listing definition of F019 in § 261.31.[2]

Nissan petitioned EPA, Region 4, on October 12, 2000, to exclude this F019 waste on a generator-specific basis from the lists of hazardous wastes in 40 CFR part 261, subpart D.

The hazardous constituents of concern for which F019 was listed are hexavalent chromium and cyanide (complexed). Nissan petitioned the EPA to exclude its F019 waste because Nissan does not use either of these constituents in the manufacturing process. Therefore, Nissan does not believe that the waste meets the criteria of the listing.

Nissan claims that its F019 waste will not be hazardous because the constituents of concern for which F019 is listed will be present only at low concentrations and will not leach out of the waste at significant concentrations. Nissan also believes that this waste will not be hazardous for any other reason (i.e., there will be no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). As a result of the EPA's evaluation of Nissan's petition, the Agency proposed to grant a delisting to Nissan on November 19, 2001. See 66 FR 57918–57930, November 19, 2001, for details. Today's rulemaking addresses public comments received on the proposed rule and finalizes the proposed decision to grant Nissan's petition for delisting.

[2] ''Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.''

II. Summary of Delisting Petition Submitted by Nissan North America, Inc., Smyrna, Tennessee (Nissan)

A. What Waste Did Nissan Petition EPA To Delist?

Nissan petitioned EPA, Region 4, on October 12, 2000, to exclude a maximum annual weight of 2,000 tons (2,400 cubic yards) of its F019 waste, on an upfront, generator-specific basis, from the list of hazardous wastes in 40 CFR part 261, subpart D. The Nissan assembly plant in Smyrna, Tennessee, manufactures light-duty vehicles, and is seeking a delisting for the sludge that will be generated by treating wastewater from its manufacturing operations, when aluminum will be used to replace some of the steel in the vehicle bodies. Wastewater treatment sludge does not meet a hazardous waste listing definition when steel-only automobile bodies are manufactured. However, the wastewater treatment sludge generated at automobile manufacturing plants where aluminum is used as a component of automobile bodies meets the listing definition of F019 in § 261.31.

B. What Information Did Nissan Submit To Support This Petition?

In support of its petition, Nissan submitted: (1) Descriptions of its manufacturing and wastewater treatment processes, the generation point of the petitioned waste, and the manufacturing steps that will contribute to its generation; (2) Material Safety Data Sheets (MSDSs) for materials used to manufacture vehicles; (3) the minimum and maximum annual amounts of wastewater treatment sludge typically generated, and an estimate of the maximum annual amount expected to be generated in the future; (4) results of analysis of the currently generated waste at the Nissan plant in Smyrna, Tennessee for the chemicals in Appendix IX of 40 CFR part 264: 17 metals; cyanide; 58 volatile organic compounds and 124 semi-volatile organic compounds; and, in addition to the Appendix IX list, hexavalent chromium; (5) results of analysis for those chemicals (i.e., Appendix IX list, hexavalent chromium) and fluoride in the leachate obtained from this waste by means of the Toxicity Characteristic Leaching Procedure ((TCLP), SW–846 Method 1311); (6) results of determinations for the hazardous characteristics of ignitability, corrosivity, and reactivity, in this waste; (7) results of determinations of percent

solids; and (8) results of a dye tracer study and source inventory of Nissan's industrial wastewater system.

The hazardous constituents of concern for which F019 was listed are hexavalent chromium and cyanide (complexed). Nissan petitioned the EPA to exclude its F019 waste because Nissan does not believe that the waste meets the criteria of the listing.

Nissan submitted to the EPA analytical data from its plant in Smyrna, Tennessee. As described in the petition, samples of wastewater treatment sludge were collected from roll-off containers over a one-month period, in accordance with a sampling and analysis plan approved by EPA and the Tennessee Department of Environment and Conservation. The maximum reported concentrations of the toxicity characteristic (TC) metals barium, cadmium, chromium, and lead in the TCLP extracts of the samples were below the TC regulatory levels. The maximum reported concentration of total cyanide in unextracted waste was 3.35 milligrams per kilogram (mg/kg), which is greater than the generic exclusion level of 1.8 mg/kg for high temperature metal recovery (HTMR) residues in 40 CFR 261.3(c)(2)(ii)(C)(1), and less than 590 mg/kg, the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) level, in 268.48. Chromium was undetected in the TCLP extract of any sample. Please see the proposed rule, 66 FR 57918–57930, November 19, 2001, for details on Nissan's analytical data, production process, and generation process for the petitioned waste. EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has maintained a spot-check sampling and analysis program to verify the representative nature of data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before or after granting a delisting. Section 3007 of RCRA gives EPA the authority to conduct inspections to determine if a delisted waste is meeting the delisting conditions.

After reviewing the analytical data and information on processes and raw materials that Nissan submitted in the delisting petition, EPA developed a list containing the following constituents of concern: Arsenic, Barium, Cadmium, Chromium, Cyanide, Lead, Nickel, Silver, Vanadium, Zinc, Acetone, Bis-2-ethylhexyl phthalate, 2-Butanone, Isobutyl alcohol, 4-Methyl phenol, Di-n-octyl phthalate, Phenol, and Xylenes. EPA calculated delisting levels and risks for these constituents using Delisting Risk Assessment Software (DRAS),[3] developed by EPA, Region 6. The DRAS uses a new model, called the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP). Please see the proposed rule (66 FR 57918–57930, November 19, 2001) for details. EPA requested and received public comment on the proposed use of DRAS and EPACMTP for calculating delisting levels and risks for Nissan's petitioned waste.

III. EPA's Evaluation and Final Rule

A. What Decision Is EPA Finalizing and Why?

For reasons stated in both the proposal and this final rule, EPA believes that Nissan's petitioned waste should be excluded from hazardous waste control. EPA, therefore, is granting a final generator-specific exclusion to Nissan North America, Inc., of Smyrna, Tennessee, for a maximum annual generation rate of 2,400 cubic yards of the waste described in its petition as EPA Hazardous Waste Number F019. This waste is required to undergo verification testing before being considered as excluded from Subtitle C regulation. Requirements for waste to be land disposed have been included in this exclusion. The exclusion applies only to the waste as described in Nissan's petition, dated October 2000.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of the delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation. See 40 CFR part 260, Appendix I. Nonhazardous waste management is subject to all applicable federal, state, and local regulations.

B. What Are the Terms of This Exclusion?

In the rule proposed on November 19, 2001, EPA requested public comment on which of the following possible methods should be used to evaluate Nissan's delisting petition and set delisting levels for the petitioned waste (see 66 FR 57918–57930, November 19, 2001):

(1) Delisting levels based on the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP model) as used in EPA, Region 6's Delisting Risk Assessment Software (DRAS); (2) use of DRAS-calculated levels based on Safe Drinking Water Act Maximum Contaminant Levels (MCLs) if more conservative delisting levels would be obtained; (3) use of the Multiple Extraction Procedure (MEP), SW–846 Method 1320, to evaluate the long-term resistance of the waste to leaching in a landfill; (4) setting limits on total concentrations of constituents in the waste that are more conservative than results of calculations of constituent release from waste in a landfill to surface water and air, and release during waste transport; (5) setting delisting levels at the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) levels in 40 CFR 268.48. See the proposed rule, 66 FR 57918–57930, November 19, 2001, for details of calculating delisting levels using these methods.

After considering all public comments on the proposed rule, EPA is granting Nissan, in today's final rule, an exclusion from the lists of hazardous wastes in subpart D of 40 CFR part 261 for its petitioned waste when disposed in a Subtitle D[4] landfill. Nissan must meet all of the following delisting conditions in order for this exclusion to be valid: (1) Delisting levels in mg/l in the TCLP extract of the waste based on

[3] For more information on DRAS and EPACMTP, please see 65 FR 75637–75651, December 4, 2000 and 65 FR 58015–58031, September 27, 2000. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). URL addresses for Region 6 delisting guidance and software are the following:

1. Delisting Guidance Manual http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dlistpdt.htm
2. Delisting Risk Assessment Software (DRAS) http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm
3. DRAS Technical Support Document (DTSD) http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dtsd.htm
4. DRAS Users Guide http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/uguide.pdf

Region 6 has made them available to the public, free of charge.

[4] The term, ''Subtitle D landfill,'' refers to a landfill that is licensed to land dispose nonhazardous wastes, that is, wastes that are not RCRA hazardous wastes. A Subtitle D landfill is subject to federal standards in 40 CFR parts 257 and 258 and to state and local regulations for nonhazardous wastes and nonhazardous waste landfills.

the DRAS EPACMTP model of 100.0[5] for Barium, 0.422[6] for Cadmium, 5.0 for Chromium, 10.1 for Cyanide, 5.0 for Lead, and 79.4 for Nickel; (2) the total concentration of cyanide (total, not amenable) in the waste, not the waste leachate, must not exceed 200 mg/kg; (3) the total concentrations, in mg/kg, of metals in the waste, not the waste leachate, must not exceed 20,000 for Barium, 500 for Cadmium, 1,000 for Chromium, 2,000 for Lead, and 20,000 for Nickel.

EPA did not propose delisting levels for cobalt, copper, silver, tin, vanadium, zinc, acetone, isobutyl alcohol, phenol, and xylenes, because the DRAS-calculated TCLP levels for these constituents are at least two orders of magnitude greater than the maximum reported concentrations in the TCLP leachate of the petitioned waste. EPA did not propose delisting levels for arsenic for the following reasons: (1) TCLP leachate concentration was non-detect; (2) total concentration in the unextracted waste was below the background soil concentration for most of Tennessee, below the national average background, and three orders of magnitude below the DRAS allowable total concentration; and (3) DRAS found no ecological risk at the maximum reported concentrations and a human cancer risk within the range of 10^{-4} to 10^{-6} assuming a TCLP concentration equal to one-half the reporting limit of the analytical laboratory. Therefore, today's final rule does not have delisting levels for arsenic, cobalt, copper, silver, tin, vanadium, zinc, acetone, isobutyl alcohol, phenol, and xylenes.

Delisting levels and risk levels calculated by DRAS, using the EPACMTP model, are presented in Table 1 below. These levels promulgated in today's final rule are the same as the levels proposed in Table 3 of the proposed rule (66 FR 57918–57930, November 19, 2001). DRAS found that the major pathway for human exposure to this waste is groundwater ingestion, and calculated delisting and risk levels based on that pathway. For details, see the following **Federal Registers**: 65 FR 75637–75651, December 4, 2000; 65 FR 58015–58031, September 27, 2000; and the proposed rule for Nissan's petitioned waste, 66 FR 57918–57930, November 19, 2001.

TABLE 1.—SUMMARY OF DELISTING LEVELS FOR NISSAN'S PETITIONED WASTE

Constituent	DRAS–Calculated Delisting Level (mg/l TCLP)	Total Concentrations * (mg/kg in unextracted waste)
Inorganic Constituents		
Barium	**100.0	20,000
Cadmium	#0.422	500
Chromium	**5.0	1,000
Cyanide (Total, not Amenable)	#10.1	200
Lead	**5.0	2,000
Nickel	79.4	20,000
Organic Constituents		
Bis(2-ethylhexyl) phthalate	0.0787	.....
Di-n-octyl phthalate	0.0984	.....
4-Methylphenol	10	.....

* These total concentration levels are more conservative (less than) DRAS-calculated total concentration levels.

** DRAS-calculated delisting level was higher than the TC level; therefore, the delisting level was set at the TC level.

DRAS-calculated delisting levels for cadmium and cyanide are based on MCLs.

After taking into account all public comments on the proposed rule, EPA is retaining in today's final rule to exclude Nissan's petitioned waste all conditions (Conditions (1) through (7)) in Table 1, Appendix IX of part 261 of the proposed rule (66 FR 57918–57930, November 19, 2001). The final delisting levels are the same as those proposed and are presented in Table 1 above.

C. When Is the Delisting Effective?

This rule is effective on June 21, 2002. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule reduces the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon final publication.

These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect the States?

The final exclusion being granted today is issued under the Federal RCRA delisting program. States, however, are allowed to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal RCRA and State non-RCRA programs, petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, i.e., to make their own delisting decisions. Therefore, this exclusion does not apply in those authorized States. If the petitioned waste will be transported to and managed in any State with delisting authorization, Nissan must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

EPA received public comments on the proposed rule published in 66 FR 57918–57930, November 19, 2001, from (1) Alliance of Automobile Manufacturers, Washington, DC; (2) Nissan North America, Inc., Smyrna, Tennessee, (Nissan), the petitioner; (3) Alcoa, Inc., Pittsburgh, Pennsylvania; and (4) The Aluminum Association, Washington, DC. EPA commends and appreciates the thoughtful comments submitted by all of the commenters.

B. Comments and Responses From EPA

Comment: The Alliance of Automobile Manufacturers (Alliance) stated that it strongly supports the proposed delisting, and agrees that fate and transport models may be useful tools to evaluate delisting petitions. However, the Alliance believes that the F019 listing itself should be revised to exclude wastewater treatment sludges from automotive industry conversion

[5] Delisting levels cannot exceed the Toxicity Characteristic (TC) regulatory levels. Therefore, although the DRAS EPACMTP calculates higher concentrations (see the proposed rule, 66 FR 57918–57930, November 19, 2001, and Table 1, below), the delisting levels in the final rule are set at the TC levels for barium, chromium, and lead. In order for the waste to be delisted, concentrations in the TCLP extract of the waste must be less than the TC levels. See the regulatory definition of a TC waste in 40 CFR 261.24.

[6] Delisting levels for cadmium and cyanide are based on MCLs and are more conservative than calculations based on risk alone.

coating on aluminum when hexavalent chromium and cyanides are not used in the process.

Response: Today's final rule is site-specific and waste-specific; it applies only to Nissan's plant in Smyrna, Tennessee, and only to the petitioned waste. An exclusion of general applicability would require a separate rule-making, with more extensive data collection and risk analysis. EPA understands the Alliance's concern about the need for each auto company to submit a delisting petition. Please see 67 FR 10341–10353, March 7, 2002, for a proposal by EPA, Region 5, in a cooperative project with the State of Michigan, to address this concern.

Comment: The Alliance disagrees with EPA's proposed use of (1) the MEP to evaluate Nissan's delisting petition; (2) establishing delisting levels based on total concentrations; and (3) establishing delisting levels based on LDR treatment standards.

Response: (1) EPA has used MEP analysis of petitioned wastes in the past as a measure of the long-term resistance of the waste to leaching (see, for example, 47 FR 52687, Nov. 22, 1982; 61 FR 14696–14709, April 3, 1996; 65 FR 48436, August 8, 2000; and 66 FR 9789, 9793–9794, February 12, 2001), which is an important consideration for waste to be disposed in a Subtitle D (nonhazardous waste) landfill. As explained in the response to the Alliance's second comment, EPA has decided not to use the MEP to evaluate Nissan's petitioned waste. (2) The Alliance brings up some significant issues in this comment and makes some good points. However, EPA feels that the proposed limits on total concentrations are reasonable, given that the delisted waste will not be subject to regulation as a hazardous waste under RCRA Subtitle C. These limits will provide added reassurance to the public that management of the waste as nonhazardous will be protective of human health and the environment. EPA has decided not to use the MEP to evaluate Nissan's petitioned waste, but will set the following limits on total concentrations (in mg/kg) which are the same as those proposed: Barium: 20,000; Cadmium: 500; Chromium: 1,000; Cyanide (Total, not Amenable): 200; Lead: 2,000; and Nickel: 20,000. (3) EPA has decided not to set delisting levels based on LDR for Nissan's petitioned waste, and the final delisting levels in Appendix IX of part 261 established in today's final rule are not based on LDR. The analytical data submitted by Nissan indicate that the petitioned waste, when generated, would meet LDR Universal Treatment Standards (UTS) for all constituents of concern except Nickel, Zinc, Bis(2-ethylhexyl) phthalate, Di-n-octyl phthalate, 4-Methylphenol, and Phenol. The petitioned waste as generated meets the LDR UTS for F019 nonwastewaters, namely, Chromium (Total): 0.60 mg/L TCLP; Cyanides (Total): 590 mg/kg; and Cyanides (Amenable) 30 mg/kg. See the proposed rule, 66 FR 57918–57930, November 19, 2001.

Comment: The Alliance commented on the use of the EPACMTP and DRAS by saying that their use should be the subject of a separate rulemaking because they raise complex issues that EPA should not try to resolve in this delisting.

Response: Use of the EPACMTP and DRAS has been described in detail in 65 FR 75637–75651, December 4, 2000, and 65 FR 58015–58031, September 27, 2000. TheDecember 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). For every delisting petition submitted to EPA, EPA proposes and requests comment on all available methods for evaluating the petition and setting delisting levels, including the EPACMTP and DRAS. Thus, these models, and future improvements, will be proposed for comment in every delisting rulemaking.

Comment: Nissan directed EPA's attention to the following typographical errors in the proposed rule (66 FR 57918–57930, November 19, 2001): (1) On page 57923, the Reactive Sulfide result for Sample NS–04a should be changed from 280U to 280; and the TCLP result for Tin in Sample NS–02a should be changed from 0.01U to 0.10U, in accordance with the report sheets from the analytical laboratory; (2) On page 57922, the TCLP result for Copper in Sample NS–02a is missing; the value 0.05U should be added; and (3) Footnote 6 is missing from page 57924.

Response: EPA is grateful to Nissan for pointing out the above errors and will make the indicated corrections. (The errors for Tin and Reactive Sulfide also occur in Table 6–4 of the petition; Section F of the petition contains the analytical laboratory report sheets which indicate the correct results.) Footnote 6, to be added to page 57924 should read: [6] Because 4-methylphenol could not be distinguished from 3-methylphenol in all samples, the values reported for 4-methylphenol in Table 1 include the values for 3-methylphenol.

In addition, EPA discovered a typographical error in Footnote 7 on page 57926: the plus sign (+) should be changed to a division sign (÷). Footnote 7 should read: [7] This estimate would be based on the following type of calculation for a 100-gram sample, using nickel as an example: % nickel leached out over a long period of time = 100 × (total number of milligrams of nickel in all the sample MEP extracts) ÷ the number of milligrams of nickel originally present in the 100-gram sample.

Comment: Nissan disagrees with EPA's proposed method of setting delisting levels based on the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) in 40 CFR 268.48. Nissan believes that UTS levels are inappropriate for setting delisting levels, because UTS levels were not designed for such a use, but were established to determine whether a hazardous waste could be land disposed.

Response: EPA has decided not to set delisting levels based on LDR UTS for Nissan's petitioned waste, and the final delisting levels in Appendix IX of part 261 established in today's final rule are not based on LDR UTS. The analytical data submitted by Nissan indicate that the petitioned waste, when generated, would meet LDR UTS for all constituents of concern except Nickel, Zinc, Bis(2-ethylhexyl) phthalate, Di-n-octyl phthalate, 4-Methylphenol, and Phenol. The petitioned waste meets the LDR UTS for F019 nonwastewaters, namely, Chromium (Total): 0.60 mg/L TCLP; Cyanides (Total): 590 mg/kg; and Cyanides (Amenable) 30 mg/kg. See the proposed rule, 66 FR 57918–57930, November 19, 2001.

Comment: Nissan disagrees with EPA's proposed method of setting delisting levels based on the DRAS EPACMTP. Nissan believes that these levels are inappropriate because they are more stringent than the Toxicity Characteristic (TC) levels used to determine if a waste is hazardous.

Response: Although there is understandable confusion between the definition of hazardous waste and the delisting process, EPA has decided to use the DRAS EPACMTP as the basis for the delisting levels in the TCLP extract of Nissan's waste. The DRAS levels minimize the risk to human health and the environment of land disposal in a nonhazardous (Subtitle D) landfill. As presented in Table 1, Section III.B. of today's preamble, DRAS-calculated delisting levels are the following concentrations in the TCLP extract of

the petitioned waste, in ppm (mg/L): Barium-100.0;[7] Cadmium-0.422;[8] Chromium-5.0; Cyanide-10.1, Lead-5.0; Nickel-79.4; Bis(2-ethylhexyl) phthalate-0.0787; Di-n-octyl phthalate-0.0984; and 4-Methylphenol-10.0.

Comment: Nissan disagrees with EPA's proposal to set limits on total concentrations for delisting. Nissan believes that limits on total concentrations are an added burden without additional benefits, that hazardous wastes are defined by TCLP concentrations rather than total concentrations, and that TCLP limits should be sufficient.

Response: Nissan's points are well taken. However, EPA has decided to promulgate in today's final rule the limits on total concentrations that were proposed. EPA has decided not to require evaluation of the waste by the MEP and believes that total concentration limits serve to reassure the public that long term effects on human health and the environment are minimized. It is true that TCLP concentrations are the only consideration when identifying wastes that could be hazardous by the Toxicity Characteristic of 40 CFR 261.24. However, EPA considers total concentrations as well as TCLP concentrations when deciding whether wastes should be listed hazardous wastes in Subpart D of 40 CFR part 261.

Comment: Alcoa, Inc. (Alcoa) agrees with EPA's proposal to delist Nissan's wastewater treatment sludge, but does not support the use of the MEP to evaluate Nissan's waste, believing that the merits of the MEP should be the subject of a separate **Federal Register** notice.

Response: EPA has used MEP analysis of petitioned wastes in the past as a measure of the long-term resistance of the waste to leaching (see, for example, 47 FR 52687, Nov. 22, 1982; 61 FR 14696–14709, April 3, 1996; 65 FR 48436, August 8, 2000; and 66 FR 9789, 9793–9794, February 12, 2001), which is an important consideration for waste to be disposed in a Subtitle D (nonhazardous waste) landfill. EPA has requested in the past and will continue to request public comment on the MEP and all other methods for evaluating delisting petitions each time a proposed rule for delisting a waste is published in the **Federal Register**.

EPA has decided not to use the MEP to evaluate Nissan's petitioned waste, but has decided to promulgate in today's final rule the proposed limits on total concentrations.

Comment: Alcoa does not support proposed limits on total concentrations, because EPA did not establish a correlation between groundwater contamination and total constituent concentrations.

Response: Alcoa's point is well taken, but EPA has decided to promulgate the proposed limits on total concentrations as a condition of delisting. EPA has decided not to evaluate Nissan's waste by means of the MEP and believes that total concentration limits serve to reassure the public that long term effects on human health and the environment are minimized.

Comment: Alcoa does not support setting delisting levels based on LDR UTS, believing that such levels would be ''arbitrary, inappropriate and contradictory.'' Alcoa states that LDR UTS are technology-based, while EPA's delisting evaluation is risk-based and that EPA concluded that Nissan's waste presents no risk to human health and the environment.

Response: EPA has decided not to set delisting levels based on LDR UTS for Nissan's petitioned waste, and the final delisting levels in Appendix IX of part 261 established in today's final rule are not based on LDR UTS. The analytical data submitted by Nissan indicate that the petitioned waste, when generated, would meet LDR UTS for all constituents of concern except Nickel, Zinc, Bis(2-ethylhexyl) phthalate, Di-n-octyl phthalate, 4-Methylphenol, and Phenol. The petitioned waste meets the LDR UTS for F019 nonwastewaters, namely, Chromium (Total): 0.60 mg/L TCLP; Cyanides (Total): 590 mg/kg; and Cyanides (Amenable) 30 mg/kg. See the proposed rule, 66 FR 57918–57930, November 19, 2001.

Comment: The Aluminum Association (TAA) supports the proposed delisting and the comments submitted by the Alliance of Automobile Manufacturers. TAA believes that the F019 listing definition should be revised to exclude automobile assembly plant wastewater treatment sludge when aluminum parts are used in place of steel and the conversion coating process does not use hexavalent chromium and cyanides.

Response: Today's final rule is site-specific and waste-specific; it applies only to Nissan's plant in Smyrna, Tennessee, and only to the petitioned waste. An exclusion of general applicability would require a separate rule-making, with more extensive data collection and risk analysis. EPA understands the concern of The Aluminum Association and the Alliance of Automobile Manufacturers about the need for each automobile manufacturer to submit a delisting petition. Please see 67 FR 10341–10353, March 7, 2002, for a proposal by EPA, Region 5, in a cooperative project with the State of Michigan, to address this concern.

Comment: TAA does not believe it is appropriate to set delisting levels based on (1) the MEP; (2) LDR UTS; or (3) total concentrations.

Response: (1) EPA has used MEP analysis of petitioned wastes in the past as a measure of the long-term resistance of the waste to leaching (see, for example, 47 FR 52687, Nov. 22, 1982; 61 FR 14696–14709, April 3, 1996; 65 FR 48436, August 8, 2000; and 66 FR 9789, 9793–9794, February 12, 2001), which is an important consideration for waste to be disposed in a Subtitle D (nonhazardous waste) landfill. EPA has requested in the past and will continue to request public comment on the MEP and all other methods for evaluating delisting petitions each time a proposed rule for delisting a waste is published in the **Federal Register**.

EPA has decided not to use the MEP to evaluate Nissan's petitioned waste, but has decided to promulgate in today's final rule the proposed limits on total concentrations.

(2) EPA has decided not to set delisting levels based on LDR UTS for Nissan's petitioned waste, and the final delisting levels in Appendix IX of part 261 established in today's final rule are not based on LDR UTS. The analytical data submitted by Nissan indicate that the petitioned waste, when generated, would meet LDR UTS for all constituents of concern except Nickel, Zinc, Bis(2-ethylhexyl) phthalate, Di-n-octyl phthalate, 4-Methylphenol, and Phenol. The petitioned waste meets the LDR UTS for F019 nonwastewaters, namely, Chromium (Total): 0.60 mg/L TCLP; Cyanides (Total): 590 mg/kg; and Cyanides (Amenable) 30 mg/kg. See the proposed rule, 66 FR 57918–57930, November 19, 2001.

(3) EPA has decided to promulgate the proposed limits on total concentrations as a condition of delisting. EPA has decided not to evaluate Nissan's waste by means of the MEP and believes that total concentration limits serve to reassure the public that long term effects on human health and the environment are minimized.

[7] Delisted wastes cannot exhibit a hazardous waste characteristic. Therefore, when delisting levels are set at the Toxicity Characteristic (TC) regulatory levels, the TCLP extract of the petitioned waste must have concentrations less than the TC levels in order to meet conditions for delisting. Although the DRAS EPACMTP calculates higher concentrations (see the proposed rule, 66 FR 57918–57930, November 19, 2001, and Table 1, Section III.B. of today's preamble), the delisting levels in the final rule are set at the TC levels for barium, chromium, and lead.

[8] DRAS-calculated delisting levels for cadmium and cyanide are based on MCLs.

Comment: TAA believes that the use of DRAS and EPACMTP should be the subject of a separate rulemaking.

Response: Use of the EPACMTP and DRAS has been described in detail in 65 FR 75637–75651, December 4, 2000, and 65 FR 58015–58031, September 27, 2000. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). For every delisting petition submitted to EPA, EPA proposes and requests comment on all available methods for evaluating the petition and setting delisting levels, including the EPACMTP and DRAS. Thus, these models, and future improvements, will be proposed for comment in every delisting rulemaking.

V. Analytical and Regulatory Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to comprehensive review by the Office of Management and Budget (OMB), and the other provisions of the Executive Order. A significant regulatory action is defined by the Order as one that may:

—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;

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

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

—Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

EPA has determined that today's final rule is not a significant regulatory action as defined by Executive Order 12866 and is, therefore, not subject to OMB comprehensive review and the other provisions of the Executive Order.

B. What Economic and Equity Analyses Were Completed in Support of the Proposed Delisting for Nissan's Wastewater Treatment Sludge?

No economic and equity analyses were required in support of the November 19, 2001 proposed rule. The proposed rule applies only to a single waste at a single facility. Therefore the proposal would have had no generalized effect on industrial compliance costs and would have reduced compliance costs for the single facility, Nissan.

C. What Substantive Comments Were Received on the Cost/Economic Aspects of the Proposed Delisting for Nissan's Wastewater Treatment Sludge?

Public comments were received from four entities. None of the comments dealt with economic effects of the proposed rule.

D. What Are the Potential Costs and Benefits of Today's Final Rule?

The value of any regulatory action is traditionally measured by the net change in social welfare that it generates. All other factors being equal, a rule that generates positive net welfare would be advantageous to society, while a rule that results in negative net welfare to society should be avoided.

Today's final rule applies to a single waste at a single facility. Therefore, EPA has determined that the rule is not expected to have any generalized economic, health, or environmental effects on society.

E. What Consideration Was Given to Small Entities Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.?

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures 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 either by the number of employees or by the annual dollar amount of sales/revenues. The level at which an entity is considered small is determined for each North American Industrial Classification System (NAICS) code by the Small Business Administration (SBA).

EPA has examined the potential effects today's final rule may have on small entities, as required by the RFA/Small Business Regulatory Enforcement Fairness Act (SBREFA). Today's final rule affects a single waste at a single facility, Nissan. Therefore, EPA has determined and certifies that this rule will not have a significant economic impact on a substantial number of small entities.

F. Was the Unfunded Mandates Reform Act Considered in This Final Rule?

Executive Order 12875, ''Enhancing the Intergovernmental Partnership'' (October 26, 1993), called on federal agencies to provide a statement supporting the need to issue any regulation containing an unfunded federal mandate and describing prior consultation with representatives of affected state, local, and tribal governments.

Signed into law on March 22, 1995, the Unfunded Mandates Reform Act (UMRA) supersedes Executive Order 12875, reiterating the previously established directives while also imposing additional requirements for federal agencies issuing any regulation containing an unfunded mandate.

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any single year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, the Agency must develop a small

government agency plan, as required under section 203 of UMRA. This plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule is not subject to the requirements of sections 202 and 205 of UMRA. Today's final rule will not result in $100 million or more in incremental expenditures. The aggregate annualized incremental social costs for today's final rule are projected to be near zero. Furthermore, today's final rule is not subject to the requirements of section 203 of UMRA. Section 203 requires agencies to develop a small government Agency plan before establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. EPA has determined that this final rule will not significantly or uniquely affect small governments.

G. Were Equity Issues and Children's Health Considered in This Final Rule?

By applicable executive order, we are required to consider the impacts of today's rule with regard to environmental justice and children's health.

1. Executive Order 12898: Environmental Justice

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population'' (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). Today's final rule applies to a single waste at a single facility. We have no data indicating that today's final rule would result in disproportionately negative impacts on minority or low income communities.

2. Executive Order 13045: ''Protection of Children From Environmental Health Risks and Safety Risks''

''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. Today's final rule is not subject to the Executive Order because it is not economically significant, as defined in Executive Order 12866.

H. What Consideration Was Given to Tribal Governments?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. Today's final rule will not significantly or uniquely affect the communities of Indian tribal governments, nor impose substantial direct compliance costs on them.

I. Were Federalism Implications Considered in Today's Final Rule?

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.''

Today's 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 the Order. Thus, Executive Order 13132 does not apply to this final rule.

J. Were Energy Impacts Considered?

Executive Order 13211, ''Actions Concerning Regulations That Affect Energy Supply, Distribution, or Use'' (May 18, 2001), addresses the need for regulatory actions to more fully consider the potential energy impacts of the proposed rule and resulting actions. Under the Order, agencies are required to prepare a Statement of Energy Effects when a regulatory action may have significant adverse effects on energy supply, distribution, or use, including impacts on price and foreign supplies. Additionally, the requirements obligate agencies to consider reasonable alternatives to regulatory actions with adverse effects and the impacts the alternatives might have upon energy supply, distribution, or use.

Today's final rule applies to a single waste at a single facility and is not likely to have any significant adverse impact on factors affecting energy supply. EPA believes that Executive Order 13211 is not relevant to this action.

VI. Paperwork Reduction Act

This final 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.*). Because there are no paperwork requirements as part of this final rule, EPA is not required to prepare an Information Collection Request (ICR) in support of today's action.

VII. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule involves environmental monitoring or measurement. Consistent with the Agency's Performance Based Measurement System (''PBMS''), EPA proposed not to require the use of specific, prescribed analytical methods, except when required by regulation in 40 CFR parts 260 through 270. Therefore, today's final rule allows the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

VIII. The Congressional Review Act (5 U.S.C. 801 et seq., as Added by the Small Business Regulatory Enforcement Fairness Act of 1996)

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 is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. Section 804 exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedures, or practice that do not substantially affect the rights or obligations of non-agency parties. See 5 U.S.C. 804(3). 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 will become effective on the date of publication as a final rule in the **Federal Register**.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: June 13, 2002.

James S. Kutzman,

Acting Director, Waste Management Division.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX, part 261 add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Nissan North America,Inc	Smyrna, Tennessee	Wastewater treatment sludge (EPA Hazardous Waste No. F019) that Nissan North America, Inc. (Nissan) generates by treating wastewater from the automobile assembly plant located at 983 Nissan Drive in Smyrna, Tennessee. This is a conditional exclusion for up to 2,400 cubic yards of waste (hereinafter referred to as ''Nissan Sludge'') that will be generated each year and disposed in a Subtitle D landfill after June 21, 2002. Nissan must demonstrate that the following conditions are met for the exclusion to be valid. (1) *Delisting Levels:* All leachable concentrations for these metals, cyanide, and organic constituents must not exceed the following levels (ppm): Barium—100.0; Cadmium—0.422; Chromium—5.0; Cyanide—10.1, Lead—5.0; and Nickel—79.4; Bis(2-ethylhexyl) phthalate-0.0787; Di-n-octyl phthalate-0.0984; and 4-Methylphenol—10.0. These concentrations must be measured in the waste leachate obtained by the method specified in 40 CFR 261.24, except that for cyanide, deionized water must be the leaching medium. The total concentration of cyanide (total, not amenable) in the waste, not the waste leachate, must not exceed 200 mg/kg. Cyanide concentrations in waste or leachate must be measured by the method specified in 40 CFR 268.40, Note 7. The total concentrations of metals in the waste, not the waste leachate, must not exceed the following levels (ppm): Barium—20,000; Cadmium—500; Chromium—1,000; Lead—2,000; and Nickel—20,000. (2) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies, where specified by regulations in 40 CFR parts 260—270. Otherwise, methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the Nissan Sludge meet the delisting levels in Condition (1).

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) *Initial Verification Testing:* Nissan must collect and analyze a representative sample from each of the first eight roll-off boxes of Nissan sludge generated in its wastewater treatment system after June 21, 2002. Nissan must analyze for the constituents listed in Condition (1). Nissan must report analytical test data, including quality control information, no later than 60 days after generating the first Nissan Sludge to be disposed in accordance with the delisting Conditions (1) through (7). (B) *Subsequent Verification Testing:* If the initial verification testing in Condition (2)(A) is successful, i.e., delisting levels of condition (1) are met for all of the eight roll-offs described in Condition (2)(A), Nissan must implement an annual testing program to demonstrate that constituent concentrations measured in the TCLP extract and total concentrations measured in the unextracted waste do not exceed the delisting levels established in Condition (1). (3) *Waste Holding and Handling:* Nissan must store as hazardous all Nissan Sludge generated until verification testing, as specified in Condition (2)(A), is completed and valid analyses demonstrate that Condition (1) is satisfied. If the levels of constituents measured in the composite samples of Nissan Sludge do not exceed the levels set forth in Condition (1), then the Nissan Sludge is non-hazardous and must be managed in accordance with all applicable solid waste regulations. If constituent levels in a composite sample exceed any of the delisting levels set forth in Condition (1), the batch of Nissan Sludge generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA. (4) *Changes in Operating Conditions:* Nissan must notify EPA in writing when significant changes in the manufacturing or wastewater treatment processes are implemented. EPA will determine whether these changes will result in additional constituents of concern. If so, EPA will notify Nissan in writing that the Nissan Sludge must be managed as hazardous waste F019 until Nissan has demonstrated that the wastes meet the delisting levels set forth in Condition (1) and any levels established by EPA for the additional constituents of concern, and Nissan has received written approval from EPA. If EPA determines that the changes do not result in additional constituents of concern, EPA will notify Nissan, in writing, that Nissan must verify that the Nissan Sludge continues to meet Condition (1) delisting levels. (5) *Data Submittals:* Data obtained in accordance with Condition (2)(A) must be submitted to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, Mail Code: 4WD–RCRA, U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303. This submission is due no later than 60 days after generating the first batch of Nissan Sludge to be disposed in accordance with delisting Conditions (1) through (7). Records of analytical data from Condition (2) must be compiled, summarized, and maintained by Nissan for a minimum of three years, and must be furnished upon request by EPA or the State of Tennessee, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). (6) *Reopener Language:* (A) If, at any time after disposal of the delisted waste, Nissan possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in the delisting verification testing is at a level higher than the delisting level allowed by EPA in granting the petition, Nissan must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (B) If the testing of the waste, as required by Condition (2)(B), does not meet the delisting requirements of Condition (1), Nissan must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (C) Based on the information described in paragraphs (6)(A) or (6)(B) and any other information received from any source, EPA will make a preliminary determination as to whether the reported information requires that EPA take action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If EPA determines that the reported information does require Agency action, EPA will notify the facility in writing of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Nissan with an opportunity to present information as to why the proposed action is not necessary. Nissan shall have 10 days from the date of EPA's notice to present such information.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(E) Following the receipt of information from Nissan, as described in paragraph (6)(D), or if no such information is received within 10 days, EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment, given the information received in accordance with paragraphs (6)(A) or (6)(B). Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise. (7) *Notification Requirements:* Nissan must provide a one-time written notification to any State Regulatory Agency in a State to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.
*	*	* * * * *

[FR Doc. 02–15612 Filed 6–20–02; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1626

Restrictions on Legal Assistance to Aliens; 1626 Negotiated Rulemaking Working Group Meeting

AGENCY: Legal Services Corporation.

ACTION: Regulation negotiation working group meeting.

SUMMARY: LSC is conducting a Negotiated Rulemaking to consider revisions to its alien representation regulations at 45 CFR Part 1626. This document announces the dates, times, and address of the next meeting of the working group, which is open to the public.

DATES: The Legal Services Corporation's 1626 Negotiated Rulemaking Working Group will meet on June 26–27, 2002. The meeting will begin at 9 a.m. on June 26, 2002. It is anticipated that the meeting will end by 3:30 p.m. on June 27, 2002.

ADDRESSES: The meeting will be held at the offices of Marasco Newton Group, Inc., 2425 Wilson Blvd., Arlington, VA 22201.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Legal Services Corporation, 750 First St., NE., 11th Floor, Washington, DC, 20001; (202) 336–8817 (phone); (202) 336–8952 (fax); *mcondray@lsc.gov.*

SUPPLEMENTARY INFORMATION: LSC is conducting a Negotiated Rulemaking to consider revisions to its alien representation regulations at 45 CFR Part 1626. The working group will hold its next meeting on the dates and at the location announced above. The meeting is open to the public. Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Ms. Condray.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–15715 Filed 6–20–02; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1389; MM Docket No.01–133; RM–10143 & RM–10150]

Radio Broadcasting Services; Mason, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The *Notice of Proposed Rule Making* in this proceeding considered a petition filed by Charles Crawford requesting the allotment of Channel 249C3 at Mason, Texas and a petition filed by Katherine Pyeatt requesting the allotment of Channel 269C3 at Mason, Texas. *See* 66 FR 35768, July 9, 2001. In response to the proposal filed by Katherine Pyeatt, this document allots Channel 269C3 at Mason, Texas, at coordinates 30–45–00 and 99–10–41. There is a site restriction 5.7 kilometers (3.6 miles) east of the community. Mexican concurrence has been requested for this allotment but notification has not been received. Therefore, operation with the facilities specified for Mason herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico. Due to a lapse in the Commission's data base which failed to disclose a short spacing with a proposal to allot Channel 249C1 at Converse, Texas, in MM Docket 00–148, we will dismiss the proposal to allot Channel 249C3 at Mason, Texas. With this action, this proceeding is terminated. A filing window for Channel 269C3 at Mason will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective July 29, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–133, adopted June 5, 2002, and released June 14, 2002. The full text of this Commission decision 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. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 269C3 at Mason.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 02–15672 Filed 6–20–02; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 67, No. 120
Friday, June 21, 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 HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1720

RIN 2550–AA22

Safety and Soundness Regulation

AGENCY: Office of Federal Housing Enterprise Oversight, HUD

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) solicits comments on a proposed regulation that would support increased transparency and public awareness of minimum supervisory standards as may from time to time be adopted by OFHEO and applied in overseeing the safety and soundness of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises). The format of the proposal reflects that used by other Federal regulators to delineate supervisory standards in a manner consistent with the United States Supreme Court rulings affecting such agency pronouncements. OFHEO will adopt and publish supervisory policy guidances as appendices to the proposed rule as it deems appropriate to illuminate areas of particular interest or potential concern.

DATES: Written comments on the proposed rule must be received by July 22, 2002.

ADDRESSES: All comments concerning the proposed rule should be addressed to Alfred M. Pollard, General Counsel, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW, Fourth Floor, Washington, DC 20552. Copies of all communications received will be available for public inspection and copying at the address above. All comments will be posted on the OFHEO Web site at *http://www.ofheo.gov.* OFHEO requests that written comments submitted in hard copy also be accompanied by an electronic version in MS Word or in portable document format (PDF) on a 3.5'' disk. Alternatively, comments may be submitted via electronic mail to *RegComments@ofheo.gov*.

FOR FURTHER INFORMATION CONTACT: David W. Roderer, Deputy General Counsel, or Marvin Shaw, Senior Counsel, at (202) 414–6924 (not a toll-free number), Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW., Fourth Floor, Washington, DC 20552. The telephone number for the Telecommunications for the Deaf is: (800) 877–8339 (TTD *only*).

SUPPLEMENTARY INFORMATION: The Federal Housing Enterprises Safety and Soundness Act of 1992, Title XIII of Public Law 102–550 (the Act), empowers OFHEO to take any such action as the Director determines to be appropriate to ensure that the federally sponsored housing enterprises, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), are adequately capitalized and operating safely by, among other things, adopting supervisory policies and standards by regulation or other guidance or process. On December 19, 2000, OFHEO issued Policy Guidance PG–00–001 setting forth minimum supervisory standards in eight broad areas of particular regulatory interest and potential concern.[1] One year later, a second policy guidance was adopted that specifically sets out the minimum safety and soundness standards for information systems and security.[2] That policy guidance, entitled ''Safety and Soundness Standards for Information,'' focused narrowly on safety and soundness concerns with the adequacy of the Enterprises' respective policies and procedures affecting the security of their information systems and integrity of such information, including borrower information maintained by the Enterprises.

Under those or any subsequently adopted policy guidances, if OFHEO finds that an Enterprise fails to meet specified requirements or standards, the Director may, among other things, require the Enterprise to submit to the agency and to implement a written plan to achieve timely compliance with the requirement or standard. If the Enterprise fails to submit such an adequate plan in the format and within the time specified by the agency or fails in some material respect to implement the plan, the agency may take additional supervisory action. The Director may at any time initiate an action to cease or prescribe conduct by the Enterprise as the agency deems to be appropriate to remedy or correct conditions resulting from an unsafe or unsound practice or condition. Agency actions may include, but are not limited to, issuance of a notice of charges or order, imposition of civil money penalties, or such other remedial actions or sanctions as determined by the Director.

The minimum standards set forth in OFHEO's policy guidances are designed to identify key safety and soundness concerns regarding operation and management of an Enterprise, and to ensure that conduct and practices of the Enterprises reasonably avoid the emergence of problems that might entail serious risks. The minimum standards also reflect the need for internal policies and procedures in particular areas that, if not appropriately addressed by the Enterprises, may warrant supervisory action by OFHEO in order to reduce risks of loss and corresponding capital impairment. The minimum standards set out in such guidances are intended to effect these purposes without dictating how the Enterprises must be operated and managed; moreover, the guidances do not purport to set out detailed operational and managerial procedures that an Enterprise must have in place. Rather, the guidances identify the ends that proper operational and management policies and procedures are to achieve, while leaving the means to be devised by each Enterprise as it designs and implements its own policies and procedures. To the limited extent that OFHEO does specify particular requirements, each Enterprise's management is left with substantial flexibility to fashion and implement those requirements.

[1] OFHEO Policy Guidance PG–00–001, Minimum Safety and Soundness Requirements (Dec. 19, 2000) (available on OFHEO's Web site at *http://www.ofheo.gov*).

[2] OFHEO Policy Guidance PG–01–002, Safety and Soundness Standards for Information (Dec. 19, 2001) (available at *http://www.ofheo.gov*).

In this notice of proposed rulemaking, OFHEO is proposing to issue a rule to provide regulatory support for the adoption and publication of such guidances, and thereby to increase the transparency and public awareness of the supervisory standards employed by OFHEO in the oversight of the Enterprises. The format of the proposed regulation, as a formal agency pronouncement delineating the parameters of the supervisory standards applicable to the Enterprises, mirrors that used by the Office of Comptroller of the Currency (OCC) in promulgating safety and soundness standards for national banks [3] pursuant to Section 39 of the Federal Deposit Insurance Act,[4] as well as in later adopting specific supervisory standards applicable to the information systems of banks.[5]

The regulation and appended guidances are intended to facilitate the public awareness and enforceability of such standards as official agency pronouncements in a manner consistent with recent United States Supreme Court's rulings.[6] Policy guidances adopted by the agency that address matters of safety and soundness concern will be published as appendices to a final rule.

Policy Guidances

The proposed regulation is not intended to effect any specific change in OFHEO's supervisory policies, as either reflected in the policy guidances or elsewhere. OFHEO routinely undertakes to evaluate an Enterprise's policies and practices, in order to determine whether such policies are safe and sound in principle and in practice. OFHEO also evaluates whether procedures are in place to ensure that an Enterprise's policies as adopted by the Enterprise's board of directors and management are, in fact, applied in the normal course of business. OFHEO will continue to determine compliance with the standards specifically addressed in the policy guidances and to assess the policies and practices of the Enterprises that might affect their financial conditions and compliance with applicable laws and regulations through examinations of the Enterprises, as well as off-site monitoring and a continuing dialogue with each Enterprise.

Nothing in the OFHEO Policy Guidances in any way limits the authority of OFHEO to otherwise address unsafe or unsound conditions or practices, or violations of applicable laws, regulations or supervisory orders. Any supervisory action undertaken with reference to the policy guidances or the proposed regulation may be taken separate from, in conjunction with, or in addition to any other enforcement action available to OFHEO. Compliance with the minimum standards articulated in a policy guidance will preclude the agency from finding that an Enterprise is otherwise engaged in a specific unsafe or unsound practice or is in an unsafe or unsound condition, or requiring corrective or remedial action with regard to such practice or condition. That is, supervisory action is not precluded against an Enterprise because it has not been cited for a deficiency under a policy guidance. Conversely, an Enterprise's failure to comply with one of these supervisory standards may not warrant a formal supervisory response from OFHEO, if the agency determines the matter can be otherwise addressed in a satisfactory manner. For example, OFHEO may require timely submission of a plan to achieve compliance with the particular standard or standards, and refrain from taking any other enforcement action.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

The proposed regulation is not classified as a significant rule under Executive Order 12866 because it will not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required and this proposed regulation need not be submitted to the Office of Management and Budget for formal review.

Unfunded Mandates Reform Act of 1995

This proposed rule does not include a Federal mandate that could result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. As a result, the proposed rule does not warrant the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the proposed regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the proposed regulation, if adopted, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation only affects the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

This proposed regulatory contains no information collection requirement that would require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

List of Subjects in 12 CFR Part 1720

Administrative practice and procedure, Privacy, Mortgages.

Accordingly, for the reasons set out in the preamble, the Office of Federal Housing Enterprise Oversight proposes to add part 1720 to subchapter C of 12 CFR chapter XVII to read as follows:

PART 1720—SAFETY AND SOUNDNESS

Sec.
1720.1 Authority.
1720.2 Safety and soundness standards.

Authority: 12 U.S.C. 4513(a), 4513(b)(1), 4513(b)(5), 4517(a), 4521(a)(2) through (3), 4631, 4632, and 4636.

§ 1720.1 Authority.

(a) *Authority.* This part is issued by the Office of Federal Housing Enterprise Oversight (OFHEO) pursuant to sections 1313(a), 1313(b)(1), and 1313(b)(5) of the Federal Housing Enterprise Safety and Soundness Act (Act) (12 U.S.C. 4513(a), 4513(b)(1), and 4513(b)(5)). These provisions of the Act authorize

[3] For the OCC, these regulations appear at 12 CFR part 30, Appendix A: ''Interagency Guidelines Establishing Standards for Safety and Soundness''; *see also,* for the Board of Governors of the Federal Reserve System at 12 CFR part 263; and for the Federal Deposit Insurance Corporation at 12 CFR part 308, subpart R; and for the Office of Thrift Supervision at 12 CFR part 570.

[4] 12 U.S.C. 1381p–1.

[5] *See,* Appendix B of 12 CFR part 30.

[6] *See, United States* v. *Mead Corp.,* 533 U.S. 218 (2001), and *Christensen* v. *Harris County,* 529 U.S. 576 (2000).

OFHEO to take any action deemed appropriate by the Director of OFHEO to ensure that the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (the Enterprises) are operated in a safe and sound manner, including by adopting supervisory policies and standards by regulation, guidance, or other process.

(b) *Preservation of existing authority.* No action by OFHEO undertaken with reference to a policy guidance or this regulation will in any way limit the authority of the Director otherwise to address unsafe or unsound conditions or practices, or other violations of law, rule or regulation. Action with reference to a policy guidance or this regulation may be taken separate from, in conjunction with, or in addition to any other supervisory response, enforcement action, or agency-imposed requirements deemed appropriate by OFHEO. Nothing in this regulation or any guidance issued by OFHEO limits the authority of the Director pursuant to section 1313 of the Act (12 U.S.C. 4513) or any other provision of law, rule or regulation applicable to the Enterprises.

§ 1720.2 Safety and soundness standards.

Policy guidances as may be adopted from time to time by OFHEO, addressing safety and soundness standards, shall apply to the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises). If OFHEO determines that an Enterprise does not meet a requirement set out in such a policy guidance, it may require corrective or remedial actions by the Enterprise, and take such enforcement action as the Director deems to be appropriate.

Dated: June 17, 2002.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 02–15678 Filed 6–20–02; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–09–AD]

RIN 2120–AA64

Airworthiness Directives: General Electric Company CF6–80A1/A3 and CF6–80C2A PMC Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–80A1/A3 and CF6–80C2A PMC series turbofan engines. This proposal would require performing either a Directional Pilot Valve (DPV) pressure switch moisture purge procedure and an operational check of the fan reverser or replacing the DPV assembly with a serviceable assembly and performing an operational check of the fan reverser. Thereafter, this AD would require one of these actions on a repetitive basis. This proposal is prompted by a review of fan reverser safety analyses resulting from the discovery of an undetectable failure mode of the DPV pressure switch on certain GE CF6–80C2A and CF6–80A engine models. The actions specified in the proposed AD are intended to prevent inadvertent fan reverser deployment, which, if it occurred in-flight, could result in loss of control of the airplane.

DATES: Comments must be received by August 20, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–09–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''*9-ane-adcomment@faa.gov*''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza, Baltimore, MD, 21220–4295, telephone: (410) 682–0094, fax: (410) 682–0100. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ann C. Mollica, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA, 01803; telephone (781) 238–7740; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, 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.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NE–09–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–09–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The FAA received a report of inadvertent thrust reverser deployment on a Pratt & Whitney powered Airbus Industrie A300–600 series airplane. Following that event, the FAA reviewed thrust reverser safety analyses on other

make and model engines, including GE CF6–80A1/A3 and CF6–80C2A series turbofan engines. The thrust reverser is also known as the fan reverser on these engine models. A review of the thrust reverser actuation system (TRAS) component failure analyses and system safety analyses revealed that hidden failure modes involving the DPV assembly can exist, and an inadvertent deployment of the fan reverser could occur as a result.

The FAA had received reports of DPV pressure switch failures on several GE CF6–80 engines as early as 1998. Results of an investigation into the root cause of these events indicates that freezing of accumulated moisture within the switch prevented normal functioning of the switch. Under certain circumstances, ice formation within the pressure switch does not allow an internal spring to unload, and therefore results in a switch failure. When the pressure switch fails to actuate, it will erroneously indicate the TRAS is not pressurized, when it in fact is pressurized. These failures are not detectable in certain CF6–80A and CF6–80C2A engine models.

The DPV assembly controls the direction of the operation of the center drive unit when the TRAS is activated. High pressure downstream of the pressure regulating and shutoff valve (PRSOV) can be caused by auto restow, PRSOV open failures, or significant PRSOV leakage. The DPV pressure switch is used to detect PRSOV open failures and significant PRSOV leakage. If high pressure downstream of the PRSOV exists in combination with an undetected DPV pressure switch failure to actuate condition, an inadvertent deployment of the fan reverser could occur.

The FAA reviewed the system safety analysis with respect to the impact of the DPV pressure switch component failure rate and detectability of this failure mode. The FAA found that for certain CF6–80C2A and CF6–80A engine series, if this condition of switch freezing is not corrected, an inadvertent deployment could occur in-flight, and could result in loss of control of the airplane.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Middle River Aircraft Systems Alert Service Bulletin (ASB) CF6–80A1/A3 SB 78A4030, dated April 4, 2002, applicable to GE CF6–80A1/A3 series engines, and ASB CF6–80C2A PMC SB 78A1118, dated April 4, 2002, applicable to GE CF6–80C2A series engines, that describe procedures for DPV pressure switch moisture purges, and refer to applicable manuals which describe the replacement of the DPV assembly.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other GE CF6–80A1/A3 and CF6–80C2A PMC series turbofan engines of the same type design, this amendment is being proposed to prevent inadvertent fan reverser deployment. The proposed AD would require one of the following within 1,400 flight hours time-since-new (TSN) or 600 flight hours time in service (TIS) after the effective date of this AD, whichever occurs later:

(1) Performing the DPV pressure switch moisture purge procedure, and performing an operational check of the fan reverser; or

(2) Replacing the DPV assembly with a serviceable assembly and performing an operational check of the fan reverser.

Thereafter, this proposed AD would require one of these actions at intervals not to exceed 1,400 flight hours TIS since the last DPV pressure switch of the same type design moisture purge. The actions would be required to be done in accordance with the service bulletin described previously.

Economic Analysis

There are approximately 678 GE CF6–80A1/A3 and CF6–80C2A PMC series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 120 engines installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 0.5 work hour per engine to purge the pressure switch and conduct an operational check and 0.5 work hour per engine to replace the DPV assembly and conduct an operational check. Approximately 5 percent of the fleet is expected to have the DPV assembly replaced instead of purging the DPV pressure switch each year. The average labor rate is $60 per work hour. Required parts to replace the DPV assembly would cost approximately $11,733 per engine.

At 1,400 hour intervals, based on an annual utilization rate of 1,600 hours, approximately 58 DPV purges or replacements will occur per year for CF6–80A1/A3 engines installed on US-operated A310 airplanes. Based on the 5 percent expectation, 55 purges will occur and three replacements will occur.

At 1,400 hour intervals, based on an annual utilization rate of 2,600 hours, approximately 130 DPV purges will occur per year for the CF6–80C2 PMC engines installed on US-operated A300–600 PMC airplanes. Based on the 5 percent expectation, 123 purges will occur and seven replacements will occur.

There are no US-operated A310 airplanes with CF6–80C2 PMC engines.

Based on these figures, the total yearly cost of the proposed AD on U.S. operators is estimated to be: $5,640 for labor and $117,330 for parts for a total cost of $122,970 per year.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. 2002–NE–09–AD.

Applicability

This airworthiness directive (AD) is applicable to General Electric Company (GE) CF6–80A1/A3 and CF6–80C2A PMC series turbofan engines. These engines are installed on, but not limited to Airbus Industrie A300–600 and A310 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j) 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

Compliance with this AD is required as indicated, unless already done.

To prevent inadvertent fan reverser deployment, which, if it occurred in-flight, could result in loss of control of the airplane, do the following:

GE CF6–80A1/A3 Series Engines

(a) For GE CF6–80A1/A3 series engines, perform one of the following no later than 1,400 flight hours time-since-new (TSN) or 600 flight hours time-in-service (TIS) after the effective date of this AD, whichever occurs later:

(1) Perform the directional pilot valve (DPV) pressure switch moisture purge, in accordance with Paragraph 3.C. of the Accomplishment Instructions of Middle River Aircraft Systems Alert Service Bulletin (ASB) CF6–80A1/A3 SB 78A4030, dated April 4, 2002, or

(2) Replace the DPV assembly with a serviceable assembly.

(b) After each purge or replacement done in accordance with paragraphs (a)(1) or (a)(2) of this AD, perform an operational check of the fan reverser in accordance with Paragraph 3.E. of the Accomplishment Instructions of ASB CF6–80A1/A3 SB 78A4030, dated April 4, 2002.

(c) Thereafter, for GE CF6–80A1/A3 series engines, at intervals not to exceed 1,400 hours TIS since the last pressure switch purge or replacement of the DPV assembly, perform one of the following:

(1) Perform the DPV pressure switch moisture purge, in accordance with Paragraph 3.C. of the Accomplishment Instructions of Middle River Aircraft Systems ASB CF6–80A1/A3 SB 78A4030, dated April 4, 2002, or

(2) Replace the DPV assembly with a serviceable assembly.

(d) After each purge or replacement done in accordance with paragraphs (c)(1) or (c)(2) of this AD, perform an operational check of the fan reverser in accordance with Paragraph 3.E. of the Accomplishment Instructions of ASB CF6–80A1/A3 SB 78A4030, dated April 4, 2002.

GE CF6–80C2A Series Engines

(e) For GE CF6–80C2A1/A2/A3/A5/A8 series engines, perform one of the following no later than 1,400 flight hours TSN or 600 flight hours TIS after the effective date of this AD, whichever occurs later:

(1) Perform the DPV pressure switch moisture purge, in accordance with Paragraph 3.C. of the Accomplishment Instructions of Middle River Aircraft Systems ASB CF6–80C2A PMC SB 78A1118, dated April 4, 2002, or

(2) Replace the DPV assembly with a serviceable assembly.

(f) After each purge or replacement done in accordance with paragraphs (e)(1) or (e)(2) of this AD, perform an operational check of the fan reverser, in accordance with Paragraph 3.E. of the Accomplishment Instructions ASB CF6–80C2A PMC SB 78A1118, dated April 4, 2002, 2002.

(g) Thereafter, for GE CF6–80C2A1/A2/A3/A5/A8 series engines, perform one of the following at intervals not to exceed 1,400 hours TIS since the last pressure switch purge or replacement of the DPV assembly:

(1) Perform the DPV pressure switch moisture purge, in accordance with Paragraph 3.C. of the Accomplishment Instructions of Middle River Aircraft Systems ASB CF6–80C2A PMC SB 78A1118, dated April 4, 2002, or

(2) Replace the DPV assembly with a serviceable assembly.

(h) After each purge or replacement done in accordance with paragraphs (g)(1) or (g)(2) of this AD, perform an operational check of the fan reverser, in accordance with Paragraph 3.E. of the Accomplishment Instructions of ASB CF6–80C2A PMC SB 78A1118, dated April 4, 2002.

Serviceable DPV Assembly

(i) For the purpose of this AD, a serviceable DPV assembly is an assembly that has:

(1) Accumulated zero time since new, or

(2) Passed the tests in the Middle River Aircraft Systems Component Maintenance Manual GEK 85007 (78–31–51), Revision No. 7 or later, Directional Pilot Solenoid Valve, Page Block 101, Testing and Troubleshooting, and that has zero flight hours TIS since passing the tests, or

(3) Been successfully purged according to paragraphs (a)(1), (c) (1), (e)(1) or (g)(1) of this AD immediately before installation on the fan reverser.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Burlington, Massachusetts, on June 14, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–15642 Filed 6–20–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–84–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 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 certain Boeing Model 747 series airplanes, that currently requires a one-time inspection to identify all alloy steel bolts on the body station 1480 bulkhead splice, and corrective action if necessary; and provides for optional terminating action for certain requirements of that AD. This proposed AD would require accomplishment of the previously optional terminating action. The actions specified by this proposed AD are intended to prevent cracked or broken bolts, which could result in structural damage and rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–84–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. 2002–NM–84–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4243, fax (425) 687–4248. Questions or comments may also be sent via the Internet using the following address: sandi.carli@faa.gov. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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 the specific change to the proposed AD being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–84–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–84–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 12, 2002, the FAA issued AD 2002–08–10, amendment 39–12718 (67 FR 19641, April 23, 2002), applicable to certain Boeing Model 747 series airplanes, to require a one-time inspection to identify all alloy steel bolts on the body station (BS) 1480 bulkhead splice, and corrective action if necessary. That action also provides for optional terminating action for certain requirements. That action was prompted by reports of broken alloy steel bolts on the BS 1480 bulkhead splice. Alloy steel bolts have been found to be susceptible to stress corrosion and consequent cracking and breakage. The requirements of that AD are intended to detect and correct cracked or broken bolts, which could result in structural damage and rapid depressurization of the airplane.

Actions Since Issuance of Previous Rule

In the preamble to AD 2002–08–10, the FAA indicated that the actions required by that AD were considered ''interim action'' and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2002–08–10 to continue to require a one-time inspection to identify all alloy steel bolts on the BS 1480 bulkhead splice, and corrective action if necessary and to require the previously optional replacement of all alloy steel bolts on the splice, which would terminate the requirements of the AD. The actions would be required to be accomplished in accordance with Boeing Alert Service Bulletin 747–53A2477, described previously, except as discussed below.

Differences Between Proposed AD and Alert Service Bulletin

Although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Explanation of Change Made to Existing Requirements

The FAA has clarified the inspection requirement contained in AD 2002–08–10. Whereas that AD specifies a detailed visual inspection, this proposed AD specifies a detailed inspection. Additionally, a note is included in this proposed AD to define that inspection.

Cost Impact

There are approximately 582 airplanes of the affected design in the worldwide fleet. The FAA estimates that 178 airplanes of U.S. registry would be affected by this proposed AD.

The inspection that is currently required by AD 2002–08–10 takes approximately 58 work hours per airplane to accomplish (including access and close), at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $619,440, or $3,480 per airplane.

The terminating action proposed in this AD action would take approximately 86 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts could cost as much as approximately $1,414 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $1,170,172, or $6,574 per airplane.

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

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 39–12718 (67 FR 19641, April 23, 2002), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2002–NM–84–AD. Supersedes AD 2002–08–10, Amendment 39–12718.

Applicability: Model 747 series airplanes, certificated in any category, line numbers 1 through 750 inclusive, excluding airplanes on which the bulkhead splice areas have been modified in accordance with Plan ''B'' of AD 2001–11–06, amendment 39–12248.

Note 1: This AD applies to each airplane 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 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 (g) 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 cracked or broken bolts, which could result in structural damage and rapid depressurization of the airplane, accomplish the following:

Restatement of Certain Requirements of AD 2002–08–10

Inspection

(a) At the applicable time specified by paragraph (a)(1) or (a)(2) of this AD: Inspect the BS 1480 bulkhead splice to identify all alloy steel bolts by using a magnet or, if applicable, detailed methods, in accordance with Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002.

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

(1) For airplanes on which the bulkhead splice inspection specified by AD 2001–11–06 has NOT been accomplished within 15 months before May 8, 2002 (the effective date of AD 2002–08–10, amendment 39–12718): Inspect within 90 days after May 8, 2002.

(2) For airplanes on which the bulkhead splice inspection specified by AD 2001–11–06 HAS been accomplished within 15 months before May 8, 2002: Inspect within 18 months since the most recent inspection.

Corrective Actions

(b) For each alloy steel bolt found during the inspection required by paragraph (a) of this AD: Before further flight, inspect those bolts using torque test or ultrasonic methods to detect cracks or breakage, in accordance with Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002, except as required by paragraph (e) of this AD.

(1) For each uncracked and unbroken alloy steel bolt found: Repeat the inspection specified by paragraph (b) of this AD thereafter at least every 18 months, until the terminating action of paragraph (d) of this AD is accomplished.

(2) For any cracked or broken bolt found: Before further flight, replace it with an Inconel 718 bolt. Such replacement terminates the requirements of this AD for that bolt only.

(3) If any cracked or broken bolt is found anywhere along the splice during any inspection required by paragraph (b) of this AD: Before further flight, reinspect, using ultrasonic methods, any remaining alloy steel bolts that were initially inspected using torque test methods, and replace any cracked or broken bolt with an Inconel 718 bolt. Such replacement terminates the requirements of this AD for that bolt only.

Magnetic Particle Inspection

(c) Plan ''A'' inspections required by AD 2001–11–06 are acceptable for compliance with the inspection requirements of paragraph (b) of this AD, provided a magnetic particle inspection and applicable corrective actions are performed on any alloy steel bolt removed during any Plan ''A'' inspection before the bolt is reinstalled. The magnetic particle inspection and corrective actions must be performed in accordance with Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002, except as required by paragraph (e) of this AD.

New Requirements of this AD

Terminating Action

(d) Within 6 years after the effective date of this AD: Replace all alloy steel bolts in the BS 1480 bulkhead splice with Inconel 718 bolts, in accordance with Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002, except as required by paragraph (e) of this AD. Replacement of all alloy steel bolts terminates the requirements of this AD.

Exceptions to Service Information

(e) If Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002, specifies to contact Boeing for appropriate action: Before further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Spares

(f) As of the effective date of this AD, no person may install an alloy steel bolt on the BS 1480 bulkhead splice on any airplane.

Alternative Methods of Compliance

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

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

Special Flight Permits

(h) 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.

Issued in Renton, Washington, on June 14, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–15662 Filed 6–20–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–377–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that would have required repetitive inspections for cracking of the skin, bear strap, and sill chord of the lower lobe cargo door cutout, and repair, if necessary. For certain airplanes, the proposed AD also would have provided an optional modification of the lower lobe cargo door cutout, which would have ended the pre-modification repetitive inspections, but would have necessitated new post-modification repetitive inspections after a certain time. This new action, prompted by new crack findings, revises the proposed rule by expanding the optional modification of the lower lobe cargo door cutout and reducing the compliance threshold for the post-modification inspections. The proposed actions are necessary to find and fix cracking of the skin, bear strap, and sill chord of the lower lobe cargo door cutout, which could lead to reduced structural integrity of the lower lobe cargo door cutout, and result in rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 26, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–377–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–377–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–377–AD.'' The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–377–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 30, 2001 (66 FR 54729). That NPRM would have required repetitive inspections for cracking of the skin, bear strap, and sill chord of the lower lobe cargo door cutout, and repair, if necessary. For certain airplanes, that NPRM also would have provided an optional modification of the lower lobe cargo door cutout, which would have ended the pre-modification repetitive inspections, but would have necessitated new post-modification repetitive inspections after a certain time. That NPRM was prompted by reports of cracking in the upper corners of the lower lobe cargo door cutout. Cracking of the skin, bear strap, and sill chord of the lower lobe cargo door cutout, if not found and fixed, could lead to reduced structural integrity of the lower lobe cargo door cutout, and result in rapid depressurization of the airplane.

Actions Since Issuance of Previous Proposal

The actions proposed in the NPRM are specifically intended to address fatigue cracks of the skin, bear strap,

and sill chord of the cargo door cutout that initiate at the fuselage skin fastener holes common to the hinge fairing strip. Since the issuance of the NPRM, the FAA has received reports of cracks that initiated in the skin at additional fastener holes and from the edge of the cargo door cutout.

Based on these new reports, we have determined that the modification of the lower lobe cargo door cutout and post-modification inspections per Boeing Alert Service Bulletin 747–53A2448, including Appendix A, dated September 28, 2000, which were provided in the NPRM as one option for compliance for certain airplanes, are no longer adequate.

Explanation of New Relevant Service Information

Boeing has issued Alert Service Bulletin 747–53A2448, Revision 1, dated April 4, 2002. Revision 1 differs from the original issue of the service bulletin in the following ways:

- The modification has been expanded to include the replacement of several additional fasteners at the forward and aft corners of the aft cargo doors and a new surface high frequency eddy current inspection of the skin and bearstrap.
- The threshold for the initial post-modification inspection has been reduced from 16,000 to 10,000 flight cycles.
- A new alternative modification for airplanes without adequate edge margin has been added.
- References to certain chapters of the Structural Repair Manual (SRM) have been added as acceptable sources of service information for the accomplishment of certain repairs.

Accomplishment of the actions specified in Revision 1 of the service bulletin is intended to adequately address the identified unsafe condition.

Comments

Due consideration has been given to the comments received in response to the NPRM. Two commenters support the proposed rule. Certain comments have resulted in changes to the proposed AD.

Provide Service Information for Repairs and an Alternative Modification

Two commenters request that the FAA refer to certain chapters of the SRM for instructions for accomplishing repairs. Paragraph (b) of the NPRM specifies that repairs are to be accomplished per a method approved by the FAA or per data approved by an authorized Boeing Company Designated Engineering Representative (DER). The commenters state that the proposed AD relates to an area that is the subject of existing SRM repairs. The commenters assert that such repairs should terminate the inspections that would be required by paragraph (a) of the proposed AD.

Further, the same commenters also ask us to refer to certain chapters of the SRM for a modification of airplanes without adequate edge margins. Note 3 of the NPRM states that no modification is available for airplanes without adequate edge margin distance. One of the commenters notes that it is likely that there will be a significant number of airplanes with short edge margins.

The FAA concurs. We have revised this supplemental NPRM to refer to Revision 1 of the service bulletin, discussed previously, which refers to certain chapters of the SRM for instructions to repair certain cracks. We find that the repairs in the SRM are sufficient for certain types of cracks and have revised paragraph (b) of this supplemental NPRM accordingly. Operators will note that, where the service bulletin specifies to contact Boeing for repair data, this proposed AD would require repairs to be accomplished per a method approved by the FAA or per data approved by an authorized Boeing Company DER.

Revision 1 of the service bulletin also includes a new optional modification for airplanes without adequate edge margins. Therefore, we have not included Note 3 of the NPRM in this supplemental NPRM and have reordered subsequent notes accordingly, and we have revised paragraph (c) of this supplemental NPRM to acknowledge this optional modification.

Clarify Language in Discussion Section of NPRM

One commenter requests that the FAA revise the ''Discussion'' section of the NPRM to indicate that ''fatigue cracking of the skin, bear strap, and sill chord of the cargo door CUTOUT initiates at the fuselage skin fastener holes common to the hinge fairing strip.'' The commenter indicates that this change is needed to clarify that the area of concern is not the cargo door but the fuselage structure at the corner of the cargo door cutout.

We acknowledge that the word ''cutout'' was inadvertently omitted in the ''Discussion'' section of the NPRM, but note that it was included elsewhere in the NPRM where we referred to the subject area. Since the ''Discussion'' section of the NPRM is not restated in this supplemental NPRM, no change is possible in this regard.

Explanation of New Proposed Requirements

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of inspections and corrective actions, if necessary, per Boeing Alert Service Bulletin 747–53A2448, Revision 1, except as discussed below under ''Differences Between Supplemental NPRM and Service Bulletin.'' The proposed AD would also provide for accomplishment of an optional modification and post-modification inspections per Revision 1 of the service bulletin.

Differences Between Supplemental NPRM and Service Bulletin

The proposed requirements specified in this supplemental NPRM differ from Revision 1 of the service bulletin in the following ways:

- The service bulletin specifies that the manufacturer may be contacted for disposition of certain repairs. However, the proposed AD would require such repairs to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the FAA to make such findings.
- The requirements of the proposed AD would apply only to airplanes with line numbers 1 through 1255 inclusive, as listed in Group 1 in the service bulletin. Airplanes with line numbers 1256 through 1297 inclusive, which are identified as Group 2 in the service bulletin, have cold-worked fastener holes near the edge of the skin panel at the upper corners of the door cutout. Thus, they are not as susceptible to the fatigue cracking addressed by the proposed AD. (Airplanes with line numbers 1298 and subsequent have a redesigned skin panel and increased edge margin at fastener locations. These airplanes are also not subject to the unsafe condition addressed by this proposed AD.)

Conclusion

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 1,129 airplanes of the affected design in the worldwide fleet. The FAA estimates that 275 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours

per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $49,500, or $180 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2000–NM–377–AD.

Applicability: Model 747 series airplanes, line numbers 1 through 1255 inclusive, 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 (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracking of the skin, bear strap, and sill chord of the lower lobe cargo door cutout, which could lead to reduced structural integrity of the lower lobe cargo door cutout, and result in rapid depressurization of the airplane, accomplish the following:

Repetitive Inspections

(a) Perform detailed and high frequency eddy current (HFEC) inspections to find cracking of the skin, bear strap, and sill chord at the upper aft and forward corners of the lower lobe cargo door cutout, per Boeing Alert Service Bulletin 747–53A2448, Revision 1, dated April 4, 2002. Do the initial inspections at the time shown in paragraph (a)(1) or (a)(2) of this AD, as applicable, and repeat the inspections at least every 3,000 flight cycles until paragraph (c) of this AD is accomplished.

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

Note 3: Inspections accomplished prior to the effective date of this AD according to Boeing Alert Service Bulletin 747–53A2448, including Appendix A, dated September 28, 2000, are considered acceptable for compliance with paragraph (a) of this AD.

(1) For airplanes with fewer than 13,000 total flight cycles as of the effective date of this AD: Do the inspection prior to the accumulation of 13,000 total flight cycles or within 1,000 flight cycles after the effective date of this AD, whichever is later.

(2) For airplanes with 13,000 or more total flight cycles as of the effective date of this AD: Do the inspection within 1,000 flight cycles or 1 year after the effective date of this AD, whichever is first.

Repair

(b) If any crack is found during any inspection required by paragraph (a) of this AD: Before the next flight, repair per Boeing Alert Service Bulletin 747–53A2448, Revision 1, dated April 4, 2002, except as provided by paragraph (d) of this AD.

Optional Modification and Post-Modification Inspections

(c) If no crack is found during any inspection required by paragraph (a) of this AD, operators may accomplish paragraphs (c)(1) and (c)(2) of this AD.

(1) Do an optional modification of the lower lobe cargo door cutout (including removing the hinge fairing and its fasteners, oversizing fastener holes, and replacing existing fasteners with new fasteners and the grounding strap with a new strap) per Figure 4 or 7, as applicable, of Boeing Alert Service Bulletin 747–53A2448, Revision 1, dated April 4, 2002, except as provided by paragraph (d) of this AD. Such modification ends the repetitive inspections required by paragraph (a) of this AD.

(2) At the applicable compliance time and repetitive inspection interval specified in Figure 1 of Boeing Alert Service Bulletin 747–53A2448, Revision 1, dated April 4, 2002, perform detailed and HFEC inspections to find cracking of the skin at the upper aft and forward corners of the lower lobe cargo door cutout, per Figure 5 of the service bulletin. If any crack is found, before the next flight, repair per the service bulletin, except as provided by paragraph (d) of this AD.

Repair and Modification: Exception

(d) Where Boeing Alert Service Bulletin 747–53A2448, Revision 1, dated April 4, 2002, specifies to contact Boeing for repair or modification information: Repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved as required by this paragraph, the approval must specifically refer to this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

(f) 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.

Issued in Renton, Washington, on June 14, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–15663 Filed 6–20–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209114–90]

RIN 1545–AH49

Golden Parachute Payments; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing that was published in the **Federal Register** on Wednesday, February 20, 2002 (67 FR 7630) that will clarify the application of section 280G of the Internal Revenue Code to deny a deduction to a corporation for any excess parachute.

FOR FURTHER INFORMATION CONTACT: Erinn Madden at (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing that is the subject of these corrections are under section 280G of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing (REG–209114–90) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing (REG–209114–90), which is the subject of FR Doc. 02–3819, is corrected as follows:

1. On page 7630, column 1, in the preamble under the caption ''**SUMMARY:**'', fourth line from the bottom of the paragraph, the language ''may rely on the 1989 regulations for any'' is corrected to read ''may rely on the 1989 proposed regulations for any''.

2. On page 7630, column 2, in the preamble under the caption ''**FOR FURTHER INFORMATION CONTACT:**'', line 2, the language ''Madden at (202) 622–6030 (not a toll'' is corrected to read ''Madden at (202) 622–6060 (not at toll—''.

3. On page 7630, column 2, in the preamble under the paragraph heading ''Background'', second paragraph, line 9, the language ''section 312(v)(2)(A), which relates to'' is corrected to read ''section 3121(v)(2)(A), which relates to the.''

4. On page 7630, column 2, in the preamble under the paragraph heading ''Background'', second paragraph, line 14, the language ''FR 19390 on May 5, 1989 (the 1989'' is corrected to read ''FR 19390 on May 5, 1989 and corrected in 54 FR 25879 (June 20, 1989) (the 1989''.

5. On page 7631, column 1, in the preamble under the paragraph heading ''*Disqualified Individuals*'', second paragraph, line 7, the language ''1989 regulations provides a de minimis'' is corrected to read ''1989 proposed regulations provides a de minimis''.

6. On page 7634, column 2, in the preamble under the paragraph heading ''*Reasonable Compensation*'', first full paragraph from the top of the column, line 2 from end of paragraph, the language ''show to be reasonable compensation'' is corrected to read '' shown to be reasonable compensation''.

7. On page 7635, column 3, in the preamble under the paragraph heading ''*Timing of the Payment of Tax under Section 4999*'', paragraph 1, line 2, the language ''section 312(v) and § 1.3121(v)–1(e)(4)'' is corrected to read ''section 3121(v) and § 31.3121(v)(2)–1(e)(4)''.

8. On page 7635, column 3, in the preamble under the paragraph heading ''*Proposed Effective Date*'', line 4, the language ''control occurring on or after January 1,'' is corrected to read ''control that occurs on or after January 1,''.

§ 1.280G–1 [Corrected]

9. On page 7638, column 2, § 1.280G–1, paragraph (g) of A–6:, *Example 4.,* line 10, the language ''application of the exemption described in'' is corrected to read ''application of the exemption described in''.

10. On page 7638, column 2, § 1.280G–1, paragraph (g) of A–6:, *Example 5.,* line 9, the language ''pays or accrues a payment that would'' is corrected to read ''that would''.

11. On page 7638, column 3, § 1.280G–1, paragraph (b)(1) of A–7:, line 9, the language ''A–7, the vote can be no less than the'' is corrected to read ''A–7, the vote can be on less than the''.

12. On page 7640, column 1, § 1.280G–1, paragraph (e) of A–7:, *Example 7.,* line 16, the language ''the payments of $400,000 to X; $600,000 to'' is corrected to read ''and describing the payments of $400,000 to X; $600,000 to''.

13. On page 7640, column 1, § 1.280G–1, paragraph (e) of A–7:, *Example 8.,* line 8, the language ''the nature of the payments to X, Y, and Z are'' is corrected to read ''the nature and amount of the payments to X, Y, and Z are''.

14. On page 7641, column 1, § 1.280G–1, paragraph (c) of A–11:, lines 18 and 19 from the top of the column, the language ''under section 3121(v) and § 1.312(v)–1(c)(4) or payment related to health'' is corrected to read ''under section 3121(v) and § 31.3121(v)(2)–1(e)(4) of this chapter, or a payment related to health''.

15. On page 7641, column 2, § 1.280G–1, paragraph (a) of A–13:, lines 13 and 14, the language ''value of an option with an ascertainable fair market value at the time the option'' is corrected to read ''value of an option at the time the option''.

16. On page 7642, column 1, § 1.280G–1, Q–17:, line 3, the language ''purposes of paragraph (a)(1) of Q/A–15'' is corrected to read ''purposes of paragraph (a)(1) and (b) of Q/A–15''.

17. On page 7642, column 3, § 1.280G–1, paragraph (c) of A–18:, line 16, the language ''defined in Q/A–20 of this section). If the'' is corrected to read ''defined in Q/A–20 of this section). The number of employees is determined with regard to the rules in Q/A–19(c). If the''.

18. On page 7642, column 3, § 1.280G–1, paragraph (a) of A–19:, line 13, the language ''A–21 of this section) paid during the'' is corrected to read ''A–21 of this section) earned during the''.

20. On page 7644, column 1, § 1.280G–1, paragraph (c) of A–22:, line 7, the language ''that is closely associated and materially'' is corrected to read ''that is closely associated with and materially''.

21. On page 7646, column 3, § 1.280G–1, paragraph (f) of A–24:, *Example 4.,* line 3 from the bottom of the column, the language ''would been on January 15, 2011. The'' is corrected to read ''would have been on January 15, 2011. The''.

22. On page 7648, column 1, § 1.280G–1, paragraph (c) of A–26:, line 13, the language ''of section 129); or a no-additional-cost'' is corrected to read ''of section 129); a no-additional-cost''.

23. On page 7648, column 1, § 1.280G–1, paragraph (c) of A–26:, line 15, the language ''132(b)) or qualified employee discount'' is corrected to read ''132(b)) qualified employee discount''.

24. On page 7648, column 1, § 1.280G–1, line 16, the language ''(within the meaning of section 132(c));'' is corrected to read ''(within the meaning of section 132(c)) qualified retirement planning services under section 132(m);''.

25. On page 7649, column 1, § 1.280G–1, paragraph (d) of A–27:, *Example 4.,* lines 11 through 22, the language ''Corporation P shareholders also owned Corporation O stock (overlapping shareholders) with a fair market value of 5 percent of the value of Corporation O stock. The overlapping shareholders consist of Mutual Company A Growth Fund, which prior to the transaction owns 3 percent of the value of Corporation O stock, Mutual Company A Income Fund, which prior to the transaction owns 1 percent of the value of Corporation O stock, and B, an individual who prior to the transaction owns 1 percent'' is corrected to read ''Corporation O shareholders also owned Corporation P stock (overlapping shareholders) exchanged for O stock with a fair market value of 5 percent of the value of Corporation O stock. The overlapping shareholders consist of Mutual Company A Growth Fund, which prior to the transaction owns P stock that is exchanged for 3 percent of the value of Corporation O stock, Mutual Company A Income Fund, which prior to the transaction owns P stock that is exchanged for 1 percent of the value of Corporation O stock, and B an individual who prior to the transaction owns P stock that is exchanged for 1 percent''

26. On page 7651, column 1, § 1.280G–1, A–32:, line 12, the language ''24 and 35 of this section. However, for'' is corrected to read ''24 and 31 of this section. However, for''.

27. On page 7655, column 1, § 1.280G–1, paragraph (c) of A–42:, *Example 3.,* line 4, the language ''services to Corporation N, when and if,'' is corrected to read ''services to Corporation N, when and if''.

28. On page 7656, column 2, § 1.280G–1, A–48: is corrected to read as follows:

§ 1.280G–1 Golden parachute payments.

* * * * *

A–48: This section applies to any payments that are contingent on a change in ownership or control that occurs on or after January 1, 2004. Taxpayers can rely on these rules after February 20, 2002, for the treatment of any parachute payment.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).

[FR Doc. 02–15740 Filed 6–20–02; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 53, 32, and 64

[WC Docket No. 02–112; FCC 02–148]

Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document initiates an inquiry regarding the sunset of the statutory requirements under section 272 imposed on Bell Operating Companies (BOCs) when they provide in-region, interLATA services and seeks comment on whether, and if so, under what conditions, the structural and nondiscrimination safeguards established in section 272 should be extended by the Commission either generally or with respect to specific states.

DATES: Comments are due July 22, 2002 and Reply Comments are due August 12, 2002. It is also available on the Commission's website at *http://www.fcc.gov.* Written comments by the public on the proposed information collections are due July 22, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before August 20, 2002.

ADDRESSES: Federal Communications Commission, Secretary, 445 12th Street, SW, Room TW–B204F, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jbherman@fcc.gov,* and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to *JThornto@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Claudia Pabo, Legal Assistant to the Chief, Competition Policy Division, or Jack Yachbes, Attorney Advisor, Wireline Competition Bureau, at (202) 418–1580. The complete text of this Notice of Proposed Rulemaking (NPRM) is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in WC Docket No. 02–112, FCC 02–148, adopted May 16, 2002, and released May 24, 2002. This full text 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.* 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, U.S. 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 appear 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 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, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Paperwork Reduction Act

This Notice of Proposed Rulemaking (NPRM) contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding. This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due August 20, 2002. Comments should address: (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 estimates; (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.

OMB Control Number: 3060–0734.

Title: Accounting Safeguards, CC Docket No. 96–150, 47 U.S.C. Sections 260 and 271–276, and 47 CFR Sections 53.209, 53.211 and 53.213.

Form No.: N/A.

Type of Review: Proposed Revised Collection.

Respondents: Business or other for-profit.

Title	Number of respondents	Estimated time per response	Total annual burdens
Affiliate Transactions Rules/Estimated Fair Market Value—Recordkeeping Requirements	20	24	480
Section 272(b)(2)—Affiliated Company Books, Records and Accounts	20	6056.25	121,125
Section 272(b)(5)—Arm's Length Requirement	7	72	504
Biennial Federal/State Audit, Audit Planning, and Analysis and Evaluation	7	250	1750

Total Annual Burden: 123,859 hours.

Total Annual Costs: $632,500.

Needs and Uses: In a Report and Order in CC Docket No. 96–150, the Commission prescribed the way ILECs, including the BOCs, must account for transactions with affiliates involving, and allocate costs incurred in the provision of, both regulated telecommunications services and nonregulated services, including telemessaging, interLATA telecommunications and information services, telecommunications equipment and CPE manufacturing and others pursuant to 47 U.S.C. sections 260 and 271 through 276. The Commission has issued a NPRM solicits comment regarding the sunset of the statutory requirements in 47 U.S.C. section 272.

Synopsis of the Notice of Proposed Rulemaking (NPRM)

1. Section 272(f)(1) provides that the provisions of that section, with one exception, expire three years after a BOC or any BOC affiliate is authorized under section 271 to provide in-region, interLATA services, ''unless the Commission extends such 3-year period by rule or order.'' In this NPRM, the Commission seeks to develop a full record so that it may properly assess: (1) Whether the structural safeguards established in section 272 should be extended by the Commission, either generally or with respect to specific states, despite the three-year sunset provision in the statute; and (2) to the extent we conclude the costs of continued application of those statutory requirements outweigh the benefits, the Commission seeks comment on whether any alternative safeguards should be put in place in states where the statutory requirements have sunset.

2. *Background.* Section 272 of the Act requires that the BOCs initially provide in-region, interLATA service through a separate corporate affiliate and comply with certain nondiscrimination requirements set forth in the statute. In addition, section 272(d) requires that a BOC obtain and pay for a biennial joint federal/state audit after section 271 approval to determine whether it has complied with section 272. The Commission adopted rules to implement the statutory requirements of section 272 in the *Accounting Safeguards Order* (67 FR 5670, February 6, 2002) and the *Non-Accounting Safeguards Order* (66 FR 36206, December 3, 2001). In the *Non-Accounting Safeguards Order,* the Commission found that the BOCs have market power in the provision of local exchange and exchange access services within their service areas. In particular, the Commission found the BOCs to be dominant carriers with the incentive and ability to discriminate in providing exchange access services and facilities that their interexchange competitors need to compete in the interLATA telecommunications services markets.

3. Section 272 (c) and (e) impose nondiscrimination safeguards on the BOC. Under section 272 and our implementing rules, a BOC and its section 272 affiliate may not jointly own transmission and switching equipment. The BOC may not perform any operating, installation, or maintenance functions for facilities owned or leased by the section 272 affiliate, and the section 272 affiliate may not perform any such functions on BOC facilities. The separate 272 affiliate must maintain separate books of account and have separate officers and directors. The separate 272 affiliate may not obtain

credit under arrangements that would permit the creditor to look to the assets of the BOC. The section 272 affiliate must conduct all transactions with the BOC on an arm's length basis, pursuant to the Commission's affiliate transaction rules, with any such transactions reduced to writing and available for public inspection. Specifically, the separate affiliate must post on the Internet within ten days of a transaction a detailed written description of the asset or service and the terms and conditions of the transaction. Section 272(d) requires a biennial audit post-entry to ensure compliance with the structural and transactional requirements of section 272.

4. Section 272(f)(1) provides that the provisions of the section, except for section 272(e), expire three years after a BOC or any BOC affiliate is authorized under section 271 to provide in-region, interLATA services, ''unless the Commission extends such 3-year period by rule or order.''

5. Section 271 approval is provided on a state-by-state basis. As such, the sunset dates for each BOC will vary depending upon when each state receives section 271 approval. Verizon's New York section 272 requirements will sunset in December of 2002, and SBC's Texas section 272 requirements will sunset in June of 2003, unless the Commission acts to extend them.

6. *Discussion.* In this NPRM, the Commission invites parties to comment on the sunset provisions of section 272. It asks whether, and, if so, under what conditions, the structural and nondiscrimination safeguards established should be extended by the Commission either generally or with respect to specific states, despite the three-year sunset in the statute. The Commission also seeks comment on what, if any, alternative safeguards should apply to BOC provisioning of in-region, interLATA, interexchange services in states where the statutory requirements have sunset.

7. *Procedural Framework for Evaluating Sunset.* Pursuant to the statute, the requirements of section 272 (except for subsection (e)) sunset three years after section 271 authorization unless extended by rule or order. The threshold question for the Commission is how it should evaluate whether these requirements of section 272 should sunset after three years or, alternatively, be extended. In particular, the Commission seeks comment on whether it should adopt a rule of general applicability or should proceed by examining each state on a case-by-case basis. If it were to proceed on a case-by-case basis, what would be the nature of the proceeding? How far in advance of the sunset date should the Commission commence the proceeding?

8. The Commission seeks comment on what information it should consider in evaluating whether the statutory requirements should sunset after three years. Specifically, the Commission seeks comment on marketplace developments, but asks more generally what factors it should consider in undertaking this inquiry.

9. *Marketplace Developments.* In order to assess the statutory sunset, the Commission seeks comment on the nature of the marketplace three years post-entry. The Commission recognizes that the market opening requirements of the 1996 Act are designed to bring the benefits of competition to consumers in all markets. In enacting 272, Congress recognized that the local exchange market would not be fully competitive upon its opening. At the same time, Congress clearly contemplated that competitors would be entering the local market, and thereby would provide alternative sources of local exchange and originating access services. To the extent such alternatives exist in the marketplace, the BOCs should be constrained in their ability to discriminate against competing providers of interexchange service. How should these and other developments inform the Commission's consideration? Have circumstances changed in three years to support the sunset of statutory requirements? Has competition continued to develop in states where section 271 applications have been granted and, if so, on which geographic areas or types of customers has that competition been focused? What significance should the Commission place on such evidence in determining how to address the section 272 sunset?

10. The Commission to date has approved thirteen section 271 applications. It asks the BOCs to identify their section 272 affiliates; describe the services provided by each; and discuss why they have chosen to establish multiple affiliates. The Commission also asks interested parties to comment on the direct and indirect costs of continued application of the statutory requirements beyond three years. Would continued application of the statutory safeguards affect competition in the interexchange marketplace?

11. The purpose of the separate affiliate and nondiscrimination requirements in section 272 is to lessen the ability of a BOC to discriminate and/or misallocate costs to the advantage of its own operations, and to make it easier to detect any such behavior. In evaluating alternatives, how should the Commission take into account the unique statutory treatment of the BOCs and their size? What evidence is there of such behavior and on what evidence should the Commission rely? For example, have there been complaints at either the federal or state level of such behavior, and, if so, do the data show that complaints have increased or decreased? Should the Commission take into account whether complaints have increased or decreased, or rely only on final regulatory or judicial findings of discrimination? Is there evidence that BOCs' wholesale performance has deteriorated or improved since grant of a section 271 application and should the Commission rely on allegations that a BOC has ceased to meet the conditions of its section 271 approval or Commission findings that such backsliding has occurred? Should the Commission rely on BOCs' performance under the state-approved performance plans?

12. The first section 272 biennial audits have been performed by independent auditors both for Verizon and SBC. The purpose of the audit under section 272 is to determine whether the BOCs are abiding by the separate affiliate and nondiscrimination requirements. The Commission asks that parties address whether factual findings contained in audit reports should in any way inform the sunset decision, and if so, how? For example, if audits were to reveal no patterns of discriminatory behavior, would that weigh in favor of permitting section 272 to sunset? Alternatively, if audits were to provide the Commission with evidence of clear patterns of BOC discriminatory behavior, might that weigh in favor of continuing the separate affiliate requirements, either generally, or with respect to that BOC?

13. *Alternative Approaches.* In evaluating how to proceed under section 272(f)(1), there are a range of options before the Commission. As discussed more fully in the NPRM, those options include, but are not limited to: (1) Allow the statutory requirements to sunset three years after section 271 authorization; (2) extend the statutory requirements for a defined period of time for all BOCs; (3) allow the statutory requirements to sunset after three years, but adopt less stringent structural separation requirements; (4) allow the statutory separate affiliate requirements to sunset, but retain the statutory biennial audit requirements; or (5) allow the statutory requirements to sunset after three years, but adopt some form of nonstructural safeguards, such as reporting requirements. The

Commission seeks comment on the costs and benefits of each of these alternatives, and invites commenters to suggest other alternatives. It asks commenters to address how our cost-benefit analysis for each alternative should take into account the fact that the BOC will still be required to use a separate affiliate in states where the sunset date has not yet occurred. Additionally, the Commisson seeks comment on a BOC-specific approach, whereby discriminatory behavior may lead to targeted retention of requirements in specific states. Finally, the Commission asks commenters to address how other proceedings currently underway, should inform our analysis.

14. The statute provides that most section 272 requirements will sunset three years after section 271 authorization, absent further Commission action. The Commission seeks comment on this sunset alternative. In particular, it seeks comment on the sufficiency of such a framework. Does the Commission have sufficient tools under pre-existing rules to address any residual concerns about cost misallocation and discrimination by the BOCs?

15. Under the Commission's current rules, the second biennial audit results for a particular state will not be available until after the three year statutory period has passed. Should the Commission permit the statutory requirements to sunset in a particular state prior to the completion of the second biennial audit? Furthermore, the Commission seeks comment on the interrelationship between the sunset provision and section 272(e) of the Act. Section 272(e) states that a BOC affiliate subject to section 251(c) ''shall fulfill any requests from an unaffiliated entity for telephone exchange services and exchange access within a period no longer that the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates.'' The Commission recognizes on the one hand, that both sections 272(e)(2) and (e)(4) could be interpreted as subject to the sunset provision because they depend on the existence of a separate affiliate. On the other hand, the Commission found that section 272(f) specifically exempts section 272(e) from the sunset requirements. The Commission held that section 272(e)(2) and (e)(4) ''can be applied to a BOC after sunset only if that BOC retains a separate affiliate.'' Should the Commission reconsider this conclusion? If so, as a practical matter, how would these requirements be applied in the absence of a separate affiliate? Would continued application of these nondiscriminatory requirements, or ones similar to these, be sufficient to constrain potential anti-competitive behavior by a BOC in the absence of a separate affiliate?

16. In evaluating whether to extend the statutory requirements, the Commission is interested in the costs of continued application of the section 272 requirements. How should it take into account the fact that a number of BOCs have chosen to establish multiple section 272 affiliates? The Commission asks parties to address the efficiency loss and other possible business costs associated with the prohibition of joint ownership of facilities. The Commission further asks parties to identify any other administrative, regulatory or economic costs associated with use of a separate affiliate. What are the costs and benefits of requiring the BOCs to post all transactions on the Internet?

17. What would be an appropriate time period, should the Commission decide to extend the statutory requirements—three more years or something shorter? For example, should we consider extending the statutory requirements long enough to receive the results of the second biennial audit for a particular state? Would extending these requirements assist in protecting interexchange competition and consumer choice? What conditions would warrant adoption of alternative, less stringent structural separation requirements? If the Commission were to conclude that some less burdensome set of structural safeguards should be put in place, what would such a more limited set of alternative safeguards be? Should we require BOCs to establish a separate subsidiary that follows the provisions established in the *Competitive Carrier Fifth Report and Order* (49 FR 34824, October 23, 1998)? Sections 272(e)(1) and (e)(3) continue to exist even if the other requirements of section 272 have sunset. In that vein, the Commission asks for comment on how it should ensure compliance with those provisions, and whether there may be a need for some form of biennial audit on these discrete requirements even after the other section 272 requirements have sunset.

18. The Commission seeks comment on whether it should replace the separate corporate affiliate requirements with nonstructural safeguards. It asks that parties comment on what, if any, requirements or mechanisms may be established as a form of nonstructural safeguard in order to facilitate the detection of discrimination against competing interexchange carriers and cost misallocation. For example, the Commission seeks comment on whether it should impose reporting and/or other nonstructural safeguard requirements on BOCs. What effect, if any, would these safeguards have on preventing cost misallocation, price and non-price discrimination, or a price squeeze? Section 272(e)(3), which does not sunset, requires the BOCs to impute an amount for access no less than that charged to interexchange competitors . Does the Commission need to adopt any rules to implement this imputation requirement?

19. The Commission recently released two Notices addressing national performance measurements and standards, including the *Special Access Measurements and Standards* proceeding. (66 FR 59759, December 17, 2001 and 66 FR 63651, December 10, 2001) The Commission asks that parties comment on whether adoption of measures considered in the *Special Access* proceeding would provide an adequate safeguard, should the section 272 requirements sunset. To what extent, if any, would these performance measurements, if adopted, serve as an effective mechanism in identifying BOC discriminatory behavior?

20. *Other Issues.* The Commission seeks comment on what enforcement tools would be available to it, should the statutory requirements sunset. Should the Commission decide to allow the statutory requirements to sunset, would section 271(d) be available to address instances of potential discrimination or cost misallocation? If the Commission were to adopt less intrusive safeguards in lieu of the statutory requirements, should it adopt mechanisms for modifying or removing these safeguards in the future? The Commission seeks comment on two alternatives. First, the Commission seeks comment on whether BOCs should petition for relief from any safeguards adopted, based on a specific showing, *e.g.,* that their market power over the local exchange and exchange access market has eroded. Second, the Commission seeks comment on whether to set a defined time period for revisiting any safeguards adopted, in order to determine the necessity for and cost effectiveness of maintaining such safeguards.

Initial Regulatory Flexibility Analysis

21. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial 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 generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 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).

22. In the context of this Regulatory Flexibility Analysis, SBA regulations define small telecommunications entities in SIC code 4813 (Telephone Companies Except Radio Telephone) as entities with fewer than 1,500 employees. This NPRM initiates an inquiry concerning the sunset of the statutory requirements under section 272 that apply to the BOCs when they provide in-region, interLATA services. In particular, this NPRM seeks to develop a full record so that the Commission may properly assess, as contemplated by the statute: (1) Whether the structural safeguards and nondiscrimination requirements applied to the BOCs by section 272 should be extended by the Commission, despite the three-year sunset provision in the statute; and (2) whether any alternative safeguards should be put in place for the BOCs in states where the statutory requirements have sunset.

23. The issues under consideration in this proceeding directly affect only the BOCs and their affiliates, which do not qualify as small entities under the RFA. In particular, none of the BOCs is a small entity because each BOC is an affiliate of a Regional Holding Company (RHC), and all of the BOCs or their RHCs have more than 1,500 employees. Insofar as this proceeding applies to other BOC or RHC affiliates, those affiliates are controlled by the BOCs or by the RHC. Accordingly, they are not ''independently owned and operated'' entities for purposes of the RFA.

24. Therefore, the proposals in this NPRM, if adopted, will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the NPRM, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration. This Initial Certification will also be published in the **Federal Register**.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

25. None.

Ordering Clauses

26. Accordingly, pursuant to the authority contained in sections 1, 2, 4(i)–4(j), 201, 202, 205, 251, 271, 272, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–4(j), 201, 202, 205, 251, 271, 272, and 303(r), this NPRM is adopted.

27. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *Shall send* a copy of this NPRM, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–15676 Filed 6–20–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1372; MM Docket No. 01–131; RM–10148]

Radio Broadcasting Services; Benjamin, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses the petition for rule making that underlies the *Notice of Proposed Rule Making (''Notice''),* 66 FR 35406 (July 5, 2001) in this proceeding because the petition is mutually exclusive with a proposal contained in a counterproposal in a prior-filed rulemaking proceeding, namely, *Quanah, Texas,* MM Docket No. 00–148, and was filed seven months after the deadline for filing counterproposals in the *Quanah, Texas,* proceeding. Therefore, the rulemaking petition is dismissed as untimely and the proceeding is terminated.

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. 01–131, adopted June 5, 2002, and released June 14, 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.*

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 02–15674 Filed 6–20–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1373; MM Docket No. 02–69; RM–10385]

Radio Broadcasting Services; Jennings and Iowa, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; withdrawal

SUMMARY: This document dismisses a petition for rule making filed by Apex Broadcasting, Inc. requesting the reallotment of Channel 225C2 from Jennings, Louisiana to Iowa, Louisiana and modification of the authorization for Station KJEF–FM accordingly. *See* 67 FR 17670, April 11, 2002. Apex Broadcasting, Inc. withdrew its interest in the allotment of Channel 225C2 at Iowa, Louisiana. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 02–69, adopted June 5, 2002, and released June 14, 2002. The full text of this Commission decision is 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. 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.*

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 02–15667 Filed 6–20–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1413; MB Docket No. 02–143; RM–10392]

Radio Broadcasting Services; Lebanon, Speedway, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comment on a petition for rulemaking filed on behalf of Radio One, licensee of Station WYJZ(FM), Lebanon, Indiana, proposing to reallot Channel 265A from Lebanon, Indiana, to Speedway, Indiana, and modify the license of Station WYJZ(FM) to reflect the changes. Specific questions raised concern population losses and gains, whether the reallotment will result in a preferential arrangement of allotments and the independence of Speedway as a community within the Indianapolis Urbanized Area. Channel 265A can be allotted at petitioner's requested site 4.9 kilometers (3.0 miles) southeast of the community at coordinates NL 39–46–10 and WL 86–13–45.

DATES: Comments must be filed on or before August 5, 2002, and reply comments on or before August 20, 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: J. Richard Carr, 5528 Trent Street, Chevy Chase, MD 20815.

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. 02–143, adopted, June 5, 2002, and released June 14, 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 Indiana, is amended by removing Lebanon, Channel 265A, and adding Speedway, Channel 265A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 02–15673 Filed 6–20–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1339; MB Docket No. 02–136; RM–10458]

Radio Broadcasting Services; Arlington, Moro, and The Dalles, OR; Covington and Trout Lake, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mid-Columbia Broadcasting, Inc., licensee of Station KMCQ(FM) (''KMCQ''), Channel 283C, The Dalles, Oregon, and First Broadcasting Company, L.P. jointly (''Joint Parties''). First Broadcasting Company, L.P. holds an option to purchase Station KMCQ. The petition proposes to change the community of license of Station KMCQ from The Dalles, Oregon to Covington, Washington, and to downgrade that station's channel from Channel 283C to 283C3, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. The Joint Parties also propose the allotments of Channel 283C1 to Moro, Oregon, Channel 261C2 to Arlington, Oregon, and Channel 226A to Trout Lake, Washington, as first local aural transmission services. The coordinates for requested Channel 283C3 at Covington, Washington, are 47–12–02 NL and 122–00–27 WL. The coordinates for requested Channel 283C1 at Moro, Oregon are 45–29–03 NL and 120–43–48 WL. The coordinates for requested Channel 261C2 at Arlington, Oregon are 45–43–01 NL and 121–11–59 WL. The coordinates for requested Channel 226A at Trout Lake, Washington, are 45–58–38 NL and 121–32–11 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 283C3 at Covington, Washington, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before July 29, 2002, and reply comments on or before August 13, 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: J. Dominic Monahan, Esq., Luvaask Cobb Richards & Fraser, PC.; 777 High Street, Suite 300; Eugene, Oregon 97401 (Counsel for Mid-Columbia Broadcasting, Inc.) and Mark N. Lipp, Esq., Shook, Hardy & Bacon, LLP.; 600 14th Street, NW., Suite 800; Washington, DC 20005 (Counsel for First Broadcasting Company, L.P.)

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. 02–136, adopted May 29, 2002, and released June 7, 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 Oregon, is amended by adding Arlington, Channel 261C2, and Moro, Channel 283C1, and removing Channel 283C at The Dalles.

3. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Covington, Channel 283C3, and Trout Lake, Channel 226A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 02–15670 Filed 6–20–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF43

Endangered and Threatened Wildlife and Plants; Supplemental Proposed Rule To Remove the Douglas County Population of Columbian White-Tailed Deer From the Federal List of Endangered and Threatened Wildlife; Notice of a Public Hearing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revision and notice of public hearing.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is publishing a revised proposal to establish two distinct population segments (DPS) of the Columbian white-tailed deer (*Odocoileus virginianus leucurus*): The Douglas County DPS and the Columbia River DPS. We also propose to remove the Douglas County, Oregon, population from the List of Endangered and Threatened Wildlife, under the Endangered Species Act of 1973 (Act), as amended. A previous proposed rule was issued on May 11, 1999. In this revised proposed rule, we provide new information and clarify our reasons for proposing to delist the population.

Current data indicate that the Douglas County DPS of Columbian white-tailed deer has recovered. This DPS has increased from about 2,500 animals in 1983, to over 5,000 today. The range of the population has also increased. This robust population growth, coupled with habitat acquired and protected for the population, have brought the Douglas County DPS to the point where a change in status is appropriate. This recovery has primarily been the result of habitat acquisition and management for the deer, hunting restrictions, and the application of local ordinances designed to protect the deer population.

The proposed delisting of the Douglas County DPS will not change the endangered status of the Columbia River DPS. It will remain fully protected by the Act.

DATES: We will accept comments until the close of business on August 20, 2002. The public hearing will be held from 6 p.m. until 8 p.m. on July 30, 2002, in Roseburg, Oregon. Prior to the public hearing, the Service will be available from 1 p.m. to 3 p.m. to provide information and to answer questions. Registration for the hearing will begin at 5:30 p.m.

ADDRESSES: The public hearing will be held at the Holiday Inn Express, 375 West Harvard Blvd, Roseburg, Oregon. If you wish to comment, you may submit your comments and materials at the hearing or by any one of several methods:

(1) You may submit written comments and information to the State Supervisor, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 S.E. 98th Ave., Suite 100, Portland, Oregon 97266.

(2) You may hand-deliver written comments to our Oregon Fish and Wildlife Office at the address given above.

(3) You may send comments by electronic mail (e-mail) to: *FW1ColumbianWTD@r1.fws.gov.* See the Public Comments Solicited section below for file format and other information on electronic filing.

FOR FURTHER INFORMATION CONTACT: Cat Brown, Wildlife Biologist, at the Oregon Fish and Wildlife Office (see **ADDRESSES** section) (telephone 503/231–6179; facsimile 503/231–6195).

SUPPLEMENTARY INFORMATION:

Background

The Columbian white-tailed deer (*Odocoileus virginianus leucurus*) is the westernmost representative of 30 subspecies of white-tailed deer in North and Central America (Halls 1978; Baker 1984). It resembles other white-tailed deer subspecies, ranging in size from 39 to 45 kilograms (kg) (85 to 100 pounds (lb)) for females and 52 to 68 kg (115 to 150 lb) for males (Oregon Department of Fish and Wildlife (ODFW) 1995). Generally a red-brown color in summer, and gray in winter, the subspecies has distinct white rings around the eyes and a white ring just behind the nose (ODFW 1995). Its tail is relatively long, brown on top with a white fringe, and white below (Verts and Carraway 1998). The subspecies was formerly distributed throughout the bottomlands and prairie woodlands of the lower Columbia, Willamette, and Umpqua River basins in Oregon and southern Washington (Bailey 1936; Verts and Carraway 1998). Early accounts suggested this deer was locally common, particularly in riparian areas along major rivers (Gavin 1978). The decline in Columbian white-tailed deer numbers was rapid with the arrival and settlement of pioneers in the fertile river valleys (Gavin 1978). Conversion of brushy riparian land to agriculture, urbanization, uncontrolled sport and commercial hunting, and perhaps other factors, apparently caused the extirpation of this deer over most of its range by the early 1900s (Gavin 1978).

By 1940, a population of 500 to 700 animals along the lower Columbia River in Oregon and Washington, and a disjunct population of 200 to 300 in Douglas County, Oregon, survived (Crews 1939; Gavin 1984; Verts and Carraway 1998). These two remnant populations remain geographically separated by about 320 kilometers (km) (200 miles (mi)) of unsuitable or discontinuous habitat.

Columbian white-tailed deer in Douglas County are most often associated with riparian habitats, but studies have shown that the deer uses a variety of lower elevation habitat types. Radio-tagged deer in a recent study selected riparian habitats more frequently than any other habitat type, but were also found using all the other habitat types in the study area (i.e., grassland, grass shrub, oak savannah, oak-hardwood woodland, oak-hardwood savannah shrub, oak-hardwood conifer, conifer and urban/suburban yards) (Ricca 1999). This study found that the areas of concentrated use within a deer's home range were generally located within 200 meters (m) (650 feet (ft)) of streams (Ricca 1999), which confirms earlier work (Smith 1981) suggesting that habitat type is less important than distance to a stream. Open areas (grasslands and oak savanna), are used for feeding between dusk and dawn (Ricca 1999). The diet of Columbian white-tailed deer consists of forbs (broad-leaved herbaceous plants), shrubs, grasses, and a variety of other foods, such as lichens, mosses, ferns, seeds, and nuts (Lowell Whitney, Oregon State University, pers. comm., 2001).

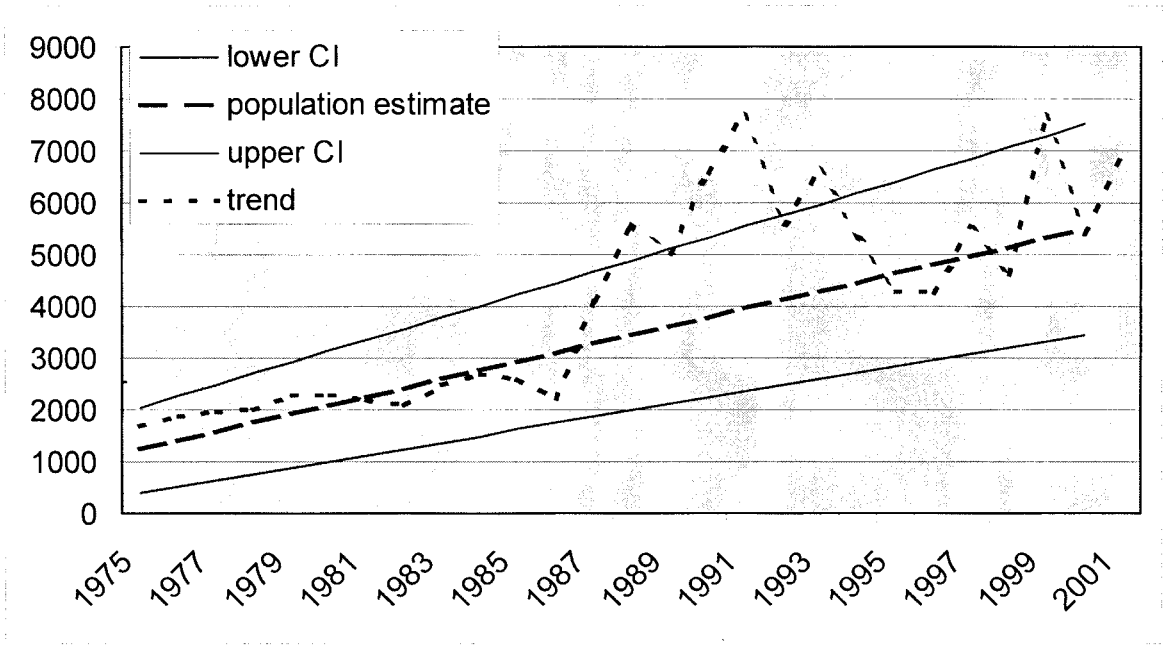
Population estimates for the Columbian white-tailed deer in Douglas County have demonstrated a fairly steady upward trend since management for the population began (see Table 1 and Figure 1).

TABLE 1.—ANNUAL TREND COUNTS (BASED ON SPRING CENSUSES) AND POPULATION ESTIMATES (BASED ON LINEAR REGRESSION) WITH CONFIDENCE INTERVALS (LOWER AND UPPER POPULATION ESTIMATES) FOR COLUMBIAN WHITE-TAILED DEER IN DOUGLAS COUNTY, 1975–2001 [1]

Year	Annual trend count (deer/mile)	Population estimate	Confidence intervals	
			Lower population estimate	Upper population estimate
1975	1.7	1230	407	2054
1976	1.9	1400	528	2272
1977	1.95	1570	650	2489
1978	2	1740	771	2707
1979	2.3	1910	892	2925
1980	2.3	2080	1014	3143
1981	2.2	2250	1135	3361
1982	2.1	2420	1257	3579
1983	2.5	2590	1378	3797
1984	2.7	2760	1500	4015
1985	2.6	2930	1621	4233
1986	2.2	3100	1743	4451
1987	4.1	3270	1864	4669
1988	5.6	3440	1985	4887
1989	5	3609	2107	5105
1990	6.6	3779	2228	5322
1991	7.7	3949	2350	5540
1992	5.6	4119	2471	5758
1993	6.6	4289	2593	5975
1994	5.3	4459	2714	6194
1995	4.3	4629	2835	6412
1996	4.3	4799	2957	6630
1997	5.5	4969	3078	6848
1998	4.6	5139	3200	7066
1999	7.7	5309	3321	7284
2000	5.4	5479	3443	7502
2001	6.9	5649	3564	7720

[1] From D. Jackson, *in litt* 2001.

Figure 1. Douglas County Columbian white-tailed deer Population estimates from 1975 to 2001, with upper and lower confidence intervals (CI). The annual population estimate is superimposed on the linear regression estimate (from D. Jackson, in litt 2001).



In the 1930s, the Columbian white-tailed deer population in Douglas County was estimated at 200 to 300 individuals within a range of about 79 square kilometers (km^2) (31 square miles (mi^2)) (Crews 1939). By 1983, the population had increased to about 2,500 deer (Service 1983). The population has continued to grow and is currently estimated at over 5,000 deer (Columbian White Tailed Deer Recovery Team (Recovery Team), *in litt.* 2001; ODFW, *in litt.* 2001; DeWaine Jackson, ODFW, *in litt.* 2001). Along with this increase in numbers, the range also has expanded to the north and west, and the subspecies now occupies an area of approximately 800 km^2 (309 mi^2) (ODFW 1995). In 2001, ODFW estimated that there were about 6.9 deer per mile along their standard census routes, with a sex ratio of 22 adult bucks to 100 adult does, and about 35 fawns to 100 does. Annual population surveys indicate that deer density has doubled in the last 20 years, and the population may be at or near carrying capacity in portions of its range within Douglas County (Ricca 1999).

The State of Oregon has had a long history of research and active management of the Douglas County population of Columbian white-tailed deer. In 1927, the Oregon State Legislature established a White-tailed Deer Refuge in Douglas County. Early studies estimated a population of 200 to 300 Columbian white-tailed deer on the refuge, and an approximately equal number of Columbian black-tailed deer (*Odocoileus hemionus columbiana*) (Crews 1939). The white-tailed deer in Douglas County was subsequently considered to be a black-tailed deer or a hybrid between the black-tailed deer and the Columbian white-tailed deer by the State of Oregon (ODFW 1995); the refuge was dissolved in 1952, and regulated hunting resumed (Gavin 1984). In 1978, Oregon recognized the white-tailed deer population in Douglas County as the Columbian white-tailed deer and prohibited hunting of white-tailed deer in that County (Service 1983).

Since 1978, ODFW has conducted spring and fall surveys to estimate population size, recruitment, and sex ratios (ODFW, *in litt.* 2001). Standard routes for spotlight surveys have been established along 76.4 km (47.5 mi) of road within the known range of the population (ODFW, *in litt.* 2001). The fall deer census counts both Columbian white-tailed deer and Columbian black-tailed deer throughout Douglas County, from November 15 thru December 15 in most years, on warmer, rainy nights when the deer are most active. All deer observed are classified by species, sex, and age (i.e., fawns, does, or bucks by antler class). This allows an estimate of fawn production going into winter (fawns per 100 adults), and in the case of black-tailed deer, the post hunting season buck survival (bucks per 100 does) (Steve Denney, ODFW, *in litt.* 2001).

The spring census is similar to the fall count. On warm, wet nights in March, ODFW conducts a spotlight count along the standard road routes, recording both white-tailed and black-tailed deer. All deer observed are recorded and classified as either adults or fawns; this provides an estimate of overwinter fawn survival (fawns per 100 does) and population trend (expressed as deer per mile) (S. Denney, *in litt.* 2001).

The State also implements an active research program, in coordination with the Service and Oregon State University, to investigate deer habitat use and movement of radio-tagged individuals (Ricca 1999; ODFW 1995; ODFW, *in litt.* 2001). Since 1998, for example, ODFW has been transplanting radio-tagged Columbian white-tailed deer from areas of high deer densities to Mildred Kanipe Memorial Park in northwestern Douglas County. The goals of the project have been to boost numbers of deer in the

park, accelerate range expansion to the north, to refine capture and transplanting techniques, and to move deer from areas where damage has been a concern (S. Denney, *in litt.* 2001).

The Columbian white-tailed deer was listed as endangered by the State with the passage of the Oregon Endangered Species Act in 1987 (ODFW 1995). In 1995, ODFW reviewed the status of the Columbian white-tailed deer in Oregon (both Douglas County and Columbia River populations), and concluded that the subspecies had recovered (ODFW 1995). At the November 1995 meeting of the Oregon Fish and Wildlife Commission (OFWC), the Commissioners voted unanimously to remove the Columbian white-tailed deer from the State of Oregon list of threatened and endangered species; the subspecies was placed on the State Sensitive Species List for continued monitoring (OFWC 1995). Oregon continues to prohibit hunting of white-tailed deer in all western Oregon big game management units (ODFW 2001).

Distinct Vertebrate Population Segment

The Douglas County and Columbia River populations of the Columbian white-tailed deer meet the requirements for consideration as distinct population segments as described in our Policy Regarding the Recognition of Distinct Vertebrate Population Segments, published in the **Federal Register** on February 7, 1996 (61 FR 4722). For a population to be considered as a distinct vertebrate population segment, two elements are considered: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; and (2) the significance of the population segment to the species to which it belongs.

A population may be considered discrete if it is (1) separated from other populations of the same taxon due to physical, physiological, ecological, or behavioral factors or (2) limited by international governmental boundaries where there are differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms. The Douglas County and Columbia River populations of Columbian white-tailed deer are discrete because they are geographically isolated from each other. Historically, this subspecies ranged from the south end of Puget Sound in Washington south to the Umpqua River drainage in Oregon (Bailey 1936). At the present time, the subspecies is found in two locations (along the Columbia River in Washington and Oregon, and in Douglas County, Oregon), which are separated by over 320 km (200 mi) of discontinuous or unsuitable habitat. Columbian white-tailed deer are not migratory and appear to restrict their movements to relatively small home ranges (ODFW 1995). Laboratory research has also demonstrated that there is a relatively large genetic difference between the Douglas County and Columbia River populations of Columbian white-tailed deer (Gavin and May 1988), which indicates a lack of gene flow between the two populations. As a result, the wide geographic gap in suitable habitat between the Columbia River and Douglas County populations demonstrates that this subspecies has two discrete population segments.

The following issues are considered when determining significance: (1) Persistence of the discrete population segment in an unusual or unique setting for the taxon; (2) evidence that loss of the segment would result in a significant gap in the range of the taxon; (3) the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (4) the population segment differs from other populations of the species in its genetic characteristics.

The Douglas County and Columbia River populations are considered significant under our policy based on two factors. First, the loss of either of the Douglas County and Columbia River populations would result in a significant gap in the range of the subspecies. The loss of either population would substantially constrict the current range of the subspecies. Second, each population has genetic characteristics that are not found in the other population (Gavin and May 1988). Because the Douglas County and Columbia River populations of the Columbian white-tailed deer are discrete and significant, they warrant recognition as Distinct Vertebrate Population Segments under the Act.

Review of the Columbian White-Tailed Deer Recovery Plan

In accordance with the Act, we appointed a team of experts to develop a recovery plan for the Columbian white-tailed deer. We approved the original Columbian White-tailed Deer Recovery Plan (Recovery Plan) in 1977, and the Recovery Team revised the Recovery Plan in 1983 to include the newly recognized Douglas County population (Service 1983).

Because of the distance between the Columbia River and Douglas County populations and differences in habitats and threats, the Recovery Plan addresses the recovery of each population separately. The Recovery Plan identified the following objectives for the Douglas County population: (1) To downlist the population to threatened, the Recovery Plan recommended the maintenance of 1,000 Columbian white-tailed deer in a viable status on lands within the Umpqua Basin of Douglas County, while keeping the relative proportions of deer habitat within the known range of the subspecies from further deterioration; (2) Additionally, to delist the population, it recommended the maintenance of a minimum population of 500 animals from the larger population be distributed on 2,226 hectares (ha) (5,500 acres (ac)) of suitable, secure habitat within the Umpqua Basin of Douglas County on lands owned, controlled, protected, or otherwise dedicated to the conservation of the species (Service 1983).

The Recovery Plan defined secure habitat as those areas which are protected from adverse human activities (e.g., heavy, unregulated grazing by domestic animals, clearing of woody plants) in the foreseeable future, and which are relatively safe from natural phenomena that would destroy their value to the subspecies (Service 1983:46). The Recovery Plan did not define secure habitat to include only publicly owned lands; rather it provided further guidance on secure habitat by stating that local entities, including planning commissions, county parks departments, and farm bureaus, could secure habitat through zoning ordinances, land use planning, parks and greenbelts, agreements, memoranda of understanding, and other mechanisms available to local jurisdictions (Service 1983:52). The Recovery Plan also recommended that private conservation organizations be encouraged to secure habitat for Columbian white-tailed deer through easements, leases, acquisitions, donations, or trusts (Service 1983:52).

The Recovery Plan identified a series of tasks that the Recovery Team recommended to meet the downlisting and delisting objectives for the Douglas County population of Columbian white-tailed deer (Service 1983:45–54). These tasks fall into five main categories: (1) Track population status; (2) ensure viability of the population through enforcement of existing laws and regulations; (3) secure and protect habitat to allow the population to increase; (4) study the ecology of the population and assess the threat of hybridization with Columbian black-tailed deer; and (5) encourage public support for Columbian white-tailed deer restoration. Nearly all of the tasks listed in the Recovery Plan (Service 1983)

have been accomplished. We provide a summary of recovery tasks and their implementation status below.

(1) *Track population status.* Tasks in this first category have been fully implemented. ODFW, with funding from the Service, has surveyed the population almost yearly since 1978. Data collected include spring and fall trend counts, estimates of overall population size, recruitment, and sex ratios. Surveys indicate that the population has grown from about 2,500 animals in 1982 to about 5,000 in 2001 (Service 1983; ODFW, *in litt.* 2001). The Recovery Plan included a model to estimate the minimum population size necessary to avoid extinction; using this model, the Recovery Team concluded that a population of 500 deer in Douglas County could be considered safe from the potentially deleterious effects of inbreeding (Service 1983). The most recent estimate of the overall population of Columbian white-tailed deer in Douglas County is significantly larger than the objectives established in the recovery plan (ODFW, *in litt.* 2001).

(2) *Ensure viability of the population through enforcement of existing laws and regulations.* Tasks concerning enforcement of existing laws to protect the Columbian white-tailed deer have been fully implemented. It is currently illegal to take Columbian white-tailed deer under State law (ODFW 2001) and as proscribed in section 9 of the Act. Service biologists have coordinated with our agency's Law Enforcement Special Agents and our National Fish and Wildlife Forensics Laboratory in Ashland, Oregon, to refer illegal take cases to the Oregon State Police, which has successfully prosecuted a number of Columbian white-tailed deer poaching cases (Sgt. Joe Myhre, Oregon State Police, pers. comm., 2001). See additional discussion under Factor D, below, for more detail. We have also engaged in section 7 consultations with Federal agencies for those actions which were determined to have the potential to affect Columbian white-tailed deer.

(3) *Secure and protect habitat to allow the population to increase.* Since 1978, over 2,830 ha (7,000 ac) have come into public ownership and are being managed for values compatible with Columbian white-tailed deer use (see full description of these parcels in Factor A, below). This acreage includes the North Bank Habitat Management Area (NBHMA), managed by the Bureau of Land Management (BLM), and Mildred Kanipe Memorial Park. Smaller parcels owned by Douglas County and The Nature Conservancy (TNC) also provide secure refugia for deer. In addition, Douglas County has used its authorities to conserve the Columbian white-tailed deer. The Douglas County Comprehensive Plan (DCPD) (DCPD 2000a), county zoning ordinances (DCPD 2000b), and the Douglas County Deer Habitat Protection Program (DCPD 1995), also have been essential in protecting open space and rural agricultural landscapes used by the deer.

The Recovery Plan recommended that the Service and ODFW develop a long-term management plan for the Douglas County population of Columbian white-tailed deer (Service 1983:50). Although a single, population-wide plan has not been prepared, this task has been, or is being, accomplished, in part, through site-specific management plans for the NBHMA (BLM 2001), Douglas County's Habitat Protection Program for the Columbian white-tailed deer (DCPD 1995), and Mildred Kanipe Memorial Park (plan currently under development) (Jeff Powers, Director, Douglas County Parks Department, pers. comm., 2001).

(4) *Study the ecology of the population and assess the threat of hybridization with Columbian black-tailed deer.* Several tasks in the Recovery Plan recommended research on the ecology of the population. A substantial amount of research has been conducted by ODFW and Oregon State University (Smith 1981; ODFW 1995; Ricca 1999; L. Whitney, pers. comm., 2001). BLM used information from these studies to develop the NBHMA management plan, the largest property managed for the deer. Laboratory studies and field observations have been used to gauge the extent of hybridization between Columbian white-tailed deer and Columbian black-tailed deer in Douglas County (Gavin and May 1988; Kistner and Denney 1991; ODFW 1995); none of these studies has indicated that hybridization is a threat to the population.

(5) *Encourage public support for Columbian white-tailed deer restoration.* The final set of tasks in the Recovery Plan deals with educating the public about the Columbian white-tailed deer restoration program. This task continues to be implemented by biologists from the Service and ODFW. ODFW has produced informational materials on the deer population in Douglas County for the public and landowners. The Service and ODFW also provide information and recommendations to private landowners who have Columbian white-tailed deer on their property.

Recovery Plans are intended to guide and measure recovery. The Act provides for delisting whenever the best available information indicates that a species, subspecies, or distinct population segment is no longer endangered or threatened. The Columbian white-tailed deer population is robust and expanding, and substantial habitat has been protected by Federal acquisition and Douglas County's zoning and open space regulations. We acknowledge that it is difficult to demonstrate that the specific delisting objective of 500 deer on 5,500 ac of secure habitat as stated in the Recovery Plan has been met (Service 1983). Surveys consistently show that most deer depend on a combination of public and private lands. Five hundred deer may live entirely on secure and suitable lands managed for deer, but demonstrating that is not feasible. However, as discussed below in the listing factor analysis, we believe that the improved status of the Columbian white-tailed deer in Douglas County justifies its removal from the List of Endangered and Threatened Wildlife. We have reached this conclusion with the concurrence of the Recovery Team (Recovery Team, *in litt.* 2001).

Previous Federal Action

On March 11, 1967, the Columbian white-tailed deer was listed in the **Federal Register** as an endangered species under the Endangered Species Preservation Act of 1966 (32 FR 4001). At that time, the subspecies was believed to occur only along the Columbia River, whereas the population in Douglas County was believed to be hybridized with the Columbian black-tailed deer (ODFW 1995). On March 8, 1969, we again published in the **Federal Register** (34 FR 5034) a list of fish and wildlife species threatened with extinction under the Endangered Species Conservation Act of 1969. This list again included the Columbian white-tailed deer. On August 25, 1970, we published a proposed list of endangered species, which included the Columbian white-tailed deer, in the **Federal Register** (35 FR 13519) as part of new regulations implementing the Endangered Species Conservation Act of 1969. This rule became final on October 13, 1970 (35 FR 16047). Species listed as endangered on the above-mentioned lists were automatically included in the Lists of Endangered and Threatened Wildlife when the Endangered Species Act was enacted in 1973. In 1978, the State of Oregon determined that white-tailed deer in the Roseburg area belonged to the Columbian subspecies (ODFW 1995). This determination resulted in that population being considered as endangered, together with the Columbia River population.

On May 11, 1999, we published a proposed rule to remove the Douglas County population of Columbian white-tailed deer from the List of Endangered and Threatened Wildlife (64 FR 25263). We accepted public comments until July 12, 1999. We reopened the public comment period on November 3, 1999, to allow peer review of the proposed rule (64 FR 59729), and the comment period closed on November 18, 1999. We opened the public comment period again from December 29, 1999, to January 13, 2000, in order to provide three peer reviewers an opportunity to review previous public comments, and to accept any new public comments on the proposed rule (64 FR 72992).

Summary of Comments on the First Proposal

In the May 11, 1999, proposed rule and associated notifications, and subsequent comment period reopenings, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We contacted appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties and asked them to comment. We published newspaper notices in the *News-Review,* Roseburg, Oregon, on May 30, 1999, and November 9, 1999, and in *The Oregonian*, Portland, Oregon, on May 30, 1999, and November 7, 1999, which invited general public comment. We received 89 comments, including those of 1 Federal agency, the State of Oregon, 3 academic or agency scientists, the Recovery Team, and 70 individuals or groups; 73 supported, 14 opposed, and 4 were neutral on the proposed action.

Comments included substantial new information regarding the management status of parcels considered secure for deer, and some commenters questioned our interpretation of population estimates for deer on those parcels. In this supplemental proposed rule, we acknowledge the merit of these comments, and have completely revised the proposed rule to incorporate this information, as well as other new information available since the publication of the proposed rule in 1999. We will seek peer review of this proposal during the public comment period.

Comments received during the comment periods are addressed in the following summary. Comments of a similar nature or point are grouped into a number of general issues.

Issue 1: One commenter raised questions about the quality of the information used in preparing the original proposed rule. This commenter provided information regarding the management status of parcels considered secure for deer, and also criticized the interpretation of population estimates for deer on those parcels.

Our Response: We have revised the proposed rule to better explain the basis for delisting. The revised proposed rule incorporates the information provided by the commenter, as well as new information available since the publication of the proposed rule in 1999. We have carefully re-examined all available information on current threats to the population, the relevant management documents for parcels providing habitat for the deer, and deer population estimates in revising the proposed rule. Because of this new information, we are issuing this supplemental proposed rule to delist the Douglas County population of Columbian white-tailed deer, and are providing another opportunity for the public to comment on this new proposal. We will also seek peer review of this proposal during the public comment period.

Issue 2: One commenter asserted that the delisting criteria specified in the Recovery Plan had not been met, and that we must withdraw our proposal to delist until all of the goals identified in the Recovery Plan had been fully attained.

Our Response: Recovery plans are intended to guide and measure recovery, but the Act also provides for delisting a species whenever it is no longer endangered or threatened based on an analysis of five factors set forth in the Act (16 U.S.C. § 1533(a)(i), *see also* 50 CFR § 424.11(d)). The deer population is larger and more robust than the Recovery Team envisioned in 1983, and over 2,830 ha (7,000 ac) of habitat used by the deer has been acquired by Federal and local government agencies.

We acknowledge that we do not know if the Columbian white-tailed deer has met the delisting criterion specified in the Recovery Plan (Service 1983) (e.g., 500 deer distributed on 5,500 acres of secure habitat). However, the deer population is large, a substantial amount of habitat in Douglas County is being managed for values compatible with Columbian white-tailed deer needs, and threats to its continued existence have been ameliorated. Our review of the five factors (see discussion in the Summary of Factors Affecting the Species below) shows that the Douglas County population of Columbian white-tailed deer has recovered and no longer requires the protection of the Act. We have reached this conclusion with the concurrence of the Recovery Team (Recovery Team, *in litt.* 2001).

Issue 3: One commenter referred to a task in the Columbian White-tailed Deer Recovery Plan which recommended completion of a long-term management plan for the Douglas County population of the deer. The commenter claimed that delisting should not be considered until this task is completed.

Our Response: Although a single, population-wide plan has not been prepared, this task has been accomplished, in part, through management plans for the North Bank Habitat Management Area (NBHMA)(BLM 2001) and Douglas County's Habitat Protection Program (DCPD 1995) for the Columbian white-tailed deer. In addition, a management plan is currently under development for Mildred Kanipe Memorial Park (J. Powers, pers. comm., 2001). These large parcels, in concert with other lands in public ownership and those governed by Douglas County through zoning and open space regulations, ensure the population's continued protection. See the full discussion of this issue under Factor A, below.

Issue 4: We received 10 comment letters with recommendations regarding the 5-year post-delisting monitoring plan. Peer reviewers of the original proposed rule to delist the population unanimously stressed the importance of a monitoring program based on rigorous sampling procedures, in order to detect real trends in the population.

Our Response: Section 4(g) of the Act requires the Service to implement a system, in cooperation with the State, to effectively monitor the status of delisted recovered species for a minimum of 5 years. If we do delist the population, we will ask the Recovery Team and stakeholders to work with Service biologists to design and implement a statistically sound monitoring plan for the Douglas County population of the deer immediately after the final rule is published. We anticipate that the monitoring program will include spring and fall census counts, analysis of sex ratios, and recruitment estimates to determine population status. See the Monitoring section of this proposed rule for more information.

Issue 5: We received three comment letters on the 1999 proposed rule that recommended the Service monitor trends in habitat quality. The commenters suggested that formulation of a habitat management plan could improve existing riparian habitat, adjacent upland oak savannah, and native grasslands within the range of the deer in Douglas County. This

information could then be used to evaluate areas for potential transplantation and population expansion.

Our Response: We acknowledge the critical importance of maintaining and improving existing habitats used by the deer. We believe the currently approved management plans provide excellent protection for a substantial amount of occupied and potential habitats. The monitoring plan (see the Monitoring section) will include an annual review of habitat quality and trends, and will result in recommendations to the Service and ODFW, if action is required. We will continue to work with ODFW to identify additional parcels which may be protected and managed through available mechanisms, such as conservation easements with willing landowners.

Issue 6: Several commenters recommended that additional research should be pursued after the Douglas County population of Columbian white-tailed deer is delisted. Recommended research included: (1) A study of the genetic relationship among the Columbian white-tailed deer populations in Douglas County and along the lower Columbia River, and the northwest white-tailed deer in Idaho; (2) a study of mortality caused by parasites, diseases, and predators; (3) a study to determine if Columbian black-tailed deer are competitively excluding Columbian white-tailed deer from portions of the North Bank Habitat Management Area; and (4) a study of Columbian white-tailed deer movements at night, to determine if nocturnal spatial distribution is similar to that observed in daytime and twilight hours.

Our Response: We will work with the Recovery Team to identify needed research and potential funding sources that may assist in the management of the population after delisting.

Issue 7: Several commenters recommended that we initiate a trap and transplant program to reduce densities of Columbian white-tailed deer in portions of their range in Douglas County, and to create new populations in historic range.

Our Response: State guidelines direct ODFW to manage wildlife populations to assure population health. An important component of the State's continuing management of the subspecies will likely include a translocation program of Columbian white-tailed deer to currently unoccupied habitat within historic range. Present urban infrastructure creates obstructions to deer movement and severs natural connectivity between habitat areas. Interstate 5 and State and county highways create hazards that impede deer movement because of traffic-induced mortality and harassment. In addition, fences, commercial and residential developments, and other urban features interfere with deer movement and the availability of suitable habitat (Service 2001).

Over the past 3 years, ODFW has moved 18 Columbian white-tailed deer to Mildred Kanipe Memorial Park from areas with high densities. One of the objectives of this operation was to remove deer from areas with perceived damage problems (S. Denney, *in litt.* 2001). We will work with the Recovery Team and biologists at ODFW to determine if continued translocation is an appropriate management tool to reduce deer densities, and to evaluate its potential to create a new population in currently unoccupied historic habitat in the Umpqua or Willamette basins.

Issue 8: We received 65 comment letters on the proposed rule from people concerned that delisting the deer would result in excessive hunting, leading to the need to re-list the population. One other commenter recommended that the Service monitor ODFW's proposed harvest level for the population, and allow public input on the issue.

Our Response: If the Douglas County population of Columbian white-tailed deer is delisted, the OFWC, with input from ODFW, would be responsible for determining whether a sport hunting season is justified. A recreational hunt could be considered as a tool to reduce population densities and improve herd health in selected areas (ODFW, *in litt.* 2001). We will monitor the population for at least 5 years after delisting, and will work closely with ODFW to determine appropriate management options for the population. If sport hunting is determined to be an appropriate management tool, we would recommend conservative harvest levels to maintain a healthy population.

Initially, ODFW intends to focus its efforts on expanding the range of the Columbian white-tailed deer with a trap and relocation program (ODFW, *in litt.* 2001). A recreational hunt could be considered as another tool to reduce population densities and improve herd health in selected areas (ODFW, *in litt.* 2001). The population currently numbers over 5,000 deer, which is considered to be large enough to withstand some level of regulated harvest (ODFW, *in litt.* 2001). ODFW seeks public input before setting big game harvest levels each year.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for listing, reclassifying, or removing species from listed status. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act; these same five factors must be considered when a species is delisted. A species may be delisted according to section 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for one of the following reasons: (1) Extinction; (2) Recovery; or (3) Original data for classification of the species were in error.

After a thorough review of all available information, we have determined that the Douglas County population of Columbian white-tailed deer is no longer endangered or threatened with extinction. A substantial recovery has taken place since its listing in 1978, and none of the five factors addressed in section 4(a)(1) of the Act currently threatens the continued existence of the subspecies in Douglas County. These factors, and their relevance to the Douglas County population of Columbian white-tailed deer, are discussed below.

A. *The present or threatened destruction, modification, or curtailment of habitat or range.* The Recovery Team recognized conversion of habitat to rural residential homesites and intensive livestock grazing as the prime threats to Columbian white-tailed deer habitat in Douglas County (Service 1983). A large area of habitat used by the deer has been protected, which has contributed to the population's recovery. Since 1978, over 2,830 ha (7,000 ac) have come into public ownership within the range of the Douglas County population of Columbian white-tailed deer. This acreage includes the BLM's NBHMA and Douglas County's Mildred Kanipe Memorial Park. In addition, several smaller parcels owned by the county and private landowners provide important refuge or hiding cover for deer.

The largest publicly owned parcel that provides habitat for deer is the NBHMA. The NBHMA, formerly the Dunning Ranch, was previously managed as a working cattle ranch. It was acquired by the BLM in 1994 through a land exchange (BLM 1998) specifically to secure habitat for the deer

since it lies within the population's core habitat. The NBHMA is located east of Roseburg in the North Umpqua River Basin and is characterized by four distinct habitat types: grasslands and oak savannah (29 percent), hardwood/conifer forest (52 percent), oak woodlands (17 percent), and other habitat such as rock outcrops, riparian areas, and wetlands (2 percent) (BLM 1998). As many as 348 Columbian white-tailed deer have been estimated to occur on the NBHMA (S. Denney, ODFW, pers. comm., 2001). There was no active management at the NBHMA in the period between its acquisition in 1994 and the completion of a management plan in 2001; this lack of management has resulted in a decline in habitat quality (BLM 2000). Thatch (rank vegetation) has built up in grassland areas, and invasion of undesirable shrub species, cedar encroachment in meadow areas, and conifer seedling establishment in oak woodlands have contributed to the decline in habitat quality by inhibiting forb production for deer forage, and by reducing the availability of preferred cover (BLM 1998). Even with this decline in habitat quality, the site continues to provide habitat for over 300 deer in the core of the population's range. The delay in initiation of management activities was due to the need to develop and approve a management plan for the parcel. A final management plan was approved in June 2001 (BLM 2001).

Implementation of the NBHMA final management plan will improve habitat quality for the deer (Service 2001). In October 2001, BLM began implementing the management plan by conducting a controlled burn to remove thatch on 162 ha (400 ac); subsequent monitoring shows that the burn was successful and new forage plants have sprung up in the burn zone (Ralph Klein, BLM, pers. comm., 2001). We will track the implementation of the NBHMA management plan through annual monitoring reports from the BLM (Service 2001).

Under the final management plan, management objectives for the site include: (1) Increased availability, palatability, and nutritional quality of deer forage and browse; (2) maintenance of mature oak, shrub, and herbaceous vegetation components; (3) control of noxious weeds; and (4) development of water sources (BLM 2000). Livestock grazing, prescribed burning, thinning, and timber management are some of the management tools that will be used to achieve these objectives (BLM 2000); these activities will be scheduled to avoid sensitive periods (such as fawning and nursing) for the deer (Service 2001).

Livestock grazing and prescribed burning will be used to increase the abundance of desirable forage plants, and thinning in oak woodlands and removal of encroaching conifers will provide more preferred open canopy hiding cover for the deer (BLM 2001; Service 2001). Heavy unregulated livestock grazing can be considered a threat to the Columbian white-tailed deer (Service 1983:46), and the BLM recognizes that livestock grazing as a tool to improve deer habitat will have to be managed carefully on the NBHMA (BLM 2001). Poorly managed grazing can lead to the introduction or spread of non-native plant species, soil erosion and compaction, and reduction of desirable deer forage plants. However, the BLM will use livestock grazing as a tool to reduce thatch and annual grasses in favor of native, perennial vegetation that the deer prefer, and in areas that are inaccessible to equipment used for mowing or seed drilling (BLM 2001). In the final management plan for the NBHMA, the BLM has stated that it will manage cattle composition to be compatible with the deer (e.g., as adult/yearling units as opposed to cow/calf units) (BLM 2001); also, the timing and stocking rates would be based on vegetation manipulation to benefit the deer, rather than maximize benefits to the cattle (BLM 2001).

The final management plan also calls for development of water guzzlers, development of springs, pond construction, stream rehabilitation, and wetland enhancement to increase the use of habitats that are lightly used by the deer at present due to limited water availability (BLM 2001). This, in conjunction with forage and habitat improvement, should increase the carrying capacity of the NBHMA for Columbian white-tailed deer, and would likely result in a better distribution of animals across the management area (Service 2001).

The management plan also provides for a range of recreational opportunities within the NBHMA (non-motorized trail use, hunting, and a boat ramp) (BLM 2001). In our Biological Opinion on the management plan, we concluded that these activities are compatible with management for Columbian white-tailed deer and other special status species because the potential increase in public use that may result is not anticipated to negatively impact the deer, and the large amount of escape cover and forage areas available will provide an ample amount of refuge area where disturbance may be avoided (Service 2001).

Mildred Kanipe Memorial Park, managed by Douglas County Parks Department, is the second largest parcel of publicly owned land (445 ha) (1,100 ac) within the range of the Douglas County population of Columbian white-tailed deer; it lies about 16 km (10 mi) north of the NBHMA. Ms. Kanipe left the ranch to Douglas County in her will and directed the County to manage it as a wildlife refuge and working ranch (Kanipe 1983). Park activities, including recreation (equestrian and hiking trails), timber harvest, farming, and grazing are guided by the provisions in Ms. Kanipe's will and the Douglas County Farm Lease program (Kanipe 1983; Douglas County Parks Department 2001). Ms. Kanipe's will states that the ranch is to be used for park purposes and includes a number of conditions relating to its management as a park: (1) No hunting or trapping is allowed; (2) all animals, birds, and fish are protected as in a refuge, provided that the county, for park purposes, may plant and permit fishing in the ranch ponds; (3) trapping and hunting of predatory animals is allowed in the event that they become a nuisance and harmful to domestic and wild animals both within the park and on adjoining lands; (4) the county may establish a limited picnic ground and associated parking facilities, but no motorized vehicles are permitted within the park except as may be required for park construction and maintenance; (5) pasture lands are to be cared for and continued in grass and, equestrian trails shall be permitted; and (6) no timber shall be cut or harvested except as may be necessary, and cutting then, only upon a sustained yield basis with all revenue from timber cutting used by the county in capital improvements upon this park (Kanipe 1983). The current farm lease at the park allows the lessee to graze sheep and cattle at the ranch. The terms of the lease include provisions to maintain pasture quality, minimize soil erosion, eradicate noxious non-native plants, and protect native wildlife and watercourses (Douglas County Parks Department 2001). The annual farm lease provisions are reviewed and approved by ODFW biologists (M. Black, ODFW, pers. comm., 2001).

Douglas County is preparing a Coordinated Resource Management Plan (CRMP) for Mildred Kanipe Memorial Park; a Steering Committee has been established, which includes representatives from ODFW, local environmental and recreation groups, the Douglas County Parks Advisory Board, and individuals with forestry and range expertise (J. Powers, pers.

comm., 2001). The management plan will cover a wide range of issues, including recreation, wildlife, grazing, timber management, and riparian conservation, and will address such issues as the appropriate level of livestock grazing for the long-term (J. Powers, pers. comm., 2001). In the past several years, Douglas County has explored options for harvesting timber in the park, but these plans have been set aside until appropriate options are developed as part of the Coordinated Resource Management Planning process (J. Powers, pers. comm., 2001).

Since 1998, ODFW has conducted three translocations of marked Columbian white-tailed deer to the park. Of the 18 deer transplanted to the park, 7 are known to have died. Of those that died, one was an accidental death, two were killed by vehicles, one is suspected to have died of natural causes, two were likely the result of predation, and one was most likely an illegal kill (M. Black, ODFW, pers. comm., 2001; S. Denney, pers. comm., 2001). The survivors have remained in or near the park, and at least two radio-collared does have been observed with fawns (S. Denney, *in litt.* 2001). In 2001, 25 deer were counted in the park (S. Denney, pers. comm., 2001).

One parcel on private property provides protection for Columbian white-tailed deer habitat in perpetuity. In 1992, TNC purchased the Oerding Preserve at Popcorn Swale, a 14-ha (35-ac) site which is managed primarily for the endangered rough popcornflower (*Plagiobothrys hirtus*) (Service 2000b). The management objective at the preserve is to restore the native wet prairie (TNC 2001), but the preserve also provides some suitable foraging habitat for deer. Surveys have detected about 20 Columbian white-tailed deer on the parcel (S. Denney, pers. comm., 2001).

Douglas County has implemented land use plans and zoning ordinances that apply to private lands to protect habitat and assist in deer recovery (DCPD 2000a). These protective measures include retention of existing land uses that maintain essential habitat components. Minimum lot sizes for farm use and timberlands, and building setbacks along riparian zones, have been established to ensure maintenance of habitat and travel corridors (ODFW 1995; DCPD 2000a).

Douglas County's Columbian White-tailed Deer Habitat Protection Program was established in 1980 (DCPD 2000a). The County, in conjunction with ODFW and the Service, identified the range of habitat with the greatest density of Columbian white-tailed deer, and 29,743 ha (73,495 ac) were designated as Essential Habitat Areas (DCPD 1995). Potential conflicting uses within the Essential Habitat Areas were identified as: (1) residential development in native riparian habitat; (2) additional livestock development in lowland river valleys; and (3) brush clearing aimed at creating and improving pastures for livestock that removes cover for deer (DCPD 2000a:6–19). To address these concerns, 96.5 percent (28,553 ha) (70,555 ac) of the resource lands (agricultural or farm/forest) within the Essential Habitat Area are subject to a minimum parcel size of 32 ha (80 ac); any land division requests of less than 30 ha (75 ac) must be reviewed by ODFW (DCPD 2000a). Land zoned as non-resource lands within the Essential Habitat Area (3.5 percent) is limited to single family dwellings, and rural residential development is limited to 0.8 ha (2 ac) and 2 ha (5 ac) lots (DCPD 1995, 2000a). Another component of Douglas County's program to preserve habitat for the subspecies is a 30-m (100-ft) structural development setback from streams to preserve riparian corridors within the Essential Habitat Area (DCPD 2000a).

Douglas County's application of zoning to protect Columbian white-tailed deer has been an essential factor in the population's recovery. The county has succeeded in limiting development and maintaining low human densities in the core of the deer population's range. The maintenance of open space on private lands significantly enhances the value of small publicly owned parcels used by the deer, such as Whistler's Bend County Park. Whistler's Bend County Park is directly south of the NBHMA, across the North Umpqua River. The park is 71 ha (175 ac) in size, and has a population of about 100 Columbian white-tailed deer (S. Denney, pers. comm., 2001). The park is managed for human recreation needs (DCPD 2000a), but also provides hiding cover for deer which make forays onto adjacent private lands to forage in the pastures and suburban yards surrounding the park (S. Denney, pers. comm., 2001). Small parcels such as this park function as important refugia for deer that meet many of their foraging requirements on adjacent private lands (Recovery Team, *in litt.* 2001).

Since management actions began, the population of Columbian white-tailed deer in Douglas County has increased and its range has expanded. In the 1930s, the Columbian white-tailed deer population in Douglas County was estimated at fewer than 300 individuals within a range of about 79 km² (31 mi²) (Crews 1939). By 1983, the population had increased to about 2,500 deer (Service 1983). The population has continued to grow and is currently estimated at over 5,000 deer (Recovery Team, *in litt.* 2001; ODFW, *in litt.* 2001; DeWaine Jackson, ODFW, *in litt.* 2001). Along with this increase in numbers, the range also has expanded to the north and west, and the subspecies now occupies an area of approximately 800 km² (309 mi²) (ODFW 1995).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The white-tailed deer is a popular big game animal. Past overutilization was considered a threat to the Douglas County population of Columbian white-tailed deer, and was one of the several factors leading to its listing as endangered.

Currently, the State of Oregon does not permit any hunting of white-tailed deer in western Oregon (ODFW 2001), and measures have been taken to reduce accidental shooting of white-tailed deer. For example, at present, black-tailed deer hunting is allowed on the NBHMA, but is limited by special permit only, usually 25 permits or less, and is limited to one or two weekends of the general deer season. Pre-hunt training on deer identification is mandatory to prevent the accidental shooting of white-tailed deer. This has resulted in hunting having no significant impacts to the Columbian white-tailed deer population in this area (Service 2001).

Recreational hunting and the possession of loaded firearms is not permitted in Douglas County parks, with the exception of limited waterfowl hunting in some reservoir parks. Therefore, deer hunting is prohibited at Mildred Kanipe Memorial Park and at Whistler's Bend County Park (J. Powers, pers. comm., 2001). Ms. Kanipe's will also states that no hunting or trapping is to be allowed in the park (Kanipe 1983). TNC also prohibits hunting on the Oerding Preserve in order to maintain a refugia for Columbian white-tailed deer (TNC 2001).

If the Douglas County population is delisted, the OFWC, with input from ODFW, would be responsible for determining whether a sport hunting season is justified. State guidelines direct ODFW to manage wildlife populations to assure population health for present and future generations of Oregonians to enjoy (ODFW, *in litt.* 2001). Initially, ODFW intends to focus its efforts on expanding the range of the Columbian white-tailed deer with a trap and relocation program (ODFW, *in litt.* 2001). A recreational hunt could be considered as another tool to reduce population densities and improve herd health in selected areas (ODFW, *in litt.* 2001). The population currently

numbers over 5,000 deer, which is considered to be large enough to withstand some level of regulated harvest (ODFW, *in litt.* 2001).

Poaching, or illegal hunting, of Columbian white-tailed deer has been documented in this population (Ricca 1999; ODFW, *in litt.* 2001). During a recent 3-year study, 3 deer, out of 64 marked, were believed to have been taken by poachers (Ricca 1999). The Oregon State Police actively prosecutes poachers in Douglas County; cooperation among the State Police, ODFW, local Service biologists and our National Fish and Wildlife Forensics Laboratory has resulted in many successful cases. In each of the past 3 years, the Oregon State Police has successfully prosecuted three to five poaching cases. Nine of these illegal kills were proven to be intentional poaching, whereas four were cases of mis-identification (i.e., confusion with legally hunted black-tailed deer) (Sgt. J. Myhre, pers. comm., 2001). This low level of illegal hunting is not considered a threat to the survival of the population (ODFW 1995).

Other than sport hunting, we do not anticipate an appreciable demand for Columbian white-tailed deer for commercial or recreational purposes. There may be a small demand for deer for research. Scientific studies, permitted under section 10(a)(1)(A) of the Act, have resulted in the take of as many as 40 deer during 1 year from the Douglas County population (Kistner and Denney 1991). These permitted takings have not had measurable impacts on population trends in this population. If the population is delisted, ODFW will administer scientific taking permits based on the merits of the proposed research and with consideration of the effects to the population (ODFW, *in litt.* 2001). We believe that ample protections are in place under State law and regulations, and thus overutilization is unlikely to be a threat to the population in the future. Our proposed monitoring plan (see the Monitoring section) will track the status of the population for 5 years following delisting, which would alert us to any new threat of overutilization.

C. *Disease or predation.* No known epizootic (epidemic in animals) diseases have affected the Douglas County population of Columbian white-tailed deer, although several studies have documented the incidence of bacterial and parasitic infections. For example, in a recent study, disease was determined to have contributed to the deaths of adult deer in poor nutritional condition. Of 29 adult deer that died during a 3-year study, 28 percent died of a combination of disease and emaciation (Ricca 1999). Necropsies revealed pneumonia, lungworms, and high levels of ecto-parasite infestation; none of these diseases would have been likely to kill an otherwise healthy adult deer, but in combination with a poor nutritional state (as evidenced by emaciation), these diseases were likely a factor in the cause of death (Ricca 1999). Diseases noted in fawn necropsies also included pneumonia and occasional instances of bacterial or viral infections (Ricca 1999). An earlier study by ODFW found moderate to high levels of internal and external parasites on adult deer and fawns, with low levels of viral diseases communicable to livestock (Kistner and Denney 1991).

High internal parasite loads have been considered an indication of high deer densities (ODFW, *in litt.* 2001), and recent research has found evidence that some Columbian white-tailed deer in Douglas County are suffering poor health due to high density (Ricca 1999). Delisting the Douglas County population of Columbian white-tailed deer would allow more management flexibility, such as hazing to disperse the deer to reduce or prevent large deer concentrations, or a regulated harvest, which could reduce the density of deer, resulting in increased herd health.

Deer hair-loss syndrome has been a concern in the Columbia River population of Columbian white-tailed deer, but has not been prevalent in the Douglas County herd. This disease is believed to be caused by the parasite *Parelaphostrongylus,* which invades the lungs of infected deer resulting in a low-grade pneumonia (Washington Department of Fish and Wildlife (WDFW) 1999). The pneumonia infection suppresses the deer's immune system, which may make infected deer more susceptible to external parasites. The disease is not necessarily fatal, but hair loss can result in death due to hypothermia in winter (WDFW 1999). Spotlight surveys by ODFW noted 2 deer (out of 329 counted) with obvious hair loss problems (ODFW, *in litt.* 2001). Two marked deer on the NBHMA are known to have died with hair loss; an infected fawn was noted, but is not known to have died from the disease (ODFW, *in litt.* 2001). Deer hair-loss syndrome is not currently considered to be a threat to the population, but the proposed post-delisting monitoring of the Douglas County population will include tracking the incidence of this disease.

In August 2001, a probable case of adenovirus, a viral disease, was identified through laboratory analysis in a Columbian white-tailed deer fawn in Douglas County. It is likely that the fawn contracted the disease while being held in a rehabilitation facility. This would be the first known incidence of this disease in white-tailed deer (Dr. Beth Valentine, Veterinary Diagnostic Laboratory, Oregon State University, *in litt.* 2001; Dr. Terry Hensley, D.V.M., U.S.D.A. Veterinary Services, pers. comm., 2001). Adenovirus infection is potentially fatal to young deer, which may succumb to respiratory failure, hemorrhagic syndromes, or acute diarrhea and dehydration caused by the disease (Dr. T. Hensley, pers. comm., 2001). The disease has been previously detected in mule deer (*Odocoileus hemionus*) in northern California. An outbreak in the 1990s caused widespread mortality, but appears to have had no long-term effect on the population (Tapscott 1998). Therefore, it has been determined that disease is not a significant threat to the species. However, since its existence had been confirmed in the Douglas County Columbian white-tailed deer population, we will coordinate with State and Federal wildlife biologists and agencies to track the incidence of the disease to assist in effective management of the species.

Predation is known to be a leading cause of death in white-tailed deer populations (Halls 1978). Ricca (1999) studied survival of Columbian white-tailed deer fawns, and found that predation was the most frequent known cause of death for fawns in his study. Bobcats (*Lynx rufus*) were the dominant predator, and researchers found some evidence of predation by red foxes (*Vulpes vulpes*) and domestic dogs (Ricca 1999). Coyotes (*Canis latrans*) are frequent predators of white-tailed deer elsewhere (Halls 1978), but Ricca's (1999) study found no evidence of fawns killed by coyotes. The apparent absence of coyote predation may be due in part to the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS) Wildlife Services predator control program. Douglas County contracts with APHIS Wildlife Services to conduct predator control. The program focuses mainly on coyotes, but also responds to fox, bobcat, and cougar (*Puma concolor*) complaints (Stan Thomas, District Supervisor, APHIS Wildlife Services, pers. comm., 2001). The purpose of the program is to protect sheep and cattle ranching operations in the area, but it may also provide incidental benefits to the population of Columbian white-tailed deer by reducing the number of potential predators on fawns. In

summary, disease and predation are not considered threats to the population.

D. *Inadequacy of existing regulatory mechanisms.* The lack of adequate Federal, State, or local regulatory mechanisms for protecting habitat and controlling take was largely responsible for the decline of the deer. Columbian white-tailed deer in Douglas County have recovered because Federal, State, and local governments have exercised their authorities to protect the subspecies and its habitat.

For example, the State of Oregon currently prohibits hunting of all white-tailed deer in western Oregon (described in Factor B, above). Delisting would provide the State with the flexibility to allow some regulated harvest to reduce population density if necessary to improve herd health.

Douglas County also provides important regulatory protection for Columbian white-tailed deer habitat on private lands through its Comprehensive Plan and Deer Habitat Protection Program (DCPD 1995:45, 2000a). The Comprehensive Plan addresses Oregon's Statewide Planning Goals. Goal 5 requires local governments to conserve open space and protect natural and scenic resources for future generations; Douglas County's Columbian White-Tailed Deer Habitat Protection Program, which is described in more detail under Factor A, was established in 1980 under Goal 5 (DCPD 2000a). State-wide planning Goals 3 and 4 provide guidelines to maintain the rural landscape in Douglas County by protecting agriculture, timber, and transitional (farm/forest) lands. These goals were also incorporated into Douglas County's Columbian White-tailed Deer Habitat Protection Program, and also provide a measure of protection for deer habitat (DCPD 2000a). Douglas County's zoning and planning ordinances and county park designations are recognized in the Recovery Plan as valid methods to secure habitat, and will provide continuing regulatory protection of Columbian white-tailed deer habitat unless changed through a public process.

E. *Other natural or manmade factors affecting its continued existence.* There are a number of other threats to the survival of individual Columbian white-tailed deer in Douglas County. These include road kill, hybridization with black-tailed deer, emaciation, conflicts with private landowners, and fire.

Road kill is one of the major sources of mortality for white-tailed deer in the United States (Halls 1978). Ricca (1999) concluded that road kill was the second most frequent cause of death in his study; he determined that five deer (17 percent of his marked adult deer) over a period of 3 years were killed by vehicle collisions. Apparently, the incidence of road kill is fairly constant. Almost 20 years earlier, Smith (1981) found car collisions to be the second most frequent cause of death for deer in Douglas County. Although road kill is a major source of mortality for this population, it has not been a limiting factor for population growth (D. Jackson, ODFW, pers. comm., 2001).

Hybridization between Columbian white-tailed deer and black-tailed deer has long been suspected to occur, and probable hybrids have been observed in Douglas County for many years (ODFW 1995). Biologists from ODFW have noted evidence of hybridization (i.e., deer with physical characteristics of both white-tailed and black-tailed deer), but concluded that the rate of cross-breeding is not a threat to the continued existence of the Douglas County population of Columbian white-tailed deer (Kistner and Denney 1991). Gavin (1988) conducted laboratory analyses of muscle samples from Columbian white-tailed deer and Columbian black-tailed deer in Douglas County and found no evidence of hybridization between the two subspecies.

Emaciation, which may be the result of poor forage quality, was determined to be the leading cause of death in a recent study. During 3 years of research on marked deer, Ricca found that 28 percent of the deer that died during the study were emaciated and diseased (see disease discussion in Factor B, above) (1999). This finding is also consistent with an earlier study (Smith 1981). High deer density may result in poor habitat quality through overuse of habitat resources (Ricca 1999). Management actions to reduce deer density or increase habitat quality could reduce the incidence of emaciation. Active habitat management (prescribed burning) to improve forage quality has begun at the NBHMA (R. Klein, pers comm., 2001).

With growth of the deer population, deer-human conflicts have increased. From 1996 to 2000, ODFW recorded 249 complaints from private property owners with deer depredation problems (ODFW, *in litt.* 2001). Resident, suburban deer can cause serious damage to croplands, gardens, and ornamental plantings. Conflict ensues because under the Act it is illegal to ''take'' listed deer, which includes such actions as hazing or harassing to disperse the deer, even where serious continued damage is occurring. Delisting the Douglas County population of Columbian white-tailed deer will allow more flexibility in development and implementation of a management plan in order to control and enhance deer populations, while fostering better relationships with landowners and more effective long-term conservation.

Fire has historically played a large part in shaping habitat for Columbian white-tailed deer in Douglas County. Although fire may have negative short-term impacts on habitat, deer distribution, and numbers, the long-term effects can be beneficial by removing decadent brush, promoting the growth of nutritious vegetation, and maintaining the oak/grassland habitat that the deer prefers (Halls 1978; BLM 2000). Columbian white-tailed deer evolved with the occurrence of fire in the ecosystem, and prescribed burning is one of the key management prescriptions for restoring and maintaining habitat quality for the deer at the NBHMA (BLM 2000; Service 2001). The occurrence of a large-scale, devastating wild fire is unlikely. The growing human population of Douglas County demands active fire suppression on public and private lands which will likely convey some protection for the deer.

For the reasons discussed above, we feel that none of these threats pose a serious threat to the persistence of the Douglas County population of Columbian white-tailed deer.

We have carefully assessed the best scientific and commercial information available concerning the past, present, and future threats faced by this population in determining to propose this rule. Based on this evaluation, we propose to remove the Douglas County population of Columbian white-tailed deer from the List of Endangered and Threatened Wildlife. The population is robust, and abundant habitat used by the deer has been protected in Douglas County to justify delisting the population.

Effects of the Rule

Finalization of this proposed rule will affect the protection afforded to the Douglas County population of Columbian white-tailed deer under the Act. Taking, interstate commerce, import, and export of deer from this population will no longer be prohibited under the Act. In addition, if the Douglas County population of the Columbian white-tailed deer is removed from the List of Endangered and Threatened Wildlife, Federal agencies would no longer be required to consult with us under section 7 of the Act to ensure that any action authorized, funded, or carried out by them is not

likely to jeopardize the continued existence of the deer.

Harvest and permitted scientific take will be regulated by the State of Oregon, and will be considered in the context of potential effects to population stability (ODFW, *in litt.* 2001). Biological data such as sex ratios, age, reproductive status, and health status (i.e., parasitism and bacterial infections) from individual deer taken through legal harvest or the issuance of special permits would be available to inform future management. Delisting the Douglas County population could have positive effects in terms of management flexibility to State and local governments. Deer densities in selected areas could be reduced by management actions. Individual deer could be controlled by hazing, and targeted individuals could be moved where repeated severe damage to agricultural crops, gardens, or ornamental plantings was documented. Thus, delisting would allow managers greater flexibility to take actions to reduce overcrowding in selected areas, which could result in a healthier deer population.

The proposed delisting of the Douglas County DPS of Columbian white-tailed deer will not change the endangered status of the Columbia River DPS of this subspecies. It will remain fully protected by the Act.

Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the 5-year monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

The Service with the State and the Recovery Team will develop and implement a statistically sound, 5-year monitoring program designed to assess the sustainability of the population through tracking of population parameters that may include the population size, trend, recruitment, and distribution. We will publish in the **Federal Register** a notice of availability of the draft monitoring plan, in order to provide the public the opportunity to comment on the content of the plan. We will issue a final monitoring plan and annually assess the results of the post-delisting monitoring of the Douglas County Columbian white-tailed deer population.

At the end of the 5-year monitoring period, we will decide if relisting, continued monitoring, or an end to monitoring activities is appropriate. If warranted (e.g., data shows a significant decline or increased threats), we will consider continuing monitoring beyond the 5-year period and may modify the monitoring program based on an evaluation of the results of the initial 5-year monitoring program.

Public Comments Solicited

We intend that any final action resulting from this proposal to remove the Douglas County population of Columbian white-tailed deer from the List of Endangered and Threatened Wildlife will be as accurate and effective as possible. Therefore, we solicit any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal. Comments should be sent to the Oregon Fish and Wildlife Office (see **ADDRESSES** section).

Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. Given the high likelihood of requests, and the need to proceed as expeditiously as possible, the Service will hold a public hearing on the date and location described in the **DATES** and **ADDRESSES** sections above.

Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Douglas County population of the Columbian white-tailed deer and its habitat that would result from implementing the measures outlined in this proposed rule;

(2) Additional information concerning the range, distribution, and population size of this population;

(3) Current or planned activities in the range of the population and their likely impacts on the population and its habitat; and

(4) Appropriate parameters to monitor and to assess the population status.

If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: [RIN–AF43]'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Oregon Fish and Wildlife Office at telephone number 503/231–6179.

Our practice is to make comments available for public review during regular business hours, including names and home addresses of respondents. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Clarity of the Rule

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this proposal easier to understand including answers to questions such as the following: (1) Is the discussion in the ''Supplementary Information'' section of the preamble helpful in understanding the proposal? (2) Does the proposal contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposal (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? What else could we do to make the proposal easier to understand?

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on agency information collection and record keeping activities (see 5 CFR 1320.8(d)). The OMB regulations at 5 CFR 1320.3(c) define a collection of information as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, record keeping, or disclosure requirements imposed on ten or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that ''ten or more persons'' refers to the persons to whom a collection of information is addressed by the agency within any 12-month period. This rule does not include any collections of information that require

approval by OMB under the Paperwork Reduction Act.

National Environmental Policy Act

We have determined that an Environmental Assessment or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this designation in the **Federal Register** on October 25, 1983 (48 FR 49244).

Executive Order 13211

On May 18, 2001, the President issued an Executive Order 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. As this proposed rule is not expected to significantly affect energy supplies, distribution, or use, 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 herein is available upon request from the Oregon Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Cat Brown, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. We propose to amend section 17.11(h) by revising the entry for Columbian white-tailed deer, *Odocoileus virginianus leucopareia* under ''Mammals'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Deer, Columbian white-tailed.	*Odocoileus virginianus leucurus*.	U.S.A. (WA, OR)	Columbia River (Pacific, Wahkiakum, Cowlitz, Clark and Skamania Counties, WA, and Columbia, Clatsop and Multnomah Counties, OR).	E	1,__	NA	NA
*	*	*	*	*	*		*

Dated: May 31, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–15189 Filed 6–20–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 67, No. 120

Friday, June 21, 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.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee on Actuarial Examinations

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (portions of which will be open to the public) in Washington, DC at the Office of Director of Practice on July 1 and 2, 2002.

DATES: Monday, July 1, 2002, from 9 a.m. to 5 p.m., and Tuesday, July 2, 2002 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in Suite 4200E, Conference Room, Fourth Floor, East Tower, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Director of Practice and Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1805.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Suite 4200E, Conference Room, Fourth Floor, East Tower, Franklin Court Building, 1099 14th Street, NW., Washington, DC on Monday, July 1, 2002, from 9 a.m. to 5 p.m., and Tuesday, July 2, 2002, from 8:30 a.m. to 5:00 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the May 2002 Basic (EA–1) and Pension (EA–2B) Joint Board Examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 2002 Pension (EA–2A) Examination will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the May 2002 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 p.m. on July 1 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements must notify the Executive Director in writing prior to the meeting in order to aid in scheduling the time available and must submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All other persons planning to attend the public session must also notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be faxed, no later than June 26, 2002, to 202–694–1876, Attn: Executive Director. Any interested person also may file a written statement for consideration by the Joint Board and the Committee by sending it to the Executive Director: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, Attn: Executive Director N:C:SC:DOP, 1111 Constitution Avenue, NW, Washington, DC 20224.

Dated: June 10, 2002.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 02–15742 Filed 6–20–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Payette National Forest, ID, Proposed Grouse Creek Road Relocation

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service, Intermountain Region, will prepare an environmental impact statement (EIS) on a proposal to relocate a 1.5-mile section of the Grouse Creek Road (Forest Service Road 50325), Payette National Forest. The Grouse Creek Road is within the Grouse Creek watershed, a tributary to the Secesh River, and is about 25 miles northeast of the city of McCall, in Idaho County, Idaho. The road relocation is necessary to improve existing road related problems and associated impacts to threatened species and their designated critical habitat, while maintaining road access for public and administrative uses. The current road is physically located in a narrow strip of land between two Inventoried Roadless Areas (IRAs). The 13,005-acre Crystal Mountain Inventoried Roadless Area lies immediately to the west, and the 8,535-acre Chimney Rock Inventoried Roadless Area lies to the east. A portion of the new road would be within the Crystal Mountain Inventoried Roadless Area.

DATES: Comments must be received by July 19, 2002.

ADDRESSES: Send written commentrs to District Ranger Randy Swick, McCall Ranger District, Payette Natiional Forest, P.O. Box 1026, McCall, Idaho 83638, or Fax (208) 634–0433.

FOR FURTHER INFORMATION CONTACT: Justin Jimenez at the above address, by phone at (208) 634–0400 or by email: *jjimenez02@fs.fed.us*

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this project is to remove a direct threat to Endangered Species Act (ESA) listed fish species and their designated critical habitat along a 1.5-mile section of Grouse Creek Road, while maintaining a viable access route through the Grouse Creek corridor.

The need for the project is based on minimizing road related impacts to

water quality and fish habitat while continuing to provide road access. The Grouse Creek Road is in close proximity to Grouse Creek in areas of exceptionally high aquatic diversity and productivity. Grouse Creek contains chinook salmon, steelhead, and bull trout, all of which are species listed as ''Threatened'' under the ESA. The Burgdorf Junction Fire Burned Area Emergency Rehabilitation (BAER) Report (2000) indicated that the Burgdorf Junction Wildlife of 2000 was stand-replacing within 90 percent of the Grouse Creek drainage. Post-fire BAER inventories (2000) identified many road problems on the Grouse Creek Road. The Forest Service corrected them shortly after the fire, with the exception of the proposed relocation.

The Burgdorf Roads Analysis (2002) found that the section of road to be relocated is within Riparian Habitat Conservation Areas (RHCAs), runs parallel to Grouse Creek through a steep canyon, and is resulting in direct sediment delivery to Grouse Creek from erosion of road surface and fill material. Surface erosion and associated sediment delivery from this section of road is adversely affecting designated critical habitat for ESA listed species and is of particular concern. If the road is left in its current location, active erosion of road surface and fill material cannot be avoided.

Forest Service personnel intensively reviewed the proposed relocation alignment on the ground and determined it best met the objectives of minimizing impacts to fisheries, while minimizing encroachment into the roadless area and providing access in the Grouse Creek corridor.

The Grouse Creek Road provides access to an active mine, a seasonally staffed fire lookout, several trailheads, dispersed campsites and California Lake, which provides fishing and camping opportunities. The Forest Service has validated the need to maintain suitable access via the Grouse Creek corridor based on the information identified above.

Idaho County has made a RS 2477 assertion on the Grouse Creek Road. The validity of their claim has yet to be decided, and early settlement of the claim is not foreseeable. This limits the ability of the Forest Service to close the Grouse Creek Road to vehicle use.

Proposed Action

The Forest Service proposes to relocate a section of the Grouse Creek Road (Forest Service Road 50325) upslope on gentle ground. A 1.5-mile section of road would be relocated; currently 1.3 miles of this road is within RHCAs. This would require 2.9 miles of new road construction, of which 2.4 miles would be within the Crystal Mountain Inventoried Roadless Area. The exiting 1.5 miles of the Grouse Creek Road and an additional 0.4 mile of associated unclassified spur road would be obliterated.

The existing road is located in a corridor between the Crystal Mountain and Chimney rock IRAs. The proposed road relocation would affect a total of 172 acres of the Crystal Mountain Inventoried Roadless Area, that portion lying between the new road and the roadless boundary to the east. To minimize this effect, Forest Service proposes to adjust the Chimney Rock Inventoried Roadless Area boundary to the west, realigning the IRA boundary along the new road corridor. The Payette National Forest Plan (1988) allocates the portion of the Crystal Mountain IRA that would be altered to general forest management, which allows development including road construction. The PayetteNational Forest's Draft Revised Forest Plan (2000) proposes to manage the Crystal Mountain IRA under an Aquatic/Terrestrial Active Restoration Management Prescription Category (MPC 3.2). This proposed action is fully consistent with that direction.

The proposed road relocation project would not involve any removal of merchantable timber; all cleared timber would be used or left on site. Field reconnaissance identified very little, if any, merchantable timber within the new construction road right-of-way; therefore, there will be no timber sale involved with this project.

The proposed action meets recent Forest Service Manual (FSM) direction requiring a Roads Analysis before new road construction or changes in road management may take place on a National Forest (FSM 7712.1, 7712.12b, and 7712.13). FSM 1925.04b, identifies that it is the responsibility of the Regional Forester to serve as the Responsible Official for the following decision on a road reconstruction project in an IRA: ''road realignment is needed to prevent resource damage by an existing road that is deemed essential for public or private access, management, or public health or safety, and where such damage cannot be corrected by maintenance.'' The proposed action meets the description above and the Regional Forester has reviewed the proposed project and agreed to serve as the Responsible Official.

This project is a National Fire Plan Rehabilitation and Community Restoration Project.

Responsible Official

The responsible official is the Regional Forester of the Intermountain Region.

Nature of Decision To Be Made

The decision to be made is whether to relocate the Grouse Creek Road, and if so, where the new road segment should be located.

Scoping Process

The Payette National Forest is conducting scoping for issues the Environmental Impact Statement should address. Comments provided by the public and other agencies will be used to develop issues to be addressed. The public is encouraged to visit with Forest Service officials during the analysis prior to the decision.

Preliminary Issues

Preliminary issues identified by the Forest Service interdisciplinary team include effects of building a road into an Inventoried Roadless Area, and short term effects to threatened and endangered species associated with road construction and obliteration.

Public Participation

Public participation will be important at several points during the analysis, particularly during scoping of issues and review of the draft environmental impact statement (DEIS). This notice of intent initiates the scoping process, which guides the development of the EIS. The scoping process will identify potential issues and issues to be analyzed in detail, and will lead to the development of alternatives to the proposal.

Comments received in response to this notice, including the names and addresses of those who comment, will be part of the project record and available for public review.

The second major opportunity for public input is with the DEIS. The DEIS will analyze a range of alternatives to the proposed action, including the no-action alternative. The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in February 2003. EPA will then publish a notice of availability of the DEIS in the **Federal Register**. Public comments will be invited. The comment period on the DEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First,

reviewers of draft environmental impact statements 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, 553 (1978). In addition, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986), and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court 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 environmental impact statement.

To assist the Forest Service in identifying and considering issues raised by the proposed action, comments on the DEIS 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 DEIS or the merits of the alternatives 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.

In the Final EIS (FEIS) the Forest Service will respond to comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, and environmental consequences addressed in the FEIS, which is expected to be completed in May 2003, along with applicable laws, regulations, and policies in making the final decision regarding this proposal. The responsible official will document the decision and reasons for it in the Record of Decision. That decision will be subject to appeal under 36 CFR 215.

Dated: June 13, 2002.

William S. Werner,

Intermountain Region, Acting Regional Forester.

[FR Doc. 02–15656 Filed 6–20–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Basin Electric Power Cooperative; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact in connection with a request from Basin Electric Power Cooperative (Basin Electric) of Bismarck, North Dakota for assistance from RUS to finance the construction of an asynchronous tie that would connect the eastern and western transmission grids near Rapid City in Pennington County, South Dakota.

FOR FUTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, Rural Utilities Service, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone (202) 720–1414, Fax (202) 720–0820, e-mail *nislam@rus.usda.gov.* Information is also available from Mr. James A. Berg, Water Quality/Waste Management Coordinator, Basin Electric, 1717 East Interstate Avenue, Bismarck, North Dakota 58501, telephone (701) 223–0441, Fax (701) 224–5336, e-mail address *jberg@bepc.com.*

SUPPLEMENTARY INFORMATION: Basin Electric is proposing construction of an asynchronous tie that would connect the eastern and western transmission grids near Rapid City in Pennington County, South Dakota. This project is known as the Rapid City Tie project. The Rapid City Tie Project will include approximately 23 miles of 230 kV transmission line, a line terminal bay at the South Rapid City Substation, a line terminal bay at the New Underwood Substation, and an asynchronous tie converter station. The project is located just south of Rapid City and the transmission line extends eastward for approximately 23 miles. The Rapid City Tie Project is anticipated encompassing approximately 325 acres of land including 285 acres for the transmission line (a 100-foot right-of-way is assumed) and 40 acres for the converter station. The project is required to meet the growing needs for power of Basin Electric's membership in South Dakota and in northeastern Wyoming. RUS may provide financial assistance to Basin Electric for this project.

RUS has concluded that the impacts of the proposed project would not be significant and the proposed action is not a major federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary. RUS, in accordance with its environmental policies and procedures, required that Basin Electric prepare an environmental report (ER/Environmental Analysis) reflecting the potential impacts of the proposed facilities. The Environmental Analysis, which includes input from Federal, state, and local agencies, has been reviewed and accepted as RUS'' Environmental Assessment (EA) for the project in accordance with 7 CFR 1794.41. Basin Electric published notices of the availability of the EA and solicited public comments per 7 CFR 1794.42. The 30-day comment period on the EA for the proposed project ended May 6, 2002. Comments were received on the EA from the following agencies: South Dakota Department of Transportation (SDDOT); South Dakota Department of Fish, Game and Parks (SDDFG&P); Natural Resources Conservation Service (NRCS); United States Army Corps of Engineers (COE); United States Fish and Wildlife Service (USFWS); and Planning Department, City of Rapid City (Rapid City PD). Basin Electric has agreed to follow Federal, state, and local agency recommendations (SDDOT, SDDFG&P, COE, USFWS, NRCS, and Rapid City PD) and secure all necessary permits prior to constructing and operating the proposed project.

Based on the EA and the Basin Electric's commitments to follow all agency recommendations, RUS has concluded that the proposed action will not have a significant effect to various resources, including important farmland, floodplains, wetlands, cultural resources, threatened and endangered species and their critical habitat, air pollution and water quality, noise, electrocution of birds. RUS has also determined that there would be no negative impacts of the proposed project on minority communities and low-income communities as a result of the construction of the project. RUS believes that there are no significant unresolved environmental conflicts related to this project.

Dated: June 17, 2002.

Blaine D. Stockton,

Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 02–15721 Filed 6–20–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Local Dial-Up Internet Grants

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funds availability.

SUMMARY: The Rural Utilities Service (RUS) announces the availability of grant funds to finance the acquisition, construction and installation of equipment, facilities and systems to provide local dial-up Internet access services in rural America. Two and a half million dollars in grant funds is available, through a Pilot Program, to encourage eligible entities to provide Internet service to rural consumers where such service does not currently exist. This program will provide grant funds, on a competitive basis, to entities serving communities up to 20,000 inhabitants to ensure rural consumers enjoy the same quality and range of telecommunications services that are available in urban and suburban communities. Applications for grant funds will be accepted through August 20, 2002.

DATES: Applications for grants will be accepted as of the date of this notice through August 20, 2002. All applications must be delivered to RUS or bear postmark no later than August 20, 2002.

ADDRESSES: Applications are to be submitted to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1590, Room 4056 South Building, Washington, DC 20250–1590.

FOR FURTHER INFORMATION CONTACT: Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Avenue, SW., STOP 1590, Washington, DC 20250–1590, Telephone (202) 720–9554, Facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION:

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements of this Notice have been approved by the Office of Management and Budget (OMB) under Control Number 0572–0125 pursuant to the Paperwork Reductions Act of 1995 (44 U.S.C. Chapter 35).

General Information

For FY 2002, $2.5 million in grants will be made available for the construction and installation of facilities and for other costs as RUS deems necessary to provide local dial-up Internet services in rural areas where it currently does not exist. This program is authorized by 7 U.S.C. 950 aaa.

Applications

Applications will be accepted as discussed previously in the **DATES** section of this notice. All interested parties are strongly encouraged to contact the RUS official listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice to discuss its financial needs and eligibility, prior to sending an application to the address listed in the **ADDRESSES** section of this notice. RUS will make available, to interested applicants, an application guide that further details the requirements and procedures for submitting an application. Applications will be scored and processed on a competitive basis.

Use of Grant Funds

Grant funds may be used to finance the acquisition, construction, and installation of equipment, facilities, and systems to provide local dial-up Internet service in rural areas where it currently does not exist. Grant funds may also be used to fund lease costs for transmission equipment, facilities, and systems for up to two years.

Size of Grants

The maximum amount of a grant award to an applicant under this program is $400,000. The minimum amount to be considered is $10,000.

Definition of Internet

As used in this notice, the term *Internet* means a world wide collection of interconnected computer networks and users that share a compatible means of interacting with one another for the purpose of exchanging electronic data.

Definition of Local Dial-Up Internet Services

As used in this notice, the term *local dial-up Internet* service means a connection to the internet made using a voice grade circuit to the local public switched telephone network (PSTN) that does not incur any additional or per call charges. Where the PSTN does not support, as an engineering matter, local dial-up access, the Administrator of RUS will consider satellite or other methods of access as meeting the intent of this definition.

Definition of Rural Area

As used in this notice, *rural area* means any area of the United States not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 20,000 inhabitants.

Grant Terms

For FY 2002, $2.5 million in grants will be made available to eligible applicants. Grants will be awarded to eligible applicants based on their score (starting with the highest scoring application) in comparison to other applications until the $2.5 million appropriation is utilized in its entirety. The grants will be awarded on a competitive basis, based on the scoring criteria outlined below.

Eligible Applicants

Grants may be made to legally organized entities providing, or proposing to provide, local dial-up Internet services in rural areas. Eligible entities may be public bodies, commercial companies including limited liability companies, cooperatives, nonprofits, and limited dividend or mutual associations.

Matching Funding

No match funding is required.

RUS Findings

(1) *Project Sustainability.* An applicant shall provide RUS with satisfactory evidence to enable the Administrator to determine that the project utilizing grant funds will be sustainable for a minimum of five years. Factors used in making this determination include, but are not limited to:

(i) Evidence of sufficient revenues from the system in excess of operating expenditures (including maintenance and replacement); and

(ii) Reasonable assurance of achieving market penetration projections upon which the grant is based.

(2) *Nonduplication.* An applicant shall provide RUS with satisfactory evidence to enable the Administrator to determine that no local dial-up internet service, without regard to quality of such service, exists in the area proposed to be served by the applicant using grant funds.

Grant Application

Applications should be prepared in conformance with the provisions of this notice and applicable USDA regulations including 7 CFR parts 3015, 3016, and 3019. Applicants must submit a completed Standard Form 424, ''Application for Federal Assistance,'' a narrative grant proposal, and all required supporting information and documents. An application must include a project description that contains plant designs, a subscriber forecast, and the basis for that forecast. The narrative must also specifically and

clearly address the scoring criteria set out below. Other items include:

(1) Certified financial statements, if available;

(2) 5 years of pro-forma financial information, evidencing the sustainability of the project;

(3) An environmental report, satisfactory to RUS;

(4) Depreciation rates, based on current industry standards, for the equipment being financed (acceptance of such rates will be subject to RUS approval);

(5) A sketch or map showing existing and proposed service areas;

(6) A description of the current level of service available;

(7) Information on the owners and principal employees' relevant work experience that would ensure the success of the project; and

(8) All other required forms for Federal assistance and compliance with other applicable Federal statutes.

Review of Grant Applications

All applications for grants must be delivered to RUS at the address listed above or postmarked no later than August 20, 2002 to be considered eligible for FY 2002 grant funding. RUS will review each application for conformance with the provisions of this Notice. RUS may contact the applicant for additional information or clarification. Incomplete applications will not be considered. Applications conforming with this Notice will then be evaluated competitively by a panel of RUS employees selected by the Administrator and points awarded as described in the Scoring Criteria section below. The applications will be ranked and grants awarded in rank order until all grant funds are expended.

Scoring Criteria

Grant awards will be made based on the following scoring criteria as determined by RUS:

(1) *The need for services and benefits derived from services (up to 40 points).* This criterion will be used by RUS to score applications based on the documentation in support of the need for services, benefits derived from the services proposed by the project, and local community involvement in planning, implementing, and financial assistance of the project. RUS will consider the extent of the applicant's documentation explaining the challenges facing the community; the applicant's proposed plan to address these challenges; how the grant can help; and why the applicant cannot complete the project without a grant.

(2) *The economic need of the applicant's service area as determined by per capita personal income by County, as determined by the Bureau of Economic Analysis, U.S. Department of Commerce, at www.bea.doc.gov/bea/regional/reis/ (up to 40 points).* Applicants will be awarded points as outlined below for service provided in each county where the per capita personal income (PCI) is less than 70 percent of the national average per capita personal income (NAPCI):

(i) PCI is 70 percent or greater of NAPCI; 0 points;

(ii) PCI is less than 70 percent and greater than or equal to 60 percent of NAPCI; 10 points;

(iii) PCI is less than 60 percent and greater than or equal to 50 percent of NAPCI; 20 points;

(iv) PCI is less than 50 percent and greater than or equal to 40 percent of NAPCI; 30 points;

(v) PCI is less than 40 percent of NAPCI; 40 points;

If an applicant proposes significant service in more than one county, an average score will be calculated based on each counties' individual scores.

(3) Project services USDA designated EZ/ECs (Empowerment Zone and Enterprise Communities) (10 points) or USDA designated Champion Communities (5 points).

Dated: June 13, 2002.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–15720 Filed 6–20–02; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 22, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Dessert Base (Vanilla), 8940–00–NSH–2001.
NPA: Advocacy and Resources Corp. (ARC), Cookeville, TN, CW Resources, Inc., New Britain, CT, Knox County Association for Retarded Citizens, Inc., Vincennes, IN, Transylvania Vocational Services, Inc., Brevard, NC.
Contract Activity: USDA, Farm Service Agency, Kansas City, MO.

Product/NSN: Dessert Base (Chocolate), 8940–00–NSH–2002.
NPA: Advocacy and Resources Corp. (ARC), Cookeville, TN, CW Resources, Inc., New Britain, CT, Knox County Association for Retarded Citizens, Inc., Vincennes, IN, Transylvania Vocational Services, Inc., Brevard, NC.
Contract Activity: USDA, Farm Service

Agency, Kansas City, MO.
Product/NSN: Dessert Base (Butterscotch), 8940–00–NSH–2003.
NPA: Advocacy and Resources Corp. (ARC), Cookeville, TN, CW Resources, Inc., New Britain, CT, Knox County Association for Retarded Citizens, Inc., Vincennes, IN, Transylvania Vocational Services, Inc., Brevard, NC.
Contract Activity: USDA, Farm Service Agency, Kansas City, MO.
Product/NSN: Dessert Base (Banana), 8940–00-NSH–2004.
NPA: Advocacy and Resources Corp. (ARC), Cookeville, TN, CW Resources, Inc., New Britain, CT, Knox County Association for Retarded Citizens, Inc., Vincennes, IN, Transylvania Vocational Services, Inc., Brevard, NC.
Contract Activity: USDA, Farm Service Agency, Kansas City, MO.
Product/NSN: Dessert Base (Cheesecake), 8940–00–NSH–2005.
NPA: Advocacy and Resources Corp. (ARC), Cookeville, TN, CW Resources, Inc., New Britain, CT, Knox County Association for Retarded Citizens, Inc., Vincennes, IN, Transylvania Vocational Services, Inc., Brevard, NC.
Contract Activity: USDA, Farm Service Agency, Kansas City, MO.
Product/NSN: Dessert Base (Tapioca), 8940–00–NSH–2006.
NPA: Advocacy and Resources Corp. (ARC), Cookeville, TN, CW Resources, Inc., New Britain, CT, Knox County Association for Retarded Citizens, Inc., Vincennes, IN, Transylvania Vocational Services, Inc., Brevard, NC.
Contract Activity: USDA, Farm Service Agency, Kansas City, MO.
Product/NSN: USMC Individual First Aid Kit,
6545–00–NSH–2001,
6545–00–NSH–2002,
6545–00–NSH–2003.
NPA: Chautauqua County Chapter, NYSARC, Jamestown, NY.
Contract Activity: U.S. Marine Corps, Quantico, VA.

Services

Service Type/Location: Administrative Services, USDA, Animal and Plant Health Inspection Service, Raleigh, NC.
NPA: Employment Source, Inc., Fayetteville, NC.
Contract Activity: Department of Agriculture.
Service Type/Location: Base Supply Center, U.S. Army Maneuver Support Center, Fort Leonard Wood, MO.
NPA: Alphapointe Association for the Blind, Kansas City, MO.
Contract Activity: U.S. Army Maneuver Support Center, Fort Leonard Wood, MO.
Service Type/Location: Office Supply Store, Herbert Hoover Building, Washington, DC.
NPA: Columbia Lighthouse for the Blind, Washington, DC.
Contract Activity: Department of Commerce.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

The following products have been proposed for deletion from the Procurement List:

Products

Product/NSN: Floorboard, Vehicular, 2510–01–063–3892.
NPA: None currently authorized.
Contract Activity: Defense Supply Center—Columbus, Columbus, OH.
Product/NSN: Case, Spectacle,
6540–01–454–6929,
6540–01–188–6023.
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, TX, Travis Association for the Blind, Austin, TX.
Contracting Activity: Defense Supply Center—Philadelphia, Philadelphia, PA.

Sheryl D. Kennerly,
Director, Information Management.

[FR Doc. 02–15730 Filed 6–20–02; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 22, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 7, 2001, March 29, and April 12, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (66 FR 63521, 67 FR 15175 and 19391) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

Accordingly, the following products and service are added to the Procurement List:

Products

Product/NSN: Air Rite Odor Counteractants, Gold/6840–00-NIB–0016
Product/NSN: Air Rite Odor Counteractants, Silver/6840–00-NIB–0018
Product/NSN: Air Rite Odor Counteractants, Red/6840–00-NIB–0019
Product/NSN: Air Rite Odor Counteractants, Blue/6840–00-NIB–0021
Product/NSN: Air Rite Odor Counteractants, Spearmint/6840–00-NIB–0022
Product/NSN: Air Rite Odor Counteractants, Honeysuckle/6840–00-NIB–0023
Product/NSN: Air Rite Odor Counteractants, Spice/6840–00-NIB–0025
Product/NSN: Air Rite Odor Counteractants, Sweet Pine/6840–00-NIB–0026
Product/NSN: Air Rite Odor Counteractants, Floral/6840–00-NIB–0027
Product/NSN: Air Rite Odor Counteractants, Citrus/6840–00-NIB–0028
Product/NSN: Air Rite Odor Counteractants, Vanilla Bean/6840–00-NIB–0029
Product/NSN: Air Rite Odor Counteractants, Green Apple Mint/6840–01–378–0412
Product/NSN: Air Rite Odor Counteractants, Green/6840–01–378–0447
NPA: Blind Industries & Services of Maryland, Baltimore, MD.
Contract Activity: Office Supplies & Paper Products Commodity Center, New York, NY.
Product/NSN: Catheter, External, Male, Self-

Adhering, Wide-band/6530–00–NIB–0060
Product/NSN: Catheter, External, Male, Self-Adhering, Pop-on/6530–00-NIB–0061
Product/NSN: Catheter, External, Male, Self-Adhering, Pop-on /6530–00-NIB–0062
Product/NSN: Catheter, External, Male, Self-Adhering, Pop-on /6530–00-NIB–0063
Product/NSN: Catheter, External, Male, Self-Adhering, Pop-on /6530–00-NIB–0064
Product/NSN: Catheter, External, Male, Self-Adhering, Pop-on /6530–00-NIB–0065
Product/NSN: Catheter, External, Male, Self-Adhering, Wide-band /6530–00-NIB–0066
Product/NSN: Catheter, External, Male, Self-Adhering, Wide-band /6530–00-NIB–0067
Product/NSN: Catheter, External, Male, Self-Adhering, Wide-band /6530–00-NIB–0068
Product/NSN: Catheter, External, Male, Self-Adhering, Wide-band /6530–00-NIB–0069
NPA: Lighthouse for the Blind, St. Louis, MO.
Contract Activity: Department of Veterans Affairs Acquisition Center, Hines, IL.
Product/NSN: Kit, Employee Start, Up/7520–01–493–6006.
NPA: Blind Industries & Services of Maryland, Baltimore, MD.
Contract Activity: Office Supplies & Paper Products Commodity Center, New York, NY.

Service

Service Type/Location: Commissary Shelf Stocking, Custodial & Warehousing, U.S. Coast Guard Support Center, Kodiak, AK.
NPA: MQC Enterprises, Inc., Anchorage, AK.
Contract Activity: Defense Commissary Agency, Fort Lee, VA.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–15731 Filed 6–20–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Addition; Correction

In the document appearing on page 40910, FR Doc. 02–15069, in the issue of June 14, 2002, in the first column the Committee published a notice of proposed addition to the Procurement List of, among other things, Laundry Service, Fort Carson, Colorado. This notice is to correct the Nonprofit Agency associated with this proposal from Goodwill Industries of Colorado Springs to Goodwill Industrial Services Corporation, Colorado Springs, Colorado.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–15732 Filed 6–20–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Board of Overseers of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Request for nominations of members to serve on the Board of Overseers of the Malcolm Baldrige National Quality Award.

SUMMARY: NIST invites and requests nomination of individuals for appointment to Board of Overseers of the Malcolm Baldrige National Quality Award (Board). The terms of some of the members of the Board will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before July 8, 2002.

ADDRESSES: Please submit nominations to Harry Hertz, Director, National Quality Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020. Nominations may also be submitted via FAX to 301–948–3716. Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic home page at: *http://www.quality.nist.gov.*

FOR FURTHER INFORMATION CONTACT: Harry Hertz, Director, National Quality Program and Designated Federal Official, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020; telephone 301–975–2361; FAX—301–948–3716; or via e-mail at harry.hertz@nist.gov.

SUPPLEMENTARY INFORMATION:

I. Board of Overseers of the Malcolm Baldrige National Quality Award Information

The Board was established in accordance with 15 U.S.C. 3711a(d)(2)(B), pursuant to the Federal Advisory Committee Act (5 U.S.C. app.2).

Objectives and Duties

1. The Board shall review the work of the private sector contractor(s), which assists the Director of the National Institute of Standards and Technology (NIST) in administering the Award. The Board will make such suggestions for the improvement of the Award process as it deems necessary.
2. The Board shall provide a written annual report on the results of Award activities to the Secretary of Commerce, along with its recommendations for the improvement of the Award process.
3. The Board will function solely as an advisory committee under the Federal Advisory Committee Act.
4. The Board will report to the Director of NIST and the Secretary of Commerce.

Membership

1. The Board will consist of approximately eleven members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance, and for their preeminence in the field of quality management. There will be a balanced representation from U.S. service and manufacturing industries, education and health care. The Board will include members familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education, and health care. No employee of the Federal Government shall serve as a member of the Board of Overseers.
2. The Board will be appointed by the Secretary of Commerce and will serve at the discretion of the Secretary. The term of office of each Board member shall be three years. All terms will commence on March 1 and end on February 28 of the appropriate year.

Miscellaneous

1. Members of the Board shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 *et seq.*
2. The Board will meet twice annually, except that additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are one day in duration.
3. Board meetings are open to the public. Board members do not have access to classified or proprietary information in connection with their Board duties.

II. Nomination Information

1. Nominations are sought from the private sector as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education, and health care. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the Board, and will actively participate in good faith in the tasks of the Board. Besides participation at meetings, it is desired that members be able to devote the equivalent of seven days between meetings to either developing or researching topics of potential interest, and so forth, in furtherance of their Board duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Board membership.

Dated: June 12, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–15680 Filed 6–20–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 020611144–2144–01; I.D. 041102A]

Marine Mammal Authorization Program Integration of Registration for Selected Atlantic Ocean, Gulf of Mexico, and Caribbean Fisheries

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

ACTION: Notice of expansion of integrated registration program.

SUMMARY: NMFS is providing notice that it is increasing the number of fisheries for which the Marine Mammal Authorization Program (MMAP) registration is integrated with existing state and Federal fishery licensing and permitting programs. NMFS is integrating MMAP registration at this time only for specific Category I or II fisheries with fishery management plans (FMP) administered by the Northeast Regional office of NMFS and the pelagic longline fishery administered under the Highly Migratory Species FMP. Fishers who participate in a Category I or II fishery for which registration is not integrated must continue to register as specified in the 2002 List of Fisheries.

ADDRESSES: For east coast fisheries, registration information and marine mammal injury/mortality reporting forms may be obtained from the following regional offices:

NMFS, Northeast Region, Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930–2298, Attn: Marcia Hobbs.

NMFS, Southeast Region, 9721 Executive Center Drive North, St. Petersburg, FL 33702, Attn: Teletha Griffin.

FOR FURTHER INFORMATION CONTACT: Patricia Lawson, Office of Protected Resources, 301–713–2322; Kim Thounhurst, Northeast Regional Office, 978–281–9138; or Teletha Griffin, Southeast Regional Office, 727–570–5312. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

According to the Marine Mammal Protection Act (MMPA), all fishers who participate in a Category I or II fishery contained in the List of Fisheries (LOF) final rule (67 FR 2410, January 17, 2002) must be registered in the MMAP. The MMAP provides an authorization for commercial fishers which allows the incidental (i.e., non-intentional) taking of marine mammals pursuant to the MMPA during the course of commercial fishing operations. To qualify for this authorization, fishers who participate in a Category I or II fishery must register in the MMAP. (For a complete description of requirements for Category I and II fisheries, consult 50 CFR 229.4). Information collected under the MMAP, as well as from other sources, provides the basis for identifying and determining the level of incidental serious injury and mortality of marine mammals in commercial fishing operations relative to the allowable take level, or potential biological removal level, for each marine mammal stock.

Section 118 (c)(5)(A) of the MMPA (16 U.S.C. 1387 (c)(5)(A)) states that ''The Secretary shall develop, in consultation with the appropriate States, affected Regional Fishery Management Councils, and other interested persons, the means by which the granting and administration of authorizations under this section shall be integrated and coordinated, to the maximum extent practicable, with existing fishery licenses, registrations, and related programs.''

In recent years, NMFS has integrated its MMAP with other licensing systems in the northeast for the state and Federal components of the American lobster trap/pot fishery, the Federal portion of the squid/mackerel/butterfish trawl fishery, and the Northeast and Mid-Atlantic Federal gillnet fisheries. NMFS has also integrated several west coast fisheries, and NMFS is now integrating additional state and Federal fishery permitting and licensing systems in the eastern United States.

The goals of the expanded integration program include assuring consistency in registration procedures across a greater number of east coast fisheries, increasing the number of registrants to better reflect the level of participation in the fisheries for monitoring purposes, and conducting outreach to the fishing industry with regard to MMPA requirements. By using data from existing fishery licensing programs, the MMAP integration will reduce the registration burden on the fishing industry while better facilitating the protection and conservation of marine mammals. In a licensing system that is integrated with the MMAP fishers will no longer have to submit an MMAP, current fishery permit holders registration form, renewal form, or processing fee to NMFS in order to receive or validate their MMAP Authorization. Certificates.

NMFS is pursuing the integration of MMAP registration based on the fishery listings in the 2002 LOF. Many of these fisheries include both a state and a Federal component. For 2002, only the fisheries with a Federal FMP administered by the NMFS Northeast Regional Office and the pelagic longline fishery administered under the Highly Migratory Species FMP will be integrated. Northeast fisheries with FMPs to be integrated include the American Lobster, Atlantic Bluefish, Atlantic Herring, Monkfish, Northeast Multispecies, Spiny Dogfish, Squid/Mackerel/Butterfish, Summer Flounder/Scup/Black Sea Bass, and Tilefish. Of those fisheries, only those permit holders who indicated use of gear types that fall within the 2002 LOF will be integrated. NMFS is continuing to work toward integrating the MMAP registration for fishers who participate

in the federal fisheries in the southeast region.

In order to integrate state-managed fisheries, NMFS is obtaining fishery license-holder information from individual states. NMFS has requested and received data from the east coast states of Maine through Florida.

Once a database is established with the license-holder information from the state and Federal permit databases, NMFS will mail MMAP Authorization Certificates and marine mammal injury/mortality reporting forms to each permit or license-holder. The certificates will provide a MMAP authorization for all fishers who participate in an integrated Category I or II fishery, provided that the fisher holds a valid state or Federal fishing permit or license for the affected regulated fishery.

Since integration must be accomplished by linking existing state and Federal permit or license databases to the NMFS MMAP database, fishers who participate only in unregulated fisheries (i.e., fisheries for which there are currently no state or Federal permits), must still register according to the procedures specified in the 2002 LOF. For example, the hagfish trap/pot fishery in New England is currently an unregulated fishery, and it falls under the new Category II listing for the Northeast trap/pot fishery. Therefore, a fisher who participates only in the hagfish trap/pot fishery in New England will be required to send in the MMAP registration form. However, if a hagfish trap/pot fisher also participates in a regulated fishery which is integrated under the MMAP, such as the American lobster fishery, NMFS will integrate registration for that permit holder for the hagfish fishery along with the regulated fishery. Thus, it will not be necessary for these fishers to submit a second registration for hagfish. A fisher who participates in state and Federal fisheries not yet integrated with the MMAP registration system must continue to send in the registration form to NMFS.

Dated: June 14, 2002.

Rebecca J. Lent,

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

[FR Doc. 02–15738 Filed 6–20–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board; Meeting

AGENCY: Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for research, education, and application of science to resource management and environmental assessment and prediction. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time and Date: The meeting will be held Tuesday, July 9, 2002, from 1 p.m. to 5 p.m.; Wednesday, July 10, 2002, from 8 a.m. to 5 p.m.; and Thursday, July 11, from 8 a.m. to 12 p.m.

Place: The meeting will be held all three days in the Canyon Room at the Millenium Harvest House, 1345 28th Street, in Boulder, CO.

Status: The meeting will be open to public participation with two 30-minute time periods set aside for direct verbal comments or questions from the public. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by Monday July 1, 2002, to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after July 1, 2002, will be distributed to the SAB, but may not be reviewed prior to the meeting date. Approximately thirty (30) seats will be available for the public including five (5) seats reserved for the media. Seats will be available on a first-come, first-served basis.

Matters to be Considered: The meeting will include the following topics: (1) the NOAA Climate Change Research Initiative, (2) reports on program and laboratory reviews conducted under the auspices of the SAB, (3) briefings and discussions on activities of SAB subcommittees and working groups and (4) public statements.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Uhart, Exeuctive Director, Science Advisory Board, NOAA, Rm. 11142, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–9121, Fax: 301–713–0163, E-mail: Michael.Uhart@noaa.gov); or visit the NOAA SAB website at *http://www.sab.noaa.gov*.

Louisa Koch,

Deputy Assistant Administrator, OAR.

[FR Doc. 02–15677 Filed 6–20–02; 8:45 am]

BILLING CODE 3510–KD–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of a Designated Consultation Level for Certain Wool Textile Products Produced or Manufactured in Mexico

June 18, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a designated consultation level.

EFFECTIVE DATE: June 21, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Government of the United States has agreed to increase the current Designated Consultation Level (DCL) for Category 433 to 12,000 dozen. To the extent used, the 2003 DCL for Category 433 will be reduced by 1,000 dozen, the equivalent amount of the increase.

The level does not apply to NAFTA (North American Free Trade Agreement) originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of the

agreement. In addition, this consultation level does not apply to textile and apparel goods, assembled in Mexico, in which all fabric components were wholly formed and cut in the United States, entered under the United States Harmonized Tariff Schedule heading 9802.00.90.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59580, published on November 29, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 18, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 23, 2001 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the period which began on January 1, 2002 and extends through December 31, 2002. The levels established in that directive do not apply to NAFTA (North American Free Trade Agreement) originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of NAFTA or to textile and apparel goods, assembled in Mexico, in which all fabric components were wholly formed and cut in the United States, entered under the United States Harmonized Tariff Schedule heading 9802.00.90.

Effective on June 21, 2002, you are directed to increase the current designated consultation level for Category 433 to 12,000 dozen [1], pursuant to exchange of letters dated May 30, 2002 and June 11, 2002, and provisions of the NAFTA (North American Free Trade Agreement).

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–15839 Filed 6–20–02; 8:45 am]

BILLING CODE 3510–DR–S

[1] The limit has not been adjusted to account for any imports exported after December 31, 2001.

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of the Draft Supplement to the Final Environmental Impact Statement for the Authorized Red River Chloride Project Wichita River Only Portion, Oklahoma and Texas

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Availability.

SUMMARY: Notice is made of the availability of a Draft Supplement to the Final Environmental Impact Statement (DSFEIS) for the Authorized Red River Chloride Control Project Wichita River Only Portion, Oklahoma and Texas prepared by the Tulsa District of the U.S. Army Corps of Engineers (USACE). The purpose of the project is to investigate methods to reduce the natural occurring levels of chlorides in the Wichita River Basin in Texas.

DATES: The DSFEIS will be available for public review when this announcement is published. The review period of the document will be until September 11, 2002. To request a copy of the supplement, please call (918) 669–4396.

FOR FURTHER INFORMATION CONTACT: For further information regarding DSFEIS, please contact Stephen L. Nolen, Chief, Environmental Analysis and Compliance Branch, U.S Army Corps of Engineers, ATTN: CESWT–PE–E, 1645 South 101st East Avenue, Tulsa, OK 74128–4629.

SUPPLEMENTARY INFORMATION: In 1957, the U.S. Public Health Service initiated a study to locate natural chloride seeps and springs and to determine the contribution of these chloride sources to the Red River, to which the Wichita River is a tributary. In 1959, the USACE recommended measures to control identified natural chloride sources. Congress authorized plans for chloride control in 1966. This project was known as the Red River Chloride Control Project (RRCCP). A Final Environmental Statement (FES) for the RRCCP dated July 1976, of which the Wichita River was a portion, was filed with the Environmental Protection Agency on May 18, 1977, and published in the **Federal Register** on May 27, 1977. Since the 1976 FES, proposed project outputs have changed. Target chloride concentrations of 250 mg/l or less 94% of the time at Lake Texoma and 98% of the time at Lake Kemp were originally established for the proposed project. However, project modifications described in the supplement would affect design effectiveness of the plan evaluated in the 1976 FES. As such, an environmental reevaluation was approved in 1997, and the NEPA scoping process was initiated in 1998. The proposed plan is expected to meet the Texas Natural Resources Conservation Commission (TNRCC) secondary drinking water standard of 300mg/l chloride 40% of the time at Lake Kemp.

Effectiveness of constructed portions of the project were evaluated by a Congressionally authorized panel, in accordance with Public Law 99–662, to assess the improvements in water quality assumed in the economic reanalysis of the proposed project. The panel submitted a favorable report to the Federal Public Works Committees of the House and Senate in August 1988 indicating that Area VIII was performing as designed. As noted above, design changes have been developed for the proposed project that would lessen impacts on stream flow, water quality, and chloride removal compared to the proposed project evaluated in the 1976 FES. In addition, potential direct and indirect impacts have been identified that were not addressed in the FES.

During the NEPA process for the DSFEIS, several issues were identified as concerns by the public and commenting natural resource agencies. Major issues addressed in this document include: (1) Hydrological biological, and water quality issues concerning fish, aquatic invertebrates, aquatic macrophytes, and the wetland/riparian ecosystem of the Wichita River, Lake Kemp, and Red River above Lake Texoma to the confluences of the Wichita River; (2) Lakes Kemp, Diversion, and Texoma components, including chloride/turbidity relationships, chloride/fish reproduction relationships, chloride/plankton community issues, chloride/nutrient dynamics issues, and impacts on recreational values; (3) water quality and quantity impacts on Dundee Fish Hatchery below Lake Diversion; (4) selenium (Se) concentrations and impact on biota; (5) man-made brines and associated reduction; (6) Section 401 water quality issues; (7) mitigation as it relates to habitat losses from construction of proposed project components; (8) Federally-listed threatened and endangered species; and (9) unquantifiable/undefined impacts.

Changes in the project base condition have also occurred since the 1976 FES. Due to growing concern in the Wichita River Basin about the availability of water and its effect on economic growth and development, the Red River Authority of Texas (RRA) in cooperation with the Texas State Soil and Water

Conservation Board (TSSWCB) initiated a study to determine the feasibility of implementing a brush control and management program to increase water yield. The goal is to restore large areas of brush to native grasses, but leave brush buffers and habitat corridors composed of mesquite and juniper. The results of the study revealed that implementation of the proposed brush control program may provide a net increase in watershed yield at Lake Kemp. The brush control program has currently been included in Texas Senate Bill 1 and the Region B Water Plan. The supplement has assumed a brush management factor of 50% implementation as its future condition without chloride control.

Fourteen alternatives were developed by the USACE for achieving lower concentrations of chlorides in the Wichita River. The objective of the 14 USACE action alternatives was to improve water quality in the Wichita River to a point where it may be economically useful for municipal, industrial, and agricultural water supply. The U.S. Fish and Wildlife Service (USFWS) and the Texas Parks and Wildlife Department (TPWD) developed an additional twelve (12) alternatives that were also considered by the USACE. The objectives of these alternatives were to lower chloride control impacts by reducing brines pumped to Truscott Brine Lake and eliminating potential selenium impacts, as well as replacing stream habitat and lessening the impact of zero flow days on fish populations.

From all the developed alternatives, USACE Alternative 7a was selected as having the greatest net NED benefits. However, concerns regarding this alternative have been raised by the USFWS and TPWD. Due to higher economic, technical, and regulatory viability, Alternative 7a best serves the purpose and need for the proposed action and is the proposed plan.

The DSFEIS has been coordinated and approved by offices and directorates affected by or interested in the subject matter, including the Office of Counsel and Executive Offices.

Stephen R. Zeltner,

Lieutenant Colonel, U.S. Army, Acting District Engineer.

[FR Doc. 02–15719 Filed 6–20–02; 8:45 am]

BILLING CODE 3710–39–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Supplemental Draft Environmental Impact Statement for a Continuing Authorities Section 205 Flood Damage Reduction Project Along Irondequoit and Allen Creeks at Panorama Valley in the Town of Penfield, Monroe County, NY

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps) Buffalo District, State and local interests have resumed assessment/evaluation of a flood damage reduction project along Irondequoit and Allen Creeks in Panorama Valley in the Town of Penfield, Monroe County, NY. A Draft and Final Feasibility Report and Environmental Impact Statement (EIS) were previously prepared and coordinated for a project in 1981. The project was deferred due to lack of local funding. The current recommended plan consists of a combination of measures including: levees, floodwalls (setback from the creek, as possible), several non-structural measures, internal drainage measures, and environmental consideration/measures.

ADDRESSES: Correspondence should be addressed to: Mr. Tod Smith, U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, NY 14207–3199.

FOR FURTHER INFORMATION CONTACT: Mr. Tod Smith at (716) 879–4175.

SUPPLEMENTARY INFORMATION:

Authority

The proposed project is authorized under Section 205 of the Flood Control Act of 1946, as amended, which provides the Corps authority to assist local sponsors with small flood damage reduction projects.

Proposed Action

The current recommended plan consists of a combination of measures including: levees, floodwalls, several non-structural measures, and internal drainage measures. Natural environmental consideration measures that are included in the plan are: aligning levees and floodwalls setback from the creek, as possible; avoiding any in stream activity between September 1st and June 15th; implementing erosion run-off reduction measures; retaining existing vegetation, as possible; planting replacement and additional riparian and upland vegetation; and other minor stream environmental improvements.

Alternatives

Alternative considerations include: No Action; Non-Structural Measures (Flood Plain Management, Flood Insurance, Relocations, Flood Proofing, etc.); Reservoirs/Wetlands; Diversion Channels; Channelization; Channelization and Berms; and Levee/Floodwalls. Alternatives are assessed/evaluated from engineering, economic, and environmental (physical/natural, social/community, cultural resources) perspectives.

Scoping Process

Resumed study scoping letters were coordinated on August 24, 1999, October 5, 1999, and January 14, 2000. A number of agency and public workshops and meetings have been conducted. A local public meeting was held at the Penfield Town Hall on February 15, 2000.

Significant Issues

The initial public response to the current study was substantial. Many interests indicated the project should be looked at from a watershed perspective and that all interests be involved, and that natural restoration measures should be considered. Many want a watershed development management plan. Some are concerned about project impacts upstream and downstream of the Panorama Valley area. Others do not think that funding should be expended to protect interests which are built in a flood prone area; they think flood prone developments should move or be moved out of the flood prone areas. Flood prone development interest would like to see some form of community development flood protection. Most want to see the natural integrity of the streams maintained or improved, as possible, for fish and some wildlife to be able to continue to utilize and pass through the area.

Scoping Meeting

Since Federal, State, and local interests have been involved with reinitiation of the study and coordination is already being conducted and a local public meeting held; no new/additional formal initial scoping meeting is scheduled.

Availability

It is expected that the Supplemental Draft EIS will be made available to the agencies and public about October 2002.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–15716 Filed 6–20–02; 8:45 am]

BILLING CODE 3710–GP–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Inland Waterways Users Board

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In Accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the next meeting of the Inland Waterways Users Board (Board). The meting will be held on July 19, 2002, in Lisle, IL, at the Hilton Lisle/Naperville Hotel, 3003 Corporate West Drive (1–630–505–0900). The Board will hear briefings on navigation projects administered by the U.S. Army Corps of Engineers, Rock Island District. Registration will begin at 7:30 a.m. and the meeting scheduled to adjourn at 1 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Norman T. Edwards, Headquarters, U.S. Army Corps of Engineers, CECW–PD, 441 G Street, NW., Washington, DC 20314–1000; Ph: 202–761–4559.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

Luz Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–15717 Filed 6–20–02; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Request for Comments on the Draft Estuary Habitat Restoration Strategy Prepared by the Estuary Habitat Restoration Council

AGENCY: Department of the Army, Army Corps of Engineers, DoD.

ACTION: Notice of extension of comment period.

SUMMARY: The Corps of Engineers on behalf of the interagency Estuary Habitat Restoration Council is extending the comment period for the draft ''Estuary Habitat Restoration Strategy.'' This extension will provide interested persons with additional time to prepare comments on the draft strategy.

DATES: Consideration will be given only to comments that are received on or before July 1, 2002.

ADDRESSES: Send comments to Estuary Habitat Restoration Strategy, U.S. Army Corps of Engineers, Institute for Water Resources, 7701 Telegraph Road, Casey Building, Alexandria, Virginia, 22315–3868. See Supplementary Information section for electronic filing address.

FOR FURTHER ASSISTANCE CONTACT: Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–4558; or Ms. Cynthia Garman-Squier, Office of the Assistant Secretary of the Army (Civil Works), Washington, DC, (703) 695–6791.

SUPPLEMENTARY INFORMATION: On May 3, 2002 we published in the **Federal Register** (67 FR 22415) the ''Draft Estuary Habitat Restoration Strategy'' for review and comment. Comments regarding the draft strategy were required to be received on or before June 17, 2002. During the comment period, we received a request to extend the comment period.

In response to this request, we are extending the comment period for the ''Draft Estuary Habitat Restoration Strategy'' through July 1, 2002.

Electronic Filing Address: You may submit comments by E-mail to *estuary@usace.army.mil.* Comments should be in one of the following formats: Word, WordPerfect, or ASCII. The subject line for submission of comments should begin with ''Estuary Habitat Restoration Strategy comments from [insert name of agency, organization, or individual].''

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–15718 Filed 6–20–02; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.333]

Demonstration Projects To Ensure Students With Disabilities Receive a Quality Higher Education; Notice inviting applications for new awards for fiscal year (FY) 2002

Purpose of Program: The Demonstration Projects to Ensure Students with Disabilities Receive a Quality Higher Education program provides grants to institutions of higher education (IHEs) to develop innovative demonstration projects. The purpose of the demonstration program is to provide technical assistance and professional development for faculty and administrators in IHEs in order to provide them with the skills and supports that they need to teach students with disabilities. The program will also be used to widely disseminate research and training to enable faculty and administrators in other IHEs to meet the educational needs of students with disabilities.

Eligible Applicants: Institutions of higher education.

Applications Available: June 21, 2002.

Deadline for Transmittal of Applications: July 22, 2002.

Deadline for Intergovernmental Review: September 19, 2002.

Available Funds: $6,930,000.

Estimated Range of Awards: $100,000–$350,000.

Estimated Average Size of Awards: $100,000–$290,000.

Estimated Number of Awards: 24.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. While we encourage applicants to limit their narrative to no more than the equivalent of 25 pages, your application may not exceed the equivalent of more than 40 pages. For the application narrative, the following standards apply:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text, including titles, headings, quotations, references, and captions.
- Use a font that is either 12-point or larger or no smaller that 10 pitch (characters per inch).
- For tables, charts, or graphs also use a font that is either 12-point or larger or not smaller than 10 pitch.

Our reviewers will not read any pages of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98 and 99.

Because there are no program specific regulations for the Demonstration

Projects to Ensure Students with Disabilities Receive a Quality Higher Education program, applicants should refer to the authorizing statute in Part D, Title VII, of the Higher Education Act of 1965, as amended (HEA). In preparing applications, IHEs should pay particular attention to the requirements in section 427 of the General Education Provisions Act (GEPA), as detailed later in this notice. Applicants must address the requirements in section 427 in order to receive funding under this competition. Section 427 requires each applicant to *describe the steps they propose to take* to address one or more barriers (i.e., gender, race, national origin, color, disability, or age) that can impede equitable access to, or participation in, the program. A restatement of compliance with civil rights requirements is not sufficient to meet the requirements in section 427 of GEPA.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR)(34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In Fiscal Year 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Demonstration Projects to Ensure Students with Disabilities Receive a Quality Higher Education Program, CFDA 84.333, is one of the programs included in the pilot project. If you are an applicant under the Demonstration Projects to Ensure Students with Disabilities Receive a Quality Higher Education Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in the e-APPLICATION pilot, please note the following:

- Your participation is strictly voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You must submit all grant documents electronically including the Application for Federal Assistance (ED 424), the Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax the ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Demonstration Projects to Ensure Student With Disabilities Receive a Quality Higher Education Program at *http://e-grants.ed.gov.*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Application) in the application package.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact EDPUBS at its web site: *http://www.ed.gov/pubs/edpuds.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from Ed Pubs, be sure to identify this competition as follows: CFDA number 84.333.

FOR FURTHER INFORMATION CONTACT: Shedita Ford, U.S. Department of Education, 1990 K Street, NW., Room 6147, Washington, DC 20006–8525. Telephone: (202) 502–7808 or via Internet: *Shedita.Ford@ed.gov.*

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 program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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.*

Program Authority: 20 U.S.C. 1140 *et seq.* Title VII, Part D of the Higher Education Act of 1965, as amended.

Dated: June 18, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–15728 Filed 6–20–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Scoping Meetings for Radioisotope Thermoelectric Generator Relocation Environmental Assessment (EA)

AGENCY: Department of Energy.

ACTION: Notice of extension of comment period.

SUMMARY: The Department of Energy published on May 31, 2002, in the **Federal Register**, a notice announcing its intent to prepare an EA for determining the future location of the Department's Heat Source/Radioisotope Power System (HS/RPS) assembly and test operations. The Department invited comments on the proposed action and scope of the EA and announced public meetings to encourage public participation. The comment period was to continue for 21 days from the date of the publication of the **Federal Register** notice (till June 21, 2002).

This **Federal Register** notice extends the comment period till July 5, 2002. The comments received after this date will be considered to the extent practical.

DATES: The scoping comment period has been extended to July 5, 2002.

FOR FURTHER INFORMATION CONTACT: Please direct comments on the proposed relocation and scope of the EA, requests for copies of the EA, and questions concerning the project to: Mr. Timothy A. Frazier, U.S. Department of Energy, PO Box 66, Miamisburg, OH 45343–0066, Telephone: (937) 865–3748, Facsimile (937) 865–4489, Electronic mail: *Tim.Frazier@hq.doe.gov* For general information on DOE's National Environmental Policy Act process, please contact Ms. Carol Borgstrom, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue, Washington, DC 20585, telephone (202) 586–4600 or leave message at 1–(800) 472–2756.

Issued in Washington, DC, June 17, 2002.

William D. Magwood, IV,

Director, Office of Nuclear Energy, Science and Technology.

[FR Doc. 02–15685 Filed 6–20–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC02–717–000; FERC–717]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

June 17, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by August 23, 2002.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426 and should refer to Docket No. IC02–717–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's website at *www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–208–0258 or by e-mail to *efiling@ferc.fed.us.* Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the RIMS link. User assistance for RIMS is available at 202–208–2222, or by e-mail to *rimsmaster@ferc.fed.us.*

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202)208–1415, by fax at (202)208–2425, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–717 ''Open Access Same Time Information System'' (OMB No. 1902–0173) is used by the Commission to carry out the general authority in Sections 309 and 311 of the Federal Power Act 1978 (PURPA)(16 U.S.C. 825h). On April 24, 1996, the Commission issued two separate but interrelated final rules. The first rule, Order No. 888 required that all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce to have on file open access non-discriminatory transmission tariffs that contain minimum terms and conditions of non-discriminatory service. The second rule Order No. 889, required utilities to establish electronic systems to share information about available transmission capacity. Under this rule, each public utility (or its agent) that owns, controls, or operates transmission facilities had to create or participate in an Open Access Same-Time Information System (OASIS) that provides open access transmission customers (current and potential) with electronic information about transmission capacity, prices, and other information necessary to obtain open access nondiscriminatory transmission services. The rule also established standards of conduct to ensure that a public utility's employees engaged in a transmission operations function independently of those employees engaged in wholesale purchases and sales of electric energy in interstate commerce. In addition, specific requirements with respect to various standards and protocols were identified to ensure that the OASIS system presents information in a consistent and uniform manner. In subsequent orders OASIS has been modified as it became necessary to adopt uniform business practices and communication protocols. In Docket No. RM01–10–000, the Commission proposed new standards of conduct to apply uniformly to both natural gas pipelines and transmitting public utilities, a matter still pending before the Commission.

The compliance with these requirements is mandatory. The reporting requirements are found at 18 CFR Part 37.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data with exception to the standards of conduct which are the subject of a separate proceeding as noted above.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
140	1	1,418	198,520

In the Commission's initial submission to OMB it included an estimate based on information obtained from technical journals of the annualized Capital/Startup costs necessary for setting out a world wide web site on the Internet. Additional costs included developing the procedures for calculating ATC and operating an OASIS, and creating the necessary links between control center computers and OASIS computers. To annualize, the Commission assumed that the system would last conservatively for three years. On an annual basis, the Commission estimated startup costs to be $190,000 per system. For operating and maintenance costs (''ongoing''), the Commission estimated the costs to be $110,000 per system. In addition, the Commission assumed that it would take six staff members working full time (five to cover reporting requirements and one to maintain the record keeping requirements).

However, six years have passed since that initial estimate and three years since the last submission to OMB. OASIS has been in full operation for several years as the Commission noted in its last submission, therefore, it will only consider costs for the continued operation of OASIS. (Operations and Maintenance costs include the use of staff to maintain the web site plus human resources necessary for developing and handling data for OASIS. The Commission had assumed in its last submission that only 4.5 personnel (a reduction from the six as noted above) were necessary for staffing, but with improvements in information technology, consolidations within the industry and sharing of staff time between the OASIS site and control room operations, it is anticipated that staffing levels has been further reduced to an average of four personnel. The total annualized cost of the OASIS requirement is 140 respondents × operations and maintenance costs + staffing costs (using a personnel cost of $70,000). The latter figure represents an average of mean annual earnings for professions in Information Technology and Engineering as reported in Federal government occupational statistics for the year 2000. (140 respondents × $390,000 = $ 54,600,000 for total costs).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–15701 Filed 6–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1406–000]

Acadia Power Partners, LLC; Notice of Issuance of Order

June 17, 2002.

Acadia Power Partners, LLC (Acadia) filed a tariff under which Acadia will make sales of capacity, energy, and ancillary services at market-based rates, and for the reassignment of transmission capacity. Acadia also requested waiver of various Commission regulations. In particular, Acadia requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Acadia.

On May 28, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates—Central, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Acadia should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Acadia is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Acadia, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Acadia's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 27, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15693 Filed 6–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1638–000]

Buchanan Generation, LLC; Notice of Issuance of Order

June 17, 2002.

Buchanan Generation, LLC (Buchanan) filed an application requesting authority to engage in the sale of wholesale energy, capacity, and ancillary services at market-based rates, franchised affiliate sales at market-based rates and the reassignment of transmission capacity. Buchanan also requested waiver of various Commission regulations. In particular, Buchanan requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Buchanan.

On May 29, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Buchanan should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Buchanan is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Buchanan, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Buchanan's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 28, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15699 Filed 6–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–149–007]

Dartmouth Power Associates Limited Partnership; Notice of Filing

June 17, 2002.

Take notice that on June 6, 2002, Dartmouth Power Associates Limited Partnership (Dartmouth) filed a triennial market analysis in support of its existing market-based rates authority.

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 27, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–15688 Filed 6–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1632–000]

Energy America, LLC; Notice of Issuance of Order

June 17, 2002.

Energy America, LLC (Energy America) filed an application requesting authority to engage in the sale of wholesale energy, capacity, and ancillary services at market-based rates, and for the reassignment of transmission capacity. Energy America also requested waiver of various Commission regulations. In particular, Energy America requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Energy America.

On May 29, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Energy America should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Energy America is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Energy America, compatible

with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Energy America's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 28, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15698 Filed 6–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–159–004]

GNE, LLC; Notice of Filing

June 17, 2002.

Take notice that on June 3, 2002, GNE, LLC, located at 1024 Central Street, Millinocket, Maine, 04462, filed with the Federal Energy Regulatory Commission a Notice of Change in Status in connection with its acquisition of six hydroelectric projects in the State of New Hampshire.

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 27, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–15691 Filed 6–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3086–002]

ISO New England Inc.; Notice of Filing

June 17, 2002.

Take notice that on June 3, 2002, ISO New England Inc. submitted a compliance report on its Load Response Program and the addition of new generation in New England in the above Docket.

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 27, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–15690 Filed 6–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1470–000]

KeySpan-Glenwood Energy Center LLC; Notice of Issuance of Order

June 17, 2002.

KeySpan-Glenwood Energy Center LLC (KeySpan-Glenwood) filed an application requesting authority to engage in the sales of energy, capacity, and ancillary services at market-based rates, franchised affiliate sales at market-based rates and the reassignment of transmission capacity. KeySpan-Glenwood also requested waiver of various Commission regulations. In particular, KeySpan-Glenwood requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by KeySpan-Glenwood.

On May 30, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates—East, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by KeySpan-Glenwood should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, KeySpan-Glenwood is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of KeySpan-Glenwood, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of KeySpan-Glenwood's

issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 1, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15695 Filed 6–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1573–000]

KeySpan-Port Jefferson Energy Center, LLC; Notice of Issuance of Order

June 17, 2002.

KeySpan-Port Jefferson Energy Center, LLC (Port Jefferson) filed an application requesting authority to engage in the sale of wholesale energy, capacity, and ancillary services at market-based rates. Port Jefferson also requested waiver of various Commission regulations. In particular, Port Jefferson requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Port Jefferson.

On June 12, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Port Jefferson should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Port Jefferson is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Port Jefferson, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Port Jefferson's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 12, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15697 Filed 6–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1401–001]

Monongahela Power Company,The Potomac Edison Company, and West Penn Power Company (Allegheny Power); Notice of Filing

June 17, 2002.

Take notice that on June 4, 2002, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed substitute sheets in the above docket to correct the unexecuted Transition Services Agreement with Letterkenny Industrial Development Authority.

Copies of the filing were served upon the Customer, the Pennsylvania Public Utility Commission, and all parties of record.

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 27, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–15692 Filed 6–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1864–016]

North Shore Concerned Citizens, Group of Lake Gogebic v. Upper Peninsula Power Company; Notice of Complaint

June 14, 2002.

Take notice that on May 2, 2002, the North Shore Concerned Citizens Group of Lake Gogebic (Concerned Citizens) filed a complaint pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206 (2002), and Part I of the Federal Power Act, 16 U.S.C. 791, *et seq.*, against Upper Peninsula Power Company, licensee of the Bond Falls Project No. 1864, located on the West Branch of the Ontonagon River in Ontonagon County, Michigan. Concerned Citizens alleges that Upper Peninsula is maintaining water level of the project reservoir at a level higher than the maximum permitted by the project's license. Copies of the complaint are on file with the Commission and are available for public inspection in the Commission's Public Reference Room. The complaint may also be viewed on the Internet at *http:/*

/www.ferc.gov using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

Upper Peninsula has been notified of the complaint. The licensee may file an answer to the complaint. Any person desiring to be heard or to protest this filing should file comments, a motion to intervene, or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The licensee's answer and all comments, motions, or protests must be filed on or before June 25, 2002. Any entity wishing to become a party must file a motion to intervene. Comments, motions to intervene, and protests may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii), and the instructions on the Commission's web site under the ''e-filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–15702 Filed 6–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SC00–1–003]

NorthWestern Energy, LLC; Notice of Filing

June 17, 2002.

Take notice that on May 13, 2002, NorthWestern Energy, LLC filed revised tariff sheets as supplements to its service agreement with Central Montana Electric Power Cooperative, Inc. and Big Horn County Electric Cooperative, Inc. (Collectively, the Cooperatives).

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 27, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–15704 Filed 6–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2032–000]

NRG New Jersey Energy Sales LLC; Notice of Filing

June 17, 2002.

Take notice that on June 4, 2002, NRG New Jersey Energy Sales LLC tendered for filing with the Federal Energy Regulatory Commission (Commission), under section 205 of the Federal Power Act (FPA), an application requesting that the Commission (1) accept for filing its proposed market-based FERC Rate Schedule No. 1; (2) grant blanket authority to make market-based wholesale sales of capacity and energy under the FERC Rate Schedule No. 1; (3) grant authority to sell ancillary services at market-based rates; and (4) grant such waivers and blanket authorizations as the Commission has granted in the past to other nonfranchised entities with market-based rate authority.

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 27, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–15700 Filed 6–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1412–000]

NRG Rockford II, LLC; Notice of Issuance of Order

June 17, 2002.

NRG Rockford II, LLC (NRG Rockford) filed a proposed tariff providing for the wholesale sale of electric energy, capacity, and ancillary services, and the sale, assignment or transfer of transmission capacity, at market-based rates. NRG Rockford also requested waiver of various Commission regulations. In particular, NRG Rockford requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by NRG Rockford.

On May 29, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by NRG Rockford should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, NRG Rockford is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of NRG Rockford, compatible with the public interest, and is

reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of NRG Rockford's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 28, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15694 Filed 6–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–765–007]

Revelation Energy Resources Corp.; Notice of Filing

June 17, 2002.

Take notice that on June 3, 2002, Revelation Energy Resources Corp. filed a report to re-affirm its authorization to market electric energy and capacity at wholesale at market-based rates and to notify the Commission of its prospective intention to file an updated market analysis every three years.

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 27, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–15689 Filed 6–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–382–000]

West Texas Gas, Inc.; Notice of Request for Clarification of Authority To Construct Replacement Facilities, or in the Alternative, Application To Amend Presidential Permit and Section 3 Authorization

June 17, 2002.

Take notice that on June 6, 2002, West Texas Gas, Inc. (WTG), 211 North Colorado, Midland, Texas, 79701, filed a request for clarification of its authority to construct, operate and maintain certain natural gas pipeline facilities as ''replacement'' facilities without further authorization under its existing Presidential Permit and Natural Gas Act (''NGA'') Section 3 authorization, issued in Docket No. CP96–497 [1], all as more fully set forth in the application which is on file with the Commission and open to 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).

Specifically, WTG proposes to replace a total of approximately 1,165 feet of two parallel 8-inch diameter pipelines with a single 12-inch pipeline which will have a substantially equivalent delivery capacity as the existing facilities. The current Presidential Permit authorizes a maximum capacity of 38,000 Mcf per day. Approximately 886 feet of these facilities are located on the U.S. side of the border near Eagle Pass, Texas, and are subject to the jurisdiction of the Commission. The proposed facilities will connect at the center of the Rio Grande with the pipeline facilities of Compania Nacional de Gas, S.A. de C.V. (Conagas), and will be used to export natural gas to serve Conagas' existing customers near the City of Piedras Negras, Mexico. WTG states that the pipeline would be constructed using directional drilling under the Rio Grande starting on the Mexican side of the river and would be tied into the existing 8-inch lines located 35 feet from the U.S. bank of the river.

WTG emphasizes that replacement is necessary because portions of the existing facilities have become uncovered and exposed to river currents in the Rio Grande. According to WTG, its existing authorization includes a condition that WTG make ''all necessary renewals and replacement'' of the facilities (See Article 8 of Permit). WTG is concerned that, unless clarification is issued promptly so that construction may commence, stress from currents causing further erosion and underwater suspension of the pipeline may destabilize and endanger the facilities. In the alternative, WTG requests the Commission to amend its existing authorization to permit the construction of the replacement facilities.

Any questions concerning the application may be directed to Richard Hatchett, 211 North Colorado, Midland, Texas 79701 or call (915) 683–4349.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before July 8, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, a motion to intervene or a protest in accordance with the Commission's rules of practice and procedure (18 CFR §§ 385.214 or 385.211). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will

[1] Valero Transmission Co. and West Texas Gas, Inc., 76 FERC ¶ 61,264 (1996).

consider these comments in determining the appropriate action to take, but the filing of a comment alone will not serve to make the filer a party to the proceedings. The Commission's rules require that any person filing comments in opposition to the project provide copies of their protest only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR § 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission Order will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–15686 Filed 6–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–385–000]

Williams Gas Pipelines Central, Inc.; Notice of Request Under Blanket Authorization

June 17, 2002.

Take notice that on June 10, 2002, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP02–385–000 a request pursuant to Sections 157.205 and 157.211(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211(b)) for authorization to construct and operate 13 miles of 30-inch and 24-inch pipeline and a 12-inch delivery meter station with appurtenant facilities located in Oklahoma County, Oklahoma, under Williams's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request.

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).

Williams requests authorization to construct and operate the facilities to serve Redbud Energy, LP (Redbud). Williams states that it would use the facilities to transport up to 51,980 MMBtu equivalent of natural gas per day. Williams estimates the cost of the facilities to be $13,008,000. Williams states further that the proposal would have no significant effect on Williams' peak day and annual deliveries, and service to Redbud through the new delivery point would be accomplished without detriment to Williams' other existing customers.

Any questions regarding the application should be directed to David N. Roberts, Manager of Certificates and Tarriffs, at: (713) 853–6549, Williams Gas Pipelines Central, Inc., P.O. Box 20009, Owensboro, Kentucky 42304.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–15687 Filed 6–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1512–000]

Yuba City Energy Center, LCC; Notice of Issuance of Order

June 17, 2002.

Yuba City Energy Center, LLC (Yuba City) filed an application requesting authority to engage in the sale of wholesale energy, capacity, and certain ancillary services at market-based rates, and the reassignment of transmission capacity and the resale of firm transmission rights. Yuba City also requested waiver of various Commission regulations. In particular, Yuba City requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Yuba City.

On June 10, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates—West, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Yuba City should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Yuba City is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Yuba City, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Yuba City's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene

or protests, as set forth above, is July 10, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15696 Filed 6–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

June 17, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. Copies of this filing are on file with the Commission and are available for public inspection. The documents may 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).

EXEMPT

Docket No.	Date filed	Presenter or requester
1. RT02–2–000, et al.	6–11–02	Sarah McKinley and Deborah Schweikart.
2. Project Nos. 4204–000, 4659–000, 4660–000	6–13–02	Don Klima.
3. RT02–2–000, et al.	6–13–02	Laura Chappelle, David A. Svanda, Robert B. Nelson.
4. Project No. 11508–000	6–14–02	Glen D. Martin.
5. CP98–150–000	6–17–02	William Gute.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–15703 Filed 6–20–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7232–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Waste Minimization Partnership Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): National Waste Minimization Partnership Program, EPA ICR No. 2076.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 20, 2002.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–00–XXXX–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. EPA, 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: *rcradocket @epamail. epa.gov.* Comments in electronic format should also be identified by the docket number F–00–XXXX–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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 (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in

the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 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. This notice and the supporting documents that detail the National Waste Minimization Partnership Program ICR are also available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For information on specific aspects of this information collection, contact Newman Smith, Office of Solid Waste (5302W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone: (703) 308–8757, e-mail: *smith.newman@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which generate, treat, and store hazardous waste.

Title: National Waste Minimization Partnership Program; EPA ICR No. 2076.01.

Abstract: EPA is establishing a national program to encourage the minimization of hazardous waste through source reduction and recycling. Participation in the National Waste Minimization Partnership Program is completely voluntary. EPA will use four forms to collect information from participants, called partners, which can be prepared and submitted by hard copy or electronically. Participation begins when an *Enrollment Form* is submitted and accepted by EPA. The form asks for basic site identification information as well as information on the company's waste minimization goals under the program.

Once in the program, partners will also have an opportunity to complete and submit an optional, one-time *Application for Certificate of Past Accomplishments.* This form enables partners to notify the Agency of waste minimization accomplished in the past. Partners also can submit a one-time *Application for Certificate of Accomplishment* when they accomplish the goals the established for their participation in the program. These certificates will enable the Agency to confirm a partners' progress and measure the overall success of the program. Certificates provide the basis for the Agency to recognize partner accomplishments in a formal (*e.g.,* at an awards ceremony or by congratulatory letter) manner, if appropriate. Recognizing partner achievements is important to help EPA spur other partners on to reduce more waste.

Partners also may submit an optional, one-time *Case Studies Submission Form.* The form enables a partner to describe its waste minimization techniques, implementation problems, lessons learned, benefits, and relevant implications. The case studies will assist the Agency in better understanding waste minimization approaches and technologies. The information may also help the Agency in sharing lessons learned and effective strategies among the facilities generating hazardous waste, in order to promote continued and effective waste minimization efforts. Sharing effective waste reduction strategies with others is a fundamental objective of the partnership program.

Because the program is voluntary, EPA expects that companies would enroll only if their benefits under the program outweigh the costs. Although EPA expects partners to experience a minor burden under the paperwork requirements of the program, the Agency fully expects many companies to realize substantial cost savings (typically more than enough to offset their paperwork costs) through implementation of their waste reduction initiatives. (EPA evidence suggests that cost savings of hundreds of thousands, if not millions, of dollars is not unusual for a large corporation.)

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.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: EPA estimates the annual respondent burden for the National Waste Minimization Partnership Program to be 3,280 hours and $203,306. EPA expects that, in the first year, 60 companies will enroll, and 90 will enroll in each subsequent year. Thus, at the end of the first year, there will be 60 existing partners, 150 at the end of the second year, and 240 at the end of the third year. For purposes of the ICR's burden calculations, EPA has averaged the number of new and existing partners over the three-year period to conclude that there will be, on average, 80 new partners annually and 150 existing partners annually. The disaggregated burden per form is estimated below:

(1) *Enrollment Form*—EPA estimates that, on average, 80 new partners will fill out this form each year. EPA further estimates that ten percent of existing partners will notify EPA to modify their waste minimization goals each year (*i.e.,* $10\% \times 150 = 15$ partners per year). The total annual hourly burden for this form is estimated to be 2,723 hours. The total annual cost for this form is estimated to be $168,221.

(2) *Application for Certificate of Past Accomplishments*—EPA estimates that two-thirds of new partners will submit an application each year, or 54 partners per year. The total annual hourly burden for this form is estimated to be 109 hours. The total annual cost for this form is estimated to be $6,878.

(3) *Application for Certificate of Accomplishment*—EPA estimates that 80 percent of existing facilities will submit this one-time form, or 64 partners per year. The total annual hourly burden for this one-time form is estimated to be 128 hours. The total annual cost for this one-time form is estimated to be $8,152.

(4) *Case Studies Submission Form*—EPA expects that 50 percent of existing facilities will submit this one-time form, or 40 partners per year. The total annual hourly burden for this one-time form is estimated to be 320 hours. The total annual cost for this one-time form is estimated to be $20,055.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying

information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: May 23, 2002.

Elizabeth Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 02–15725 Filed 6–20–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6630–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *www.epa.gov/oeca/ofa.*

Weekly receipt of Environmental Impact Statements

Filed June 10, 2002, through June 14, 2002,

Pursuant to 40 CFR 1506.9.

EIS No. 020235, FINAL EIS, IBR, NM, Elephant Butte and Caballo Reservoirs, Resource Management Plan (RMP), Implementation, Sierra and Socorro Counties, NM, Wait Period Ends: July 22, 2002, Contact: Clay McDermeit (505) 248–5391.

EIS No. 020236, DRAFT EIS, IBR, NM, City of Albuquerque Drinking Water Project, To Provide a Sustainable Water Supply for Albuquerque through Direct and Full Consumptive Use of the City's San Juan-Chama (SJC) Water for Potable Purposes, Funding, Right-of-Way and COE Section 404 Permits, City of Albuquerque, NM , Comment Period Ends: August 13, 2002, Contact: Lori Robertson (505) 248–5326. This document is available on the Internet at: *http://www.saj.usace.army.mil/permit/occidental.htm.sic¿.*

EIS No. 020237, DRAFT EIS, BLM, OR, Cascade-Siskiyou National Monument (CSNM) Resource Management Plan, Implementation, Klamath and Rouge River Basins, Jackson County, OR, Comment Period Ends: September 20, 2002, Contact: Richard Drel (541) 618–2200. This document is available on the Internet at: *www.ca.blm.gov/palmsprings.*

EIS No. 020238, DRAFT EIS, AFS, ID, Sixshooter Project, to Reduce the Threats of Insect Infestation and Wildfire, Sixmile and West Fork Creek, Boise National Forest, Emmett Ranger District, Gem County, ID, Comment Period Ends: August 05, 2002, Contact: Jeffery Clark (208) 365–7000.

EIS No. 020239, DRAFT EIS, COE, NJ, South River, Raritan River Basin Hurricane and Storm Damage Reduction and Ecosystem Restoration, Implementation, Draft Integrated Feasibility Report, Middlesex County, NJ, Comment Period Ends: August 05, 2002, Contact: Mark H. Bulas (212) 264–4663.

EIS No. 020240, FINAL EIS, APH, PROGRAMMATIC—EIS Rangeland Grasshopper and Mormon Cricket Suppression Program, Authorization, Funding and Implementation in 17 Western States, AZ, CA, CO, ID, KS, MT, NB, NV, NM, ND, OK, OR, SD, TX, UT, WA and WY, Wait Period Ends: July 22, 2002, Contact: Charles Brown (301) 734–8963. This document is available on the Internet at: *http://www.aphis.usda.gov/ppd/es/ppqdocs.htm1.*

EIS No. 020241, FINAL EIS, NOA, IN, Indiana Lake Michigan Coastal Program Document, Federal Approval and Implementation, Coastal Zone Management, Lake, Porter, and LaPorte Counties, IN, Wait Period Ends: July 22, 2002, Contact: Diana Olinger (301) 713–3155.

EIS No. 020242, DRAFT EIS, AFS, MO, Rams Horn Project, To Accomplish the Direction and Desired Conditions Identified in the Mark Twain National Forest, Land and Resource Management Plan, Houston/Rolla/Creek Ranger District, Phelps and Pulaski Counties, MO, Comment Period Ends: August 05, 2002, Contact: Mark Hamel (417) 967–4194. This document is available on the Internet at: *http://www.fs.fed.us/r9/marktwain/publications.*

EIS No. 020244, FINAL EIS, GSA, CA, Los Angeles Federal Building—U. S. Courthouse, Construction of a New Courthouse in the Civic Center, City of Los Angeles, Los Angeles County, CA , Wait Period Ends: July 22, 2002, Contact: Javad Soltani (415) 522–3493.

EIS No. 020245, DRAFT EIS, MMS, AK, Beaufort Sea Planning Area Multiples Sale 186, 195 and 202 Oil and Gas Lease Sales, Alaska Outer Continental Shelf, Offshore Marine Environment, Beaufort Sea Coastal Plain, and the North Slope Borough of Alaska, Comment Period Ends: September 20, 2002, Contact: Dr. George Valiulis (703) 787–1662.

EIS No. 020246, FINAL EIS, BLM, AZ, Las Cienegas Resource Management Plan, Implementation, Las Cienegas National Conservation Area (NCA) and Sonoita Valley Acquisition Planning District, AZ, Wait Period Ends: July 22, 2002, Contact: Karen Simms (520) 258–7210.

EIS No. 020247, DRAFT EIS, AFS, CA, Brown Darby Fuel Reduction Project, Proposal for a Combination of the Salvage Harvesting of Trees Killed and other Fuels Management Activities, Stanislaus National Forest, Calaveras Ranger District, Calaveras and Tuolumne Counties, CA, Comment Period Ends: August 05, 2002, Contact: Kathy Aldrich (209) 795–1381. This document is available on the Internet at: *www.is.ch2m.com/iidweb.*

EIS No. 020248, DRAFT EIS, COE, CA, Bolinas Lagoon Ecosystem Restoration, Proposal to Removal up to 1.5 Million Cubic Yard of Sediment from the bottom of the Lagoon to Allow Restoration of Tidal Movement and Eventual Restoration of Tidal Habitat, Marin County, CA, Comment Period Ends: August 05, 2002, Contact: Roger Golden (415) 977–8703.

EIS No. 020249, DRAFT EIS, NPS, MO, Wilson's Creek National Battlefield General Management Plan, Implementation, To Commemorate the Battle of Wilson's Creek and to Preserve the Associated Battlefield, Greene and Christian Counties, MO, Comment Period Ends: August 05, 2002, Contact: Dick Lusardi (417) 732–2662.

EIS No. 020250, FINAL EIS, IBR, CA, American River Pump Station Project, Providing Placer County Water Agency (PCWA) with the Year-Round Access to its Middle Fork Project (MFP) Water Entitlements from the American River, Placer County, CA, Wait Period Ends: July 22, 2002, Contact: Roderick Hall (916) 989–7279.

Dated: June 18, 2002.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–15726 Filed 6–20–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6630–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental

Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002, (67 FR 11992).

Draft EISs

ERP No. D–DOE–L05224–WA Rating LO, Maiden Wind Farm Project, Proposes to Construct and Operate up to 494 megawatts (MW) Wind Generation on Privately- and Publicly-owned Property, Conditional Use Permits, Benton and Yakima Counties, WA.

Summary: EPA has no significant concerns with the project.

ERP No. D–FHW–F40404–MN Rating EO2, Trunk Highway (TH) 53 Project, Transportation Improvements, from 1.2 km (¾ mile) South of St. Louis County Road 307 to the South City Limits of Cook, NPDES Permit, COE Section 10 and 404 Permits, St. Louis County, MN.

Summary: EPA expressed environmental objections regarding the magnitude of wetland impacts, lack of a detailed wetland mitigation plan, impacts to U.S. Forest Service land, and possible forest fragmentation and wildlife habitat issues. EPA requested that additional information on wetland mitigation, forest fragmentation and wildlife habitat impacts be developed and taken into consideration when identifying a preferred alternative.

ERP No. D–FHW–H40403–KS Rating EC2, US 59 Highway Construction Improvements, Lawrence to Ottawa, Funding, NPDES Permit Issuance and Possible US Army COE Permit Issuance, Douglas and Franklin Counties, KS.

Summary: EPA expressed environmental concerns with the degree of information provided on cultural resources, noise impacts, and endangered species. EPA requested that appropriate mitigation measures be described in more detail for these three project impacts.

ERP No. D–NPS–D65025–WV Rating LO, National Coal Heritage Area, Strategic Management Action Plan, Implementation, Boone, Cabal, Layette, Logan, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne and Wyoming Counties, WV.

Summary: EPA expressed lack of objections to the preferred alternative.

Final EISs

ERP No. F–AFS–F65029–IL Midewin National Tallgrass, Proposed Land and Resource Management Plan, Implementation, Prairie Plan Development, Will County, IL.

Summary: EPA has no objection to the action as proposed since the final EIS addressed previous concerns regarding water quality, preserving wetland functions, invasive species, and non-target agricultural practice impacts.

ERP No. F–BLM–K67052–NV Newmont Gold Mining, South Operations Area Project Amendment, Operation and Expansion, Plan of Operations, Elko and Eureka Counties, NV.

Summary: EPA expressed continuing objections to the proposed project because the existing mine is currently out of compliance with its National Pollutant Discharge Elimination System (NPDES) discharge effluent limitations for total dissolved solids (TDS) and possibly other constituents. EPA recommended that BLM not approve the Plan of Operations for the proposed expansion until the mine comes into compliance with its permit. EPA also expressed concerns regarding the acid generating potential of the waste rock, and recommended that BLM include specific commitments in its Record of Decision (ROD) to ensure the appropriate ratio of acid neutralizing waste rock to acid generating waste rock during disposal. EPA recommended that BLM consider additional monitoring and address any long-term bonding needs prior to issuance of the Plan of Operations.

ERP No. F–MMS–L03010–AK Liberty Development and Production Plan, Beaufort Sea Oil and Gas Development, Implementation, To Transport and Sell Oil to the U.S. and World Markets, Right-of-Way Application, Offshore Beaufort Sea Marine Environment and Onshore North Slope of Alaska Coastal Plan, AK.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–USA–D11032–PA Fort Indiantown Gap National Guard Training Center, Training and Operations Enhancement, Pennsylvania National Guard (PANG), Annville, Dauphin and Lebanon Counties, PA.

Summary: EPA has no objection to the proposed action since previous issues were adequately addressed within the Final EIS.

Dated: June 18, 2002.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–15727 Filed 6–20–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7236–3]

Draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of comment request extension.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has developed Draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency (Information Quality Guidelines). EPA is extending the comment period regarding its draft Information Quality Guidelines from May 31, 2002 to June 21, 2002.

DATES: Comments must be received on or before June 21, 2002, 11:59 pm EST.

ADDRESSES: Comments should be addressed to: Docket ID No. OEI–10014 which has been established at: U.S. EPA, Northeast Mall, Room B607, 401 M Street SW., Washington, DC 20460. See the ''Supplementary Information'' section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Evangeline Tsibris Cummings, Environmental Protection Agency, Office of Environmental Information, Telephone: 202–566–0621; Fax: 202–566–0706; e-mail: cummings.evangeline@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has developed draft Information Quality Guidelines, in response to an Office of Management and Budget (OMB) guideline directing all Federal agencies to develop and implement their own guidelines by October 1, 2002 (67 FR 8451, February 22, 2002). The draft Information Quality Guidelines are available at the EPA web site, *www.epa.gov/oei/qualityguidelines*. Comments may be submitted by web site, e-mail, mail, facsimile, or in person. EPA encourages you to submit your comments electronically to ensure timely receipt. Please visit the EPA web site, *www.epa.gov/oei/qualityguidelines*, or the previous notice (67 FR 21234–21235, April 30, 2002) for instructions on how to submit your comments.

Dated: June 14, 2002.

Mark Luttner,

Director, Office of Information Collection, Office of Environmental Information.

[FR Doc. 02–15724 Filed 6–20–02; 8:45 am]

BILLING CODE 6560–50–P

EXECUTIVE OFFICE OF THE PRESIDENT

Council on Environmental Quality

Proposed Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of information

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Proposed guidelines and corrections to comment request.

SUMMARY: This notice requests comment on proposed guidelines. These proposed guidelines were first published in **Federal Register** Vol. 67 No. 98 on May 21, 2002. They were accompanied by a request for comments, however, the email address listed was incorrect. This notice has the correct email address and an extended comment period to July 15, 2002.

These guidelines implement Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2002 (Public Law 106–554; H.R. 5658). Section 515 directs the Office of Management and Budget (OMB) to issue government-wide guidelines under sections 3504(d)(1) and 3516 of Title 44, and require each Federal agency to issue agency-specific guidelines, to ensure and maximize the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by the agency and to establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with such guidelines. Each agency must also report periodically to the OMB director on the number, nature, and resolution of complaints received by the agency in regards to these requirements.

The proposed guidelines published below would implement these requirements for the Council on Environmental Quality. They are intended to comply with both the statutory requirements noted above and the final guidelines published by OMB on February 22, 2002 (Vol. 67 **Federal Register** No. 36, at 8452).

DATES: Public comments must be submitted by July 15, 2002.

ADDRESSES: Please submit comments to Dinah Bear, General Counsel of the Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20503. Comments can be emailed to *info_quality@ceq.eop.gov*

FOR FURTHER INFORMATION CONTACT: Dinah Bear, General Counsel, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20503. Telephone: (202) 395–7421.

SUPPLEMENTARY INFORMATION: Notice of this action appeared in The Council on Environmental Quality (CEQ) was established by Congress in 1969 through passage of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* and is an agency within the Executive Office of the President (EOP). The Chairman of CEQ, who is appointed by the President with the advice and consent of the Senate, serves as the principal environmental policy adviser to the President. CEQ coordinates federal environmental efforts and works closely with agencies and other White House offices in the development of environmental policies and initiatives. CEQ also oversees Federal agencies implementation of NEPA through promulgation of regulations implementing the procedural provisions of NEPA (40 CFR 1500–1508) and through interpretation of statutory requirements. CEQ also has a variety of other responsibilities under NEPA, the Environmental Quality Improvement Act of 1970 and other statutes.

Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554, hereinafter referred to as Section 515) directs the Office of Management and Budget to issue government-wide guidelines that ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.'' OMB has required agencies to publish draft guidelines no later than May 1, 2002. The Council on Environmental Quality's guidelines will be published in the **Federal Register** and posted on the agency's web site at *www.whitehouse.gov/ceq.*

The following are CEQ's ''Proposed Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Council on Environmental Quality'':

A. CEQ will ensure that all information it disseminates to the public meets all applicable standards of quality, including objectivity, utility and integrity. CEQ hereby adopts this standard of quality, as a performance goal, and adopts the following procedures for the incorporation of information quality criteria into CEQ information dissemination activities.

1. Objectivity and Utility of Information.

As defined in Section C, below, ''objectivity'' is a measure of whether disseminated information is ''accurate, clear, complete, and unbiased;''. ''Utility'' refer to the usefulness of the information to its intended audience. CEQ is committed to disseminating reliable and useful information. Before disseminating information, CEQ staff and officials will ensure that the information has been reviewed in an information quality review process that is proportional to the importance of the information. It is the primary responsibility of the professional staff person drafting information intended for dissemination, or supervising the preparation of such information, to use the most knowledgeable and reliable sources reasonably available to confirm the objectivity and utility of such information.

2. Much of the information CEQ disseminates consists of or is based on information submitted to CEQ by other Federal agencies. Prior to dissemination of such information, responsible CEQ staff will obtain a written statement from the agency submitting the information attesting that the information meets the agency of origin's information quality guidelines.

3. In seeking to assure the ''objectivity'' and ''utility'' of the information it disseminates, CEQ will generally follow the basic clearance process established internally by the Chief of Staff and, where appropriate, the government-wide clearance process coordinated by OMB. Where appropriate, substantive input will be sought from within CEQ, other offices within the EOP, other government agencies, non-government organizations, and the public. When CEQ determines that the transparency of information is relevant for assessing the information's usefulness from the perspective of the users of the information, including the public, CEQ shall ensure that transparency has been appropriately addressed and provided. In determining the appropriate level of transparency, CEQ should consider the types of data that can practicably be subjected to a reproducibility requirement given ethical, feasibility, and confidentiality constraints.

4. The CEQ staff member or official responsible for the dissemination of information should generally take the

following basic steps to assure the ''objectivity'' and ''utility'' of the information to be disseminated:

a. Preparing a draft of the document after consulting the necessary parties, including government and non-government sources, as appropriate;

b. Determining necessary clearance points;

c. Determining where the final decision shall be made;

d. Determining whether peer review would be appropriate and, if necessary, coordinating such review;

e. Obtaining clearances; and

f. Overcoming delays and, if necessary, presenting the matter to higher authority.

5. For information regarding risks to human health, safety and the environment and information that CEQ determines is ''influential'' as defined in Section D(3) of these guidelines, CEQ adapts the standards set forth by Congress in the Safe Drinking Water Act Amendments of 1996 (42 U.S.C. 300g–1(b)(3)(A) & (B) to CEQ's information quality review process. Thus, CEQ will use the ''best available,'' peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices'', and ''data collected by the accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).'' Such information shall be presented in a manner that is comprehensive and informative.

CEQ will also determine whether peer review would be appropriate and, if necessary, coordinate such review. Further, CEQ will provide sufficient information about such methods as related to influential information that a qualified member of the public could reproduce the analysis, subject to an acceptable degree of imprecision and subject to ethical, feasibility and confidentiality constraints.

6. CEQ will disseminate information only after appropriate internal clearances are obtained from the Office of the General Counsel and the Chief of Staff.

7. ''Integrity'' refers to the protection of information from unauthorized, unanticipated, or unintentional modification, thus preventing information from being compromised by corruption or falsification. Within the EOP, the Office of Administration has substantial responsibility for ensuring the ''integrity'' of information as defined in these guidelines. CEQ also has an Administrative Officer that coordinates and works with the EOP Office of Administration to ensure the integrity of information. These offices implement and maintain new computer software and hardware systems and provide operational support for systems and system users.

8. Computer security is the responsibility of the EOP Office of Administration's Chief Information, Information Assurance Directorate.

This Office oversees all matters relating to information integrity, including the design and implementation of the security architecture for the EOP, periodic audits of security architecture components, and review and approval of changes to the technical baseline.

9. As an agency under the EOP, CEQ is an integral part of the overall EOP network, and is an active participant in all aspects of information integrity at EOP. CEQ adheres to both law and OMB IT security policies, along with EOP security policies and operational processes for the protection of data and information.

10. Information quality standards applicable to the dissemination of information by CEQ may be waived temporarily by the Chair of CEQ, the General Counsel, the Chief of Staff, or his/her designee in urgent situations (e.g., imminent threats to public health, homeland security, or of significant environmental impact) to the extent necessary to respond to the urgent situation. Any waiver shall provide for public notice, to the extent practicable under the circumstances of the waiver, and a determination of the point at which the normal application of information quality standards will resume.

B. Administrative Process for Correction of Information

1. Any person who is affected by information disseminated by CEQ that he or she believes does not comply with these guidelines may seek correction of that information by submitting a request for correction to CEQ within 90 days of CEQ's dissemination of the information.

2. Any request for correction must be submitted by mail to the Deputy General Counsel, CEQ, 722 Jackson Place, NW., Washington, DC 20503 or via electronic mail at *info_quality@ceq.eop.gov*. The request for correction should be as specific as possible regarding the information that is the subject of the concern and the reason(s) for the concern. Affected persons shall clearly indicate that the communication is a ''Request for Correction'' under Section 515 of the Treasury and General Government Appropriation Act for Fiscal Year 2001. Persons should specify the information that is being contested, the aspect of the information that needs to be corrected, explain how they are affected by the information, how the information identified does not comply with applicable information quality guidelines, and what corrective action is sought. Persons should provide all supporting information necessary for CEQ to correct the information. CEQ may decline to respond to requests that appear to be frivolous and/or duplicative.

3. CEQ will respond to any request within 60 days of receipt of the request in accordance with paragraph C.1, and may at that time provide an initial response that additional time is necessary to consider the request, to consult with the source of the information or other agencies, or to obtain additional information from the requestor or the public. If CEQ finds that additional time is necessary, CEQ shall seek a mutually agreed-upon extension of time and, if agreement is not obtained, shall include in its initial response a deadline for a final CEQ response based upon the factors that require additional time.

4. CEQ's final response will set forth whether CEQ agrees or disagrees with the concern expressed and, if it believes the concern has validity, how CEQ will correct the information or otherwise address the concern. Subject to applicable law, rules and regulations, CEQ may take corrective measures through any appropriate and effective means, including personal contacts via letter or telephone, form letters, press releases, or postings on the CEQ website to correct a widely disseminated error or address a frequently raised request. Corrective measures, where appropriate, should be designed to provide reasonable notice to affected persons of such correction.

5. If CEQ responds that the information meets the requirements of the applicable guidelines and no correction is needed, the affected person may request reconsideration of the response from the CEQ General Counsel within 60 days of receipt of the response. Such a request for reconsideration shall clearly indicate that the communication is a ''Request for Reconsideration'' under Section 515 of the Treasury and General Government Appropriation Act for Fiscal Year 2001 and set forth, as specifically as possible, the reasons for the affected person's disagreement with CEQ's response. The request for reconsideration should be mailed to the CEQ General Counsel, 722 Jackson Place, NW., Washington DC 20503 or e-mailed to *info_quality@ceq.eop.gov* CEQ will respond to any such request for

reconsideration within 60 days of receipt of the request.

C. Definitions

1. ''Affected'' persons are those who use, or may benefit from or be harmed by, the disseminated information.

2. ''Dissemination'' means agency-initiated or sponsored distribution of information to the public, whether in written, electronic, or audiovisual form. Dissemination does not include distribution of information or materials that are:

a. intended for government employees or agency contractors, consultants or volunteers;

b. intended for U.S. government agencies;

c. produced in response to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or similar law, or requests from Congress or other government officials;

d. correspondence or other communication limited to individuals or to other persons within the meaning of ''person'' as forth in paragraph 7, below;

e. archival records;

f. responses to subpoenas or other compulsory document productions;

g. documents prepared for adjudicative proceedings.

3. ''Influential'' when used in the phrase ''influential information'' refers to disseminated information that CEQ determines will have a clear and substantial impact on important public policies or important private sector decisions.

4. ''Information,'' for purposes of these guidelines, means any communications or representation of facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition does not include:

a. opinions, where the presentation makes clear that the statements are subjective opinions, rather than facts; however, any underlying information disseminated by CEQ upon which the opinion is based may be subject to these guidelines;

b. information originated by, and attributed to, Non-CEQ sources, provided CEQ does not expressly rely upon it. Examples include: Non-U.S. Government information reported and duly attributed in materials prepared and disseminated by CEQ; hyperlinks on CEQ's website to information that others disseminate; and reports of advisory committees published on CEQ's website;

c. statements related solely to the internal personnel rules and practices of CEQ and other materials produced for CEQ employees, contractors, agents, volunteers or alumni;

d. descriptions of the agency, its responsibilities and its organizational components;

e. statements, the modification of which might cause harm to the national security, including harm to the national defense or foreign relations of the United states;

f. statements of Administration policy; however, any underlying information disseminated by CEQ upon which a statement is based may be subject to these guidelines;

g. testimony or comments of CEQ officials before Congress, courts, administrative bodies, or the media;

h. investigatory material compiled pursuant to U.S. law or for law enforcement purposes in the United States; or

i. statements which are, or which reasonably may be expected to become, the subject of litigation, whether before a U.S. or foreign court, or in a dispute resolution proceeding.

5. ''Integrity'' refers to the security of information—protection of the information from unauthorized access or revision, to prevent the information from being compromised through corruption or falsification.

6. ''Objectivity'' addresses whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner, including background information where warranted by the circumstances.

7. ''Person'' means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a regional, national, State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, tribal, or local government or a branch of a political subdivision, or an international organization;

8. ''Quality'' encompasses ''utility'', ''objectivity'', and ''integrity''. Thus, the government-wide guidelines and CEQ's guidelines may refer to these four statutory terms, collectively, as ''quality''.

9. ''Utility'' refers to the usefulness of the information to its intended users, including the public.

Dated: June 18, 2002

James L. Connaughton,

Chairman, Council on Environmental Quality.

[FR Doc. 02–15777 Filed 6–20–02; 8:45 am]

BILLING CODE 3125–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2558]

Petitions for Reconsideration of Action in Rulemaking Proceeding

June 13, 2002.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by July 8, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of Amendment of Parts 2, 25 and 97 of the Commission's Rules with Regards to the Mobile-Satellite Service Above 1 GHz (ET Docket No. 98–142).

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–15635 Filed 6–20–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

TIME AND DATE: 1:30 p.m.—June 25, 2002.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be open and the remainder will be closed.

MATTERS TO BE CONSIDERED:

The Open Portion of the Meeting

1. Docket No. 02–07—Financial Responsibility Requirements for Nonperformance of Transportation—Discontinuance of Self-Insurance and the Sliding Scale, and Guarantor Limitations Passenger Vessel Operator Program: Issues Regarding Financial Coverage for Performance of Cruises.

2. Letter to Congress Regarding Commission Concerns About Casualty and Nonperformance Coverage Passenger Vessel Operator Program: Issues Regarding Financial Coverage for Performance of Cruises.

The Closed Portion of the Meeting

1. Petition No. P1–02—Petition of the National Customs Brokers and Forwarders Association of America, Inc. and the International Association of NVOCCS, Inc. for an Investigation of the Contracting Practices of the Transpacific Stabilization Agreement.
2. Controlled Carrier Issues.
3. Agreement No. 011807—Ocean Common Carrier Status of Shanghai Hai Hua Shipping Co., Ltd. and SNL/HASCO Cross Space Charter and Sailing Agreement.
4. Docket No. 00–11—New Orleans Stevedoring Company v. Board of Commissioners of the Port of New Orleans.

CONTACT PERSON FOR FURTHER INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–15821 Filed 6–18–02; 4:51 pm]

BILLING CODE 6730–01–M

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 July 5, 2002..

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. James M. Floyd, Sr.; Floyd Stockholdings, LP; Floyd Real Estate Holdings, LP; Carolyn M. Floyd; James M. Floyd, Jr.; Alicia L. Floyd; Meghann T. Floyd; Roscoe L. Floyd; Evanne L. Floyd (joint tenants with right of survivorship); O.C. Martin, Jr.; Carroll W. Floyd; Billie G. Floyd, all of Hinesville, Georgia, Karen Floyd Boyer; Clayton D. Boyer; Mary Nichole Boyer; Nicholas C. Boyer, all of Richmond Hill, Georgia, O.C. Martin, III; and Janet P. Martin, both of Winston-Salem, North Carolina; to retain voting shares of Liberty Shares, Inc., Hinesville, Georgia, and thereby indirectly retain voting shares of Heritage Bank, Hinesville, Georgia.

Board of Governors of the Federal Reserve System, June 17, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–15651 Filed 6–20–02; 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 15, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Mainstreet Bankshares, Inc., Martinsville, Virginia; to acquire 100 percent of the voting shares of Franklin Community Bank, N.A., Rocky Mount, Virginia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Independent Group Holdings, Inc., Memphis, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Independent Bank, Memphis, Tennessee.

Board of Governors of the Federal Reserve System, June 17, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–15652 Filed 6–20–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Solicitation of Nominations for Membership

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board is inviting the public to nominate qualified individuals for appointment to its Consumer Advisory Council, whose membership represents interests of consumers, communities, and the financial services industry. New members will be selected for three-year terms that will begin in January 2003. The Board expects to announce the selection of new members by year-end 2002.

DATES: Nominations should be received by August 19, 2002.

ADDRESSES: Nominations, including a *résumé* for each nominee, must be received by August 19, 2002. Electronic nominations are preferred. The appropriate form can be accessed at: *http://www.federalreserve.gov/forms/cacnominationform.cfm.* If electronic submission is not feasible, the nominations can be mailed (not sent by facsimile) to Sandra F. Braunstein, Assistant Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: Ann Bistay, Secretary of the Council, Division of Consumer and Community Affairs, (202) 452–6470, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Consumer Advisory Council was established in 1976 at the direction of the Congress to advise the Federal Reserve Board on the exercise of its

duties under the Consumer Credit Protection Act and on other consumer-related matters. The Council by law represents the interests both of consumers and of the financial services industry (15 USC 1691(b)). Under the Rules of Organization and Procedure of the Consumer Advisory Council (12 CFR 267.3), members serve three-year terms that are staggered to provide the Council with continuity.

New members will be selected for terms beginning January 1, 2003, to replace members whose terms expire in December 2002; the Board expects to announce its appointment of new members by year-end. Nomination letters should include a résumé and information about past and present positions held by the nominee; a description of special knowledge, interests or experience related to community reinvestment, consumer protection regulations, consumer credit, or other consumer financial services; and the full name, title, organization name, organization description, current address, telephone and fax numbers for both the nominee and the nominator. Individuals may nominate themselves.

The Board is interested in candidates who have familiarity with consumer financial services, community reinvestment, and consumer protection regulations, and who are willing to express their viewpoints. Candidates do not have to be experts on all levels of consumer financial services or community reinvestment, but they should possess some basic knowledge of the area. They must be able and willing to make the necessary time commitment to participate in conference calls, and prepare for and attend meetings three times a year (usually for two days, including committee meetings), held at the Board's offices in Washington, DC. The Board pays travel expenses, lodging, and a nominal honorarium.

In making the appointments, the Board will seek to complement the background of continuing Council members in terms of affiliation and geographic representation, and to ensure the representation of women and minority groups. The Board may consider prior years' nominees and does not limit consideration to individuals nominated by the public when making its selection.

Council members whose terms end as of December 31, 2002, are:

Dorothy Broadman, Director of Corporate Citizenship, Capital One Financial Corporation, Corporate Communications, Falls Church, Virginia

Teresa A. Bryce, General Counsel, Nexstar Financial Corporation, St. Louis, Missouri

Robert Cheadle, Legislative Counsel, The Chickasaw Nation, Tribal Legislature, Ada, Oklahoma

Lester Wm. Firstenberger, Attorney at Law, Pittsfield, New Hampshire

Jeremy Nowak, Chief Executive Officer, The Reinvestment Fund, Philadelphia, Pennsylvania

Russell Schrader, Senior Vice President and Assistant General Counsel, Visa U.S.A., San Francisco, California

Council members whose terms continue through 2003 and 2004 are:

Anthony Abbate, President and Chief Executive Officer, Interchange Bank, Saddle Brook, New Jersey

Janie Barerra, President and Chief Executive Officer, ACCION Texas, San Antonio, Texas

Kenneth Bordelon, Chief Executive Officer, E Federal Credit Union, Baton Rouge, Louisiana

Manuel Casanova, Executive Vice President, International Bank of Commerce, Brownsville, Texas

Constance Chamberlin, President/CEO, Housing Opportunities Made Equal, Richmond, Virginia

Robin Coffey, Vice President, Harris Trust and Savings Bank, Chicago, Illinois

Thomas FitzGibbon, Senior Vice President, MB Financial Bank, N.A., Chicago, Illinois

Elizabeth Renuart, Staff Attorney, National Consumer Law Center, Boston, Massachusetts

Debra Reyes, President, Neighborhood Lending Partners, Inc., Tampa, Florida

Benson Roberts, Vice President for Policy, Local Initiatives Support Corporation, Washington, District of Columbia

Larry Hawkins, President and Chief Executive Officer, Unity National Bank, Houston, Texas

Earl Jarolimek, Vice President/Corporate Compliance Officer, Community First Bankshares, Fargo, North Dakota

Patrick Liddy, Director of Compliance, Fifth Third Bancorp, Cincinnati, Ohio

Ruhi Maker, Senior Attorney, Public Interest, Law Office of Rochester, Rochester, New York

Oscar Marquis, Attorney, Hunton and Williams, Park Ridge, Illinois

Patricia McCoy, Professor of Law, Cleveland-Marshall College of Law, Cleveland State University, Cleveland, Ohio

Ronald Reiter, Supervising Deputy Attorney General, California Department of Justice, San Francisco, California

Frank Torres, III, Legislative Counsel, Consumers Union, Washington, District of Columbia

Hubert Van Tol, Co-Director, Fairness in Rural Lending, Sparta, Wisconsin

Board of Governors of the Federal Reserve System, June 17, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–15653 Filed 6–20–02; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records; Cancellation of a Medical Standard Form

AGENCY: Office of Management Services, GSA.

ACTION: Notice.

SUMMARY: Because of low usage, the following Standard Form is cancelled:

SF 537, Medical Record—Pediatric Graphic Chart.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

DATES: Effective June 21, 2002.

Dated: June 13, 2002.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 02–15737 Filed 6–20–02; 8:45 am]

BILLING CODE 6820–BR–M

GENERAL SERVICES ADMINISTRATION

Submission for Public Comments: General Services Administration (GSA); Household Goods Tender of Service (HTOS); Conversion of Flat Industrial Funding Fee (IFF) to a Percentage IFF

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of HTOS amendment with request for comments.

SUMMARY: The General Services Administration (GSA), in compliance with 41 U.S.C. 418b, is publishing for comment in the attachment to this notice HTOS revisions to convert the Centralized Household Goods Traffic Management Program (CHAMP) IFF from a $145 flat fee to a comparable fee of 2.75 percent of a shipment's total net transportation charge (excluding storage in transit (SIT) fees). This change conforms with the percentage method GSA uses to fund its other programs,

including its multiple award schedules, and automatically will keep program funding at a pace with inflation.

DATES: Comment Due Date: July 22, 2002.

ADDRESSES: Mail comments to the Travel and Transportation Management Division (FBL), General Services Administration, Crystal Mall Bldg. 4, Rm. 812, 1941 Jefferson Davis Highway, Arlington, VA 22202, Attn: Ms. Lynn Ju (Re: Percentage IFF). GSA will consider your comments prior to implementing this change.

FOR FUTHER INFORMATION CONTACT: Ms. Lynn Ju, Transportation Programs Branch, by phone at 703–305–7060 or by e-mail at *lynnette.ju@gsa.gov.*

SUPPLEMENTARY INFORMATION: The GSA CHAMP provides Federal civilian agencies a framework for efficiently and economically transporting household goods (HHG) of their employees relocated in the interest of the government from one official duty station to another, both domestically and internationally. On average CHAMP saves agencies 52 percent compared to commercial rates. GSA has arrangements with over 280 carriers, both large and small, for shipping Federal employees' HHG. GSA provides a listing of available carriers for interstate, intrastate, or international shipments including American offshore moves. Agencies have access to this information through GSA's web-based Interagency Transportation Management System (ITMS).

GSA proposes to convert the current CHAMP IFF from a $145 flat fee per shipment to 2.75 percent of the net transportation charge per shipment excluding SIT fees. This is a procedural change only for the purpose of converting the flat fee to a percentage fee that equates to approximately the same amount as the current flat fee without increasing the overall cost to Federal agencies. Use of a percentage fee is the fundamental way GSA's Federal Supply Service (FSS) has assessed IFF's for essentially all of its programs since Congress authorized GSA to charge fees in 1987. This change will align the HHG IFF with GSA's funding mechanism for other programs and automatically will keep pace with inflation. The collection method will remain the same; that is, transportation service providers will continue to collect and pay the IFF to GSA, but based on 2.75 percent of a shipment's net transportation charge instead of a flat fee.

Representatives of GSA's Transportation Zone Offices studied converting the flat fee to a percentage basis to arrive at a percentage that equates to approximately the same overall cost for Federal agencies as the current flat fee. The American Moving and Storage Association furnished the Federal civilian sector's average shipment weight of 8,000 pounds and average distance of 1,000 miles for a domestic HHG shipment based on a sample of its records. The gross line-haul cost for a shipment of this size would be $7,681, and the average max pack would be $3,676.50. The top 16 CHAMP transportation service providers represent 81 percent of the volume of CHAMP moves, and last year their average discount was 52 percent. Using these figures the net cost of an average shipment would be $5,292. The IFF for an average shipment costing $5,292 at 2.75 percent would be $145.53. GSA does not have statistical data for accessorial items such as, bulky items, long carries, shuttles, crating, etc. Therefore, the percentage is hypothetical based on the best information available, and could be somewhat higher or lower than the current IFF depending on the actual characteristics of a particular move. The IFF would be more for heavier shipments and less for lighter shipments, but the IFF still will be embedded in carriers' rates and should balance out without any cost increase to Federal agencies or carriers overall, in using CHAMP.

Dated: June 17, 2002.

Joseph H. Jeu,

Assistant Commissioner, Office of Transportation and Property Management.

Attachment—Changes to Household Goods Tender of Service, Section 9—Reporting Requirements

9–3.1.4. Industrial Funding Fee

The Industrial Funding Fee (IFF) amount must equal the sum of all shipment net charges reported in HTOS Paragraph 9–3.1.2, multiplied by the applicable IFF percentage identified in the Request for Offers. Any deficiencies identified will be handled in accordance with HTOS Paragraph 9–3.1.4.1. and 9–3.1.4.2.

9–3.2.2.2. Shipment Report Spreadsheet Format

Entry format is text entry (*i.e.* left aligned). Fields marked with an asterisk (*) are numeric and must, if necessary, be zero filled from the left (*i.e.,* 00250 for 250) depending on the field size. Save the file as a comma-separated file (.CSV) then rename as necessary (.SHP or .ERS).

Field	Required position(s)	Record position(s)	Contents
Record ID	1	1	Must be S.
Field Delimiter	1	2	Comma.
SCAC	4	3–6	Four (4) digit Standard Carrier Alpha Code (SCAC) identifying the carrier the GBL/CBL was issued to.
Field Delimiter	1	7	Comma.
Type of Transportation	2	8–9	Enter GD for General Domestic, GI for General International, DD for Direct Domestic Move Management (MMS), DI for Direct International MMS, BD for Broker Domestic MMS, or BI for Broker International MMS.
Field Delimiter	1	10	Comma.
Type of Move	3	11–13	If the GBL/CBL was used for household goods, put in HHG; for Automobile, put in POV; for Unaccompanied Air Baggage, put in UAB. **If multiple elements were moved using one GBL/CBL, each element must have an individual shipment record.
Field Delimiter	1	14	Comma.

Field	Required position(s)	Record position(s)	Contents
Federal Agency Identification Code	9	15–23	Agency's 9 digit User ID code used to access ITMS. This User ID can be obtained directly from the user agency or from the ITMS system itself. If unable to obtain the proper User ID, please contact the PMO. Records with this field blank. X or zero-filled will not be accepted.
Field Delimiter	1	24	Comma.
Carrier Reference Number	15	25–39	Carrier reference number used when the shipment was booked by the carrier. Start the reference number with position 25. If reference number does not consist of 15 numbers, place X's after number to fill out the 15 positions. Example: Reference number 135895 would appear as 135895XXXXXXXXX. Records with this field blank, X or zero filled will not be accepted.
Field Delimiter	1	40	Comma.
Billing Date	8	41–48	Date of Agency Billing (YYYYMMDD) (Example: 20020215 = February 15, 2002).
Field Delimiter	1	49	Comma.
BL Number	8	50–57	Bill of Lading Number. Use GBL/CBL number associated with the shipment. If CBL number is less then 8 characters, place X's after the number to fill in field. Records with this field blank or zero filled will not be accepted.
Field Delimiter	1	58	Comma.
Type of GBL/CBL	1	59	Input V if Virtual GBL/CBL was used. Input G if standard GBL/CBL was used.
Field Delimiter	1	60	Comma.
Pickup Date	8	61–68	YYYYMMDD (see Billing Date).
Field Delimiter	1	69	Comma.
Delivery Date	8	70–77	YYYYMMDD (see Billing Date).
Field Delimiter	1	78	Comma.
*Transit Time	3	79–81	Actual Transit Time in days. Example: 007 = 7 days.
Field Delimiter	1	82	Comma.
Origin State or Country Code	4	83–86	Four digit state or country identifier. State is the two digit state identifier, all CAPS, plus two (2) zeros (0). Example: FL00. Country code is the four-digit country code as listed in the most current Request for Offers. Example: Germany = 3940. Records with this field blank, X or zero filled will not be accepted.
Field Delimiter	1	87	Comma.
Origin Zip Code	5	88–92	5-digit zip (X Fill for Canada or International Shipments).
Field Delimiter	1	93	Comma.
Destination State or Country Code	4	94–97	See Origin State above. Records with this field blank, X or zero filled will not be accepted.
Field Delimiter	1	98	Comma.
Destination Zip Code	5	99–103	5-digit zip (X Fill for Canada or International Shipments).
Field Delimiter	1	104	Comma.
*Actual Weight Shipped	5	105–109	In pounds for HHG or UAB. Example: 09800 = 9800 pounds. If the record is for POV, place five (5) zeros, 00000 **If field is zero filled for POV, positions 11–13 must state POV.
Field Delimiter	1	110	Comma.
*Mileage	4	111–114	Whole miles only. Example: 0750 = 750 miles. This field should be zero filled for International moves.
Field Delimiter	1	115	Comma.
* Discount Offered	3	116–118	Domestic: Discount off the current 415 tariff; International: Percentage of the base line rate tables contained in the Request for Offers.
Field Delimiter	1	119	Comma.
*Gross Charges	5	120–124	Exclusive of SIT charges, in whole dollars only.
Field Delimiter	1	125	Comma.
*Net Charges	5	126–130	Exclusive of SIT charges, in whole dollars only. Example: 07600 = $7,600.00.
Field Delimiter	1	131	Comma.

Field	Required position(s)	Record position(s)	Contents
Employee's Last Name	15	132–146	Last name of the employee listed on the GBL/CBL in all CAPS. If the employee's name does not consist of 15 letters, place X's after the name to fill out the 15 positions. Example: The name of Jones would appear as JONESXXXXXXXXXX. Records with this field blank, X or zero filled will not be accepted.
Field Delimiter	1	147	Comma.
Participants Tax ID Number	9	148–156	Participant TIN.

Examples:

(1) Domestic:

A	B	C	D	E	F	G	H	I	J	K	L
S	GSAA	GD	HHG	RXPGITY43	Q794912349XXXXX	19990612	S12345XX	V	19990105	19990312	007

M	N	O	P	Q	R	S	T	U	V	W
MO00	64131	OK00	7122	10030	0400	056	12500	05500	SMITH-BATTSONXX	103777444

(2) International:

A	B	C	D	E	F	G	H	I	J	K	L
S	GSAA	GI	POV	RXPG8TY43	Q794–P912666XXX	19991012	PP123456	G	19990601	19990724	053

M	N	O	P	Q	R	S	T	U	V	W
MO00	64131	490J	XXXXX	00000	0000	165	15500	15500	SMITH-BATTSONXX	103777444

[FR Doc. 02–15736 Filed 6–20–02; 8:45 am]
BILLING CODE 6820–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Suggestions on Community-Based Participatory Research

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of request for suggestions.

SUMMARY: AHRQ is soliciting input from its user-groups and stakeholders on its implementation of Community-Based Participatory Research (CBPR) to meet the requirements of the Minority Health and Health Disparities Research and Education Act of 2000. CBPR is a methodology that promotes active community involvement in the processes that shape research, as well as, products and translation of research. CBPR offers opportunities to overcome the barriers faced by conventional approaches to research in low-income and minority communities, which lack this kind of collaboration and communication. As a result, CBPR has been gaining increasing acceptance within the larger biomedical and behavioral research community, and is especially relevant to many research subjects of mutual interest to Federal agencies, including health disparities. The Minority Health and Health Disparities Research and Education Act of 2000 mandates that AHRQ use methods characteristic of CBPR in conducting its research on health disparities. The Act states that ''the Director shall implement research strategies and mechanisms that will enhance the involvement of individuals who are members of minority health disparity populations, health services researchers who are such individuals, institutions that train such individuals as researchers, members of minority health disparities populations or other health disparity populations for whom the Agency is attempting to improve the quality and outcomes of care, and representatives of appropriate tribal or other community-based organizations with respect to health disparities.'' Research strategies may include the use of centers of excellence that have a ''demonstrated capacity to involve members and communities of health disparity populations, including minority health disparity populations, in the planning, conduct, dissemination, and translation of research.'' Section 903(b)(2), 42 U.S.C. 299a–1(b)(2) and see Title II of the Minority Health and Health Disparities Research and Education Act of 2000 at *http://www.feds.com/basic svc/public law/106–525.htm.*

Nature of Recommendations

AHRQ encourages written suggestions from its customers and stakeholders on how AHRQ can implement CBPR in its research portfolio and in the field of health services research. In particular, AHRQ requests comments on the following:

1. Please offer possible definitions of community that are appropriate for health services research.
2. Please describe collaborative opportunities to foster the development or use of CBPR.
3. Please describe strategies that AHRQ could use to increase the capacity for health services researchers and community-based organizations to conduct CBPR.
4. Please describe the strategies that AHRQ could use to support relationships between researchers and community-based organizations.
5. Please describe the accountability mechanisms that AHRQ could institute to ensure the development and

maturation of these partnership relationships.

6. Please describe strategies that AHRQ could use to support partnerships with patients and community-based organizations to improve safety and quality in health care.

In preparing your response, please consider ideas put forth at a conference on CPBR last fall which are listed under section titled, ''Report of November 2001 Meeting on CBPR.''

DATES: Responses to this request will be accepted within 60 days from publication date. AHRQ will not respond to individual responses, but will consider all suggestions.

Arrangement for public inspection: All responses will be available for public inspection on weekdays between 8:30 a.m. and 5 p.m., from Kaytura Felix Aaron, M.D., Center for Primary Care Research, Agency for Healthcare Research and Quality.

Arrangements for reviewing the submissions may be made by calling Phone: (301) 594–6198; Fax: (301) 594–3721; E-mail: kfaaron@ahrq.gov. Responses may also be accessed through AHRQ's Electronic FOIA Reading Room on AHRQ's web site at *http://www.ahrq.gov/news/foia.htm* </news/foia.htm>.

ADDRESSES: Submissions should be brief (no more than three pages for each submission) and may be in the form of a letter or e-mail, preferable with an electronic file in a standard word processing format. Please present your suggestions in bullets or outline format. Responses to this request should be submitted to Kaytura Felix Aaron, M.D., Center for Primary Care Research, Agency for Healthcare Research and Quality, 6010 Executive Blvd., Suite 201, Rockville, MD 20852; Phone: (301) 594–6198; Fax: (301) 594–3721; E-mail: *kfaaron@ahrq.gov.*

FOR FURTHER INFORMATION CONTACT: Kaytura Felix Aaron, M.D., Center for Primary Care Research, Agency for Healthcare Research and Quality, 6010 Executive Blvd., Suite 201, Rockville, MD 20852; Phone (301) 594–6198; Fax: (301) 594–3721; E-mail: *kfaaron@ahrq.gov.*

SUPPLEMENTARY INFORMATION:

Background on Community-Based Participatory Research

There is increased interest in research that aims to improve the health of disadvantaged populations. However, conventional research in these communities has a contentious history and offers limited opportunities to improve the health and well being of these communities. Policy makers are interested in increasing investments in participatory research because participatory research addresses several of the barriers to and limitations of conventional research. First, partnerships with representatives of the study population ensure that research addresses the priorities of the population under study. Second, community partners bring local knowledge to the research process, thereby increasing the understanding of the complex interactions among economic, social, and behavioral factors that contribute to health problems. Third, partnerships with the population under study increase the efficiency of the research process by improving recruitment and retention of subjects. Finally, the involvement of stakeholders and groups affected by the problem under study increases the opportunity for adoption of new knowledge and the translation of research into practice.

Community-based participatory research (CBPR) is a promising model of research collaboration between researchers and community-based, including faith-based and other non-profit organizations. Researchers and community representatives are actively engaged throughout the research process, from the conception of the research problem to the analysis, dissemination and translation of findings. CBPR engages community members, employs local knowledge in the understanding of health problems and the design of interventions, and invests community members in the processes and products of research. In addition, community members are more likely to be invested in the dissemination and use of research findings and ultimately in the reduction of health disparities.

Report on November 2001 Meeting on CBPR

The Agency for Healthcare Research and Quality convened a meeting on CBPR on November 27–28, 2001 to increase awareness and support for CBPR and to develop an action plan. Participants at this meeting re-affirmed that CBPR is an important model of research for AHRQ and other federal agencies because CBPR can potentially broaden the understanding of complex health issues and increase the relevance of research. Participants at that meeting developed a broad, national research agenda for CBPR.

The recommendations were aimed at the diverse sectors represented at the meeting: Public and private funding organizations, academic institutions, and community organizations. The recommendations that were specific to AHRQ included:

1. Fund CBPR projects and centers;
2. Develop funding mechanisms that facilitate the development of research capacity in community-based organizations;
3. Build a national repository for CBPR methods, tools, and resources;
4. Evaluate CBPR as a strategy to improve health and health care;
5. Develop a balanced portfolio that supports early and mature partnerships;
6. Convene a group to develop standards for CBPR; and
7. Identify and address institutional policies that deter community participation in grant making process.

CPBR is Consistent With AHRQ's Mission and Programs

AHRQ was reauthorized on December 6, 1999 to support research designed to improve the outcomes and quality of health care, reduce its costs, address patient safety and medical errors, and broaden access to effective services. AHRQ accomplishes these goals through the establishment of a broad base of scientific research on the organization, financing, and delivery of health care services, and through the promotion of improvements in clinical practice. The research sponsored, conducted, and disseminated by AHRQ provides information that helps people make better decisions about health care. Since its reauthorization, the Agency's is also required to produce information that improves the outcomes, quality, cost, and accessibility of health care for the following priority populations: Inner city; rural; low income; minority; women; children; elderly; and those with special health care needs, including those who have disabilities, need chronic care, or need end of life health care. CBPR represents an important strategy to meet these objectives.

AHRQ uses mechanisms of grants, cooperative agreements, and contracts to carry out research projects, demonstrations, evaluations, and dissemination activities. AHRQ also supports small grants, conference grants, and training </fund/training/trainix.htm> through dissertation grants *<http://grants.hnih.gov/grants/guide/pa-files/par-00-076.html<* and National Research Service Awards to institutions <training/t32.htm> and individuals <99005.htm>. The vast majority of AHRQ grants and cooperative agreements are investigator-initiated.

AHRQ uses the following processes to meet its policy and program objectives to conduct its ongoing activities in order

to make the most productive use of its resources:

1. *Needs Assessment.* AHRQ conducts needs assessments through a variety of mechanisms including expert meetings, conferences, and consultations with stakeholders and customers of its research, publishing notices for comment in the **Federal Register**, as well as regular meetings with its National Advisory Council and government leaders. The results of these assessments are used to determine and prioritize information needs.

2. *Knowledge Creation.* AHRQ supports and conducts research to produce the next generation of knowledge needed to improve the health care system.

3. *Translation and Dissemination.* AHRQ's commitment to research extends beyond knowledge generation. AHRQ believes that findings must be useful and made widely available in accessible formats to practitioners, patients, and other decisionmakers. In addition, AHRQ synthesizes and translates knowledge into products and tools in order to support its customers in problem solving and decision making. AHRQ actively disseminates the knowledge, products, and tools to appropriate audiences. Effective dissemination involves forming partnerships with other organizations and leveraging resources.

4. *Evaluation.* In order to assess the ultimate outcomes of AHRQ research, the Agency is placing increased emphasis on the evaluation of the impact and usefulness of Agency-supported work in health care settings and policymaking.

Dated: June 18, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–15865 Filed 6–20–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Planning Ideas for Development of a Health Services Research Agenda for the National Children's Study

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Request for Ideas.

SUMMARY: AHRQ seeks recommendations on priority issues in children's health services for potential inclusion as topics of research in a planned large-scale longitudinal study of children's health outcomes. The goal of AHRQ's role in the study is to generate new knowledge that can be incorporated into practice and policy. The purpose of this announcement is to solicit broad input from clinical and social scientists, researchers, clinicians, health systems leaders and others regarding priority issues for research which could be addressed in this study. Recommendations received will be compiled and discussed at an expert workshop convened to discuss the role of health services research in this study and to plan research hypotheses and methods. This request for suggestions and the expert meeting are preparatory steps for submission of hypotheses for consideration into the National Children's Study.

DATES: Please submit comments on or before July 2, 2002.

ADDRESSES: Submissions should be brief (no more than three pages per recommendation), and may be in the form of a letter or e-mail, preferably with an electronic file in a standard word processing format on a 3½ inch floppy disk or as an e-mail attachment. Responses to this request should be submitted to: William Lawrence, M.D., Agency for Healthcare Research and Quality, 6010 Executive Blvd., Suite 300, Rockville, MD 20852, Phone: (301) 594–4040, Fax: (301) 594–3211, E-mail: *wlawrence@ahrq.gov.*

In order to facilitate handling of submissions, please include full information about the person submitting the recommendation: (a) Name, (b) title; (c) organization, (d) mailing address, (e) telephone number, and (f) e-mail address. Please do not use acronyms. Electronic submissions are encouraged to *wlawrenc@ahrq.gov.*

FOR FURTHER INFORMATION CONTACT: William Lawrence at (301) 594–4040 or at *wlawrence@ahrq.gov.* All responses will be available for public inspection at AHRQ's Center for Outcomes and Effectiveness Research weekdays between 8:30 a.m. and 5 p.m. Arrangements for reviewing the submissions may be made by calling (301) 594–4040.

SUPPLEMENTARY INFORMATION:

Background

The National Children's Study (NCS) represents a unique opportunity to understand the impact of health services on children's health and development within a large-scale, longitudinal study of children. This study would combine AHRQ's commitment to health services research on one of its priority populations: children, and two of its strategic goals: to support improvements in health outcomes and identify strategies to improve access, foster appropriate use, and reduce unnecessary expenditures.

Therefore, the NCS is a proposed longitudinal study of a cohort of approximately 100,000 children, following them from before birth through age 21 years old. This large-scale study seeks to examine the impact of physical, psychological, social, and economic environmental factors on children's health and development. AHRQ is seeking written suggestions as to the priority issues for research into children's health care services that should be addressed in the NCS. Issues should be considered priorities for this study if their impact has not been adequately studied in other research, if their impact can only be evaluated in a large study such as this, and if there is a large potential for impact on children's health. Supporting rationale and suggestions for research strategies should be included.

Nature of Recommendations

Suggestions should address one or more of the following:

- *Age group to be studied:* The nature of the proposed study will be to follow children from birth through age 21; for some of the cohort, mothers may be recruited during pregnancy or even preconception. Thus, participants will be followed in this study throughout childhood and possible before birth. However, we are seeking recommendations for specific age ranges to be studied for priority issues.
- *General population or priority population to be studied:* Should health services research within the NCS be focused on the needs of priority populations (as defined by AHRQ: racial and ethnic minorities, low-income populations, people living in rural areas and inner-city areas, and people living with chronic illnesses and/or disabilities), the needs of children insured through public programs, or the general pediatric population?
- *General health care or specific conditions:* Some research questions require specific tracer conditions (e.g., asthma, depression, etc.) to adequately study, whereas other questions may be best studies with a broad range of health services and conditions. Specific conditions studied in the NCS would need to be of sufficient prevalence or incidence that a sufficient number of children with the condition could be recruited in a population sample of 100,000 children. AHRQ seeks recommendations for priority conditions and issues in general health

care, with rationale including the importance of the topic and assurance of sufficient number of children in the study to adequately study the priority issues.

• *Environmental factors:* For those exposures in the physical, social, and economic environment that have a detrimental effect on children's health and development, health services may have a positive effect by preventing the exposure on ameliorating the impact of the exposure on health. AHRQ seeks recommendations with rationale for priority issues concerning environmental exposures, broadly defined, in which health services may impact on the relationship between exposure and health outcomes.

• *Components and structure of health services:* What organizational and delivery components of child health care settings and characteristics should be examined for their impact on children's health outcomes? What specific processes should be studied? AHRQ seeks recommendations for study of a broad variety of health services, including not only care delivered in traditional inpatient and outpatient settings, but also care delivered through the community, the educational system, the juvenile justice system, and other venues. Recommendations should be given within the broad categories of mental health services, dental health services acute and chronic medical care services, services for people with disabilities, community health, prevention and anticipatory guidance, obstetric and perinatal services, and other.

• *Content area of research priorities:* The Institute of Medicine, in their 2001 report Crossing the Quality Chasm: A New Health System for the 21st Century, identified six critical determinants of quality of health services: safety, effectiveness, patient-centeredness, timeliness, efficiency, and equity. In addition, care can impact on children with different needs, including: staying healthy, getting better, living with illness, end of life care. The framework of quality criteria and children's needs from the health care system form a matrix within which research priorities in children's health services can be considered. AHRQ is seeking research priorities within these content areas.

• *Outcomes to be measured:* What are the most important child health outcomes, long and short term, for which it would be important to study the relationship with structures and processes of health care under study?

• *Methodologic issues:* The study of health services within the NCS must take place within the constraints of the main study design. Within these constraints, what critical design issues need to be considered in a large-scale study of health services? Example issues in this category could include: oversampling of specific populations, time points for measurement, or inclusion of nested studies. Comments on the relative advantages or disadvantages of different methodologic approaches to answering study questions in priority research areas are also welcomed. For example, which questions can be addressed with observational data and which with data from intervention studies?

• *Other issues in child health care services that do not fit into the categories above.*

Dated: June 14, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–15788 Filed 6–20–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–02–10]

Fiscal Year 2002 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications.

SUMMARY: The Administration on Aging announces that under this program announcement it will accept applications for funding in fiscal year 2002 under the Older Americans Act, title VI, Grants for Native Americans, part B-Native Hawaiian Program.

Purpose of grant awards: The purpose of these grants is to provide nutrition and supportive services to Native Hawaiian elders.

Eligibility for grant awards and other requirements: Eligibility for grant awards is limited to public and/or nonprofit private organizations having the capacity to provide services for Native Hawaiians that (1) will serve at least 50 Native Hawaiian individuals who have attained 60 years of age or older, and (2) demonstrates the ability to deliver supportive services and nutrition services. For the purposes of title VI, part B, the term ''Native Hawaiian'' means an individual any of whose ancestors were natives of the area, which consists of the Hawaiian Islands prior to 1778.

DATES: The deadline date for the submission of applications is August 20, 2002.

ADDRESSES: Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Yvonne Jackson, Director, Office of American Indian, Alaskan Native and Native Hawaiian Programs, 330 Independence Ave., SW., Washington, DC 20201 or by calling 202/619–2713. Applications must be postmarked on or before August 20, 2002. An original and two copies of the application are to be mailed to Margaret A. Tolson, Director, Office of Grants Management, 330 Independence Ave., SW., Washington, DC 20201.

Dated: May 30, 2002.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 02–15654 Filed 6–20–02; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02101]

Support for Epidemiology, Mathematical Modeling, and Tools for Monitoring the Impact of the Local Response to the HIV/AIDS Epidemic in Zimbabwe; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a Cooperative Agreement program for Support for Epidemiology, Mathematical Modeling, and Tools for Monitoring the Impact of the Local Response to the Human Immunodeficiency Virus (HIV/AIDS) Epidemic in Zimbabwe.

The purpose of the program is to assist the CDC to provide support to:

The Zimbabwe Ministry of Health and Child Welfare (MOHCW) in its mission of conducting epidemiologic studies of HIV/AIDS at a population level in Zimbabwe and conducting mathematical modeling studies of HIV infection.

The National AIDS Council (NAC) in its mission of generating tools and training local District AIDS Action Committees to help monitor the local response to the epidemic of HIV/AIDS.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for

the Global AIDS Program (GAP). Working with other countries, USAID, international, and U.S. government agencies, reduce the number of new HIV infections among 15 to 24 year olds in sub-Saharan Africa from an estimated two million by 2005.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 307 of the Public Health Service Act, (42 U.S.C. section 2421), as amended. The Catalog of Federal Domestic Assistance number is 93.941.

C. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations worldwide, regional or technical organizations involved in health and development in Africa or globally, or any development or research organization worldwide. Consideration will be given to those applicants than have demonstrated their ability to work successfully in Zimbabwe and/or elsewhere in the Southern Africa Development Community (SADC).

Zimbabwe is committed to demonstrating and documenting a successful response to HIV/AIDS within the next five years. CDC's Global AIDS Program Zimbabwe wishes to recruit partners for the highest possible technical performance in this effort without regard to nationality or any other geographic, political.

D. Availability of Funds

Approximately $150,000 is available in FY 2002 to fund one to two awards. It is expected that the award(s) will begin on or about August 15, 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 award(s) within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Direct Assistance

Equipment or supplies may be requested in the form of direct assistance, in lieu of a portion of financial assistance, if the applicant deems that it is cost efficient for achieving the CDC mission of supporting the expanded response to HIV/AIDS in Zimbabwe. At the end of the cooperative agreement, and in accordance with the standards outlined in 45 CFR 74.34, any such equipment should become property of one of the permanent, indigenous institutions of public health of Zimbabwe (for example, the MOHCW, NAC, University of Zimbabwe, School of Medicine or another relevant organization).

Use of Funds

The purchase of antiretroviral, reagents, and laboratory equipment for antiretroviral treatment projects requires pre-approval from the Global AIDS Program Headquarters.

Applicants may contract with other organizations under this cooperative agreement, however, applicants must perform a substantial portion of the activities, including program management and operations and delivery of prevention services for which funds are requested.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

All requests for funds, including the budget contained in the application, shall be stated in United States dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

No funds appropriated under this act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Funds should be used in a complementary fashion to support two overriding CDC objectives: (1) Accomplishing high priority work identified by the CDC, NAC, MOHCW, and other central institutions of the national response to HIV/AIDS, especially those elements for which the CDC has been requested to support efforts and initiatives of the MOHCW and NAC; and (2) building capacity for long-term ability to respond to HIV/AIDS in Zimbabwe.

1. Funding Preferences

Characteristics of a preferred cooperative agreement partner include:

a. Expert knowledge of HIV epidemiology in Sub Saharan Africa and in Zimbabwe.

b. Expertise in mathematical modeling of infectious diseases, especially HIV/AIDS.

c. Understanding of the local response to HIV/AIDS in Zimbabwe, including the roles and functions of the MOHCW, the NAC, and District AIDS Action Committees; and expertise in monitoring of responses to HIV/AIDS, including developing appropriate tools.

d. Capacity to contribute substantively to knowledge of surveillance options for HIV/AIDS, including antenatal surveillance and its relationship to population-based surveillance and surveys.

e. In-depth knowledge of Zimbabwe, including knowledge of the relationship between national level indicators of HIV epidemic status and local (especially rural) epidemiology of HIV infection.

f. Demonstrated capacity and cultural competence to function effectively in Zimbabwe and other underdeveloped, sub-Saharan African countries.

g. Demonstrated commitment to and understanding of the processes required to build capacity in the areas of HIV epidemiology and mathematical modeling of epidemics in Zimbabwe and similar sub-Saharan African countries.

h. Appreciation for the District Planning Initiative of the Zimbabwe NAC, especially the structures at rural level, and capacity to help design and evaluate tools for monitoring the District (and lower) levels of response to the HIV/AIDS epidemic.

Matching funds is not a requirement for this program announcement.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Train and support local staff of MOHCW, NAC, ZNFPC, CDC-Zimbabwe, University of Zimbabwe School of Medicine, and other groups in epidemiology, surveillance, mathematical modeling, and related subjects that relate current epidemiologic status and indicators to long-term implications in terms of morbidity, mortality, and demographic and economic impact.

b. Support and contribute to analyses of epidemiologic and surveillance data (such as, antenatal HIV surveillance and the Young Adult Survey (YAS+) as

required to help contribute to a clear informed profile of HIV in Zimbabwe. Such analyses may be hosted either by CDC Zimbabwe or by the MOHCW or NAC of Zimbabwe, or potentially other partners.

c. Assist in developing a District level ''epidemiologic'' profile'' of the AIDS epidemic for all 82 HIV Planning Districts in Zimbabwe, and a training program in communicating about and using the District Profile to aid in developing the District AIDS Action Plan.

d. Develop a dynamic mathematical model of the HIV/AIDS epidemic at a national level in Zimbabwe, incorporating available data on HIV prevalence, incidence, mortality, and related variables, that yields a predictive model of the future of the epidemic.

e. Develop or adapt a mathematical model for the epidemic appropriate for use at the District level in Zimbabwe and allow characterization of local conditions and assessment of the potential impact of different local interventions.

f. Conduct research in Zimbabwe, especially among rural populations, of behavioral and other interventions, including but not limited to: (1) The CDC Modeling and Reinforcement to Combat HIV (MARCH) strategy for behavior change; (2) the local response (district planning) initiative of the National AIDS Council of Zimbabwe, and other efforts to organize or stimulate a broader response to HIV/AIDS in Zimbabwe; and (3) development and evaluation of tools for monitoring the response to HIV/AIDS at the local level, especially at the district level.

g. Sponsor long-term training for Zimbabwean scientists, students, and public health officers in any or all of the above areas, to build national capacity for these areas of expertise.

2. CDC Activities

a. Contribute to developing priorities for approaches to and protocols for analyses, training, and research in epidemiology, demographic, and socioeconomic impact to be implemented by the recipient, and participate in such research.

b. When CDC scientists are co-investigators in research, assist in the development of research protocols for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. (The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed).

c. Facilitate the integration of the recipient and the collaborative activities into other components of Zimbabwe's response to HIV/AIDS, including the monitoring, evaluation, and research agenda of the NAC, training in evaluation of public health interventions at the University of Zimbabwe, and so on.

F. Content

Letter of Intent (LOI)

A LOI is required for this program. The narrative should be no more than two double-spaced pages, printed on one side, with one-inch margins, and size unreduced fonts. Your letter of intent will be used to help plan the review process, and should include the following information:

1. Principal investigator and co-investigators
2. Institutions involved
3. 500 words (or less) abstract outlining ''Central Concepts'' to be developed more fully in the complete application
4. 300 words (or less) statement of qualifications and capacity to
5. Estimated amount of funds to be requested

Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget. It should be no more than 30 double spaced pages, printed on one side, with one-inch margins, and unreduced fonts.

G. Submission and Deadline

Letter of Intent (LOI)

On or before July 5, 2002, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*

On or before August 5, 2002, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Letters of Intent and final applications shall be considered as meeting the deadlines if they are either:

1. Received on or before the deadline dates.
2. Sent on or before the deadline dates and received in time for submission to the independent review group.

Late: Letters of Intent and Applications which do not meet the criteria in 1 or 2 above will be returned to the applicant.

H. Evaluation Criteria

Application

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of Effectiveness must relate to the performance goal (or 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 independent review group appointed by CDC:

Understanding the Purpose of the Overall Plan the Application (10 points)

A cogent, brief summary of critical issues; succinct, coherent understanding of the purpose of the program announcement; and crosscutting, cost-effective approaches to responding to the announcement.

Objectives (15 points)

A translation of the general purposes of the program announcement into no more than four specific objectives, products, or outputs of the cooperative agreement that will be convincingly realized: two objectives within one to two years, and two objectives more linked to capacity building within three to four years on onset of funding.

Methods (15 points)

Enunciation of a methodology appropriate for accomplishing the Objectives outlined above.

Evaluation (15 points)

Brief explanation of how internal monitoring and evaluation of this program will contribute to strengthening and institutionalization of this program during the period of the grant.

Capacity (40 point)

Epidemiologic analysis and support (15 points)

Ability to participate in epidemiologic analysis of HIV infection rates, especially the relationships between

HIV prevalence in pregnant women and in the general population.

Mathematical Modeling (15 points)

Ability to develop mathematical models that help interpret the underlying dynamics of the HIV epidemic in Zimbabwe, and contribute to characterizing interventions that reflect a cost effective response to the epidemic.

Tools for Monitoring the Local Response to HIV/AIDS (10 points)

Ability to develop appropriate tools to assist in monitoring the HIV/AIDS epidemic in a highly affected country with a generalized epidemic, especially including the organizational response at the district level (the District AIDS Action Committee), including monitoring the local response plus response to the epidemic at a local level.

Measures of Effectiveness (5 points)

Measures must be objective and quantitative and must measure the intended outcome.

Budget and Cost-effectiveness (Reviewed but not scored)

Creative and convincing approaches to resource utilization (financial, personnel, computing, etc.) to lead to a major impact of available resources.

Human Subjects (Review But Not Scored)

The extent to which the application adequately addresses the requirements listed in the 45 CFR 46 for the protection of human subjects.

I. Other Requirements

Technical Reporting Requirements

1. Progress report (annual); A brief, comprehensive narrative progress report should be submitted no later than 30 days after the end of the budget period. The progress report must include the following: (1) A comparison of the actual accomplishments to the objectives established; (2) the reasons for slippage if established objectives were not met; and (3) other pertinent information.

2. Financial status report, no more than 90 days after the end of each budget period.

3. Final financial report and performance report, no more than 90 days after the end of the project period.

Obtain annual audit of these CDC funds (program specific audit) by a U.S. based audit firm with international branches and current licensure/ authority in country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

A fiscal Recipient Capability Assessment may be required with the potential awardee, prior or post award, in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To obtain business management technical assistance, contact:

Cynthia Collins, Grants Management Specialist, International & Territories Acquisition & Assistance Branch, Procurement & Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2757, E-mail: *ccollins@cdc.gov.*

For program technical assistance, contact:

Michael St. Louis, MD, Director, Global AIDS Program (GAP), Zimbabwe Country Team, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), Zim-CDC AIDS Project Team, 38 Samora Machel Avenue, 2nd Floor, Harare, Zimbabwe, Telephone: 263 4 796040 796048, Fax: 263 4 796032, E-mail: *stlouism@zimcdc.co.zw.*

Dated: June 17, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–15659 Filed 6–20–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02104]

Cooperative Agreement To Support State Assessment Initiatives: Notice of Availability of Funds; Correction

A notice announcing the availability of Fiscal Year 2002 funds to fund a Cooperative Agreement to Support State Assessment Initiatives was published in the **Federal Register** on June 12, 2002, Volume 67, Number 113, pages 40309–40316. The notice is amended as follows: On page 40309, second column, under number three, Community Health Assessment Practices, paragraph 2, CDC Web site should be corrected to read, ''*http://www.cdc.gov/od/ pgo/funding/ grantmain.htm.*''

Dated: June 17, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–15657 Filed 6–20–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 67 FR 18914–18921, dated April 17, 2002) is amended to establish the National Personal Protective Technology Laboratory within the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention. The Laboratory will be located in Pittsburgh, PA.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the functional statement for the *Disaster Prevention and Response Branch (CC27), Pittsburgh Research Laboratory (CC2),* and insert the following:

(1) Conducts laboratory and field investigations of catastrophic events such as explosions and catastrophic

structural or ground failures to better understand cause and effect relationships that initiate such events; (2) designs and implements appropriate intervention strategies; (3) develops, tests, and promotes the use of disaster prediction and risk evaluation systems for control or reduction of risk; (4) develops criteria and tests for explosives to determine their suitability for mine use and transportation; (5) evaluates and recommends implementation strategies for disaster prevention; (6) assists in the development and evaluation of curricula for mine rescue and firefighting in conjunction with other health education, health communication, and other information and education activities of the Institute.

Delete the functional statement for the *Division of Respiratory Disease Studies (CCA)* and insert the following:

(1) Provides national and international leadership for understanding and preventing occupational respiratory disease; (2) plans, designs and conducts a national research program for the prevention of occupational respiratory disease; (3) upon request, conducts hazard evaluations and provides technical assistance to address emerging problems in occupational respiratory disease; (4) plans, designs and conducts a national surveillance program for occupational respiratory disease; (5) communicates study findings for the prevention of occupational respiratory diseases and evaluates the effectiveness of these communications; (6) administers a program of legislatively mandated medical services for coal miners under the Federal Mine Safety and Health Act (FMSHAct) of 1977.

Delete the functional statement for the *Laboratory Research Branch (CCA9), Division of Respiratory Disease Studies (CCA),* and insert the following:

(1) Conducts laboratory research complementary to, and coordinated with, field investigations of occupational respiratory diseases; (2) formulates and implements laboratory research which will identify factors involved in the early detection and differential rates of susceptibility to occupational respiratory disease; (3) develops new methods to improve detection and measurement of human response to respiratory hazards found in the workplace; (4) develops new methods and technologies to characterize and measure respiratory exposure agents; (5) devises and conducts clinical research studies on the causes, detection, and quantification of occupational respiratory disease; (6) in conjunction with researchers in the Health Effects Laboratory Division (HELD), carries out an experimental pathology program utilizing appropriate laboratory animals to study the mechanism and progression of lung damage from occupational respiratory exposures.

Delete in their entirety and title and functional statement for the *Respirator Branch (CCAA), Division of Respiratory Disease Studies (CCA).*

Delete the functional statement for the *Surveillance Branch (CCAB), Division of Respiratory Disease Studies (CCA),* and insert the following:

(1) Collects, analyzes and disseminates health and hazard information related to occupational respiratory diseases; (2) collaborates on the establishment of health surveillance systems in order to: (a) summarize information relating to overall incidence, prevalence, mortality, and importance of occupational respiratory diseases; (b) describe the occurrence of specific diseases (including temporal trends) with regard to occupation, industry, geography, demographic characteristics, and other factors for which information is available; (c) describe the distribution and trends in occupational exposure to agents responsible for respiratory diseases; (3) produces and develops reports describing workplace hazards and work-related occupational lung diseases; (4) coordinates with other Federal agencies and promulgates rules as provided for in the FMSHAct of 1977, and the OSHAct of 1970, to provide for the collection and reporting of health and hazard surveillance data related to occupational respiratory diseases; (5) provides technical assistance and recommendations concerning medical screening and health surveillance of workers exposed to respiratory hazards in the workplace; (6) conducts surveys of hazardous exposures and the application and use of various exposure control technologies; (7) synthesizes data and frames recommendations for priority setting, hypothesis generation, and improved methods for data collection; (8) develops and evaluates surveillance methods of data collection, processing, and statistical analysis which are relevant to the Division mission.

Delete the functional statement for the *Division of Safety Research (CCB)* and insert the following:

(1) As the focal point for the Institute's occupational traumatic injury prevention and safety program, identifies the major causes of injuries and safety hazards, identifies interventions to improve worker safety, and supports implementation of these interventions; (2) develops scientifically sound recommendations for programs to prevent and control occupational traumatic injuries; (3) develops scientifically sound recommendations for the performance and use of equipment and various other devices for protecting workers; (4) evaluates the impact of targeted control programs for preventing or mitigating traumatic injury, diseases, disability, and death; (5) manages program planning/project coordination, including the Division's financial and personnel management systems, and ensures the scientific and program integrity of Division functions.

Delete the functional statement for the *Methods and Analysis Section (CCB54), Analysis and Field Evaluations Branch (CCB5), Division of Safety Research (CCB),* and insert the following:

(1) In collaboration with the Intervention and Evaluation Section, develops scientifically sound methods for the conduct of analytic epidemiologic investigation and applied field interventions trials to assess the effectiveness of new, redesigned, and existing technical, managerial, regulatory, and system safety engineering and occupational medicine approaches and programs for preventing injuries and for utilizing recommended work practices and equipment; (2) develops methods for the collection and analysis of data on the human and economic costs of occupational injuries and assures a cost-benefit component of studies where feasible; (3) collaborates in the development and implementation of analysis plans for epidemiologic and other data collected by the Branch; (4) designs and implements quality assurance efforts for the collection and management of data within the Branch; (5) develops information for dissemination to the scientific community as well as to employers, workers, safety and health professionals and others; (6) provides risk assessment analyses and services for improved decision making in job safety to the Protective Technology Branch, other components of NIOSH and CDC, other Federal agencies, and other public and private sector organizations.

Delete the functional statement for the *Protective Technology Branch (CCB7), Division of Safety Research (CCB),* and insert the following:

(1) Designs and develops new and improved safety engineering systems and controls, work practices, and equipment to protect workers; (2) tests and evaluates, in the laboratory, simulated workplace, and actual work-sites, existing and new technological approaches to worker protection, and occupational injury prevention and control; (3) evaluates the use and

performance of safety engineering controls; (4) develops scientifically sound recommendations for the performance and use of existing or redesigned safety engineering controls, work practices, and equipment; (5) develops technical information to support recommendations for safety standards; (6) coordinates the preparation of technical informational packages from the Technology Development, Protective Equipment, and Safety Controls Sections; (7) provides recommendations to the Analysis and Field Evaluations Branch regarding specific hazards or interventions requiring further epidemiologic research and/or evaluation; (8) provides technical assistance and consultation to other Branches within the Division of Safety Research, other components of NIOSH and CDC, other Federal agencies, and other public and private sector organizations on the use of protective technology for the prevention of worker exposures to safety hazards that lead to injuries.

Delete the functional statement for the *Protective Equipment Section (CCB74), Protective Technology Branch (CCB7), Division of Safety Research (CCB),* and insert the following:

In coordination with the National Personal Protective Technology Laboratory (NPPTL): (1) Conducts research in the laboratory, simulated workplace, and actual workplace to identify ways to improve the performance of personal protective equipment other than respirators; (2) develops and validates test methods necessary to evaluate interventions and to increase the performance of personal protective equipment; (3) develops recommendations for relevant constituent groups on the use of effective personal protective equipment other than respirators; (4) assists in preparing technical informational packages to facilitate the proper use of all types of personal protective equipment.

Delete the functional statement for the *Technology Development Section (CCB75), Protective Technology Branch (CCB7), Division of Safety Research (CCB),* and insert the following:

(1) Conducts research in new technology and methodology for occupational safety research; (2) develops and validates test and measurement methods necessary to conduct safety controls and equipment research; (3) designs, modifies, calibrates, and maintains laboratory test equipment in support of Branch research activities; (4) develops recommendations for relevant constituent groups on the use of exposure assessment tools and occupational safety research technologies; (5) collaborates in developing recommendations for the use of effective safety engineering controls and work practices by relevant constituent groups; (6) collaborates in preparing technical informational packages to facilitate the proper use of occupational safety research technologies.

Following the functional statement for the *Special Studies Section (CCB85), Surveillance and Field Investigations Branch (8CCB8), Division of Safety Research (CCB),* insert the following:

National Personal Protective Technology Laboratory (CCC). (1) Conducts work site surveillance of hazards for which protective technologies and equipment are used to protect workers, and studies patterns of personal protective technology (PPT) use; (2) conducts a variety of laboratory and field research relating to the development and evaluation of innovative personal protective technologies and equipment; (3) researches and develops criteria, standards and guidelines relating to PPT performance, quality, reliability and efficacy; (4) directs and carries out the NIOSH respirator approval program and related laboratory, field, quality, and records activities; (5) produces and disseminates research findings, technical information, training materials, performance criteria, and recommendations for using personal protective equipment to improve protection of workers; (6) develops, studies and assesses the effectiveness of communications and training approaches and technologies relating to PPT.

Respirator Branch (CCC2). (1) Processes respirator approval applications; i.e., certifying performance, quality, reliability, and efficacy of respiratory protection devices in accordance with Federal regulations and NIOSH policy; (2) evaluates and maintains official records on NIOSH-approved respirators; (3) develops and promulgates new approval standards and regulations; (4) establishes NIOSH policy relating to the approval of respirators, including approval policies for innovative respirator features; (5) evaluates quality control plans, including in-plant manufacturing-site quality system audits, and monitors the quality and performance of certified respirators; (6) investigates field problems associated with NIOSH-certified respirators; (7) recommends NIOSH activities to address product non-conformance such as NIOSH approval rescission, product recalls or retrofits, and public notification of potentially unsafe products; (8) provides technical assistance on the selection, use, maintenance, and operation of respirator protective equipment.

Certification, Evaluation, and Testing Section (CCC22). (1) Develops programs, standard test procedures and evaluation criteria to determine if products submitted for NISOH approval meet established standards; (2) processes respirator manufacturer applications for NIOSH approval by reviewing engineering specifications, drawings, quality assurance and other pertinent documentation, and conducting standard laboratory tests on products to ensure they meet or exceed regulatory requirements, such as 42 CFR Part 84; (3) conducts laboratory tests on NIOSH-approved respirator equipment in support of product audits and special investigations; (4) develops respirator selection and use guidelines for NIOSH-approved respirators; (5) collects and processes application fees and materials; (6) tracks submitted applications; (7) responds to technical requests for information.

Quality Assurance Section (CCC23). (1) Conducts manufacturing site audits to ensure that manufacturers comply with the quality assurance program plans approved by NIOSH; (2) conducts audits of products purchased either ''off-the-shelf'' or from the manufacturer during site audits to ensure that the manufacturers continue to comply with all aspects of the approval requirements after the respirator is in production; (3) conducts audits of private laboratories authorized by NIOSH to conduct standard tests on respirators submitted to NIOSH for approval; (4) conducts audits of private auditors authorized by NIOSH to conduct manufacturing site or laboratory audits; (5) conducts product investigations of respirator failure/problems; (6) resolves or corrects problems that may include product recalls, field retrofits, requests to stop sale of the respirator as a NIOSH-approved device, or in extreme cases, approval revocation.

Policy and Standards Development Section (CCC24). (1) Identifies where research is needed to support new standards, regulations, and policies relating to NIOSH-certified respirators; (2) assesses research findings and translates them into effective NIOSH policy, regulations, and auditing practices, especially for new respirator technology or special applications; (3) holds public meetings to solicit information concerning users needs and the feasibility of specific technologies;

(4) determines the public financial and legal impacts of Federal regulation revision.

LTFE/SCSRs Program Section (CCC25). (1) Assesses the in-mine operational durability and reliability of self-contained self-rescuers (SCSRs) deployed in accordance with Federal regulations 30 CFR 75.1714 and 42 CFR 84; (2) conducts laboratory assessments and recommends technology improvements, reliability test procedures and user guidelines for the effective care and inspection of SCSR devices; (3) provides technical assistance and consultation to other branches within NPPTL, other components of NIOSH and CDC, other Federal agencies, and other public and private sector organizations on SCSR reliability; (4) investigates SCSR failure and conducts field studies in various mines to assess and improve SCSR protection for workers.

Technology Branch (CCC3). (1) Encourages and conducts research related to innovative technologies for new products; (2) conducts laboratory and field research of methods and PPT performance, quality, reliability, and efficacy, especially for new or emerging hazards; (3) investigates emerging hazards and personal exposures to identify worker PPT needs and technology gaps; (4) conducts research for the effective integration of various personal protective technologies and equipment; (5) recommends performance, quality, reliability, and efficacy criteria; (6) conducts PPT failure investigations and analyses, and recommends criteria to improve PPT; (7) conducts hypothesis testing-based research; (8) studies and improves human/technology interfaces; (9) conducts research into the physiologic and psychologic stressors and worker responses to protective technologies and equipment; (10) recommends user guidelines, including cautions, limitations, and restrictions of use; (11) participates on national and international standards setting committees and establishes a national/international database of relevant standards.

Surveillance, Communications, and Training Branch (CCC4). (1) Collects data relevant to work site hazards and worker protection needs; (2) conducts surveillance of hazards for which protective technologies and equipment are used; (3) studies patterns of personal protective technology use; (4) investigates barriers to effective use of protective technologies; (5) conducts surveillance of PPT failures, and cautions and limitations of personal protective technologies and the programs guiding their use; (6) reports on the overall incidence, prevalence, and trends of illnesses and injuries of personnel engaged in high-risk occupations or working in extreme environments; (7) designs field studies in collaboration with other branches within NPPTL; (8) produces and disseminates technical information, research findings, training materials, performance criteria, and recommendations for using personal protective equipment to improve protection of workers; (9) studies and assesses communication effectiveness; (10) develops and evaluates the effectiveness of training approaches, e.g., technologies that simulate the effect of PPT on workers; (11) provides writing and editing support to the Laboratory's personnel.

Dated: June 7, 2002.

Julie L. Gerberding,

Acting Director.

[FR Doc. 02–15658 Filed 6–20–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Award of Non-Competitive Grant

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Notice; opportunity to comment.

SUMMARY: Notice is hereby given that ACYF is considering awarding grant funds without competition to the California Institute for Human Services (CIHS) at Sonoma State University for up to $3,000,000 of Head Start funds in FY 2002. And, pending the availability of Federal funds, and the continuing non-Federal support from the Hilton Foundation, ACYF will award up to $3,000,000 of Head Start funds per year for four additional fiscal years. The five-year project period would begin September 1, 2002 and end August 31, 2007. This award will be made to the CIHS to provide Federal support for a second phase of the public/private partnership between the Head Start Bureau and the Conrad N. Hilton Foundation to support the Hilton/Early Head Start Training Program.

The Hilton/Early Head Start Training Program, developed and implemented by the CIHS since the program began in 1997, provides a combination of training and technical assistance to local community teams throughout the nation, so that Early Head Start and Migrant and Seasonal Head Start programs can more effectively include infants and toddlers with disabilities and their families. The model supports high levels of involvement of such key stakeholders as the local Part C/Early Intervention providers and the parents of infants and toddlers with disabilities. The Hilton/Early Head Start model's support for ongoing follow-up coaching in every participating community is cited by local teams as essential to implementing local strategies addressing their programs' objectives for improving the inclusion of young children with disabilities and their families.

The CIHS staff developed and refined the program's SpecialQuest training model, trained the trainers and learning coaches on its use, and are uniquely qualified to provide direction and coordination for a timely implementation of a second phase of this project. ACF believes only CIHS has:

- The requisite staff resources, organizational capacity and experience to undertake this project in a manner that improves and expands upon the results already realized;
- A trained and coordinated national network of 140 learning coaches and 60 trainers with substantial experience delivering the SpecialQuest curriculum and on-site coaching;
- The capacity to retain and quickly mobilize this network for training and technical assistance activities in the 2002–2003 program year; and
- Substantial continued non-Federal support for a second phase of this project.

The Agency is providing members of the public, including qualified organizations which would be interested in competing for the funding if a competition were held, an opportunity to comment on the planned action.

Statutory Authority: This award will be made pursuant to the Head Start Act, as amended, 42 U.S.C. 9801 et seq. (CFDA: 93.600)

DATES: In order to considered, comments on this planned action must be received on or before July 1, 2002.

ADDRESSES: Interested parties, including qualified organizations which would be interested in competing for the funding if a competition were held, should write to: James O'Brien, Head Start Bureau, Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human

Services. 330 C Street SW., room 2018, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: James O'Brien, Head Start Bureau, at (202) 205–8646.

(Catalog of Federal Domestic Program Number 93.600, Project Head Start)

Dated: June 17, 2002.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 02–15655 Filed 6–20–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0359]

Program Priorities in the Center for Food Safety and Applied Nutrition; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting comments concerning the establishment of program priorities in the Center for Food Safety and Applied Nutrition (CFSAN) for fiscal year (FY) 2003. As part of its annual planning, budgeting, and resource allocation process, CFSAN is reviewing its programs to set priorities and establish work product expectations. This notice is being published to give the public an opportunity to provide input into the priority-setting process.

DATES: Submit written or electronic comments by August 20, 2002.

ADDRESSES: Submit written comments concerning this document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Donald J. Carrington, Center for Food Safety and Applied Nutrition (HFS–666), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, e-mail: dcarring@cfsan.fda.gov, 301–436–1697.

SUPPLEMENTARY INFORMATION:

I. Background

On January 28, 2002, CFSAN released a document entitled ''2002 CFSAN Program Priorities.'' The document, a copy of which is available on CFSAN's Web page (www.cfsan.fda.gov), constitutes CFSAN's priority workplan for fiscal year 2002, i.e., October 1, 2001, through September 30, 2002. (See **FOR FURTHER INFORMATION CONTACT** for copies.) The 2002 workplan is based on input we received from our stakeholders (see 66 FR 37480, July 18, 2001), as well as input generated internally. Throughout the priority-setting process, we focused on one central question: ''Where do we do the most good for consumers?''

In addition to adding a new emphasis on enhancing the security of the Nation's food supply, the FY 2002 workplan continues to place a high priority on food safety, food additives, dietary supplements, and food biotechnology. In this year's workplan, the Food Safety and Security section has been broadened by including additional food safety strategies: Food Allergens; Transmissible Spongioform Encephalopathies; and Chemical Contaminants, Pesticides and Other Hazards. Outside of these priorities, the workplan identifies eight other program areas and cross-cutting areas that need emphasis: (1) Nutrition, health claims and labeling; (2) cosmetics; (3) completing the move of CFSAN offices and laboratories to a new facility in College Park, MD; (4) enhancing the science base; (5) international activities; (6) enhancing internal processes; (7) focused economic-based regulations; and (8) management initiatives.

The FY 2002 workplan contains two lists of activities—the ''A'' list and the ''B'' list. Our goal is to fully complete at least 90 percent of the ''A'' list activities by the end of the fiscal year, September 30, 2002. Activities on the ''B'' list are those we plan to make progress on, but may not complete before the end of the fiscal year. Some activities on the ''B'' list are highlighted with an asterisk. These are the highest priority ''B'' list activities, most of which are 2-year projects that we are positioning to be on the ''A'' list the following year.

CFSAN intends to issue a progress report on what program priority activities already have been completed to date in FY 2002, as well as any adjustments in the workplan (i.e., additions or deletions) for the balance of the fiscal year.

CFSAN has responsibility for many important ongoing activities that are not identified in the workplan. For example, CFSAN's base programs in data collection, research, and enforcement are important and are ongoing. Rather, the workplan addresses primarily those initiatives representing something new or different that CFSAN needs to address in 2002, as well as priority initiatives that are being continued from the 2001 workplan. In addition, the workplan does not address the myriad of unanticipated issues that often require a substantial investment of CFSAN resources (e.g., response to outbreaks of foodborne illness).

II. 2003 CFSAN Program Priorities

FDA is requesting comments concerning the establishment of program priorities in CFSAN for FY 2003. The input will be used to develop CFSAN's 2003 workplan. The workplan will set forth CFSAN's program priorities for October 1, 2002, through September 30, 2003. FDA intends to make the 2003 workplan available in the fall of 2002.

The format of the 2002 workplan will be similar to last year's workplan. FDA expects there will be considerable continuity and follow-through between the 2002 and 2003 workplans. For example, new initiatives aimed at increasing the security of our country's food supply will continue to be a high priority in FY 2003. Moreover, a number of goals inherently require a multiyear effort. For example, in 2003, progress will continue towards development of a centralized adverse event reporting system. FDA requests comments on other broad program areas that should continue to be a priority in FY 2003, or new areas that need to be initiated.

In addition, as noted, the 2002 workplan highlights certain ''B'' list activities with an asterisk. Many of these are 2-year projects that we are positioning to be candidates for the ''A'' list next year. FDA requests comments on which ''B*'' and regular ''B'' list activities (i.e., those not designated with an asterisk) should be elevated to the ''A'' list for completion in 2003. Finally, as noted, FDA requests comments on new program areas or activities that should be added as a high priority for FY 2003.

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written comments regarding this notice by August 20, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–15778 Filed 6–18–02; 4:55 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Board of Scientific Advisors, June 24, 2002, 8:30 a.m. to June 25, 2002, 6 p.m., National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892 which was published in the **Federal Register** on June 6, 2002, 67 FR 39027.

This meeting is amended to change the closing time on 6/25/02 to 1 p.m. The meeting is open to the public.

Dated: June 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15769 Filed 6–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Gene Therapy.

Date: June 26, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate program documents.

Place: 6701 Rocklede Dr., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert B Moore, PhD., Scientific Review Administrator, Review Branch, Room 7192, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0287.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15757 Filed 6–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Centers for Reducing Asthma Disparities HL 02–006.

Date: July 18, 2002.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Radisson Plaza Hotel, Baltimore Inner Harbor, 20 West Baltimore, Baltimore, MD 21201.

Contact Person: Arthur N. Freed, PhD, Review Branch, Room 7186, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892 (301) 435–0280, *freeda@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15764 Filed 6–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Mathematical Models of Cytokine/Chemokine Networks in HIV Associated Lung Disease.

Date: July 19, 2002.

Time: 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Chitra Krishnamurti, PhD., Scientific Review Administrator, Review Branch, Room 7206, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for the Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Disease Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15766 Filed 6–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and persona information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Panel Advance Technology Development.

Date: July 10–11, 2002.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Waltham-Boston, 70 Third Avenue, Waltham, MA 02451.

Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: June 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15767 Filed 6–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Multimodal Network Studies.

Date: June 24, 2002.

Time: 8:30 a.m. to 9 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Richard D. Crosland, PhD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Hypoglycemia Special Emphasis Panel.

Date: June 28, 2002.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Embassy Row, 2100 Massachusetts Ave, Washington, DC 20008.

Contact Person: Richard D. Crosland, PhD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.583, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: June 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15758 Filed 6–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–67, Review of Health Disparities RFAs DE02–004, 005.

Date: July 15–17, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Anna Sandberg, MPH, DRPH, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–3089.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–87, Review of R44 Grants.

Date: July 30, 2002.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–92, Review of R44 Grants.

Date: August 5, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst of Dental & Craniofacial Research, National Institutes of

Health, 45 Center Dr. Rm, Bethesda, MD 20892–6402.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15759 Filed 6–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel.

Date: July 25, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: John E. Richters, PhD., Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, Bethesda, MD 20892, (301) 594–5971, *jrichters@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: June 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15760 Filed 6–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, NIMH Program for Toxicological Evaluation of Novel Ligands.

Date: July 12, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Mariott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MS 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15761 Filed 6–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Youth Mental Health Services Applications.

Date: July 2, 2002.

Time: 1 p.m. to 2:15 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joel Sherrill, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606, 301–443–6102, *jsherril@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Services Research Applications on Adolescent MH

Date: July 2, 2002.

Time: 3 p.m to 4:15 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joel Sherrill, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606, 301–443–6102, *jsherril@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15762 Filed 6–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: July 15, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol, Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 443–2926, *skandasa@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel RFA–AA02–005 Medications to Clinically Treat Alcohol Dependence & Alcohol-Related Diseases.

Date: July 22, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, *etaylor@niaaa.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15763 Filed 6–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Betacellulin Gene Varient and Insulin Secretion.

Date: July 2, 2002.

Time: 5 p.m. to 6:15 p.m.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Blvd, Bethesda, MD 20892 (Telephone Conference Call)

Contact Person: Maria E. Davila-Bloom, PHD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 746, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, 301–594–7637, *davila-bloomm@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15765 Filed 6–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Fogarty International Scientific Research Development Award.

Date: July 3, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700 B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eleazar Cohen, PHD, Scientific Review Administrator, NIAID/DEA, Scientific Review Program, Room 2217, 6700B Rockledge Drive, MSC–7616, Rockville, MD 20892, 301–496–2550, *ec17w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research: 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15768 Filed 6–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, CA Cells.

Date: July 31, 2002.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD., Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892. (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program No. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: June 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15770 Filed 6–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Phase 1 and 2 study of surveillance, safety, and immunogenicity of investigational Shigella vaccines in adults and children 5 to 7 years old and 1 to 4 years old in China.

Date: July 12, 2002.

Time: 12:00 pm to 1:30 pm.

Agenda: To review and evaluate contract proposals.

Place: 6100 Executive Blvd., DSR Conf. Rm., Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Hameed Khan, PHD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892. (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: June 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15771 Filed 6–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, ORWH SCORS.

Date: July 18–19, 2002.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25S, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 13, 2002.

LaVerne J. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15772 Filed 6–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, TCCH Embyro Implantation.

Date: July 30, 2002.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892. (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program, 93.864, Population Research; 93.865, Research for Mothers and Children, 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: June 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15773 Filed 6–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–26]

Notice of Submission of Proposed; Information Collection to OMB Informed Consumer Choice Disclosure Notice

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 22, 2002

ADDRESSES: Interested person are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0537) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports, Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal: (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Office for the Department.

This Notice also lists the following information:

Title of Proposal: Information Consumer Choice Disclosure Notice.

OMB Approval Number: 2502–0537.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: This information is provided by mortgages/lenders and used by prospective mortgagors/borrowers to determine if mortgage products other than FHA insurance would result in lower costs to the mortgagor/borrower.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	9,000		1		0.5		4,500

Total Estimated Burden Hours: 4,500.

Status: Extension of currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 14, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–15650 Filed 6–20–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–25]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: June 21, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 14, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–15497 Filed 6–20–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–068–02–1610–DQ–241E]

Notice of Availability of Proposed Resource Management Plan/Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Proposed Resource Management Plan/Final Environmental Impact Statement (RMP/FEIS) for the Las Cienegas National Conservation Area (NCA).

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan/Final Environmental Impact Statement (RMP/FEIS) for the Las Cienegas National Conservation Area (NCA) and Sonoita Valley Acquisition Planning District located in Pima and Santa Cruz Counties, Arizona.

The RMP/FEIS has been prepared pursuant to the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), the act establishing the Las Cienegas National Conservation Area (H.R. 2941), and BLM management policies.

The RMP/FEIS was developed with broad public participation through a five-year collaborative planning process. Land use planning for the NCA and Acquisition Planning District are included in the document which addresses management on approximately 49,000 acres of public land.

DATES: The RMP/FEIS will be available for review and protest of the proposed land use plan decisions for 30 days from the date the Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) of this RMP/FEIS in the **Federal Register**. Protests must be filed in accordance with the instructions described in the Supplemental Information section of this notice.

ADDRESSES: Copies of the RMP/FEIS are available from the Field Manager, Tucson Field Office, Bureau of Land Management, 12661 E. Broadway Blvd., Tucson, AZ 85748.

FOR FURTHER INFORMATION CONTACT: Karen Simms, Ecosystem Planner, Tucson Field Office, Bureau of Land Management, 12661 E. Broadway Blvd., Tucson, AZ 85748, Telephone 520–258–7200.

SUPPLEMENTARY INFORMATION: In accordance with 43 CFR 1610.5–2, any person who participated in the planning process and believes they may be adversely affected by approval of the resource management plan may protest the proposed land use plan decisions of the RMP/FEIS document.

The protest may raise only those issues which were submitted for the record during the planning process. The protest must be in writing and within the date the EPA publishes it's NOA of this RMP/FEIS in the **Federal Register**. The protest must be complete and filed with the Director, Bureau of Land Management (WO–210, ms 1050LS), Attention: Brenda Hudgens-Williams, Protest Coordinator, 1849 C Street NW, Washington, DC 20240. If you wish to send your protest using an overnight express delivery service, the address is, Director, Bureau of Land Management (WO–210), Attention: Brenda Hudgens-Williams, Protest Coordinator, 1620 L Street NW, Suite 1075, Washington, DC, 20036. Also please send a copy of any protest along with all backup documentation to Karen Simms, Tucson Field Office, 12661 E. Broadway Blvd., Tucson, AZ 85748.

In order to be considered complete, your protest must contain, at a minimum, the following information:

1. The name, mailing address, telephone number, and interest of the person filing the protest.
2. A statement of the issue or issues being protested.
3. A statement of the part or parts of the proposed RMP being protested. To the extent possible, this should be done by reference to specific pages, paragraphs, sections, tables, maps, etc., included in the document.
4. A copy of all documents addressing the issue or issues that you submitted during the planning process or a reference to the date the issue or issues were discussed for the record.
5. A concise statement explaining why you believe the proposed plan is wrong. The explanation should include all relevant facts and reasons, and documentation rather than merely expressing disagreement with the proposed decision.

Single copies of the RMP/FEIS will be available at the start of the 30-day protest period at the BLM Tucson Field Office, 12661 E. Broadway, Tucson, Arizona 85748. The RMP/FEIS may be reviewed via the Internet at *http://www.az.blm.gov.* Interested persons not already on the mailing list may request a hard copy or a CDROM of the RMP/FEIS from the BLM Tucson Field Office.

Background

The RMP/EIS analyzed four alternatives to manage natural and cultural resources, visitor use and access, grazing, and maintenance of desired resource, economic and quality-of-life conditions. Alternative 1, the no action alternative, represents the continuation of existing management decisions within the National Conservation Area and Sonoita Valley Acquisition Planning District. Alternative 2, the proposed plan or BLM's preferred alternative, emphasizes ecosystem management and the use of partnerships and collaboration to achieve desired resource conditions. Alternative 3 proposes allowing the greatest mix of land uses with restrictions to protect sensitive areas and with fewer road closures and restrictions than the other alternatives. Alternative 4 emphasizes land use closures and restrictions and limits on development to achieve desired resource conditions making it the most restrictive of the alternatives.

The proposed plan (Alternative 2) is designed to achieve or maintain desired future conditions developed through the Sonoita Valley Planning Partnership process. Under the preferred alternative land use plan, the public lands are open to livestock grazing and dispersed recreation, both motorized and mechanized vehicles are limited to designated routes, and recreation is managed within three zones. Two utility corridors are established and the public lands are closed to mineral entry and location. The public lands in the planning area will be designated as an Area of Critical Environmental Concern (ACEC) upon approval of the RMP. The preferred alternative (Alternative 2) includes a series of management actions to meet the desired resource conditions for upland and riparian vegetation, wildlife habitats, and cultural and visual resources as well as livestock grazing and recreation management actions.

Dated: April 29, 2002.

Denise Meridith,

State Director.

[FR Doc. 02–15640 Filed 6–20–02; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Boundary Revision, and Opportunity for Public Comment, Mission San Jose Unit, San Antonio Missions National Historical Park

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Title II, § 201 of the Act of November 10, 1978, Public Law No. 95–629, 92 Stat. 3635, 3636, codified as amended at 16 U.S.C. 410ee (2000), established San Antonio Missions National Historical Park in San Antonio, Texas. Subsection 201(a) of that act, codified as amended at 16 U.S.C. subsection 410ee(a) provides that, after advising the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives, in writing, the Secretary of the Interior may make minor revisions of the boundaries of the park when necessary by publication of a revised drawing or other boundary description in the **Federal Register**. The National Park Service has so advised the Congressional committees of this minor boundary revision.

The boundary revision will result in the addition of 9.113 acres of land known as San Antonio Missions National Historical Park (SAAN) Tract 102–20 which adjoins the Mission San Jose y San Miguel de Aguayo Unit of the park. This parcel has significant cultural resources that contribute to the interpretation of Mission San Jose. Additionally, the parcel will provide pedestrian access to the San Antonio River along remnants of the historic grist mill ditch.

Tract 102–20 is depicted on the SAAN land acquisition status map segment 102, drawing number 472/80,026–D, prepared by the Land Resources Program Center, Intermountain Region. This map is on file and available for inspection in the office of the National Park Service, Land Resources Program Center, Intermountain Region, and the office of the Superintendent, San Antonio Missions National Historical Park.

DATES: Notice is hereby given that, effective on the date of publication of this notice, the boundaries of San Antonio Missions National Historical Park are revised pursuant to the above-cited act to include the lands depicted as Tract 102–20 on the map having drawing number 472/80,026–D. Comments will be received on or before July 22, 2002.

ADDRESSES: Send comments to the Superintendent, San Antonio Missions National Historical Park, 2202 Roosevelt Avenue, San Antonio, TX 78210–4919.

FOR FURTHER INFORMATION CONTACT: Further information about this minor boundary revision may be obtained from the Superintendent, San Antonio Missions National Historical Park, 2202 Roosevelt Avenue, San Antonio, Texas 78210–4919.

Dated: April 9, 2002.

Karen P. Wade,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. 02–15637 Filed 6–20–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Temporary Concession Contract for Fire Island National Seashore, NY

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a temporary concession contract authorizing the operation of marina, food service, campground, and sundry merchandise sales facilities and services for the public at Fire Island National Seashore, New York for a term not to exceed October 31, 2002.

EFFECTIVE DATE: July 22, 2002.

ADDRESSES: Concession Program Manager, National Park Service, Northeast Region, Concession Management Program, 15 State Street, Boston, MA 02109–3572.

SUPPLEMENTARY INFORMATION: This temporary concession contract is being awarded to the Davis Park Marine Services, Inc., Patchogue, New York. It is necessary to award the contract in order to avoid interruption of visitor services.

This action is issued pursuant to 36 CFR Part 51.24(a). This is not a request for proposals and no prospectus is being issued at this time. The Secretary intends to issue a competitive solicitation for offers for a long-term operator for various services, to begin in 2003. You may be placed on a mailing list for receiving information regarding the competitive solicitation by sending a written request to the above address.

Dated: April 5, 2002.

Chrysandra Walter,

Regional Director, Northeast Region.

[FR Doc. 02–15638 Filed 6–20–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Environmental Statements; Notice of intent; Biscayne National Park, FL

AGENCY: National Park Service.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement for a General Management Plan Amendment for Biscayne National Park, Florida.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, the National Park Service (NPS) is preparing a draft environmental impact statement (DEIS) for an Amendment to the Biscayne National Park General Management Plan. This effort will result in a plan to guide the management of the 7 stilt structures that are located in the northern end of Biscayne National Park in Biscayne Bay, Florida. Management options being considered include removing the structures from the bay, public use of the structures consistent with NPS policy and best management practices for environmental protection, leasing the structures to a non-profit trust, and leasing the structures for private uses under NPS management.

Major issues potential impacts on water quality, biological resources, scenic resources, cultural resources, and the visitor experience.

To facilitate sound planning and consideration of environmental resources, the NPS intends to gather information necessary for the preparation of the General Management Plan Amendment/DEIS and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the Management Plan Amendment/DEIS. Comments and participation in this scoping process are invited. Participation in the planning process will be encouraged and facilitated by various means, including newsletters and, subsequent to the issuance of a draft General Management Plan Amendment/DEIS, by open houses or meetings. Comments previously submitted to NPS pursuant to public meetings held on September 24 and 25, 2001, in Miami, Florida and Homestead, Florida to provide the public an opportunity to give their ideas to the NPS regarding the future of Stiltsville will continue to be part of the public record on this planning process. Similarly, comments on future uses of Stiltsville were also received during Biscayne National Park's General Management Plan public scoping meetings held in January 2001 and September 2001 in various locations

and these will also be part of the public record.

DATES: The NPS will conduct public open house meetings to receive public comments on the Draft General Management Plan Amendment/DEIS. Locations, dates, and times of public open house meetings will be announced in the local press, in NPS newsletters and on the park website, *http://www.nps.gov/bisc* and may also be obtained by contacting Biscayne National Park.

ADDRESSES: Written comments and information concerning the scope of the General Management Plan Amendment/DEIS and other matters should be sent to the following address: General Management Plan Amendment, Biscayne National Park, 9700 SW 328th St., Homestead, Florida 33033. Requests to be added to the project mailing list should be directed to the same address.

FOR FURTHER INFORMATION CONTACT: Superintendent, Biscayne National Park, 305–230–1144 ext. 3002.

SUPPLEMENTARY INFORMATION: The NPS is developing an amendment to Biscayne National Park's 1983 General Management Plan for management of the 7 stilt structures located in the northern part of Biscayne National Park in Biscayne Bay. In 1980, the park's northern boundary expanded and Biscayne National Monument became Biscayne National Park. In 1985, when the State of Florida transferred ownership of the bay bottom within the expansion area to the park, it also transferred the leases for the property, which the structures occupy. The leases expired in July 1999. The park's 1983 General Management Plan, Development Concept Plan, Wilderness Study, and Environmental Assessment recommended removing the structures before the leases expired. Because of numerous expressions of public interest in maintaining the structures, the NPS initiated a multi-stage planning process to identify and recommend future public uses of the structures consistent with NPS policy.

Our practice is to make comments, including names and addresses of respondents available for public review during regular business hours. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: May 15, 2002.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 02–15666 Filed 6–20–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Death Valley National Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: This notice sets forth the date of the June 25, 2002 meeting of the Death Valley National Park Advisory Commission.

DATES: The public meeting will be held on June 25, 2002 from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Death Valley National Park Visitor Center Auditorium, Highway 190, Death Valley, California.

FOR FURTHER INFORMATION CONTACT: James T. Reynolds, Death Valley National Park, PO Box 579, Death Valley, California, 92328.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Death Valley National Park Advisory Commission, PO Box 579, Death Valley, California, 92328. Due to mis-routing of U.S. mail, the notice could not be published at least 15 days prior to the meeting date. The National Park Service regrets this error but is compelled to hold the meeting as scheduled because of the significant sacrifice re-scheduling could require of committee members who have adjusted their schedules to accommodate the meeting date. Since the meeting date has received widespread publicity in area news media and among the parties most affected, the National Park Service believes that the public interest will not be adversely affected by the less-than-15-days advance notice in the **Federal Register**.

Agenda: The June 25, 2002 meeting will consist of handing out the final General Management Plan for Death Valley National Park; Operational Updates on Park Activities which include the Furnace Creek Environmental Impact Statement and related water issues; the pending acquisition of Barrick Mines Inc. Administrative Site; briefing on the California Desert Park Foundation; Fee Demonstration project update; Natural History Association update; Timbisha Shoshone Tribe update; and a Citizens Open Forum where the public can make comments and ask questions on any park activity.

Dated: June 10, 2002.

Fran P. Mainella,

Director.

[FR Doc. 02–15636 Filed 6–20–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Storage Industry Consortium

Notice is hereby given that, on May 3, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Storage Industry Consortium (''NSIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Agere Systems, Allentown, PA; Euxine Technologies, Broomfield, CO; Maxtor, Milpitas, CA; and MEMS Optical, Huntsvilles, AL have been added as parties to this venture. The following colleges and universities have joined NSIC as university associate members: Arizona State University, Tempe, AZ; Georgia Institute of Technology, Atlanta, GA; Johns Hopkins university, Baltimore, MD; Northeastern University, Boston, MA; Purdue University, West Lafayette, IN; and University of Missouri, Columbia, MO.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NSIC intends to file additional written notifications disclosing all changes in membership.

On June 12, 1991, NSIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 13, 1991 (56 FR 38465).

The last notification was filed with the Department on October 18, 1999. A notice was published in the **Federal**

Register pursuant to section 6(b) of the Act on June 26, 2000 (65 FR 39429).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–15729 Filed 6–20–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services (COPS); Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of information collection under review: new collection, Community Policing Development Proposal Packet.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 20, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, (202) 305–7780, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Community Policing Development Proposal Packet.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Office of Community Oriented Policing.

Services Form Number: N/A.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, local, and Tribal law enforcement agencies, institutions of higher education, and/or non-profit/profit organizations.

Other: None.

Abstract: The information collected will be used by the COPS Office to determine grantee's eligibility for funding under Community Policing Development initiatives, which address current law enforcement/community needs and emerging law enforcement issues.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There will be an estimated 200 responses. The estimated amount of time required for the average respondent to respond is 9 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: There are approximately 1,800 hours annual burden hours associated with this information collection.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: June 14, 2002.

Brenda Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–15647 Filed 6–20–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: New collection; Methamphetamine Discretionary Grant Program application.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 20, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, (202) 305–7780, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Methamphetamine Discretionary Grant Program Application.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* From Number: None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law enforcement agencies experiencing a significant Methamphetamine problem. Other: None. Abstract: The information collected will be used by the COPS Office to determine grantee's eligibility for funding under the Methamphetamine Discretionary Grant Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 100 respondents. The estimated amount of time required for the average respondent to respond is 14 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 1,500 hours annual burden hours associated with this collection.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: June 14, 2002.

Brenda Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–15648 Filed 6–20–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: new, mental health and juvenile justice: building a model for effective service delivery.

The Department of Justice (DOJ), Office of Justice Programs, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until August 20, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ellen Wesley, (202) 616 3558, Office of Management and Budget Services, Office of Justice Programs, US Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New.

(2) *Title of the Form/Collection:* Mental Health and Juvenile Justice: Building a Model for Effective Service Delivery.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: OJP Form 1121 Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households; State and Local Government. This study is designed to examine: (1) The mental health status of youth in selected facilities and programs; (2) the availability of mental health and related substance abuse services for these youth; (3) the extent to which needed services are services are received by the youth; and (4) the level of youth and family satisfaction with services received.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that approximately 2,700 youth will complete the Massachusetts Youth Screening Instrument—Second Version (MAYSI–2), which takes 6–10 minutes to administer. In addition, a brief youth survey on service utilization and satisfaction, including some demographic items, will be administered to all study participants with the MAYSI. This survey will take no more than 15 minutes to administer. The Voice Diagnostic Interview Schedule for Children Version 4 (V–DISC 4) will be administered to 50% of those completing the MAYSI–2 interview. The V–DISC 4 takes about 1 hour to administer. We anticipate a total of 24 participants in the family focus groups and 45 key staff interviews. It is anticipated that the focus groups will take approximately 2 hours each, and the key staff interviews will take 45 minutes each.

(6) An estimate of the total public burden (in hours) associated with the collection:

The estimated total hour burden to complete all data collection activities is estimated to be 2,556.75 hours.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 14, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–15646 Filed 6–20–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office for Victims of Crime

[OJP(OVC)–1355C]

Notice of Solicitation for Services for Trafficking Victims; Correction

AGENCY: Office for Victims of Crime, Office of Justice Programs, Justice.

ACTION: Correction to Notice of Solicitation.

SUMMARY: This document provides the corrected information regarding when submissions are due for the Services for Trafficking Victims Solicitation, which was first published in the **Federal Register** on June 17, 2002 at 67 FR 41265.

FOR FURTHER INFORMATION CONTACT: Michelle Avery Weston, Program Specialist (telephone 202–514–5084 or e-mail *averym@ojp.usdoj.gov.*

DATES: Applications for competitive programs must be received (not postmarked) at the OVC Training and Technical Assistance Center located at 10530 Rosehaven Street, Suite 400, Fairfax, Virginia 22030 on Monday, July 29, 2002, no later than 5:30 eastern standard time. OVC will not grant extensions of the due date.

Dated: June 17, 2002.

John W. Gillis,

Director, Office for Victims of Crime.

[FR Doc. 02–15665 Filed 6–20–02; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office for Victims of Crime

[OJP(OVC)–1356C]

Notice of Solicitation for Training and Technical Assistance for Services for Trafficking Victims; Correction

AGENCY: Office for Victims of Crime, Office of Justice Programs, Justice.

ACTION: Correction to notice of solicitation.

SUMMARY: This document provides the corrected information regarding when submissions are due for the Training and Technical Assistance for Services for Trafficking Victims solicitation, which was first published in the **Federal Register** on June 17, 2002 at 67 FR 41272.

FOR FURTHER INFORMATION CONTACT: Michelle Avery Weston, Program Specialist (telephone 202–514–5084 or e-mail *averym@ojp.usdoj.gov.*

DATES: Applications for competitive programs must be received (not postmarked) at the OVC Training and Technical Assistance Center located at 10530 Rosehaven Street, Suite 400, Fairfax, Virginia 22030 on Monday, July 29, 2002, no later than 5:30 eastern standard time. OVC will not grant extensions of the due date.

Dated: June 17, 2002.

John W. Gillis,

Director, Office for Victims of Crime.

[FR Doc. 02–15664 Filed 6–20–02; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 14, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202 693–4158 or e-mail *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Notice of Recurrence.

OMB Number: 1215–0167.

Affected Public: Individuals or households.

Frequency: Once Per Recurrence.

Number of Respondents: 550.

Number of Annual Responses: 550.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 275.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $203.50.

Description: The Office of Workers' Compensation Programs administers the Federal Employees' Compensation Act (5 U.S.C. 8101, *et seq*). The statute provides for continuation of pay or compensation for work related injury or disease resulting from Federal employment. The information requested on the CA–2a is obtained from claimants with previously accepted injuries who claim a recurrence of disability, and from their supervisors. The information requested relates to the specific circumstances leading up to the recurrence and employment and earnings information. If this information were not collected, an eligible beneficiary could be denied benefits, or benefits could be authorized at an incorrect rate, resulting in an underpayment or overpayment of compensation.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–15756 Filed 6–20–02; 8:45 am]

BILLING CODE 4510–CH–M

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 and June 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 subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,172; The Goodyear Tire and Rubber Co., Danville, VA
TA–W–41,176; Eastern Felt Co., Inc., Westerly, RI
TA–W–41,274; Azon Corp., Johnson City, NY
TA–W–41,468; Pacific Crest Lumber Co., Inc., Winlock, WA
TA–W–40,040; United Metal Fabricators, Johnstown, PA

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–41,496; Alcatel USA, Customer Service/ITAS, Plano, TX
TA–W–41,388; Fujitsu Network Communications, Inc., Raleigh, NC
TA–W–40,916; EDS, PA Solution Center, Camp Hills, PA
TA–W–40,923; Telecruz Technology, Inc., San Jose, CA
TA–W–41,295; Multax Systems, Inc., at The Boeing Co., Oak Ridge, TN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,880; Madill Corp., Eugene, OR
TA–W–41,028 & A; Anne Klein for Kasper ASL, Ltd, New York, NY and Kasper ASL Ltd, Secaucus, NJ
TA–W–41,348; S.D. Warren Co. d/b/a Sappi Fine Paper North America, Somerset Operations, Skowhegan, ME
TA–W–40,044; BMI Industries, Schaumburg, IL
TA–W–41,042; Partridge River, Inc., Hoyt Lakes, MN
TA–W–41,049; Hale Products, Inc., St. Joseph, TN
TA–W–41,105; Arlee Home Fashions, Leachville, AR
TA–W–40,932; Allegro Micro Systems, Inc., Willow Grove, PA
TA–-W–41,300; L and A Molding Corp., Lewiston, ME
TA–-W–41,022; DT Magnetics, Inc., Knightdale, NC
TA–W–41,386; Ericsson, Inc., Lynchburg, VA
TA–W–41,073; Vishay Dale Electronics, Film Div., Norfolk, NE: ''All workers producing thin film products and E-Rel products are denied eligibility to apply for adjustment assistance.

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–41,170; Hoskins Manufacturing Co., Hamburg Plant, Hamburg, MI: November 29, 2000.
TA–W–41,545; Multi Products, Inc., Tool Room Div., Erie, PA: May 6, 2001.
TA–W–39,291; Emerson Electric Co., White-Rodgers Div., Affton, MO: April 11, 2000.
TA–W–39,998; Cook Technologies, Inc., Green Lane, PA: August 23, 2000.
TA–W–40,731; Fulflex of Virginia, Stuart, VA: December 10, 2000.
TA–W–40,861; Master Design Furniture, Eupora, MS: February 6, 2001.
TA–W–40,917; Hunter Sadler, Tupelo, MS: September 29, 2001.
TA–W–41,015 & A; E.J. Footwear LLC, Franklin, TN and Endicott, NY: February 14, 2001.
TA–W–39,084; Consolidated Auto Screen, Woonsocket, RI: April 4, 2000.
TA–W–41,151 & A; Bernard Chaus, Inc., Secaucus, NJ and New York, NY: February 7, 2001.
TA–W–41,159; Renfro Corp., Star Plant, Star, NC: January 30, 2001.
TA–W–41,184; Xerox Corp., Electronics Delivery Unit, El Segundo, CA: February 26, 2001.
TA–W–41,187; Flowline Div., Markovitz Enterprises, Inc., New Castle, PA: February 18, 2001.
TA–W–41,217; Scotty Fashions Cutting, Pen Argyl, PA: March 14, 2001.
TA–W–41,218; Scotty Fashions #1, Little Gap, PA: March 14, 2001.
TA–W–41,270; Devil Dog Manufacturing Co., A Div. Of General Sportswear Co., Inc., Zebulon, NC: March 5, 2001.
TA–W–41,280; Pat and Rose Dress, Inc., New York, NY: March 6, 2001.
TA–W–41,073; Vishay Dale Electronics, Film Div., Norfolk, NE: February 7, 2001. ''All workers engaged in the production of thick film military chips are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''.
TA–W–41,092; Standard Gage Div., Brown and Sharpe, Inc., Poughkeepsie, NY: January 11, 2001.
TA–W–41,113; American Fine Wire Corp., Div. Of Kulicke and Soffa Industries, Selma, AL: February 22, 2001
TA–W–41,031; Great American Knitting Mills, Inc., Bally, PA: April 18, 2002.
TA–W–41,282; Precision Technologies, Inc., Franklin, PA: March 1, 2001.
TA–W–41,291; Braden Manufacturing, LLC, Fort Smith, AR: March 25, 2001.
TA–W–41,314; Schneider Mills, Inc., Alexander Mills, Plant, Forest City, NC: April 24, 2001.
TA–W–41,483; Acorn Products Co., Inc., Lewiston, ME: July 24, 2001.
TA–W–41,489; Goss and Deleeuw Machine Co., Inc., Kensington, CT: April 25, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.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 and June, 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–05513; Cook Technologies, Inc., Green Lane, PA

NAFTA–TAA–05551; Froedtert Malting, A Div. Of International Malting Co., LLC, Milwaukee, WI

NAFTA–TAA–05845; Hale Products, Inc., St. Joseph, TN

NAFTA–TAA–06002; Burlington Chemical Co., Burlington, NC

NAFTA–TAA–06007; Schneider Mills, Alexander Mills Plant, Forest City, NC

NAFTA–TAA–06029; T and T Land and Timber, Inc., Rexford, MT

NAFTA–TAA–06087; International Paper, Corinth, NY

NAFTA–TAA–06067; Ericsson, Inc., Lynchburg, VA

NAFTA–TAA–06100; Pacific Crest Lumber Co., Inc., Winlock, WA

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–06092; Levcor International, New York, NY

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate sub-division thereof) did not become totally or partially separated from employment.

NAFTA–TAA–05606; Cooper-Standard Automotive, Fairview Manufacturing Facility, Fairview, MI

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–06094; L.G. Philips Displays, Ottawa, OH: April 3, 2001.

NAFTA–TAA–06140; Louisville Ladder Group LLC, Louisville, KY: April 18, 2001.

NAFTA–TAA–05707; Hunter Sadler, Tupelo, MS: September 29, 2001.

I hereby certify that the aforementioned determinations were issued during the month of May and June, 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 13, 2002.

Edward A. Tomchick,

Director, Division of Trade, Adjustment Assistance.

[FR Doc. 02–15752 Filed 6–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,234]

Agere Systems, Orlando, FL; Notice of Negative Determination Regarding Application for Reconsideration

By application received April 25, 2002, the International Brotherhood of Electrical Workers (IBEW), Local Union 2000, 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 March 11, 2002 and published in the **Federal Register** on March 29, 2002 (67 FR 15225).

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 Agere Systems, Orlando, Florida engaged in the production of wafers for integrated circuits, 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 subject firm did not import wafers. The subject firm primarily produced wafers for export.

The IBEW requests administrative reconsideration based on the fact that the wafers produced by the subject plant are shipped to foreign sources, then produced into computer chips and a portion of those foreign produced computer chips are then imported back to the United States

Imports ''like or directly competitive'' with what the subject plant produced must ''contribute importantly'' to the layoffs at the subject firm. Therefore, the scenario as presented by the petitioner relating to the subject plant's wafer production being exported to Asia, produced into computer chips and then imported back to the United States does not meet the eligibility requirements of the Trade Act of 1974. The product produced by the subject firm, a wafer (which includes the circuit) is not ''like or directly competitive'' with a finished integrated circuit, such as a computer chip.

The IBEW further indicates that the subject plant produced the same product as TAA certified plants at Agere Systems, Integrated Circuits, Reading, Pennsylvania (TA–W–39,437) and the Integrated Circuits Division, Allentown, Pennsylvania (TA–W–39,449).

A review and further clarification from the company shows that a meaningful portion of the products produced at the Pennsylvania plants were finished integrated circuits, not the wafers (with circuits) as produced by the subject plant. The Pennsylvania plants served a different customer base than the subject plant. The wafers (with circuits) are not like or directly competitive with the finished products produced at the Pennsylvania facilities. The subject plant's wafer production is not integrated into the TAA certified Pennsylvania plants' production. Therefore, the ''contributed importantly'' criterion is not met.

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 6th day of June, 2002.

Edward A. Tomchick

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–15746 Filed 6–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,531]

Price Pfister, Inc., Pacoima, CA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Price Pfister, Inc., Pacoima, California. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–40,531; Price Pfister, Inc., Pacoima, California (June 3, 2002).

Signed at Washington, DC this 14th day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–15749 Filed 6–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,584 and TA–W–40,584A]

Rockwell Collins, A/K/A New Rockwell, Pomona, California and Rockwell Collins, A/K/A New Rockwell, Irvine California; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 8, 2002, applicable to workers of Rockwell Collins plants located in Pomona and Irvine, California. The notice was published in the **Federal Register** on March 29, 2002 (67 FR 15226).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State show that the workers wages are reported to the Unemployment Insurance tax account for New Rockwell.

The intent of the certification is to provide coverage to all workers of the subject firm impacted by increased imports of in-flight entertainment systems. Therefore, the Department is amending the certification to include workers of the firm whose wages are paid by New Rockwell.

The amended notice applicable to TA–W–40,584 and TA–W–40,584A is hereby issued as follows:

All workers of Rockwell Collins, also known as New Rockwell, Pomona, California (TA–W–40,584) and Irvine, California (TA–W–40,584A), who became totally or partially separated from employment on or after January 3, 2001 through March 8, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974. Workers of Rockwell Collins, also known as New Rockwell, Pomona, California and Irvine, California, engaged in the production of the 8.6″ Boeing retract for PAVES in-flight entertainment system are covered under TA–W–39,179 and TA–W–39,179A, respectively, through July 16, 2003; and beginning July 17, 2003 through March 8, 2004, are eligible under this certification to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 6th day of June, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–15750 Filed 6–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,472]

Romart, Inc., Scranton, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 29, 2002, applicable to workers of Romart, Inc., located in Scranton, Pennsylvania. The notice was published in the **Federal Register** on May 17, 2002 (67 FR 35143).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The review of the TAA petition investigation file revealed that workers of Romart, Inc., Scranton, Pennsylvania, were previously certified eligible to apply for worker adjustment assistance under petition number TA–W–35,232, which expired December 1, 2000.

In order to avoid an overlap in worker group coverage, the Department is amending this certification to change the impact date from October 24, 2000 to December 2, 2000.

The amended notice applicable to TA–W–40,472 is hereby issued as follows:

All workers of Romart, Inc., Scranton, Pennsylvania, engaged in employment related to the production of of men's and boys' dress and sport coats and other formal wear, who became totally or partially separated from employment on or after December 2, 2000, through April 29, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of June, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–15748 Filed 6–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,805]

Valeo Climate Control, Decatur, IL; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Valeo Climate Control, Decatur, Illinois. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–40,805; Valeo Climate Control, Decatur, Illinois (June 3, 2002)

Signed at Washington, DC this 14th day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–15751 Filed 6–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,349]

Willamette Industries, Inc., (Currently Known as Weyerhaueser), Saginaw Planer, Saginaw, OR; Notice of Revised Determination on Reconsideration

By letter of May 4, 2002, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on March 26, 2002, based on the finding that a survey of customers indicated that increased imports did not contribute importantly to worker separations at the subject firm. The denial notice was published in the **Federal Register** on April 5, 2002 (67 FR 16441).

The company requested further examination of the survey conducted by the Department of Labor (DOL) and also requested that a new survey be conducted if the initial survey was performed incorrectly.

The Department on further review of the survey results discovered that a major customer increased their reliance on imported lumber like or directly competitive with products produced at the subject plant during relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Willamette Industries, Inc., Saginaw Planer, Saginaw, Oregon contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Willamette Industries, Inc., Saginaw Planer, Saginaw, Oregon who became totally or partially separated from employment on or after November 2, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 6th day of June 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–15747 Filed 6–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Labor Certification for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the United States; Administrative Measures To Improve Program Performance

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; request for comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Department of Labor is soliciting comments concerning the proposed extension of the Paperwork Reduction Act. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below August 20, 2002.

ADDRESSES: Submit written comments to Charlene G. Giles, Team Leader, Temporary Programs, Division of Foreign Labor Certification, Employment and Training Administration, 200 Constitution Avenue, NW., Room C–4318, Washington, DC 20210. Telephone: (202) 693–2950 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

At 64 FR 34958 (June 29, 1999), the Department amended its regulations to improve program performance related to the certification of temporary employment of nonimmigrant agricultural (H–2A workers) in the United States. One improvement was to modify the requirement that an employer notify the State Employment Security Agency (now known as the State Workforce Agency (SWA)), in writing, of the exact date on which the H–2A workers depart for the employer's place of business. The rule states that the departure date is now deemed to be the third day before the employer's first date of need for the foreign workers. Only if the workers do not depart by the date of need is the employer required to notify the SWA as soon as the employer knows that the workers will not depart by the first date of need, but no later than such date of need. The employer also must notify the SWA of the worker's expected departure date en route to the employment, if known. The departure date is used as the starting date of the contract period for the purposes of the ''50-percent rule'' under 20 CFR 655.103(e). That regulation provides that the employer must continue to provide employment to any qualified and eligible U.S. worker who applies to the employer until 50 percent of the work contract period, under which the foreign worker, who is in the job, has elapsed. The employer's obligation to engage in positive recruitment ends on the day the foreign workers depart for the employer's place of business. The employer, however, must keep an active job order on file until the ''50 percent rule, has been met. The amendment to the regulations regarding the departure date notification substantially reduced the reporting burden on employers yet continued to allow the SWA to properly administer the ''50 percent rule''.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

DOL and the SWAs continue to use the dates listed on the employer's application to calculate the employer's responsibilities under ''50-percent rule''. The departure date (the third date before the date of need) is deemed the start date of the contract period in administration of the ''50-percent rule'' under 20 CR 655.103(e).

The collection of information requirement is being extended and revised to reflect annual reporting hour burdens changes based on an increase in the number of respondents. Additionally, the collection was revised to reflect a change in the name of the State Employment Security Agency (SESA) to State Workforce Agency (SWA).

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Labor Certification for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the United States; Administrative Measures to Improve Program Performance.

OMB No: 1205–0404.

Affected Public: Farms are primarily affected and other business or other for-profit entities.

Total Respondents: 6,711.

Frequency: Once.

Total Responses: 4,079.

Average Time of Response: 15 minutes.

Estimated Total Burden Hours: 679 hours.

Total Burden Cost (capital/startup): $16,975.

Total Burden Cost: $0.

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

Signed at Washington DC, this 17th day of June, 2002.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 02–15745 Filed 6–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5712]

Crown, Cork & Seal Packaging Company, Inc., Plant #77, South Connellsville, PA; Amended Certification Regarding Eligibility To Apply for NAFTA—Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on May 8, 2002, applicable to workers at Crown, Cork & Seal Packaging Company, Inc., Plant #77, located in South Connellsville, Pennsylvania. The notice was published in the **Federal Register** on May 17, 2002 (67 FR 15227).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of metal/paper and plastisol lined closures. The review of the TAA petition investigation revealed that workers of Crown, Cork & Seal Packaging Company, Inc., Plant #77, South Connellsville, Pennsylvania, were previously certified eligible to apply for NAFTA–TAA under petition number NAFTA–3583, which expired January 19, 2002.

In order to avoid an overlap in worker group coverage, the Department is amending this certification to change the impact date from January 4, 2001 to January 20, 2002.

The amended notice applicable to NAFTA–5712 is hereby issued as follows:

All workers engaged in activities related to the production of metal/paper and plastisol lined closures at Crown, Cork & Seal Packaging Company, Inc., Plant #77, South Connellsville, Pennsylvania, who became totally or partially separated from employment on or after January 20, 2002, through May 8, 2004, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, DC this 10th day of June 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–15755 Filed 6–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–4883; NAFTA–4883A]

Motorola, Inc., Global Telecom Solutions Sector (GTSS), Formerly Network Solutions Sector (NSS), Plantation, FL.; and Motorola, Inc., Commercial, Government, Industrial Solutions Sector (CGISS), Plantation, FL.; Amended Certification Regarding Eligibility To Apply for NAFTA—Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on July 27, 2001, applicable to workers of Motorola, Inc., iDEN Subscriber Division, located in Plantation, Florida. The notice was published in the **Federal Register** on August 15, 2001 (FR 66 42879).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that employment has declined further as a portion of production of CGISS and IDEN EBTS radio system units at Motorola's Global Telecom Solutions Sector (GTSS), of which the iDEN Subscriber Division is a subdivision, and its Commercial, Government, Industrial Solutions Sector (CGISS), has shifted from Plantation, Florida to Mexico.

The intent of the Department's certification is to include all workers of Motorola, Inc., in Plantation, Florida, adversely affected by the shift in production from the subject plant to Mexico.

Accordingly, the Department is amending the certification to include workers at Motorola, Plantation, Florida, engaged in employment related to production in CGISS and IDEN EBTS radio system units. The amended notice applicable to NAFTA–4883 is hereby issued as follows:

All workers at Motorola, Inc., at the Global Telecom Solutions Sector (GTSS), Formerly Network Solutions Sector (NSS), Plantation, Florida (NAFTA–4883), and Commercial and Government, Industrial Solutions Sector (CGISS), Plantation, Florida (NAFTA–4883A), engaged in activities related to the production of CGISS and IDEN EBTS radio system units, who became totally or partially separated from employment on or after May 14, 2000 through July 27, 2003, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, DC this 10th day of June 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–15753 Filed 6–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5710; NAFTA–5710A]

Rockwell Collins a/k/a New Rockwell, Passenger Systems, Irvine, CA; and Rockwell Collins a/k/a New Rockwell, Passenger Systems, Pomona, CA; Amended Certification Regarding Eligibility To Apply for NAFTA–Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA–Transitional Adjustment Assistance on March 8, 2002, applicable to workers of Rockwell Collins, Passenger Systems, located in Irvine and Pomona, California. The notice was published in the **Federal Register** on March 29, 2002 (67 FR 15227).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State show that the workers wages are reported to the Unemployment Insurance tax account for New Rockwell.

The intent of the Department's certification is to provide coverage to all workers of Rockwell Collins, Passenger Systems, Irvine and Pomona, California, adversely affected by the shift in production of in-flight entertainment systems to Mexico. Therefore, the Department is amending the certification to include workers of the subject firm whose wages are paid by New Rockwell.

The amended notice applicable to NAFTA–5710 and NAFTA–5710A is hereby issued as follows:

All workers of Rockwell Collins, also known as New Rockwell, Pomona, California (NAFTA–5710) and Irvine, California (NAFTA–5710A), who became totally or partially separated from employment on or after January 3, 2001 through March 8, 2004, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974. Workers of Rockwell Collins, also known as New Rockwell, Pomona, California and Irvine, California, engaged in the production of the 8.6″ Boeing retract for PAVES in-flight entertainment system are covered under NAFTA–4964 and NAFTA–4964A, respectively, through July 16, 2003; and beginning July 17, 2003 through March 8, 2004, are eligible under this certification to apply for NAFTA–TAA Section 250 of the Trade Act of 1974.

Signed in Washington, DC this 6th day of June, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–15754 Filed 6–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statues as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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Connecticut
- CT020001 (Mar. 1, 2002)
- CT020003 (Mar. 1, 2002)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington DC, this 13th day of June, 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–15431 Filed 6–20–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. MACOSH 2002–2]

Maritime Advisory Committee for Occupational Safety and Health (MACOSH); Request for Nominations

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for nominations for persons to serve on MACOSH.

SUMMARY: The Secretary of Labor intends to reestablish the charter of the Maritime Advisory Committee for Occupational Safety and Health (MACOSH), which expired on March 10, 2002. The purpose of MACOSH is to obtain advice for the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) from a broad range of representatives from the maritime industry on all matters relevant to the safety and health of workers in that sector. The Assistant Secretary will seek the advice of this committee on activities in the maritime industry related to the priorities set for the agency, including: strong, fair and effective enforcement; expanded compliance assistance, guidance and outreach; expanded partnerships and voluntary programs; leadership in the national dialogue on occupational safety and health; and regulatory matters affecting the maritime industry, as appropriate.

The committee will be diverse and balanced, both in terms of segments of the maritime industry represented (*e.g.,* shipyard and longshoring industries), and in the views or interests represented by the members (employer, employee, safety and health professional organizations, government organizations with interests or activities related to the maritime industry, academia, and the public). OSHA invites interested parties to submit nominations for membership on MACOSH.

DATES: Nominations for MACOSH membership (whether hard copy, electronic mail or facsimile) must be received by August 5, 2002.

ADDRESSES: Nominations may be submitted in hard copy, electronic mail, or facsimile.

Submitting nominations in hard copy: Nominations for membership on the Committee may be hand-delivered, or sent by Express Mail or other overnight delivery service, to: U.S. Department of Labor, OSHA Docket Office, Docket MACOSH 2002–2, Room N–2625, 200 Constitution Ave., NW., Washington, DC 20210, Telephone: (202) 693–2350.

Submitting nominations electronically: Nominations for membership on the Committee may be sent electronically from the OSHA website at *http://ecomments.osha.gov.* Nominations may also be faxed to the OSHA Docket Office at (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Director, Office of Maritime Standards, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3621, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 693–2222.

SUPPLEMENTARY INFORMATION:

1. Background

The maritime industry has historically been a sector that has a high incidence of illnesses and injuries in its workforce. The types of work performed can be quite different in various parts of the industry, ranging from manufacturing type work in shipyards to longshoring operations. OSHA has targeted this industry for special attention because of the incidence of illnesses and injuries, and the specialized nature of some of the work. This targeting has included development of guidance or outreach materials specific to the industry, as well as rulemaking to update requirements, and other activities to help focus actions in the industry and reduce the occurrence of illnesses and injuries. This committee will be used to advise OSHA on these ongoing activities, as well as in new areas where the agency chooses to pursue or expand its programs and projects to further address these specific needs. The advice of the committee will help the agency in terms of substantive input on conditions in the industry, ideas that could be implemented to reduce illnesses and injuries, and feedback on agency initiatives in the maritime industry.

II. Nominations

The Committee will consist of at least 12 members. The Agency encourages the nomination of individuals who can represent a broad range of relevant areas as possible Committee members. The Committee will fairly balanced in terms of the points of view represented and the functions to be performed. OSHA is requesting that the Committee be chartered for a two year period. OSHA anticipates that during its two-year term, the Committee will meet no more than 3 times per year.

The Committee will function solely as an advisory body, and in compliance with the provisions of Section 7(b) of the OSHA Act (29 U.S.C. 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 41 CFR part 102–3.

Nominees for committee membership should be qualified by experience, knowledge, and expertise. Interested persons may nominate themselves or others for membership on the Committee. Each nomination must include: (1) The name of the nominee; (2) the address, phone number, title, position, experience, qualifications and resume of the nominee; and (3) a written commitment from the nominee that he/she can and will attend regular meetings of the Committee and participate in good faith. In addition, please include an e-mail address or fax number, so that the Agency may acknowledge that it has received your nomination. (For information on dates and addresses for submitting nominations, *see* the **DATES** and **ADDRESSES** section of this notice, above.) Because of security-related problems in receiving regular mail service in a timely manner, OSHA requests that nominations be hand-delivered to the Docket Office, or sent by Express Mail or other overnight delivery service, electronic mail, or facsimile. Please do not send nominations by more than one of these media.

Consistent with the Department's recently-issued procedural rule on OSHA Advisory Committees (67 FR 658, 1/7/02), appointment of a person to this Advisory Committee for a fixed time period shall not affect the authority of the Assistant Secretary to remove, in his discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Assistant Secretary may appoint for the remainder of the unexpired term a new member who shall represent the same interest as his or her predecessor.

III. Authority

This notice was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under sections 6(b) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), and GSA's FACA Regulations (41 CFR Part 102–3).

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–15743 Filed 6–20–02; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–335 AND 50–389]

Florida Power and Light Company, et al.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Florida Power and Light Company, et al. (the licensee) to withdraw its October 18, 2001, application for proposed amendment to Facility Operating License Nos. DPR–67 and NPF–16 for the St. Lucie Plant, Unit Nos. 1 and 2, respectively, located in St. Lucie County, Florida.

The proposed amendment would have revised the Technical Specifications regarding Engineered Safety Feature Actuation System instrumentation to limit the period of time that inoperable recirculation actuation signal, containment spray actuation signal, and auxiliary feedwater actuation signal input channels could be in the bypassed and/or tripped condition.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 28, 2001 (66 FR 59507). However, by letter dated June 6, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 18, 2001, and the licensee's letter dated June 6, 2002, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically 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.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 17th day of June 2002.

For the Nuclear Regulatory Commission.

Brendan T. Moroney,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–15681 Filed 6–20–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Yucca Mountain Review Plan, NUREG–1804, Revision 2, Draft Report for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of comment period.

SUMMARY: On March 29, 2002 (67 FR 15257), and April 5, 2002 (67 FR 16490), the U.S. Nuclear Regulatory Commission (NRC) published for a 90-day public comment period the ''Yucca Mountain Review Plan, NUREG–1804, Revision 2, Draft Report for Comment.'' The public comment period was to have expired on June 27, 2002. The NRC conducted public meetings on the draft review plan on May 21–23, 2002. During these meetings, NRC received a request to extend the comment period by an additional 90 days and conduct additional public meetings on the draft review plan. The requester cited not having received the document in a timely manner as the reason for the extension request. The draft review plan provides guidance to the NRC staff for evaluating a potential license application for a geologic repository.

After careful consideration of the request, NRC has decided to extend the public comment period for an additional 45 days. The extended comment period will now expire on August 12, 2002. The NRC believes that it has provided ample opportunity for interested individuals to comment on the draft review plan and thus does not intend to conduct additional public meetings at this time.

DATES: The public comment period has been extended and now expires on August 12, 2002. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T–6D59, Washington, DC 20555–0001. Deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m., on Federal workdays.

Copies of any comments received and documents related to this action may be examined at the NRC Public Document Room, One White Flint North, Public File Area O1–F21, 11545 Rockville Pike, Rockville, Maryland. Documents are also available electronically at NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm.html.* From this site, the public can gain entry into NRC's Agency-wide Documents Access and Management System, which provides text and image files of NRC's public documents. For more information, contact the NRC's Public Document Room Reference staff by telephone at (800) 397–4209, (301) 415–4737, or e-mail: *pdr@nrc.gov.*

The document is also available at NRC's website at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1804/.* You may also send comments electronically from this website by clicking on *comment form.* If a hard copy is preferred, a free single copy of the ''Yucca Mountain Review Plan, NUREG–1804, Revision 2, Draft Report for Comment,'' may be requested by writing to the U.S. Nuclear Regulatory Commission, ATTN: Reproduction and Distribution Services Branch, Washington, DC 20555–0001; sending an e-mail to *Distribution@nrc.gov;* or by sending a fax to (301) 415–2289. A copy of the ''Yucca Mountain Review Plan, NUREG–1804, Revision 2, Draft Report for Comment,'' is also available for inspection, and copying for a fee, in the NRC's Public Document Room, One White Flint North, Public File Area O1–F21, 11555 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION, CONTACT: Jeffrey A. Ciocco, High-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–7F3, Washington, DC 20555–0001, telephone (301) 415–6391, e-mail: *jac3@nrc.gov.*

Dated at Rockville, Maryland, this 17th day of June 2002.

For the Nuclear Regulatory Commission.

Janet R. Schlueter,

Chief, High-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–15682 Filed 6–20–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27540]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

June 14, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 9, 2002, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 9, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company Inc., et al. (70–9785)

American Electric Power Company Inc. (''AEP''), Central and South West Corporation (''CSW''), both registered holding companies, American Electric Power Service Corporation (''AEPSC''), and Columbus Southern Power Company (''CSP''), all located at 1 Riverside Plaza, Columbus, Ohio 43215; Central Power and Light Company (''CPL''), 539 North Carancahua Street, Corpus Christi, Texas 78401–2802; Ohio Power Company (''OPCO''), 301 Cleveland Avenue S.W., Canton, Ohio 44702; Southwestern Electric Power Company (''SWEPCO''), 428 Travis Street, Shreveport, Louisiana 71156–0001; and West Texas Utilities Company (''WTU''), 301 Cypress Street, Abilene, Texas 78601–5820, (collectively, ''Applicants''), have filed an application-declaration (''Application'') under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(d),13(b), and 32 of the Act and rules 43, 44, 45, 46, 54, 90 and 91 under the Act.

Applicants seek authority to restructure the AEP system and to carry out transactions associated with that restructuring. The restructuring of the AEP system is prompted by restructuring of the electric industry in Texas and Ohio. The Application requests authority to create and capitalize certain entities and transfer generating and distribution/transmission assets. Applicants also make a number of financing requests associated with the restructuring.

AEP holds vertically integrated electric utility companies with retail utility operations in 11 states—Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia. These states have reached different decisions about when and how to restructure electric industries. Texas and Ohio have opted to deregulate generation, require separation of the generation and energy delivery functions and eliminate the concept of native load retail service in favor of free and open competition for retail customers. Both states have approved restructuring plans. To comply, AEP's utility companies operating in Texas and Ohio will separate their assets between Power Generating Company (''PGC'') affiliates that will sell power and energy at wholesale and Energy Delivery Company (''EDC'') affiliates that will own transmission and local distribution facilities, transport energy and perform metering functions.

In connection with this restructuring, AEP proposes to realign certain of its utility and nonutility businesses under three first tier subsidiaries: CSW, Enterprises and AEPSC. CSW will become the regulated holding company (''Reg Holdco'') and will serve as an intermediate holding company for the EDC affiliates and certain other AEP utility subsidiary companies that are not required to restructure, including vertically integrated companies. Enterprises will be an intermediate holding company for AEP's nonutility businesses and the PGC subsidiaries. Under Enterprises will be Wholesale Holdco, which will hold Domestic Holdco. Domestic Holdco will hold the PGC affiliates. AEPSC will continue to provide services to the AEP system companies, such as centralized and regionalized management and support for generation subsidiaries.

The Ohio statute that provides for competitive retail electric service, referred to as S.B.3, directs vertically integrated electric utilities that offer retail electric service to separate their generating and other competitive operations (such as marketing, and brokering) and related assets from their transmission and distribution operations and assets.

The Texas statute, referred to as S.B. 7, requires vertically integrated electric utilities to separate ownership of their generating and other power supply assets from ownership of their transmission and distribution assets. Under S.B. 7, vertically integrated utilities are generally obligated to disaggregate into at least three separate corporate units: (1) A PGC that will sell power and energy at wholesale; (2) an EDC that will own transmission and local distribution facilities and perform metering functions but cannot own power supply facilities or sell electricity; and (3) a retail electric provider (''REP'') that will sell electricity to retail customers.

Transfer of Assets Proposals

To comply with restructuring plans in Texas and Ohio, Applicants seek authority for CPL, CSP, OPCO, SWEPCO [1] and WTU (''Operating Companies'') to transfer assets as required by each state. Assets to be transferred will be generating facilities, step-up transformers, circuit breakers, interconnection facilities, related facilities and other assets associated with generating units that CPL and WTU will transfer to PGC companies as well as transmission lines, transmission facilities, distribution lines and distribution facilities that CSP, OPCO and SWEPCO [2] will transfer to EDC companies. Assets remaining after these transfers will be transmission/distribution assets held by CPL EDC and WTU EDC and generation assets held by CSP PGC, OPCO PGC and SWEPCO PGC.

Specifically, the transfer requests are as follows:

(i) CPL to transfer or contribute a total of 100% of its ownership interests in its

[1] Applicants request that the Commission reserve jurisdiction over all transfers and other authority requested in the Application relating to SWEPCO, SWEPCO EDC and SWEPCO Transco (a to-be-formed EDC which will hold the Texas transmission assets and related liabilities of SWEPCO).

[2] SWEPCO will retain title to its generating assets because it provides bundled retail electric service in Louisiana, which to date has not adopted retail competition legislation, and in Arkansas, where SWEPCO is not obligated to separate ownership of its generating assets from its transmission and distribution assets. In order to comply with S.B. 7, however, SWEPCO will contribute its transmission and distribution assets in Texas and related business operations to SWEPCO EDC, a wholly owned subsidiary of AEP.

generation assets (estimated net book value at December 31, 2001, $2,412 million) and related liabilities (estimated book value at December 31, 2001, $1,074 million) to CPL PGC at their net book value at the transfer date and for CPL PGC to transfer or contribute a total of 100% of its ownership interests in such generation assets and related liabilities to CPL PGC LP at the same book value.[3]

(ii) WTU to transfer or contribute a total of 100% of its ownership interests in its generation assets (estimated net book value at December 31, 2001, $394 million) and related liabilities (estimated book value at December 31, 2001, $208 million) to WTU PGC at their net book value at the transfer date and for WTU PGC to transfer or contribute a total of 100% of its ownership interests in such generation assets and related liabilities to WTU PGC LP at the same book value (see Exhibits B–3 and B–6).[4]

(iii) OPCO to transfer or contribute a total of 100% of its ownership interests in its transmission and distribution assets (estimated net book value at December 31, 2001, $2,263 million) and related liabilities (estimated book value at December 31, 2001, $816 million) to OPCO EDC at their book value at the transfer date.[5]

(iv) CSP to transfer or contribute a total of 100% of its ownership interests in its transmission and distribution assets (estimated net book value at December 31, 2001, $1,515 million) and related liabilities (estimated book value at December 31, 2001, $474 million) to CSP EDC at their book value at the transfer date.[6]

(v) SWEPCO to transfer or contribute a total of 100% of its ownership interests in (i) its distribution assets and related liabilities located in Texas to SWEPCO EDC and (ii) the undivided interest in a load-based allocation of all of SWEPCO's transmission assets and related liabilities (''Texas Transmission Assets and Related Liabilities'') to SWEPCO Transco (a to-be-formed EDC) at their book value on the transfer date (the value of assets and liabilities to be transferred and retained have not yet been determined).

(vi) After the transfers are executed, AEP seeks approval for:

(a) CPL EDC to dividend CPL PGC's common stock or limited liability interest to CSW, which will dividend the stock to AEP, which will contribute the stock to Enterprises, which will contribute the stock or limited liability interest to Wholesale Holdco, which will contribute the stock or limited liability interest to Domestic Holdco.

(b) WTU EDC to dividend WTU PGC's common stock or limited liability interest to CSW, which will dividend the stock to AEP, which will contribute the stock or limited liability interest to Enterprises, which will contribute the stock or limited liability interest to Wholesale Holdco, which will contribute the stock to Domestic Holdco.

(c) OPCO PGC to dividend OPCO EDC's common stock or limited liability interest to AEP, which will contribute the stock or limited liability interest to Reg Holdco.

(d) OPCO EDC to merge with and into OPCO EDC LLC so that following the merger OPCO EDC will be a single member limited liability company all of whose limited liability interest is held by Reg Holdco.

(e) CSP PGC to dividend CSP EDC's common stock or limited liability interest to AEP, which will contribute the stock or limited liability interest to Reg Holdco.

(f) SWEPCO to dividend the common stock or limited liability interest of SWEPCO EDC to CSW.

(vii) Upon completion of these transactions, Reg Holdco will hold CPL EDC, WTU EDC, SWEPCO, SWEPCO EDC, OPCO EDC and CSP EDC, and, indirectly, SWEPCO Transco, each of which will own transmission and distribution assets and related liabilities (other than SWEPCO which will continue to be a vertically integrated utility with respect to its operations located outside of Texas). Domestic Holdco will hold, among other things, CPL PGC, WTU PGC, OPCO PGC and CSP PGC, each of which will own, directly or indirectly, generation assets and related liabilities and, upon all necessary state and federal regulatory approval, will be exempt wholesale generators (''EWGs''), as defined in section 32 of the Act.

(viii) Subject to any required state approval, AEP seeks authorization to contribute the stock of the AEP Generating Company, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company and Wheeling Power Company (''Vertically Integrated Companies''), all currently owned by AEP, to Reg Holdco and for Reg Holdco to acquire the stock of the Vertically-Integrated Companies.

Formation and Capitalization of Entities

Applicants seek authority to form and capitalize Enterprises as a first tier wholly owned corporation or limited liability company, Wholesale Holdco as a wholly owned subsidiary corporation or limited liability company of Enterprises, and Domestic Holdco as a wholly owned subsidiary corporation or limited liability company of Wholesale Holdco. AEP, Enterprises and Wholesale Holdco, respectively, propose to make an initial capital contribution to Enterprises, Wholesale Holdco and Domestic Holdco, respectively, in an amount to be determined, in exchange for all of the commons stock of, or limited liability interest in, Enterprises, Wholesale Holdco and Domestic Holdco. AEP, Enterprises and Wholesale Holdco seek authority for Enterprises, Wholesale Holdco and Domestic Holdco to issue, and for AEP, Enterprises and Wholesale Holdco, respectively, to acquire all of the common stock of or limited liability interest in Enterprises, Wholesale Holdco and Domestic Holdco, respectively.

Applicants also seek authority to form and capitalize the EDC and PGC entities to which and through which the generation and the transmission/distribution assets will be transferred. CPL will form and capitalize CPL PGC to hold the generation assets and related liabilities of CPL; WTU will form and capitalize WTU PGC to hold the generation assets and related liabilities of WTU; CPL PGC will form and capitalize CPL PGC LLC, which would serve as the general partner of CPL PGC LP; (4) CPL PGC and CPL PGC LLC will form and capitalize CPL PGC LP to hold the generation assets and related liabilities of CPL PGC; WTU PGC will form and capitalize WTU PGC LLC, to serve as the general partner of WTU PGC LP; WTU PGC and WTU PGC LLC will form and capitalize WTU PGC LP to hold the generation assets and related liabilities of WTU PGC; OPCO will form and capitalize OPCO EDC to hold the transmission and distribution assets and related liabilities of OPCO; CSP will form and capitalize CSP EDC to hold the transmission and distribution assets and related liabilities of CSP; SWEPCO will form and capitalize SWEPCO EDC to hold its distribution assets and related liabilities in Texas and SWEPCO Transco to hold the Texas Transmission

[3] CPL will retain its transmission and distribution assets (estimated net book value at December 31, 2001, $2,703 million) and related liabilities (estimated book value at December 31, 2001, $2,203 million).

[4] WTU will retain its transmission and distribution assets (estimated net book value at December 31, 2001, $629 million) and related liabilities (estimated book value at December 31, 2001, $376 million).

[5] OPCO will retain its generation assets (estimated net book value at December 31, 2001, $2,814 million) and related liabilities (estimated book value at December 31, 2001, $2,252 million).

[6] CSP will retain its generation assets (estimated net book value at December 31, 2001, $1,680 million) and related liabilities (estimated book value at December 31, 2001, $1,320 million).

Assets and Related Liabilities; and Reg Holdco will form and capitalize OPCO EDC LLC for the purpose of merging OPCO EDC with and into Reg Holdco.

To capitalize the PGC and EDC subsidiaries, Applicants seek the following authority:

(i) CPL to acquire all of the common stock of, or limited liability interest in, CPL PGC in exchange for transferring its generation assets (including its interest in the South Texas Project nuclear generating station) and related liabilities to CPL PGC and for CPL PGC to issue, and for CPL to acquire, all of the common stock of, or limited liability interest in, CPL PGC.

(ii) CPL PGC to acquire all of the membership interests of CPL PGC LLC in exchange for sufficient capitalization for CPL PGC LLC to act as general partner of CPL PGC LP and for CPL PGC LLC to issue, and for CPL PGC to acquire, all of the membership interests of CPL PGC LLC.

(iii) CPL PGC to acquire all of the limited partnership interest of CPL PGC LP in exchange for transferring its generation assets and related liabilities to CPL PGC LP, for CPL PGC LLC to acquire the general partnership interest of CPL PGC LP, for CPL PGC LP to issue, and for CPL PGC to acquire, all of the limited partnership interest of CPL PGC LP and for CPL PGC LP to issue, and for CPL PGC LLC to acquire, the general partnership interest of CPL PGC LP.

(iv) WTU to acquire all of the common stock of, or limited liability interest in, WTU PGC in exchange for transferring its generation assets and related liabilities to WTU PGC and for WTU PGC to issue, and for WTU to acquire, all of the common stock of, or limited liability interest in, WTU PGC.

(v) WTU PGC to acquire all of the membership interests of WTU PGC LLC in exchange for sufficient capitalization for WTU PGC LLC to act as general partner of WTU PGC LP and for WTU PGC LLC to issue, and for WTU PGC to acquire, all of the membership interests of WTU PGC LLC.

(vi) WTU PGC to acquire all of the limited partnership interest of WTU PGC LP in exchange for transferring its generation assets and related liabilities to WTU PGC LP, for WTU PGC LLC to acquire the general partnership interest of WTU PGC LP, for WTU PGC LP to issue, and for WTU PGC to acquire, all of the limited partnership interest of WTU PGC LP and for WTU PGC LP to issue, and for WTU PGC LLC to acquire, the general partnership interest of WTU PGC LP.

(vii) OPCO to acquire all of the common stock of, or limited liability interest in, OPCO EDC in exchange for transferring its transmission and distribution assets and related liabilities to OPCO EDC and for OPCO EDC to issue, and for OPCO to acquire, all of the common stock of, or limited liability interest in, OPCO EDC.

(viii) CSP to acquire all of the common stock of, or limited liability interest in, CSP EDC in exchange for transferring its transmission and distribution assets and related liabilities to CSP EDC and for CSP EDC to issue, and for CSP to acquire, all of the common stock of, or limited liability interest in, CSP EDC.

(ix) SWEPCO to acquire all of the common stock of, or limited liability interests in, SWEPCO EDC in exchange for transferring its distribution assets and related liabilities located in Texas to SWEPCO EDC and to acquire all of the common stock of, or limited liability interests in SWEPCO Transco in exchange for transferring the Texas Transmission Assets and Related Liabilities to SWEPCO Transco, and for SWEPCO EDC and SWEPCO Transco, respectively, to issue and SWEPCO to acquire all of the common stock of or limited liability interest in SWEPCO EDC and SWEPCO Transco.

(x) Reg Holdco to acquire all of the limited liability interest in OPCO EDC LLC and for OPCO EDC LLC to issue all of its limited liability interest to Reg Holdco.

Other Proposals

AEP is seeking EWG status for the PGC affiliates. If EWG status is not immediately obtained, Enterprises, Wholesale Holdco and Domestic Holdco (''Enterprise Holding Companies'') will register under the Act. Accordingly, for a period of 12 months beginning with the date of the order in this filing, the Enterprise Holding Companies seek a waiver from the otherwise applicable requirement to file Form U5B while EWG certification is sought for the generating assets they will hold. Applicants also request authority under section 12(d) of the Act to divest to third parties the generating capability of CPL's Lon Hill Units 1–4, Nueces Bay plant, and Joslin Unit 1 if EWG status is not obtained in time for CPL to meet the deadline to divest these generating assets. If divestment of these units is made to nonaffiliated purchasers, divestment will be at fair market value.

In addition to the foregoing affiliate transfers, CPL, SWEPCO and WTU seek authority to sell certain utility assets to non-affiliates as required by S.B.7. The statute states that each electric utility ''shall separate from its regulated utility activities its customer energy services business activities that are otherwise also already widely available in the competitive market.'' Rules promulgated in connection with this provision define ''competitive energy services'' as non-roadway lights and distribution facilities, including distribution transformers, conductors, and associated distribution equipment beyond the customer's primary metering point as well as substation facilities dedicated to serving individual customers. CPL, SWEPCO and WTU have offered customers the option to purchase such facilities, provide their own facilities or convert their service to secondary metering. Should a customer elect to purchase the facilities, CPL, SWEPCO and WTU request authority to sell these assets.

AEP also seeks authority to restructure within or to the Enterprises chain of entities its nonutility holdings (including utility holdings that are not subject to state regulation) from time to time as may be necessary or appropriate. This restructuring might involve the acquisition of new special purpose subsidiaries to acquire and hold direct or indirect interests in any or all of the AEP system's existing or future authorized nonutility businesses or it might involve the creation, capitalization and acquisition of a subsidiary to hold non-utility interests or the transfer of existing subsidiaries or portions of existing businesses among AEP associates or the reincorporation of existing subsidiaries in a different state.

AEPSC seeks authority to render services to any direct or indirect subsidiary of any Applicant to be formed as requested in this Application in accordance with the existing AEP service agreement and in compliance with ''at cost'' provisions of Rules 90 and 91 of the Act. Also requested is authority for Operating Companies to enter into operating agreements with respective subsidiaries for the period following receipt of respective state regulatory approvals of relevant portions of the AEP restructuring proposed in this filing but prior to actual restructuring as proposed.

Authority is also requested to establish services entities. AEP proposes to organize a specialized service company (''GenServCo'') for dispatch, wholesale trading and fuel procurement of generation assets not subject to state regulation and other energy-related services. Affiliate companies will reimburse GenServCo for its services on a full cost basis in accordance with the Act. Applicants request that the Commission reserve jurisdiction on approval of GenServCo until completion of the record. In addition, a division may be established under AEPSC to

comply with a code of conduct established in connection with S.B. 7 which prohibits PGCs and EDCs in Texas from sharing the services of a single service provider for services such as engineering, purchasing of electric transmission, transmission and distribution system operations and marketing services.

CPL EDC, CPL PGC, CPL PGC LLC, CPL PGC LP, CSP EDC, CSP PGC, Domestic Holdco, Enterprises, OPCO EDC, OPCO PGC, Reg Holdco, SWEPCO EDC, SWEPCO Transco, Wholesale Holdco, WTU EDC, WTU PGC, WTU PGC LLC and WTU PGC LP (''Finance Applicants'') and, following the transactions for which authority is sought in this Application, any subsidiary controlled by a Finance Applicant, requests authorization under Section 13(b) of the 1935 Act to provide services and sell goods to the nonutility associate companies described below at fair market prices determined without regard to cost and requests an exemption under Section 13(b) of the 1935 Act from the cost standards of Rules 90 and 91, as applicable to these transactions, in any case in which the nonutility subsidiary purchasing these goods or services is:

1. A FUCO or foreign EWG which derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States.

2. An EWG which sells electricity at market-based rates which have been approved by the FERC, provided that the purchaser is not a public utility company in the AEP system;

3. A ''qualifying facility'' (''QF'') within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA''), that sells electricity exclusively at rates negotiated at arms'' length to one or more industrial or commercial customers purchasing the electricity for their own use and not directly for resale and/or to an electric utility company other than a public utility in the AEP system at the purchaser's ''avoided cost'' as determined in accordance with PURPA regulations;

4. A domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser is not a public utility company in the AEP System;

5. A subsidiary engaged in Rule 58 activities or any other nonutility subsidiary that: (1) is partially owned by a member of the AEP system, (2) is engaged solely in the business of developing, owning, operating and/or providing services or goods to the nonutility subsidiaries described in clauses 1 through 4 immediately above, or (3) does not derive any part of its income from a public-utility company within the AEP system.

Financing Requests

Applicants make a number of financing requests in connection with the restructuring for a period up to June 30, 2005.

AEP requests authority to:

(1) Issue guarantees (including guarantees for debt), obtain letters of credit, enter into support or expense agreements or otherwise provide credit support to Finance Applicants and enter into guarantees of nonaffiliated third parties' obligations in an amount not to exceed $15 billion outstanding at any one time (such guarantees issued by AEP will be subject to rule 58(a)(1) and rule 53 limitations in effect for AEP).

(2) Acquire the debt or other securities of Enterprises, Wholesale Holdco, Domestic Holdco and Reg Holdco for the purpose of lending to them.

(3) Invest in the EWGS to be held by CPL PGC, CPL PGC LLC, CPL PGC LP, CSP, OPCO, WTU PGC, WTU PGC LLC and WTU PGC LP (''Enterprises Subsidiaries''), the entities holding the generation assets to be transferred by this Application, up to the aggregate of the equity accounts of the Enterprises Subsidiaries, which was approximately $2.4 billion as of December 31, 2001, plus up to an aggregate of $1.5 billion of related guarantees and credit support for the benefit of the Enterprises Subsidiaries. This Application contemplates that (i) generation assets currently owned by WTU and CPL (''Generation Assets'') will be transferred to Texas PGC subsidiaries (''Texas PGCs''), (ii) upon transfer of the transmission and distribution assets and related liabilities, OPCO and CSP will be PGCs (''Ohio PGCs''), which with the Texas PGCs are also the Enterprises Subsidiaries, and (iii) the Enterprises Subsidiaries will be held by a direct or indirect subsidiary of Enterprises. The Enterprises Subsidiaries will be public utility companies within the meaning of the Act until such time as the Federal Energy Regulatory Commission grants them EWG status. The Generation Assets will be transferred to the Texas PGCs at book value as required by Texas state law. The fair market value of the Generation Assets is not known at this time. Applicants propose that once EWG status is obtained for the Enterprises Subsidiaries, the aggregate investment in them will be $3.911 billion consisting of (i) $2.411 billion, as of December 31, 2001, which is the aggregate of the equity accounts of the Enterprises Subsidiaries as projected in Exhibit B–2 and which amount reflects the equity investment of AEP in the Enterprises Subsidiaries and, therefore, is recourse to AEP (''Recourse Amounts''), and (ii) $1.5 billion of related guarantees and other credit support by AEP for the benefit of these subsidiaries. If AEP subsequently determines to retain the Texas PGCs, the fair market value of the Generation Assets will be substituted for the Texas PGC portion of the Recourse Amounts in the $3.911 billion aggregate investment amount. AEP is currently authorized by order to engage in EWG and FUCO financings in an amount equal to 100 percent of consolidated retained earnings as defined in rule 53(a)(1). That amount was $3.308 billion as of March 31, 2002. Current investment in these entities is $2.970 billion.

Financing requests by other entities:

The following entities seek authority to issue securities to non-affiliated and affiliated entities in aggregate principal amounts (not including the refunding of outstanding securities) as follows: (1) each Enterprises Holding Company up to $5 billion; (2) CPL PGC, CPL PGC LP, and CPL PGC LLC up to $1 billion; (3) CSP PGC up to $500 million; (4) OPCO PGC up to $1 billion; (5) WTU PGC, WTU PGC LP, and WTU PGC LLC up to $250 million; (6) Reg Holdco up to $10 billion; (7) CPL EDC up to $1 billion; (8) SWEPCO EDC up to $500 million; (9) SWEPCO Transco up to $500 million; (10) WTU EDC up to $500 million.

Each Enterprise Holding Company proposes to: (1) issue guarantees and extend credit support to Enterprises subsidiaries, any finance subsidiary owned by it, any other Enterprises Holding Company, any direct or indirect subsidiary of any Enterprises Holding Company or any nonaffiliate in accordance with the parameters set forth in the Application in an aggregate amount not to exceed $10 billion; (2) enter into hedging transactions; (3) acquire the debt or other securities of any Enterprises subsidiary or other Enterprises holding company for the purpose of lending to them.

Authority is sought for Reg Holdco to acquire the debt or other securities of any affiliated public utility company whose common equity is owned directly or indirectly by Reg Holdco for the purpose of lending to it; to enter into hedging transactions; to issue guarantees and extend credit support to CPL EDC, CSP EDC, OPCO EDC, SWEPCO EDC, SWEPCO Transco and

WTU EDC (''Regulated Subsidiaries'') and to any finance subsidiary owned by it or any non-affiliate in accordance with the parameters set forth in the Application in an aggregate amount not to exceed $10 billion; and to borrow from the AEP money pool, subject to the terms of previous money pool orders (HCAR No. 27186, June 14, 2000, and HCAR No. 26697, March 28, 1997, HCAR No. 26854, April 3, 1998), (collectively, ''Money Pool Orders''), and to issue short-term debt up to $3 billion by participating in the money pool or otherwise in accordance with the parameters set forth in the Application.

The Enterprises Subsidiaries and the Regulated Subsidiaries seek authority to issue guarantees and extend credit support in the amounts of financing authority stated above to any subsidiary owned by it or any non-affiliate, and, in the case of the Enterprises Subsidiaries, to any other subsidiary of Enterprises. Enterprises Subsidiaries and Regulated Subsidiaries also seek authority to enter into hedging transactions. Regulated Subsidiaries also seek authority to participate in the authorized AEP money pool as set forth in the Money Pool Orders and to issue short-term debt by participating in the money pool or otherwise in accordance with the parameters set forth in the Application up to the following amounts: CPL EDC, $200 million; CSP EDC, $175 million; OPCO EDC, $250 million; SWEPCO EDC, $100 million; SWEPCO Transco, $100 million; WTU EDC, $75 million.

Each Finance Applicant requests authority to organize and acquire all of the common stock or other equity interests in one or more financing subsidiaries for the purpose of effecting any financing requested in the Application and authority for any financing subsidiary so organized to effect any transaction for which a Finance Applicant has received authorization in this filing.

Request To Pay Dividends Out of Capital or Unearned Surplus

The Operating Companies and Reg Holdco request authority to pay dividends from paid-in capital in projected amounts for the purpose of placing the PGCs under Enterprises and the EDCs under Reg Holdco. After the transactions set forth in the Application and through June 30, 2004, each Utility Subsidiary and Reg Holdco requests authority to pay dividends in an aggregate amount up to but not exceeding the retained earnings of the respective Operating Company associated with CPL EDC, CPL PGC, CPL PGC LLC, CPL PGC LP, CSP EDC, CSP PGC, OPCO EDC, OPCO PGC, SWEPCO, SWEPCO EDC, SWEPCO Transco, WTU EDC, WTU PGC, WTU PGC LLC AND WTU PGC LP (''Utility Subsidiaries'') (or, in the case of Reg Holdco, of Reg Holdco) immediately preceding the transactions set forth in the Application.

By way of example, as of December 31, 2001, CSP had retained earnings of approximately $176 million. The Application seeks authority for CSP to form, capitalize and transfer its transmission and distribution assets and liabilities to CSP EDC (after which CSP will be CSP PGC). Because no retained earnings can be transferred to CSP EDC and because the retained earnings of CSP PGC will be eliminated when it dividends CSP EDC to AEP, neither CSP EDC nor CSP PGC will have any retained earnings as a result of the proposed transactions. Accordingly, granting the authority requested here would permit CSP EDC and CSP PGC to dividend an amount (when added to amounts already dividended by either) equal to $176 million through June 30, 2004, assuming the proposed transactions had occurred on December 31, 2001, which amount would be increased by any retained earnings of either (such increases applying only to the company earning them).

For extraordinary reasons related to the adoption of utility restructuring legislation in Texas and Ohio, the Operating Companies and Reg Holdco will each be declaring and distributing significant portions of their respective assets (the equity interest each Operating Company owns in the subsidiaries created by each and the equity interest in the Texas PGCs owned by Reg Holdco) to their respective immediate parents as more fully described in the Application. The following, each contemplated by the proposed transactions, result in separate but related entries on the equity account of each entity involved: (i) The direct or indirect contribution by AEP of additional paid-in capital to the Operating Companies in amounts such that: (a) Assuming the elimination of retained earnings, sufficient paid-in capital is available to effect the dividend, and, (b) following the distribution of the newly capitalized subsidiaries, the equity portion of consolidated capitalization of each entity declaring a dividend is no less than 30%, and (ii) the distribution by the Operating Companies (and, with respect to the Texas PGCs, by Reg Holdco) of the common stock or limited liability interests of the newly capitalized subsidiaries to their ultimate parent, AEP. Subsequent contributions of common stock or limited liability interests of the newly capitalized subsidiaries or common stock of applicable Operating Companies and vertically-integrated companies in order to achieve the proposed corporate structure are not expected to impact the equity account of any entity involved.

The distribution of the common stock or limited liability interest of each subsidiary will result in a debit in the equity account of each entity declaring the dividend in an amount equal to the value of the common stock or limited liability interest of the applicable subsidiary, *i.e.,* the value of the utility assets and liabilities contributed to such subsidiary. Generally speaking, there are three components to the equity account of a corporation: stated capital (common stock), paid-in capital and retained earnings. Under general corporate principles, no dividend may exceed the aggregate amount of paid-in capital and retained earnings.

There are two constraints on the distribution by the Operating Companies (and, with respect to the Texas PGCs, by Reg Holdco) of the common stock or limited liability interest of their respective newly capitalized subsidiaries: (i) Unless expressly approved by the Commission, the amount of any dividend may not exceed the amount of retained earnings of the entity declaring the dividend, and, (ii) consistent with Commission policy, following the dividend, the equity portion of each entity declaring a dividend may not be less than 30%. Currently, in all but one Operating Company and Reg Holdco the amount of the dividend, i.e., the value of the common stock or limited liability interest of the applicable subsidiary, is greater than the retained earnings of the entity declaring the dividend. Accordingly, in order to effect the proposed transactions, each Operating Company requests authority to pay dividends out of paid-in capital.

Except for one Operating Company and Reg Holdco, the distribution of the subsidiaries to AEP will (i) eliminate the retained earnings component of the equity account of each Operating Company, and (ii) reduce, in varying degrees, or eliminate the paid-in capital component of the equity account of each Operating Company. These reductions in the equity account of each entity declaring a dividend might otherwise cause the equity portion of the consolidated capitalization of the entity declaring the dividend to fall below 30%. Therefore, in order to effect the dividend out of paid-in capital and maintain a 30% equity ratio, AEP, directly or indirectly, will contribute

sufficient capital into each entity declaring a dividend prior to such dividend in the amount needed to increase the paid-in capital component of the equity account to a level where the equity portion of the consolidated capitalization of each entity declaring a dividend will be no less than 30%. AEP uses the equity method of accounting; the retained earnings and equity account of AEP will not be impacted by these dividends or by any of the subsequent contributions of common stock or limited liability interests of the newly capitalized subsidiaries or common stock of applicable Operating Companies and vertically-integrated companies contemplated by the proposed transactions.

In addition to the foregoing dividends, Reg Holdco will borrow, directly or indirectly, an amount projected to be approximately $1.4 billion and authority is sought for Reg Holdco to dividend the cash proceeds, from paid-in capital, to AEP. AEP will contribute the cash proceeds of this dividend to CSP and OPCO to permit them to pay down existing indebtedness as contemplated by the proposed transaction. CSP EDC will borrow an amount projected to be approximately $600 million from Reg Holdco and authority is sought for CSP EDC to dividend the cash proceeds of such borrowing, from paid-in capital, to Reg Holdco. OPCO EDC will also borrow an amount projected to be approximately $800 million from Reg Holdco and authority is sought for OPCO EDC to dividend the cash proceeds of such borrowing, from paid in capital, to Reg Holdco. Such borrowings, dividends, contributions and retirements of indebtedness are necessary to achieve the appropriate capitalization and equity ratio for each entity involved.

Through a series of internal transactions which will be recorded on the books of the AEP affiliates involved as corresponding dividends and contributions of capital, CPL and WTU will transfer certain of their pollution control bonds to Wholesale Holdco via Reg Holdco, AEP and Enterprises. Such transfers are necessary to prevent pollution control bonds remaining on the books of CPL and WTU following the transfer by each of their respective generation assets and related liabilities to CPL PGC and WTU PGC, respectively. Moreover, indebtedness cannot be transferred to CPL PGC and WTU PGC without incurring substantial tax liability when those entities are dividended to Reg Holdco and AEP and contributed to Domestic Holdco. Authority is requested to make the necessary dividends from paid-in capital to transfer such pollution control bonds from CPL and WTU to Wholesale Holdco.

These distributions will also result, on a pro forma basis, in unusual reductions in, and/or elimination of, the retained earnings of the Operating Companies, Wholesale Holdco and Reg Holdco, which may make it difficult in some cases for each to continue to pay dividends at historical levels without such dividends being paid from paid-in capital. Accordingly, until June 30, 2004 each Utility Subsidiary, Enterprise Holding Company and Reg Holdco requests authority to pay dividends out of paid-in capital up to an amount not to exceed the aggregate retained earnings (immediately prior to the proposed transactions) of the Operating Companies and Reg Holdco. The effect of this limit shall be to preserve for a short interval the historical retained earnings of each Operating Company or Reg Holdco, as applicable, to permit its respective post-transaction successors to pay dividends without increasing the amount of dividends any could have paid, but for the proposed transactions. Each Utility Subsidiary and Reg Holdco shall pay dividends out of paid-in capital only if its common equity is at least 30% of its consolidated capitalization.

Financing Parameters

Applicants state that for any requested transaction the effective cost of money on unsecured, long-term, debt borrowings authorized by order in this application-declaration will not exceed the greater of (i) 500 basis points over the comparable term U.S. Treasury securities or (ii) a gross spread over U.S. Treasuries that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The effective cost of money on short-term debt borrowings authorized under this Application will not exceed the greater of (i) 350 basis points over the comparable term London Interbank Offered Rate (''LIBOR'') or (ii) a gross spread over LIBOR that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The dividend rate on any series of preferred securities will not exceed the greater of (a) 700 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the term of such series of preferred securities or (b) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

Applicants state that the maturities on unsecured indebtedness will not exceed 50 years, that all preferred securities will be redeemed no later than 50 years after issuance, and that underwriting fees and similar remuneration paid in connection with the issue or sale of securities authorized by this filing will be less than 5% of the principal or amount of the security being issued. AEP and the Finance Applicants state that each will maintain common equity of at least 30% of consolidated capitalization as defined by the Application and they will not publicly issue any secured or unsecured indebtedness or preferred securities unless they maintain at least an investment grade corporate or senior unsecured debt rating by at least one nationally recognized rating agency. Applicants have excluded CPL's securitization debt from the calculation of indebtedness and total capitalization. Applicants request that the Commission reserve jurisdiction over CPL's exclusion of securitization debt from its calculation of consolidated capitalization until such time that its common equity would otherwise be less than 30 percent of its consolidated capitalization with the inclusion of the securitization debt.

Proceeds of the financing requests will be used for capital expenditures of the AEP system; working capital for the system; acquisition, retirement or redemption of securities previously issued by AEP subsidiaries; investment by Enterprises Holding Companies in companies authorized by prior Commission order, including energy-related companies as defined in Rule 58 of the Act, EWGs, Foreign Utility Companies as described in section 33 of the Act, exempt telecommunications companies, and other approved subsidiaries; and other lawful purposes.

With regard to requests to engage in hedging activities, Applicants state that interest rate hedging transactions with respect to existing indebtedness (''Interest Rate Hedges''), subject to certain limitations and restrictions, would be entered into in order to reduce or manage interest rate cost or risk. Interest Rate Hedges would only be entered into with counterparties (''Approved Counterparties'') whose senior debt ratings, or whose parent companies' senior debt ratings, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investors' Service or Fitch Investor Service. Interest Rate Hedges will involve the use of financial instruments and derivatives commonly used in today's capital markets, such as interest rate swaps, options, caps, collars, floors, and structured notes (i.e.,

a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations. The transactions would be for fixed periods and stated notional amounts. In no case will the notional principal amount of any interest rate swap exceed that of the underlying debt instrument and related interest rate exposure. Applicants will not engage in speculative transactions. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

In addition, interest rate hedging transactions with respect to anticipated debt offerings (the ''Anticipatory Hedges''), subject to certain limitations and restrictions would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (i) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap (each a ''Forward Sale''); (ii) the purchase of put options on U.S. Treasury obligations (a ''Put Options Purchase''); (iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury obligations (a ''Zero Cost Collar''); (iv) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations; or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, options, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange (''On-Exchange Trades'') with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade or the Chicago Mercantile Exchange, the opening of over-the-counter positions with one or more counterparties (''Off-Exchange Trades''), or a combination of On-Exchange Trades and Off-Exchange Trades. Each Applicant will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. Applicants may decide to lock in interest rates and/or limit its exposure to interest rate increases. Applicants represent that each Interest Rate Hedge and Anticipatory Hedge will be treated for accounting purposes under generally accepted accounting principles. Applicants will comply with the then existing financial disclosure requirements of the Financial Accounting Standards Board associated with hedging transactions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–15709 Filed 6–20–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25613; 812–12490]

One Group Mutual Funds, et al.; Notice of Application

June 14, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under (i) section 6(c) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of Application: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

Applicants: One Group Mutual Funds (the ''Trust''), Banc One Investment Advisors Corporation (the ''Investment Manager''), One Group Administrative Services, Inc. (the ''Administrator''), and all other registered open-end investment companies and series thereof that are part of the same group of investment companies (as defined in section 12(d)(1)(G) of the Act) as the Trust and that are advised by the Investment Manager or a person controlling, controlled by, or under common control with the Investment Manager (together with the Trust and its series, the ''Funds'').[1]

[1] All existing investment companies that currently intend to rely on the order are named as applicants, and any other existing or future investment companies that subsequently rely on the order will comply with the terms and conditions of the application.

FILING DATES: The application was filed on March 23, 2001, and amended on June 4, 2002, and June 10, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 9, 2002, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW., Washington, DC 20549–0609; Applicants: c/o Bank One Corporation, 1111 Polaris Parkway, Suite 4P, Columbus, OH 43271–0152, Attn: Michael V. Wible, Esq.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0582, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust is registered under the Act as an open-end management investment company and is organized as a Massachusetts business trust. Currently, the Trust is comprised of forty-eight Funds. The Investment Manager is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). Each Fund has entered into an investment advisory agreement with the Investment Manager. The Administrator serves as administrator for the Funds. Both the Investment Manager and the Administrator are wholly owned indirect subsidiaries of Bank One Corporation, a bank holding company incorporated in the state of Delaware.

2. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term instruments. Other Funds may borrow money from the same or similar banks for temporary

purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade ''fail'' in which cash payment for a security sold by a Fund has been delayed. Currently, the Funds have a credit arrangement with their custodian bank (i.e., overdraft protection) and have established a committed line of credit with a banking syndicate under which the banks lend money to the Funds to meet the Funds' temporary cash needs.

3. If the Funds were to borrow money from any bank under their current arrangements or under other credit facility arrangements, the Funds would pay interest on the borrowed cash at a rate which would be significantly higher than the rate that would be earned by other (non-borrowing) Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants believe this differential represents the bank's profit for serving as a middleman between a borrower and lender. In addition, the committed line of credit requires the Funds to pay substantial commitment fees in addition to the interest rate to be paid by the borrowing Fund.

4. Applicants request an order that would permit the Funds to enter into lending agreements (''Interfund Lending Agreements'') under which the Funds would lend money and borrow money for temporary purposes directly to and from each other through a credit facility (''Interfund Loan''). Applicants believe that the proposed credit facility would substantially reduce the Funds' potential borrowing costs and enhance their ability to earn higher rates of interest on short-term lendings. Although the proposed credit facility would substantially reduce the Funds' need to borrow from banks, the Funds would continue to maintain overdraft protection with their custodian and would also obtain an uncommitted line of credit with their custodian. They would terminate their committed line of credit.

5. Applicants anticipate that the credit facility would provide a borrowing Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, which normally are effected immediately, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of securities fails due to circumstances such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Fund has undertaken to purchase a security with the proceeds from securities sold. When the Fund experiences a cash shortfall due to a sales fail, the custodian typically extends temporary credit to cover the shortfall and the Fund incurs overdraft charges. Alternatively, the Fund could sell a security on a same day settlement basis, earning a lower return on investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or lower investment returns.

7. While borrowing arrangements with banks will continue to be available to cover unanticipated redemptions and sales fails, under the proposed credit facility, a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or other short-term instruments. Thus, applicants believe that the proposed credit facility would benfit both borrowing and lending Funds.

8. The interest rate charged to the Funds on any Interfund Loan (the ''Interfund Loan Rate'') would be the average of the ''Repo Rate'' and the ''Bank Loan Rate,'' both as defined below. The Repo Rate for any day would be the highest rate from investments in overnight repurchase agreements that is available to a lending Fund or to a joint account in which a lending Fund may participate. The Bank Loan Rate for any day would be calculated by the Credit Facility Team (as defined below) each day an Interfund Loan is made according to a formula established by the board of trustees for the Funds (the ''Board'') designed to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (e.g., Federal Funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. The Board periodically would review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of the Board.

9. The Treasury unit of the Administrator (the ''Credit Facility Team'') would administer the credit facility. Under the proposed credit facility, the portfolio managers for each participating Fund may provide standing instructions to participate daily as a borrower or lender. The Credit Facility Team on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodian. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Credit Facility Team would allocate loans among borrowing Funds without any further communication from portfolio managers. Applicants expect far more available uninvested cash each day than borrowing demand. After the Credit Facility Team has allocated cash for Interfund Loans, the Investment Manager will invest any remaining cash in accordance with each Fund's normal practice.

10. The Credit Facility Team will allocate borrowing demand and cash available for lending among the Funds on what the Credit Facility Team believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by the Board on behalf of each Fund, including a majority of trustees who are not ''interested persons'' of the Funds, as defined in section 2(a)(19) of the Act (''Independent Trustees''), to ensure that both borrowing and lending Funds participate on an equitable basis.

11. The Credit Facility Team would (a) monitor the Interfund Loan Rate and the other terms and conditions of the loans, (b) ensure compliance with each Fund's investment policies and limitations, (c) ensure equitable treatment of each Fund, and (d) make quarterly reports to the Board concerning any transactions by the Funds under the credit facility and the Interfund Loan Rate charged in the transactions.

12. The Credit Facility Team would administer the credit facility as part of its duties under its existing administrative services agreement with each Fund and would receive no additional fee as compensation for its services. The Investment Manager would monitor the Credit Facility Team's administration of the credit facility and would receive no additional fee as compensation for its services.

13. Each Fund's participation in the proposed credit facility will be consistent with its organizational documents and its investment policies and limitations. The Statement of Additional Information (''SAI'') of each Fund will disclose all material facts concerning the Fund's participation in Interfund Lending Agreements prior to the commencement of such arrangement and at all times during the term of the Interfund Loans. No Fund would borrow more than the lesser of the amount permitted by section 18 of the Act or the amount permitted by its investment limitations.

14. In connection with the credit facility, applicants request an order under (a) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having the Investment Manager as their common investment adviser.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with strong potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because (a) the Credit Facility Team would administer the program as a disinterested party; (b) the Investment Manager would monitor the Credit Facility Team's administration of the credit facility as a disinterested fiduciary; (c) all Interfund Loans would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or other short-term instruments; (d) the Interfund Loans would not involve a greater risk than other similar investments; (e) the lending Fund would receive interest at a rate higher than it could obtain through other similar investments; and (f) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that the Credit Facility Team would receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of proposed credit facility is to provide economic benefits for all the participating Funds.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank; provided that, immediately after the borrowing, there is an asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting the relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined credit facility and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated persons of an affiliated person, when acting as principal, from effecting

any joint transaction in which the company participates unless the transaction is approved by the Commission. Rule 17d–1 provides that in passing upon applications for exemptive relief, the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms that are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The Interfund Loan Rate to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate, adjusted daily.

2. On each business day, the Credit Facility Team will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than the Repo Rate, and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days), and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, the event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets; provided, that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would exceed the limits imposed by section 18 of the Act.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (a) repay all its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Credit Facility Team will mark the value of the collateral to market each day and the Fund will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend to another Fund through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 15% of the lending Fund's net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

10. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents. A Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions and 102% of sales fails for the preceding seven calendar days.

11. The Credit Facility Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among the Funds without the intervention of any portfolio manager of the Funds. The Credit Facility Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Investment Manager will invest any amounts remaining after satisfaction of borrowing demand in accordance with its normal practice.

12. The Credit Facility Team will monitor the Interfund Loan Rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Board concerning the participation of the Funds in the credit facility and the terms and other conditions of any extensions of credit under the facility.

13. The Board of each Fund, including a majority of the Independent Trustees: (a) Will review no less frequently than quarterly the Fund's

participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) will establish the Bank Loan Rate formula used to determine the Interfund Loan Rate and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

14. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, the Credit Facility Team will promptly refer the loan for arbitration to an independent arbitrator selected by the Board of any Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[2] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit at least annually a written report to the Board setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

15. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, and such other information presented to the Fund's Board in connection with the review required by conditions 12 and 13.

16. The Credit Facility Team will prepare and submit to the Board for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of operations of the credit facility, the Credit Facility Team will report on the operations of the credit facility at the Board's quarterly meetings.

In addition, for two years following the commencement of the credit facility, an independent public accountant for each Fund shall prepare an annual report that evaluates the Credit Facility Team's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board; and (e) that the Interfund Loan Rate does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

17. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its SAI all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

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BILLING CODE 8010–01–P

[2] If the dispute involves Funds with separate Boards, the Board of each Fund will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

[Rel No. IC–25614; 812–12106]

Merrimac Master Portfolio, et al.; Notice of Application

June 17, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

Summary of Application: Applicants seek an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

Applicants: Merrimac Master Portfolio (''Master Trust''), Merrimac Series (''Feeder Series Trust''), Merrimac Funds (''Feeder Funds Trust'') and Investors Bank & Trust Company—Advisory Division (''Adviser'').

Filing Dates: The application was filed on May 19, 2000, and amended on June 12, 2002.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 12, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549–0609. Applicants, c/o Investors Bank & Trust Company, 200 Clarendon Street, Boston, MA, 02116.

FOR FURTHER INFORMATION CONTACT: Julia Kim Gilmer, Senior Counsel, at (202) 942–0528, or Todd F. Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC, 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Master Trust, the Feeder Series Trust and the Feeder Funds Trust are registered under the Act as open-end management investment companies.[1]

[1] Applicants also request that any relief granted pursuant to the application also apply to any other existing or future registered open-end management investment company (''Future Trust,'' together with the Master Trust, the Feeder Series Trust and the Feeder Funds Trust, the ''Trusts'') and all current and future series of the Trusts (''Investment Companies'') that: (i) are advised by the Adviser (or a person controlling, controlled by, or under common control with the Adviser); (ii) use the same

The Master Trust, a New York common law trust, consists of five Investment Companies (individually, a ''Master Fund'') each with its own investment objectives, policies, and restrictions. The Feeder Series Trust and the Feeder Funds Trust are Delaware trusts and are composed of five and two Investment Companies respectively. Each Investment Company of a Feeder Series Trust and Feeder Funds Trust (a ''Feeder Fund'') invests all of its investable assets in a single Master Fund with the same investment objective and policies as that Feeder Fund. The Adviser is registered under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to each Master Fund pursuant to an investment advisory agreement (''Investment Adviser Agreement'') that was approved by each Master Fund's shareholders and the Master Trust's board of trustees (''Board'') (including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees'')). The Investment Adviser Agreements permit the Adviser to enter into separate investment advisory agreements (''Sub-Advisory Agreements'') with subadvisers (each a ''Sub-Adviser'') to whom the Adviser delegates its responsibility for providing investment advice and making investment decisions for the particular Investment Company.

2. Under the terms of the Investment Adviser Agreements the Adviser assumes overall responsibility, subject to ongoing supervision of the Board, for administering all operations of the Master Trust and for monitoring and evaluating the management of each Master Fund's assets by one or more Sub-Advisers. Sub-Advisers will be recommended to the Board by the Adviser and selected and approved by the Board, including by a majority of the Independent Trustees. Each Sub-Adviser's fees will be paid by the Adviser out of the management fees received by the Adviser from the applicable Master Fund. Each Sub-Adviser is or will be registered under the Advisers Act. Currently, each Master Fund has a single Sub-Adviser.

3. The Adviser will administer all operations of the Master Trust, evaluate each Sub-Adviser's management of assets and recommend to the Board the hiring, termination and replacement of Sub-Advisers. The Adviser will recommend Sub-Advisers based on a number of factors used to evaluate their skills in managing assets pursuant to particular investment objectives.

4. Applicants request relief to permit the Adviser, subject to Board oversight, to enter into and materially amend Sub-Advisory Agreements without shareholder approval. The requested relief will not extend to a Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trusts or the Adviser, other than by reason of serving as a Sub-Adviser to one or more of the Investment Companies (''Affiliated Sub-Adviser'').

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in part, that it is unlawful for any person to act as investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides, in relevant part, that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.[2]

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

3. Applicants assert that the shareholders of each Investment Company are relying on the Adviser to select and monitor the activities of Sub-Advisers best suited for the Investment Company. Applicants assert that, from the perspective of the investor, the role of the Sub-Advisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of each Sub-Advisory Agreement may impose unnecessary costs and delays on the Investment Company, and may preclude the Adviser from acting promptly and efficiently in a manner considered advisable by the Board and the Adviser. Applicants note that the Investment Adviser Agreements will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before an Investment Company may rely on the order requested in the application, the operation of the Investment Company in the manner described in the application will be approved by a majority of the outstanding voting securities of the Investment Company, within the meaning of the Act, which in the case of a Master Fund will be pursuant to voting instructions provided by shareholders of the Feeder Fund investing in such Master Fund or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) of the Act, if applicable; or, in the case of an Investment Company whose shareholders have purchased shares on the basis of a prospectus or offering circular containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Investment Company to the public.

2. The offering circular or prospectus of any Investment Company relying on the requested relief or, in the case of a Master Fund relying on the requested relief, its offering documents and the corresponding Feeder Fund's offering circular or prospectus will disclose the existence, substance and effect of any order granted pursuant to this application. In addition, any such Investment Company will hold itself out to the public as employing the management structure described in the application. The offering circular or prospectus of such Investment Company, or in the case of such Master Fund, its offering documents and the corresponding Feeder Fund's offering circular or prospectus, will prominently disclose that the Adviser has the ultimate responsibility to oversee the Sub-Advisers and recommend their hiring, termination, and replacement.

3. At all times, a majority of the Board of each Trust will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then existing Independent Trustees.

4. Neither the Adviser nor any Investment Company will enter into a Sub-Advisory Agreement with an Affiliated Sub-Adviser without that agreement, including the compensation to be paid thereunder, being approved

management structure; and (iii) comply with the terms and conditions in the application. The registered investment companies that currently intend to rely on the requested order are named as applicants. If the name of an Investment Company contains the name of a Sub-Adviser (as defined below), it will be preceded by the name of the Adviser.

[2] In the case of the Master Funds, shareholder approval requirements under section 15(a) and rule 18f–2 also are governed by the voting provisions set forth in section 12(d)(1)(E) of the Act.

by the shareholders of the applicable Investment Company, which in the case of a Master Fund will be pursuant to voting instructions provided by shareholders of those Feeder Funds investing in such Master Fund that are registered under the Act, or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) of the Act, if applicable.

5. When a Sub-Adviser change is proposed for an Investment Company with an Affiliated Sub-Adviser, the applicable Board of Trustees, including a majority of the Independent Trustees, will make a separate finding, reflected in the minutes of the Board of the Master Fund and the Board of Trustees of the corresponding Feeder Fund, that the change is in the best interests of the Master Fund and its shareholders, and any Feeder Fund investing in the Master Fund and its respective shareholders, and does not involve a conflict of interest from which the Adviser or Affiliated Sub-Adviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Sub-Adviser, the shareholders of the applicable Master Fund and Feeder Fund will be furnished all information about the new Sub-Adviser that would have been contained in a proxy statement, including any change in such disclosure caused by the addition of a new Sub-Adviser. The Trusts will meet this condition by providing such shareholders, within 90 days of the hiring of a new Sub-Adviser an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

7. The Adviser will provide general management services to each Investment Company, including overall supervisory responsibility for the general management and investment of each Investment Company's portfolio, and, subject to review and approval by the respective Trusts' Board will (i) set the Investment Company's overall investment strategies; (ii) select Sub-Advisers; (iii) when appropriate, recommend to the Investment Company's Board the allocation and reallocation of the Investment Company's assets among multiple Sub-Advisers; (iv) monitor and evaluate the performance of Sub-Advisers; and (v) implement procedures reasonably designed to ensure that the Sub-Advisers comply with the Investment Company's investment objectives, policies, and restrictions.

8. No trustee, or officer of a Trust or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by the trustee, director or officer) any interest in a Sub-Adviser except for (i) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by or is under common control with a Sub-Adviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–15708 Filed 6–20–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46078; File No. SR–Amex–2002–45]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Discontinuation of the Exchange's Program of Revenue Sharing With Exchange Specialists

June 14, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to discontinue the Exchange's program of revenue sharing with Exchange specialists. The revenue sharing program will be reduced by 50 percent as of July 1, 2002 and will be discontinued entirely effective January 1, 2003.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–Amex–99–44,[5] the Exchange filed: (1) Certain changes to the Exchange's Equity Fee Schedule, including elimination of share or value charges for orders up to 2,099 shares entered into the Amex Order File (''System Orders''); (2) implementation of a policy to eliminate specialists'' commissions for System Orders up to 2,099 shares; and (3) a program of revenue sharing with Exchange specialists, to be made from the Exchange's general revenues. These fee and policy revisions were implemented as of November 1, 1999.[6]

The applicable revenue sharing is calculated on the basis of average daily Amex (not consolidated) trading volume, excluding Portfolio Depositary Receipts (*e.g.,* SPDRs®, Nasdaq 100 Index Tracking Stock™), Index Fund Shares (*e.g.,* iShares™, VIPERs™), and Trust Issued Receipts (*e.g.,* HOLDRs™) based on the following incremental rates per 100 shares:

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] The Exchange will issue a Memorandum to Amex specialist units describing the 50 percent reduction in revenue sharing as of July 1, 2002 and the elimination of the program, effective January 1, 2003. Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Cyndi Nguyen, Attorney, Division of Market Regulation (''Division''), Commission, on June 12, 2002.

[5] *See* Securities Exchange Act Release No. 42067 (October 28, 1999), 64 FR 60254 (November 4, 1999).

[6] Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Cyndi Nguyen, Attorney, Division, Commission, on June 6, 2002.

Average daily volume (millions)	Rate per 100 shares
Up to 40	$0.25
from 40 to 60	.23
from 60 to 80	.20
over 80	.18

The applicable rate(s) is calculated monthly. Payments on qualified orders are made monthly in arrears to equity specialists at a rate calculated as a single weighted average rate based on volume for the month most recently ended. Qualifying orders are those delivered electronically from off the floor of the Exchange, but excluding all orders for Portfolio Depositary Receipts, Index Fund Shares, and Trust Issued Receipts.

The Exchange has determined to reduce the revenue sharing arrangement by 50 percent as of July 1, 2002 and to discontinue the revenue sharing program entirely effective January 1, 2003, in view of revenue requirements of the Exchange under increasingly competitive market conditions. The rate per 100 shares applicable from July 1 to December 31, 2002 would be $.125, $.115, $.10, and $.09 for Average Daily Volume of up to 40 million, from 40 to 60 million, from 60 to 80 million, and over 80 million shares, respectively.

Because this program was implemented in conjunction with implementation of an Exchange policy to eliminate specialist commissions for System Orders up to 2,099 shares, the Exchange believes continued application of this policy to be inappropriate and unnecessary. Specialists, therefore, would be able to charge commissions for such orders if they choose.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(4) [8] in particular, because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [9] and subparagraph (f)(2) of Rule 19b–4 thereunder [10] because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–45 and should be submitted by July 12, 2002.

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–15711 Filed 6–20–02; 8:45 am]

BILLING CODE 8010–01–U

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46082; File No. SR–PCX–2002–29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to a One-Year Extension of the Auto-Ex Book Function Pilot Program

June 17, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 4, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by PCX. PCX filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act [3] and rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend the Automatic Execution System (''Auto-Ex'') Book function pilot program for one year. The text of the proposed rule change is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 22, 2001, the Commission approved a one-year pilot program for the operation of the Exchange's Auto-Ex Book function.[5] The pilot program is currently set to expire on June 22, 2002.

The Auto-Ex Book function permits orders in the Limit Order Book to be executed via the Auto-Ex system when those orders become marketable subject to certain procedures. The function may be used when one or more orders in the Limit Order Book become marketable, as indicated by a locked or crossed market being displayed on the trading floor. When this occurs, the Lead Market Maker may direct the Order Book Official to initiate the Auto-Ex Book function, which will cause marketable orders in the Limit Order Book to be automatically executed against the accounts of market makers who are participating on the Auto-Ex system at the time.

The Exchange is requesting an extension of the pilot program for one year from June 22, 2002 to June 22, 2003. The added time permits the Exchange an opportunity to continue reviewing and evaluating the program. The Auto-Ex book function is operating as intended and provides a service to both customers and members by facilitating the execution of orders in the Limit Order Book. This function is often used in fast markets to provide quicker executions of booked orders thereby maintaining a fair and orderly market. The Exchange believes that this program is operating successfully and without any problems, and on that basis, the Exchange believes that a one-year extension of the program is warranted.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with section 6(b)[6] of the Act, in general, and further the objectives of section 6(b)(5),[7] in particular, in that they are designed to facilitate transactions in securities, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the foregoing rule change as effecting a change that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days from the date of filing. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date. Accordingly, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[8] and rule 19b–4(f)(6) thereunder.[9] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

PCX has requested that the Commission waive the 30-day waiting period, and that the extension become operative on or before June 22, 2002. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[10] Acceleration of the operative date will permit the Auto-Ex Book function pilot to continue uninterrupted. For these reasons, the Commission designates the proposal to be operative on June 22, 2002.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. PCX–2002–29 and should be submitted by July 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–15710 Filed 6–20–02; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Securities Exchange Act Release No. 44468 (June 22, 2001), 66 FR 34505 (June 28, 2001).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed priorities. Request for public comment.

SUMMARY: As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the Federal sentencing guidelines, and in accordance with Rule 5.2 of its Rules of Practice and Procedure, the Commission is seeking comment on possible priority issues for the amendment cycle ending May 1, 2003.

DATE: Public comment should be received on or before August 2, 2002.

ADDRESS: Send comments to: United States Sentencing Commission, One Columbus Circle, NE, Suite 2–500,

South Lobby, Washington, DC 20002–8002, Attention: Public Affairs—Priorities Comment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for Federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

For the amendment cycle ending May 1, 2003, and possibly continuing into the amendment cycle ending May 1, 2004, the Commission has identified the following tentative priorities: (1) Continuation of its work on the 15 Year Study, which is composed of a number of projects geared toward analyzing the guidelines in light of the goals of sentencing reform described in the Sentencing Reform Act and the statutory purposes of sentencing set forth in 18 U.S.C. 3553(a)(2); (2) continuation of its policy work and possible guideline amendments relating to the USA PATRIOT ACT, Public Law 107–56, nuclear, biological, and chemical weapons offenses, and other terrorism offenses; (3) continuation of its research, policy work, and possible guideline amendments relating to Chapter Four (Criminal History and Criminal Livelihood), which may include (A) assessment of the calculation of criminal history points for first time offenders and offenders who are in the highest criminal history categories; (B) assessment of the criminal history rules for minor offenses, juvenile offenses, and expunged convictions; (C) assessment of the criminal history rules for related cases; and (D) consideration of other application issues relating to simplifying the operation of Chapter Four; (4) consideration of guideline amendment proposals to implement the Bipartisan Campaign Reform Act of 2002, Public Law 107–155, which may include addressing a number of application issues related to the public corruption guidelines in Chapter Two, Part C (Offenses Involving Public Officials); (5) implementation of other crime legislation enacted during the second session of the 107th Congress warranting a Commission response; (6) § 3E1.1 (Acceptance of Responsibility), which may include an assessment of downward adjustments given for timely entry of a guilty plea prior to trial preparation, provision of information regarding the defendant's role in the offense, and the criteria for demonstrating acceptance of responsibility; (7) consideration, through the amendment cycle ending May 1, 2004, of amendment proposals pertaining to compassionate release programs; and (8) other miscellaneous and limited issues pertaining to the operation of the sentencing guidelines, including (A) offenses involving trafficking in oxycontin; (B) offenses involving the unlawful sale or transportation of drug paraphernalia; (C) § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment); and (D) policies for voluntary disclosure of offense conduct by defendants (§ 5K2.16 (Voluntary Disclosure of Offense) and related guidelines).

The Commission hereby gives notice that it is seeking comment on these tentative priorities and on any other issues that interested persons believe the Commission should address during the amendment cycle ending May 1, 2003, including short- and long-term research issues. To the extent practicable, comments submitted on such issues should include the following: (1) A statement of the issue, including scope and manner of study, particular problem areas and possible solutions, and any other matters relevant to a proposed priority; (2) citations to applicable sentencing guidelines, statutes, case law, and constitutional provisions; and (3) a direct and concise statement of why the Commission should make the issue a priority.

Authority: 28 U.S.C. § 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Diana E. Murphy,

Chair.

[FR Doc. 02–15684 Filed 6–20–02; 8:45 am]

BILLING CODE 2210–40–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Intent To Prepare an Environmental Impact Statement for the Rim of the World Scenic Trail on the San Bernardino National Forest, San Bernardino County, CA

AGENCY: Federal Highway Administration (FHWA) DOT and U.S. Forest Service (USDA).

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Highway Administration and the USDA Forest Service (joint lead agencies) will prepare an Environmental Impact Statement (EIS) on a proposal to construct approximately 44 miles of non-motorized, multi-use trails on National Forest land in San Bernardino County.

DATES: Submit comments on or before August 5, 2002. Public meeting/Open House dates are:

1. July 17, 2002, 6:30 p.m. to 8:30 p.m., Lake Arrowhead, CA.
2. July 18, 2002, 6:30 p.m. to 8:30 p.m., Fawnskin, CA.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review during the spring of 2003. At that time, 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 publishes the Notice of Availability in the **Federal Register**. The Final EIS is scheduled to be completed in the winter of 2003.

ADDRESSES: Address all comments concerning this notice to Gene Zimmerman, Forest Supervisor, San Bernardino National Forest, 1824 S. Commercenter Circle, San Bernardino, CA 92408. E-mail comments may be sent to *rimoftheworldcomments@yahoo.com.*

Meeting locations are:

1. Lake Arrowhead—Lake Arrowhead Resort, 27984 Highway 189, Lake Arrowhead, CA 92352
2. Fawnskin—Big Bear Discovery Center, 1020 Highway 38, Fawnskin, CA 92333

FOR FURTHER INFORMATION CONTACT: Tay Dam, Senior Transportation Engineer, Federal Highway Administration, (213) 202–3954 or Mike Florey, San Bernardino National Forest Engineer, (909) 884–6634.

SUPPLEMENTARY INFORMATION: Forest visitors and local residents have identified the need for additional non-motorized, multi-user trails in the Big Bear and Back Country Management Areas (MA's) of the San Bernardino National Forest. In addition, the San Bernardino National Forest Plan (Forest Plan) identified the need to increase the miles of trail in these MA's to offer improved non-motorized recreation opportunities. The purpose of this action is to develop a trail system from Silverwood Lake State Recreation Area to the Big Bear area, providing a primitive, backcountry experience with

moderate to difficult opportunities. The trail access would be located between Silverwood Lake Recreation Area and Big Bear.

The trail would be three to five feet in width and would provide varying degrees of difficulty. In some areas, the trail would utilize short sections of existing roads. Information and interpretive signs would be placed at appropriate locations along the trail corridor and at access points (e.g. road intersections, trailheads, parking lots, etc.). The trail would include construction of up to 12 trailheads, accommodating three to ten vehicles each. This proposal includes the construction of four spur trails that would provide access for the mountain communities and to several points of interest. These spurs would connect the trail to Green Valley Lake, Butler Peak, Tunnel Two ridge, and Valley of Enchantment/Breezy Point. Alternatives have not been identified at this time. The FHWA and the Forest Service invite public comments on potential alternatives for the trail.

Construction would begin in late fall of 2003 or spring of 2004, with completion of the entire system by 2005.

As additional funding becomes available, the Forest would consider enhancing interpretation opportunities on the trail. The actions would be subject to separate environmental review. Construction of facilities along the trail or at access points (e.g. water and toilets) is not planned at this time.

Authorization

National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321–4346), Council on Environmental Quality Regulations (40 CFR parts 1500–1508); U.S. Department of Agriculture NEPA Policies and Procedures (7 CFR part 1b).

Reviewer's Obligation

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wisc. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at the time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement 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 environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewer 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.

[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.]

Jeffrey W. Kolb,

Chief, District Operations—South.

Gene Zimmerman,

Forest Supervisor, San Bernardino NF.

[FR Doc. 02–15643 Filed 6–20–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2002–12529]

Information 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 Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before August 20, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth Gearhart, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–1867; FAX: 202–366–7901 or E-MAIL: *elizabeth.gearhart@marad.dot.gov.*

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Shipbuilding Orderbook and Shipyard Employment.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0029.

Form Numbers: MA–832.

Expiration Date of Approval: December 31, 2002.

Summary of Collection of Information: In compliance with the Merchant Marine Act of 1936, as amended, MARAD conducts this survey to obtain information from the shipbuilding and ship repair industry to be used primarily to determine if an adequate mobilization base exists for national defense and for use in a national emergency.

Need and Use of the Information: The collection of information is necessary in order for MARAD to perform and carry out its duties required by Sections 210 and 211 of the Merchant Marine Act of 1936.

Description of Respondents: Owners of U.S. shipyards who agree to complete the requested information.

Annual Responses: 800 responses.

Annual Burden: 400 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

Dated: June 18, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–15733 Filed 6–20–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (2002–3)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the third quarter 2002 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The third quarter 2002 RCAF (Unadjusted) is 1.062. The third quarter 2002 RCAF (Adjusted) is 0.557. The third quarter 2002 RCAF–5 is 0.537.

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1533. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā-To-Dā Legal, Suite 405, 1925 K Street, NW., Washington, DC 20006, phone (202) 293–7776. [Assistance for the hearing impaired is available through FIRS: 1–800–877–8339.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: June 14, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–15774 Filed 6–20–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 9779, 9779(SP), 9783, 9783(SP), 9787, 9787(SP), 9789, 9789(SP) and 12252

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 9779, 9779(SP), 9783, 9783(SP), 9787, 9787(SP), 9789, 9789(SP) and 12252, Electronic Federal Tax Payment System (EFTPS).

DATES: Written comments should be received on or before August 20, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Electronic Federal Tax Payment System (EFTPS).

OMB Number: 1545–1467.

Form Number: Forms 9779, 9779(SP), 9783, 9783(SP), 9787, 9787(SP), 9789, 9789(SP) and 12252.

Abstract: These forms are used by business and individual taxpayers to enroll in the Electronic Federal Tax Payment System (EFTPS). EFTPS is an electronic remittance processing system that the Service uses to accept electronically transmitted federal tax payments. EFTPS (1) establishes and maintains a taxpayer data base which includes entity information from the taxpayers or their banks, (2) initiates the transfer of the tax payment amount from the taxpayer's bank account, (3) validates the entity information and selected elements for each taxpayer, and (4) electronically transmits taxpayer payment data to the IRS.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, and state, local or tribal governments.

Estimated Number of Respondents: 4,471,000.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 1,490,019.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 13, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–15741 Filed 6–20–02; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Friday,
June 21, 2002

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 42 et al.
Hazard Communication (HazCom); Final Rule and Withdrawal of Interim Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 42, 46, 47, 48, 56, 57, and 77

RIN 1219–AA47

Hazard Communication (HazCom)

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule and withdrawal of interim final rule.

SUMMARY: We (MSHA) are establishing this final rule on ''Hazard Communication (HazCom)'' to reduce injuries and illnesses related to chemicals in the mining industry. HazCom requires mine operators to evaluate the hazards of chemicals they produce or use and provide information to miners concerning chemical hazards by means of a written hazard communication program; labeling containers of hazardous chemicals; providing access to material safety data sheets (MSDSs); and initial miner training. While most of the requirements in this final rule are substantially the same as in the proposed and interim final rules, portions have been revised in response to public comments. The most significant revision involves the HazCom training requirements. Initial HazCom training for current miners will be conducted under the HazCom final rule. Conforming amendments with requirements for subsequent HazCom training have been added to existing training standards. With the publication of this final rule, the mining industry joins other industry groups in requiring that chemical hazard information be offered to employees.

DATES: This rule is effective on September 23, 2002. This rule is applicable at mines that employ five or fewer miners on March 21, 2003. The interim final rule published on October 3, 2000 (65 FR 59048) and delayed on August 28, 2001 (66 FR 45167) is withdrawn as of June 21, 2002.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Arlington, Virginia 22209–3939. Mr. Nichols can be reached at *nichols-marvin@msha.gov* (internet e-mail), 202–693–9440 (voice), or 202–693–9441 (fax). You may obtain copies of the final rule in alternative formats by calling this number. The alternative formats available are either a large print version of the final rule or the final rule in an electronic file on computer disk. The final rule also is available on the Internet at *http://www.msha.gov/hazcom.*

SUPPLEMENTARY INFORMATION: The following is an outline of this HazCom preamble to help you find information more quickly.

I. Introduction
- A. Overview of Rulemaking
- B. Need for HazCom
- C. OSHA's HCS and MSHA's HazCom Final Rule
- D. Reasons for Not Exempting Aggregate Producers
- E. Reasons for Staggering the Compliance Dates
- F. Regulatory History

II. Discussion of the Final Rule
- A. Subpart A—Purpose, Scope, Applicability, and Initial Miner Training
- B. Subpart B—Definitions
- C. Subpart C—Hazard Determination
- D. Subpart D—HazCom Program
- E. Subpart E—Container Labels and Other Forms of Warning
- F. Subpart F—Material Safety Data Sheet (MSDS)
- G. Conforming Amendments: HazCom Training Requirements under 30 CFR Parts 46 and 48
- H. Subpart H—Making HazCom Information Available
- I. Subpart I—Trade Secrets
- J. Subpart J—Exemptions
- K. Appendices

III. Legal Authority and Feasibility
- A. HazCom as a § 101(a)(6)(A) standard
- B. Finding of Significant Risk
- C. Finding of Feasibility
- D. Petitions for Modification

IV. The Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, and Executive Order 12866
- A. Alternatives Considered
- B. Consultation with SBA
- C. Compliance Costs
- D. Regulatory Flexibility Certification and Factual Basis
- E. Benefits

V. Paperwork Reduction Act

VI. Other Regulatory Considerations
- A. The National Environmental Policy Act of 1969
- B. Unfunded Mandates Reform Act of 1995
- C. Executive Order 12630: Government Actions and Interference with Constitutionally Protected Property Rights
- D. Executive Order 12988: Civil Justice Reform
- E. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
- F. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
- G. Executive Order 13132: Federalism
- H. Executive Order 13211: Energy

VII. Addendum: Health Effects of Physical and Chemical Substances Normally Used by Miners

I. Introduction

We refer to our hazard communication standard as ''HazCom'' to help distinguish it from the Occupational Safety and Health Administration's (OSHA's) Hazard Communication Standard (HCS). In this final rule, ''you'' refers to production operators and independent contractors, who have the primary responsibility for complying with our standards. Where needed, we use the terms ''operator'' or ''independent contractor'' to avoid confusion. ''We'' and ''us'' refers to MSHA.

Also, for the purpose of simplicity, we continue to use the term ''written'' or ''writing'' in the regulatory language to include electronic transmission of information. Operators are expected to exercise reasonable judgment. A label can be a sign, placard, process sheet, batch ticket, operating procedure, or other alternative. A label must be in a form that can be clearly and quickly associated with the hazardous chemical. A label in a computer, for example, will be inadequate as a way of labeling a truckload of lime. The purpose of an MSDS, on the other hand, can be readily achieved through an electronic access to the information.

Some of HazCom's provisions differ from the proposed and interim final rules in response to commenters' concerns and suggestions. These changes clarify the rule's intent, reduce the operator's burden to comply without reducing protections afforded by the interim final rule, and eliminate unnecessary language and needless repetition. We have tailored provisions to fit the mining industry. Despite these changes, the substance of most requirements remains the same as in the proposed and interim final rules. We have organized the rule to optimize the reader's ability to understand the rule's requirements.

This final rule reflects comments received during the entire rulemaking process including the advance notice of proposed rulemaking, the proposed rule, the limited re-opening of the record in 1999, the interim final rule comment periods, and the public hearings. All comments and testimony became part of the rulemaking record.

A. Overview of Rulemaking

HazCom is based on two safety and health principles: miners have a right to know about the chemical hazards where they work; and you have a responsibility to know about the chemical hazards at your mine.

Chemically related injuries and illnesses in the mining industry indicate that many operators and miners are not as aware of the presence and nature of hazardous chemicals as they should be.

Injury and illness reports sent to us describe instances where miners—

- Were using inadequate or improper personal protective equipment,
- Did not know what they had been exposed to that caused their symptoms,
- Failed to follow instructions because they misunderstood or were unaware of the consequences, and
- Inadvertently misused a chemical from an unlabeled container.

Our existing standards already require you to train miners in occupational health, hazard recognition, and the safety and health aspects of tasks, among other subjects. Except at underground coal mines, you are also currently required to label hazardous materials. The intent of HazCom is to ensure that your mine has a program emphasizing chemical hazards by requiring you to take certain actions. Current regulations do not require you to collect material safety data sheets (MSDSs), give copies of hazard information to miners, or keep a list of the hazardous chemicals at the mine.

HazCom requires you to inform miners about chemical hazards. This information is important because miners are at risk of harm in the absence of such knowledge. We expect HazCom, by increasing both knowledge and awareness, to bolster good work procedures and safer behavior, thus reducing injuries and illnesses related to chemicals. When put into effect at a mine, HazCom should result in better hazard identification and assessment; more consistent use of personal protective equipment; and greater awareness and care when working near hazardous chemicals.

Communicating the hazards of chemicals can be difficult because it requires using unfamiliar technical terms, scientific symbols, and complex physical laws. For the training to be effective, it must balance scientific precision with the practical needs of miners to understand chemical hazards and protect themselves in their daily work. When miners understand the chemical hazards of mine processes and recognize the job elements that can lead to chemical exposures, they will be more successful in reducing accidents and injuries.

The final rule requires operators of mines initially to instruct each miner with information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program. Subsequent HazCom training must be conducted in accordance with 30 CFR parts 46 and 48. This modification of the HazCom training requirements is a result of comments received during the last reopening of the rulemaking record, as well as testimony presented at the public hearings. Accordingly, the HazCom final rule modifies the interim final rule by removing Subpart F—HazCom Training and adding conforming amendments to the training requirements of 30 CFR parts 46 and 48 to include instruction about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program. The conforming amendments to parts 46 and 48 apply to new miner training, new experienced miner training, task training, and annual refresher training.

The major provisions of HazCom are as follows:

Hazard determination. You must identify the chemicals at your mine and determine if they can present a physical or health hazard to miners. If you produce a chemical, such as gold, molybdenum sulfide, calcium oxide (lime), sand, and phosphates, among others, you must review available scientific evidence to determine if it is hazardous. Some of the chemicals you produce that result from a chemical reaction, such as nitrogen oxides from blasting or an intermediate chemical formed during mineral processing, may already be addressed on the MSDS for the original chemical. For a chemical or mixture brought to your mine, such as diesel fuel, lubricants, solvents, and paints, you can rely on the evaluation performed by the chemical's manufacturer or supplier. Although you do not need to modify the MSDS or label that comes from the chemical's manufacturer or supplier, you must review the label and MSDS to learn what hazards the chemical can present to your miners.

HazCom program. You must develop, implement, and maintain a written comprehensive plan to formalize a HazCom program. The program must include provisions for container labeling, collection and availability of MSDSs, and training of miners, among other requirements. It also must contain a list of the hazardous chemicals known to be at the mine. If a mine has more than one operator on site, such as an independent contractor and a primary operator, each HazCom program must describe how you will inform the other operator(s) about the chemical hazards you produce or bring to the mine and the protective measures needed.

Container labeling. A label is an immediate warning about a chemical's most serious hazards. You must ensure that containers of hazardous chemicals are marked, tagged, or labeled with the identity of the hazardous chemical and appropriate hazard warnings. The label must be in English and prominently displayed. We are not requiring you to label mine products that go off mine property, though you must provide the hazard information if a customer asks for it.

Material safety data sheet (MSDS). A chemical's MSDS provides comprehensive technical and emergency information. It serves as a reference document for operators, exposed miners, health professionals providing services to exposed miners, and firefighters or other public safety workers. You must have an MSDS for each hazardous chemical at your mine. The MSDS must be accessible in the work area where the chemical is present or in an alternate location readily available to miners in an emergency.

Initial HazCom training. You must initially instruct each miner about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against those hazards, and the contents of the mine's HazCom program by the effective date of this final HazCom rule. Subsequent HazCom training must be conducted in accordance with 30 CFR parts 46 and 48.

Making HazCom information available. You must provide miners, their designated representatives, MSHA, and NIOSH with access to the materials that are part of the HazCom program. These include the HazCom program, the list of hazardous chemicals, labeling information, MSDSs, some training materials, and any other material associated with the HazCom program. You do not have to disclose the identity of a trade secret chemical except when there is a compelling medical need or as specified in this rule.

B. Need for HazCom

Chemicals in the mining industry pose a range of hazards, from mild health effects, such as irritation, to death. Some chemicals cause or contribute to chronic diseases, such as heart disease, kidney disease, sterility, or cancer. The relationship between these injuries and illnesses and exposure to a chemical can be obscured by years of latency between the exposure and the onset of symptoms. Many chemicals cause acute injuries or illnesses such as dermatitis, burns, and poisonings. Some chemicals pose hazards by contributing to fires and explosions.

Even relatively harmless substances can pose a hazard under certain

conditions. If mixed or heated, for example, some chemicals give off toxic fumes. Calcium chloride is generally considered a relatively harmless chemical, however, the MSDS for the compound lists its toxic decomposition products as chlorine fumes or hydrogen chloride. An ammonia based window cleaner mixed with common household bleach can produce deadly fumes. Miners must be made aware of these potential, life-threatening hazards.

Also pre-existing conditions, such as respiratory or central nervous system diseases, can be aggravated by exposure to some chemicals. For example, open wounds, skin disorders, and chronic respiratory disease can be aggravated by exposure to unleaded gasoline. Miners with existing health conditions need to be aware of the potential additional hazard that exposure to chemicals presents.

1. Chemical Injuries and Illnesses

In considering a HazCom standard, we reviewed reports of chemically related injuries and illnesses reported to MSHA. From January 1990 through December 1999, the mining industry reported over 2,500 chemical burns. More than 1,200 of these burns were lost work time cases, involving over 50 commodities, more than 60 job classifications, and exposures to chemicals at all sizes and types of mines. Bituminous coal mines reported the most chemical burns for that industry. Crushed and broken limestone mines reported the most chemical burns in the metal and nonmetal industry. This same accident and injury data indicated more than 400 poisonings. This data takes into account only some of the acute effects reported as a result of chemical exposures and does not include the chronic effects that we know also occur. MSHA believes that injuries, illnesses, and accidents reported to us understate the extent of the health and safety problems caused by chemicals in the workplace.

Reporting injuries and illnesses. Lack of knowledge about chronic health effects associated with chemical exposures contributes to the under-reporting of occupational illnesses. Employers, such as mine operators, and doctors often lack information to link occupational illnesses with exposures to chemical hazards.[1] Symptoms of chemically related, chronic, occupational illnesses are often treated without realizing that the cause is an occupational exposure. The Bureau of Labor Statistics (BLS) made note of this reporting disparity in one of their annual reports.[2]

> * * * Some conditions (*e.g.,* long-term latent illnesses caused by exposure to carcinogens) are often difficult to link to the workplace and, therefore, may not be recognized and reported. Because of this, these long-term latent illnesses are believed to be understated in the survey's illness measures. * * *

Worker turnover also increases the likelihood that the link between a workplace chemical exposure and subsequent illness will be overlooked and will not be reported. MSHA's experience under part 50 reveals that occupational illnesses are frequently unreported because the miner has retired or taken a job in another industry. This is particularly true for long-term health effects which develop over time or after repeated exposures. Many chronic diseases are characterized by latency periods of 20–30 years or longer.

In addition, health effects of some chemicals may contribute to the occurrence of injuries that are reported but are not causatively linked to chemical exposures. Part of the purpose of the hazard communication standard is to increase awareness regarding these potential effects.

Although MSHA's frequent presence at mines tends to minimize under-reporting, we believe the reporting is still incomplete. Our experience indicates that reporting of injuries and illnesses increases when we systematically audit operator reporting. For example, a nationwide audit of operator accident and injury reporting in the late 1970's produced a 13% increase in reported injuries. During MSHA's ''part 50 grace period'' for chronic illnesses in the late 1990's, industry reported an additional 3900 cases of silicosis, pneumoconiosis, hearing loss, and chronic musculoskeletal injuries. This increase strongly suggests that there is under-reporting. We expect improved reporting of occupational illnesses and injuries caused by chemical exposures to be one of the positive effects of this standard.

Hazards to miners working with chemicals. Between 1984 and 1989, the National Institute for Occupational Safety and Health (NIOSH) surveyed almost 500 individual mines covering 70 commodities and about 60,000 miners for the National Occupational Health Survey of Mining (NOHSM). NOHSM documented over 10,000 individual hazardous chemicals and mixtures of hazardous chemicals to which miners could be exposed.

Comments to the proposed and interim final rules suggested that HazCom apply only to those chemicals posing a risk to miners. We decided against limiting the application of HazCom to the chemicals NIOSH identified as most commonly posing a risk to miners because—

- New hazardous chemicals would not be covered,
- There are likely to be some hazardous chemicals used or produced at mines that are not on NIOSH's list, and
- NIOSH did not survey all mines.

In September of 1996, NIOSH published *Results from the National Occupational Health Survey of Mining (NOHSM)* [DHHS(NIOSH) Publication No. 96–136]. NOHSM's Appendix O listed ''100 Chemical Substances with the Highest Projected Number of Workers Potentially Exposed.'' This appendix projected only potential exposure to chemical substances purchased and used at mines. The NOHSM report is in the rulemaking record. The addendum to this preamble (VII. Addendum: Physical and Health Effects of Chemical Substances Normally Used by Miners) lists the health effects of chemicals for which NIOSH projects more than 1000 miners to be potentially exposed.

We listed the health effects for these substances to illustrate the acute and chronic effects of exposures to substances common in mining. It is apparent that many of these chemicals have serious acute health effects, as well as life-shortening chronic health effects. Diesel fuel and kerosene are examples of such chemicals. We found the listed health effects for most of these substances on material safety data sheets (MSDSs) available free on the internet. The *NIOSH Pocket Guide to Chemical Hazards,* a copy of which is in the rulemaking record, also lists health effects.

Current hazard communication programs in mining. Some operators began complying with OSHA's HCS requirements in 1983 when it was first promulgated. Others began complying when the scope of OSHA's HCS was extended to cover general industry. In anticipation of a similar MSHA standard, some began complying after MSHA published its proposed HazCom rule, using the unregulated interval as a time to assimilate the requirements into

[1] Rosenstock, L., ''Occupational Medicine: Too Long Neglected'', *Annals of Internal Medicine,* Vol. 95, No. 6, December 1981, pp. 774–776.

American Lung Assn., ''Diagnosis and Treatment, Taking the Occupational History'', *Annals of Internal Medicine,* Vol. 99, No. 5, November 1983, pp. 641–651.

[2] U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Injuries and Illneses: Counts, Rates, and Characteristics, 1994,* Bulletin 2485 (April 1997), page 7.

their mines' standard operating procedures. Although some operators on their own initiative have established programs that meet HazCom's provisions and goals, and have integrated OSHA's HCS requirements into the cultures of their mines, many have not made that effort or fully met those objectives.

Some operators have a comprehensive HazCom program in place, while others have some elements of a HazCom program. This HazCom rule requires that operators give all miners the information, initial training, and access needed to protect themselves from chemically related injuries and illnesses. HazCom unifies, focuses, and clarifies existing requirements.

2. Existing Parts 46 and 48 Training

The principal training standards that apply at your mine are found in parts 46 or 48, depending on the commodity you produce and the type of mine you have. Under existing parts 46 and 48, you must provide new miner training, newly hired or experienced miner training, new task training, and annual refresher training and, for those less exposed, hazard awareness training.

An issue throughout this rulemaking has been whether the training under parts 46 and 48 negates the need for the HazCom standard. Several commenters to the interim final rule said that the existing training requirements under parts 46 and 48 already cover hazard recognition and prevention. The HazCom standard would be, in their view, needlessly duplicative and burdensome. As a few commenters pointed out, parts 56 and 57 already have standards for labeling toxic substances. Others said that, in their part 48 training, they endeavor to fully encompass the health and safety aspects of working with hazardous chemicals at their operations. Still others said that part 46, effective only recently, has not been given a chance to show that it can work for purposes of hazard communication.

By contrast, several commenters stressed the need for the HazCom standard. They said that the important job of educating people within the mining industry on the dangers of chemicals in the workplace was not being done. Misuse of chemicals at the mines was a significant concern to them. Not only are miners left uninformed about hazardous chemicals, but according to many of these commenters, the operators, who are expected to know about these hazards, often need help themselves and provide little guidance to miners, even about elementary precautions to take when working around hazardous chemicals. Some operators may not be familiar with basic sources of information such as MSDSs. These commenters maintained that a more effective means of getting the information out and increasing the awareness of chemical hazards is vital so people can avoid misuse and make intelligent decisions to safeguard their health.

In the interim final rule we stated that although we have standards for labeling toxic substances under parts 56 and 57, these standards do not contain any training requirements on hazardous chemicals. With regard to the existing training under parts 46 and 48, we stated that these training regulations were insufficient for purposes of HazCom training because they do not specify the training content. They basically require instruction in hazard recognition and the health and safety aspects of new work tasks.

After carefully reviewing all comments, and testimony presented at all the HazCom hearings, however, we have determined that subsequent HazCom training requirements, after initial training, can be eliminated from the HazCom rule, but effectively provided under existing parts 46 and 48 by adding language to the training subjects of these parts. Accordingly, the HazCom final rule requires operators of mines initially to instruct each miner with information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program. While initial training is required under § 47.2(b) of the final HazCom rule, subsequent HazCom training must be conducted in accordance with the conforming amendments added under 30 CFR parts 46 and 48. We believe that this modification of the training requirements of the HazCom standard and parts 46 and 48 is responsive to commenters' concerns regarding training and, at the same time, ensures that parts 46 and 48 training requirements concerning hazard recognition specifically includes instruction on the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program.

C. OSHA's HCS and MSHA's HazCom Final Rule

In addition to the requirements in the Mine Act and our experience in the mining industry, we based our final rule on—

- The comments received in response to the advance notice of proposed rulemaking (ANPRM), the notice of proposed rulemaking, the limited re-opening, and the interim final rule;
- The testimony presented at the public hearings on the proposed and interim final rules; and
- The related standards of other federal agencies, such as OSHA and EPA.

To the extent practical, the substance of MSHA's HazCom requirements is the same as that in OSHA's HCS. Also, we have expressly stated that if a HazCom program meets OSHA's HCS requirements, it will satisfy MSHA's requirements except for the coverage of EPA-regulated hazardous waste (OSHA has a separate standard for hazardous waste operations). We will publish a Compliance Guide to help you understand the application of this rule.

Hazardous waste. The treatment of hazardous waste in MSHA's HazCom standard differs from OSHA's HCS. OSHA exempts hazardous waste because its Hazardous Waste Operations and Emergency Response rule (Hazwoper, 29 CFR 1910.120) addresses these hazards. Because we do not have similar standards that address miners' exposures to hazardous waste, we needed supplemental requirements to ensure that miners understand the hazards and take precautions.

HazCom fills an important gap in protecting the health and safety of miners who may be exposed to hazardous waste. HazCom does *not* require you to determine the components of the hazardous waste, research the components' health and safety effects, or prepare an MSDS. HazCom requires you to—

- Label the hazardous waste, if it is not already labeled;
- Inform miners about hazardous waste in their work areas, its hazards, and safe work procedures; and
- Provide miners access to any information about the hazardous waste that addresses its components or their health and safety effects.

We addressed the subject of hazardous waste at all stages of the rulemaking process. MSHA is confident that the coverage of hazardous waste in HazCom provides essential protection for miners and avoids unnecessary burden on mine operators.

Temporary, portable containers. Labeling of temporary, portable containers is another area where MSHA and OSHA standards differ. In response to comments, HazCom allows more flexibility and compliance options than OSHA's HCS with respect to labeling temporary, portable containers. OSHA's

HCS does not require the employer to label a temporary, portable container into which a hazardous chemical is transferred from a labeled container for the immediate use of the employee who performs the transfer. MSHA's HazCom provides the following choice of compliance methods:

- You do not have to label the container if your miners know the identity, hazards, and protective measures for the chemical in the container, and leave the container empty at the end of the shift; or
- You must label the container, at least with the common name of its contents.

Although OSHA's requirements for portable containers are sufficiently protective, HazCom's differences from HCS are deliberate and appropriate to mining conditions. The HazCom provision provides a flexible and practical alternative for mining operations.

Labels for customers. HazCom does not specifically require you to label hazardous chemical products that go off mine property. Your customers, however, may have to comply with the OSHA HCS which requires hazardous chemicals to be labeled. For this reason, HazCom requires you to provide the label information (and MSDS) if a customer asks for one.

D. Reasons for Not Exempting Aggregate Producers

An aggregates industry commenter to the interim final rule argued that his industry should be exempt from HazCom. The commenter stated that—

> * * * an overwhelming number of entries [injuries and illnesses associated with chemical exposures] would most likely not have been prevented if HazCom were in place. * * * In nearly all cases, regulations already in place apply and would have prevented the incidents from occurring in the first place.

The commenter asserted that other existing standards would provide the safety and health protection afforded by HazCom. The commenter also downplayed the number of injuries and illnesses reported to MSHA.

The existing MSHA safety and health regulations cannot be equated with or replace the HazCom standard. The HazCom rules are not duplicative of existing standards and, in fact, encompass a broader scope of activities than the other regulations. For example, the requirements for a chemical inventory and current, accessible MSDSs are not included in other existing regulations, but are integral parts of HazCom. Under HazCom, operators are responsible for disseminating accurate safety and health information to miners, and in a timely manner to best accomplish the goal of accident, injury, and illness ''prevention.'' Miners, in turn, have a right to know the identity of chemicals with which they are working, the hazards of these chemicals, and how to properly protect themselves. This right has been afforded for years to other workers in the United States, and to many workers in other countries.

HazCom is not dependent on a risk analysis. We conducted a general finding of risk to help operators appreciate the need for the standard. This general finding of risk determined that—

- Hazardous chemicals are at all sizes and types of mines,
- Miners are exposed to these hazardous chemicals, and
- Miners get injuries and illnesses from exposure to hazardous chemicals at the mine.

MSHA examined 14,505 incidents of injuries or illnesses reported to the Agency between 1983 and 2000. Commenters' review of the MSHA data indicated that there was an average of 50 chemical burns in the aggregates industry per year that would be addressed by HazCom. The preponderance of these chemical burns are the result of acids (*e.g.*, in batteries) and alkalis (*e.g.*, lime) present in the aggregates industry. The commenter also estimates that ¾ of the HazCom-covered chemical burns are related to eyes. We agree with the commenter that these are valuable findings about eye injuries and that some corrective action is needed to prevent such injuries. The continuing reports of chemical burns, particularly involving the eyes, represent a serious problem and the possible loss of a miner's sight requires the immediate attention of mine operators.

After separating the eye injuries from the data and excluding cases for which the commenter had concerns (e.g., applicability of HazCom, verification), the commenter concluded that there were an average of 20 cases (injuries and illnesses) per year in the aggregates industry over the 17-year period. The commenter then went on to say, '' * * * this figure hardly seems to us to justify imposition of a multi-million dollar regulation.'' The commenter presumably was referring to the entire metal and nonmetal and coal mining industry. MSHA disagrees with this statement. Given the benefits of this rule to the mining industry as a whole and miners in particular, MSHA believes that the cost of this rule is reasonable.

The data presented by the commenter, that was also analyzed by MSHA, emphasize the need for the HazCom rule and for better compliance with existing regulations. On the basis of these numerous and continuing chemically related burns alone, it appears that there is a need for more specific information and training given to miners. In addition, we estimated that the long-term health effects of the HazCom rule include a reduction of 11.4 cancer deaths every year. Some of these health benefits would surely accrue to miners in the aggregates industry, in which carcinogens, such as benzene, respirable crystalline silica, and diesel fuel, as well as various solvents are used or produced. We cannot justify the exclusion of a group of miners from the requirements for hazard communication, when all other miners and workers in other industries will be given this protection from chemical injuries and illnesses.

MSHA believes that there is a significant risk of numerous adverse health outcomes for miners who work with hazardous materials (chemicals); these outcomes may be manifested over a long period of time. The commenter has attempted to refute the risk by pointing to the absolute number of chemical burns and poisonings over the past 17 years, using a database with known concerns for under-reporting. The commenter has neglected to consider the number and potency of chemicals used in mines; the possible interactions between chemicals; the duration, number, and frequency of exposures; the large gamut of adverse outcomes and their severity; and the role of the miner himself. These factors indicate that miners, including miners who work in the aggregates industry, are at risk of uncertain and undesirable outcomes when working with hazardous chemicals. HazCom, through implementation of and compliance with its various components, will serve to reduce the factors that contribute to injury and illness.

A miner's risk of injury or illness will be reduced by providing the miner with information and initial training regarding exposures and potential adverse effects related to hazardous chemicals. It is possible to anticipate, recognize, evaluate, and control the exposures once the presence of a hazardous chemical is known. For example, if miners understand that they will be working with batteries containing sulfuric acid, then they may anticipate exposure to this acid. Information may be provided regarding chemical burns and the emergency procedures to be followed if an

inhalation, eye, or skin exposure should occur. As a second example, if miners know that they will be welding with rods made of cadmium or zinc oxide, they can anticipate the generation of toxic welding fumes. These fumes are invisible and provide no warning of their presence (*i.e.*, no burning of the eyes, nose, throat). If miners know this, they may take appropriate precautions and protective measures, such as the use of personal protective equipment or a welding booth with proper ventilation, to keep the fumes out of their breathing zone.

We did not analyze our accident and injury data to determine whether or not an injured miner had been trained. Such analysis would not have been helpful because, even if the miner was trained, there is no record as to whether that training included the health and safety hazards and safe work procedures for working with the hazardous chemical.

With a better understanding of chemical hazards from the HazCom program at a mine, an operator may limit the array of chemicals kept at the mine and may establish criteria to decide which chemicals will be brought onto the property.

OSHA initially estimated that its HCS would reduce chemically related injuries and illnesses by 20%. As noted by the commenters, this was an educated guess at the time OSHA developed HCS. In the GAO report submitted to members of the United States Senate and House of Representatives (1992), a summary of employers' experiences in complying with OSHA's HCS was presented. Seventeen percent (17%) of surveyed employers reported fewer work-related injuries and 16% of these employers reported fewer work-related illnesses. Because of HCS, 29% of these employers stated that they use a less hazardous chemical in the workplace. OSHA's experience and findings indicate that there also should be reductions in injuries and illnesses at mining operations once HazCom is implemented.

In conclusion, there is no reason to exempt a large subset of mines from the HazCom rule. The under-reporting of our accident and injury data and the broader scope of the HazCom standard, when considered in connection with the potency of chemicals used in mining, the duration and frequency of exposure, and the possibility of long term health effects being manifested over time, provide reasons why the aggregates industry should not be exempt from the rule.

E. Reasons for Staggering the Compliance Dates

The final HazCom rule becomes effective 3 months from the date of publication in the **Federal Register**. At mines that employ five or fewer miners, it will become applicable 9 months from the date of publication in the **Federal Register**.

The data in our rulemaking record indicates that approximately 50% of all coal and M/NM mining operations consist of five or fewer employees. The record also indicates that exposure to chemical hazards occurs in every type of mine, including small mines, with miners typically experiencing multiple exposures to different chemical hazards at one point of time, or over a long period of employment.

We have determined that small mines will be able to comply with the HazCom final rule. However, we recognize that mine operations with five or fewer employees, because of their size, have special needs that justify providing them with more time to become familiar with the requirements of the HazCom rule. For example, it is our experience that many of these small mines—

- Are unfamiliar with OSHA's HCS, the basis of HazCom, and may need more time to comply;
- Do not have personnel knowledgeable about chemical hazards, the use of computers to access MSDSs, or the resources to implement the final rule within 3 months;
- Are family-owned, employing only family members; and
- Operate intermittently.

Additionally, MSHA needs time to provide extensive outreach to help the industry comply, particularly these small operations.

By contrast, certain segments of the mining industry have had extensive experience with the OSHA HCS, and therefore, will be able to comply with our standard with minimal effort. For example, some independent contractors who work in both mining and general industry are already familiar with the OSHA HCS requirements, and may be able to comply with both OSHA's HCS and our HazCom standard using a single HazCom program.

While we cannot exempt these small operations from the HazCom standard for reasons stated elsewhere in this preamble, we can delay its application to provide them with more time to prepare for compliance. Accordingly, the final rule's compliance date for operations with five or fewer employees will be 9 months after publication in the **Federal Register**. For operations with six or more employees, the compliance date is 3 months after publication in the **Federal Register**, which is the same as the effective date of the final rule.

MSHA wants to emphasize that we are committed to providing compliance assistance to *all* mine operations, regardless of size. In fact, there are many HazCom aids already available. MSHA has developed an instruction guide, PowerPoint presentations, videos, model HazCom programs, a brochure, and generic MSDSs, and plans extensive compliance assistance. Also, OSHA has developed training materials for its industries, such as a generic MSDS form, a model hazard communication program, and the HCS Compliance Guide. Many are available from OSHA's Web site at *http://www.osha.gov* and can be adapted for use at mining operations. You can use these as models for your own program.

F. Regulatory History

Since it was originally promulgated in 1983, OSHA's HCS has evolved to apply to all industries under OSHA's jurisdiction. Mining was the only industry segment not required to provide employees with access to MSDSs and other information about hazardous chemicals in their work areas.

1. Program Information Bulletin 86–2–M

Several commenters to the interim final rule stated that a final standard addressing hazard communication is unnecessary. To support their position, these commenters referenced MSHA's Program Information Bulletin No. 86–2M (April 7, 1986) (PIB). These commenters claimed that, in the PIB, MSHA stated that a standard addressing hazard communication was not necessary for mining because existing standards addressed the labeling and storage of toxic materials, and warning signs.

The 1986 PIB on hazard communication was issued only to metal and nonmetal MSHA inspectors in response to a jurisdictional issue with OSHA. The purpose of the PIB was to clarify that mining operations under our jurisdiction do not have to comply with the OSHA HCS. In establishing the fact that OSHA lacked jurisdiction under § 4(b)(1) of the Occupational Safety and Health Act (OSH Act) to apply their HCS at mining operations, MSHA personnel were requested by OSHA and the mining industry to attach to the PIB a list of MSHA standards addressing some of the same hazards which the OSHA HCS was intended to address. In developing the PIB, we were not seeking to establish that our existing standards offered the same protection as the

OSHA HCS, but that there was the requisite minimum MSHA coverage necessary to justify continuing MSHA jurisdiction. HazCom supplements existing MSHA safety and health standards by specifically addressing chemical hazards from a different perspective using different methods.

2. Petition for Rulemaking

On November 2, 1987, the United Mine Workers of America (UMWA) and the United Steelworkers of America (USWA) jointly petitioned us to adapt OSHA's HCS in both coal and metal and nonmetal mines and to propose it for the mining industry. They based their petition on the need for miners to be better informed about chemical hazards.

In their petition, the UMWA and USWA argued that miners deserve protection equal to that of other workers. To support their position, the petition cited an incident in which miners at an iron ore mine were experiencing adverse health effects. These miners asked the operator for MSDSs for the flotation chemicals used at the mine to determine the identity of the chemical causing their symptoms. Although the state in which the mine was located had a right-to-know law, this law did not cover mines. Because we did not have a standard to require the operator to provide MSDSs to miners, the operator refused several times to provide the requested MSDSs. The operator finally provided the MSDSs after lengthy negotiations. The local union used the information provided in the MSDSs to discuss safety procedures with the company.

The petition also specifically noted that work at both surface and underground coal and metal and nonmetal mines exposes miners to a variety of hazardous chemicals. For example, the petition stated that explosives contain organic nitrates that produce nitrogen oxides and ammonia when detonated; roof bolting systems contain plastic resins and reactants; solvents used in equipment maintenance are both toxic and flammable; and mill reagents can release hydrogen sulfide, cyanide, or other dangerous chemicals.

3. Preliminary Rulemaking

In response to this petition, we issued an advance notice of proposed rulemaking (ANPRM) on hazard communication on March 30, 1988 (53 FR 10256). In the ANPRM, we indicated that we would use the OSHA HCS as a basis for our standard and requested specific comments on a number of related issues. A number of written comments and testimony at public hearings in response to the ANPRM defined industry and labor concerns. We published a notice of proposed rulemaking on hazard communication for the mining industry on November 2, 1990 (55 FR 46400), held three public hearings in October 1991, and closed the record on January 31, 1992.

Public response to preliminary rulemaking. We received a wide variety of comments on our ANPRM and proposed rule. Commenters included both small and large mining companies; a variety of trade associations, including those representing specific minerals; state mining associations; chemical and equipment manufacturers; national and local labor unions; a member of Congress; and two federal agencies.

4. 1999 Limited Re-opening of the Record

While HazCom was being developed, Congress passed several laws and the President issued several Executive Orders which affected our rulemaking procedures. These statutory mandates and related Executive Orders had required us to evaluate the impact of a regulatory action on small mines; [3] the expenditures of state, local, and tribal governments (Unfunded Mandates); [4] and the health and safety of children.[5] In addition, we requested comments on the information collection and paperwork requirements of certain provisions of the proposed rule, now considered as an information collection burden under the expanded definition of *information* under the Paperwork Reduction Act of 1995.[6] We re-opened the rulemaking record on March 30, 1999 (64 FR 15144) to receive comments on the impact of the proposed rule in accordance with these regulatory mandates and Executive Orders. The record closed on June 1, 1999.

Most MSHA regulations do not require an evaluation of their impact on the environment. Health standards do, however. This was brought to our attention and we took this opportunity to remedy the oversight. We requested comments on the effect of the proposed rule on the environment because the proposed rule had not.[7]

Public Response to Limited Re-opening. We received seven comments, mostly from trade associations and labor organizations, on this limited re-opening of the rulemaking record. Some commenters urged us to re-open the rulemaking record in its entirety because they asserted that the information in the record was outdated. They claimed this action would improve the effectiveness and quality of the HazCom standard because sectors of the mining industry that have incorporated OSHA's HCS can provide us with their experience under that program. A large mining company stated that we need to address in the HazCom standard recent changes in the OSHA HCS regarding electronic access to MSDSs and microfiche maintenance of these documents. Some commenters disputed the need to promulgate a HazCom standard in light of our new miner training regulations applicable to surface aggregate mines. Finally, a major labor organization objected to the delay in promulgating a final standard.

We disagreed with commenters on the need to re-open the rulemaking record in its entirety. Unlike general industry, the mining industry is narrowly composed of two sectors, coal and metal and nonmetal. Through our frequent presence on mine properties, we determined that there are no substantial changes in the mining industry which would require changes in the provisions of the standard. Changes experienced by the mining industry since the publication of the HazCom proposed rule in 1990 did not rise to a level of change in ''core'' circumstances so material in nature as to entail a modification of the standard. Substantive rulemaking issues and regulatory alternatives have not changed since the record closed in 1992 and, consequently, the evidence in the rulemaking record at that time continues to be applicable now.

We understood commenters' desire to provide more information regarding their experience under the OSHA HCS standard. Our rulemaking record, however, contains numerous comments concerning the mining industry's experience with OSHA's HCS. The record also contains numerous background documents, such as the

[3] The Small Business Regulation Enforcement Fairness Act of 1996 (SBREFA) Amendments to the Regulatory Flexibility Act of 1980, Pub. L. No. 96–354, 94 Stat. 864 (1980) (codified as amended at 5 U.S.C. 601–612.

[4] The unfunded Mandates from Act of 1995 (2 U.S.C. 1501 *et seq.*); and Executive Order 13084, Consultation and Coordination with Tribal Governments.

[5] Executive Order 13045, Protection and Children from Environmental Health Risks and Safety Risks.

[6] Pub. L. No. 104–13, 109 Stat. 163 (1995) (codified as amended at 4 U.S.C. §§ 3501–3520). When we published the HazCom proposed rule, the information collection and paperwork requirements were not an information collection burden under the 1980 Paperwork Reduction Act because they were third-party disclosures. Under the Paperwork Reduction Act of 1995, agency rules that require businesses or individuals to maintain information for the benefit of a third-party or the public, rather than the government, are covered by the Act under the definition of ''information.''

[7] The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*).

report of the hazard communication workgroup of the National Advisory Committee on Occupational Safety and Health, expressing OSHA's experience with its HCS. We have considered the comments and background information, and the final standard reflects the public's recommendations where they do not undermine HazCom's purpose in protecting the safety and health of miners. For example, some commenters indicated their experience regarding OSHA's MSDS requirements and suggested that we include a provision on electronic access to MSDSs; simplify the proposed rule regarding the content of MSDSs; use terms that are consistent with the Mine Act instead of the OSH Act; simplify the requirements regarding inclusion of MSDSs with initial shipment of product; and require retention of MSDSs for a period of less than 30 years.

In response to these comments, the interim final rule provided for electronic access to MSDSs; used terms such as ''miner'' and ''mine operator'' instead of ''employee'' and ''employer'' to be more consistent with the language of the Federal Mine Safety and Health Act of 1977 (Mine Act); streamlined and clarified the provisions on the format and content of MSDSs; and required the operator to keep the MSDS at the mine for as long as the chemical is known to be present at the mine, instead of 30 years as OSHA requires. While MSHA's HazCom standard is generally consistent with OSHA's HCS, we made changes to the interim final rule from the proposed rule in recognition of comments received from the mining industry concerning its experience under OSHA's HCS. These changes also recognize that the affected regulated community is smaller and more homogeneous than the industries regulated by OSHA.

5. Interim Final Rule

Although we disagreed with commenters on the need to re-open the rulemaking record in its entirety, in an effort to be further responsive to the public, we decided to publish an interim final rule to provide an additional opportunity for comment. The interim final rule was published on October 3, 2000, and gave commenters until November 17, 2000, to submit comments on the entire rule, on their experience under the OSHA HCS, and on the new ''plain language'' format of the rule. We were particularly interested in receiving comments addressing any new developments in the mining industry since the proposed rule that we were unaware of. In response to requests from commenters, we also held a public hearing in Washington, DC, on December 14, 2000. The record closed on December 19, 2000.

Public response to interim final rule. We received 22 comments on the interim final rule, and six persons spoke at the December 2000 public hearing. None of the comments received or testimony presented raised new substantive issues. In fact, most of the issues raised by commenters were already addressed in the preambles to the proposed rule and interim final rule.

Several commenters at the public hearing objected to our short comment period and our short notice of the public hearing. These commenters stated that they were denied sufficient time to fully analyze the interim final rule and provide meaningful comment because the public hearing took place 3 days after the notice of the hearing was published in the **Federal Register** on December 11, 2000 (65 FR 77292).

MSHA acknowledges that notice was short, but contends that notice was adequate. At the end of the comment period, we had received two requests for a public hearing. We made arrangements for a public hearing, prepared a notice of the hearing for publication in the **Federal Register**, personally notified all commenters and other interested persons on December 7, 2000, and put our hearing notice on our website on Friday, December 8, 2000.

Several parties (FMC Corporation, General Chemical Group, Inc., OCI of Wyoming, Solvay Minerals, and NAA–NSA) have challenged the interim final rule in the U.S. Circuit Court for the District of Columbia Circuit. The United Mine Workers and the National Mining Association are interveners in the lawsuit. The petitioners have indicated that they will argue that affected parties were not provided an adequate opportunity to participate in the rulemaking, and that the HazCom rule is arbitrary, capricious, and contrary to law because of the following, among other things:

- HazCom will not significantly reduce a risk to miners.
- HazCom is unnecessary because it duplicates other MSHA rules, including the parts 46 and 48 training rules.
- HazCom unlawfully delegates the Secretary's rulemaking responsibilities to ACGIH, alleging it violates the Federal Advisory Committee Act.
- HazCom unlawfully incorporates by reference future actions of non-government entities, such as ACGIH, without prior notice and opportunity for comment.

The matter is in abeyance awaiting issuance of the final rule.

6. 2001 Re-opening of the record

As stated previously, commenters to the interim final rule objected to what they perceived as MSHA's failure to provide adequate notice and opportunity to comment. Over the following months, industry trade associations sent MSHA several letters asserting they had new information and reiterating their request to re-open the record. In response, MSHA re-opened the HazCom record for public comment on August 28, 2001 (66 FR 45167); delayed the effective date of the interim final rule until June 30, 2002; and announced seven public hearings to be held across the country from September 25 through October 10, 2001. The record closed on October 17, 2001.

Public response to 2001 re-opening. In this most recent re-opening of the HazCom record, MSHA received 30 written comments. In addition, 52 individuals presented testimony at the public hearings. All commenters agreed with the principle of informing miners about chemical hazards, but there was wide disagreement on the need for a HazCom rule, the effectiveness of some of the rule's requirements, and the magnitude of the burden on mine operators. The substance of the comments, especially those relating operators' experiences with their own hazard communication programs, convinced us that some additional changes to the interim final rule were needed.

In sum, we are confident that we have considered all comments in the rulemaking record in the development of this final standard. While it conforms to the primary purpose of protecting the safety and health of miners, the final standard reflects the public's recommendations to the extent practical, is performance oriented, and minimizes the compliance burden on operators.

II. Discussion of the Final Rule

In preparing this final rule, we considered the concerns and suggestions of all commenters, while balancing the need of miners to have the information necessary to work in a safe and healthful environment.

Commenters to both the proposed and interim final rules supported widely different ideas about a HazCom rule for the mining industry. Some said we do not need one because existing standards require hazard training and labeling; others said it is vital to allow miners to exercise their right-to-know. Some said the rule would be a great burden; others said that they already have such a program. Some said they want a rule

just like OSHA's; others said we should resist the temptation to duplicate OSHA's HCS. Some wanted a separate standard for the coal mining industry; others recommended that we establish separate standards for mine operators and independent contractors; others wanted a single federal standard. Some urged us to include specific language to ensure that individual states do not promulgate or enforce any requirements related to hazard communication that conflict with the federal standard. Commenters recommended that the final rule be practical, strike a balance between providing too much information and too little, and allow for global harmonization with international standards.

In response to the different needs for hazard communication in the mining industry, and the broad range of comments, the provisions of the final rule are performance oriented and flexible enough that operators, including contractors, can comply using a single program to meet OSHA's HCS and our HazCom standard. We considered adopting the OSHA HCS in its entirety, but some requirements of OSHA's HCS are not relevant to mining. As another consideration, OSHA's HCS is supplemented by other OSHA standards for which we have no parallel. OSHA, for example, has comprehensive standards specifically covering hazardous waste operations, laboratories, and medical records. To the extent practical, the substance of our final rule is the same as that in OSHA's HCS. We added provisions where needed, however, to give miners the same protection as employees in general industry.

A. Subpart A—Purpose, Scope, Applicability, and Initial Miner Training

The proposed rule included a ''scope and application'' section stating where HazCom applied and listing exemptions from coverage. In the interim final rule, we renamed this section ''operators and chemicals covered.'' We moved the exemptions, which were a part of the scope in the proposed rule, to the end of the HazCom interim final rule so that the substantive requirements would be up front where they are more accessible. This placement is unchanged in the final rule. (*See* §§ 47.91 and 47.92.) We will discuss exemptions later in the preamble, consistent with their placement in the final rule.

1. Section 47.1 Purpose of a HazCom Standard; Applicability

A few commenters to the proposed rule suggested that we include a ''purpose and intent'' section in our HazCom final rule, in addition to the ''scope and application'' section. In response, the final rule adds language to specify that the purpose of HazCom is to reduce chemically related injuries and illnesses by ensuring that you—

- Know what chemicals are at your mine;
- Determine which are hazardous and the nature of their hazards;
- Establish a HazCom program; and
- Provide each miner with initial HazCom training.

This section of the final rule also includes the compliance dates for application of the rule. For mines employing five or fewer miners, the rule is applicable 9 months from its date of publication in the **Federal Register**. For mines employing six or more miners, the rule is applicable 3 months from its date of publication.

2. Section 47.2 Operators and Chemicals Covered; Initial Training

Operators and chemicals covered. The scope of the final rule remains unchanged from that of the interim final rule. Paragraph (a) of § 47.2 of the final rule states that the standard ''applies to any operator producing or using a hazardous chemical to which a miner can be exposed under normal conditions of use or in a foreseeable emergency.'' This language is consistent with the purpose of HazCom and OSHA's HCS.

The proposed rule specified that the rule would apply ''to all operators who produce or use hazardous chemicals in their workplace'' and to ''any chemical which is known to be present in the workplace in such a manner that employees are exposed * * *.'' Although the proposed rule seemed to apply only where there was an actual exposure, the proposed rule defined *exposed* as ''subjected, or potentially subjected, to a hazardous chemical * * *.'' The preamble to the proposed rule further explained that this definition included ''current and potential (accidental and possible) exposures.''

In the interim final rule we clarified the language of the proposal by stating that HazCom applies ''to any operator producing or using a hazardous chemical to which a miner can be exposed * * *.'' By modifying the language in the interim final rule, we clarified our intent that you must know what hazardous chemicals are present at your mine and evaluate whether it is possible for miners to be exposed under normal conditions of use or in a foreseeable emergency.

The potential for exposure to a hazardous chemical, such as diesel fuel, motor or hydraulic oils, lubricants, paints, or solvents, occurs at every known mining operation. While considering HazCom, we reviewed data and documents from inspections and investigations, chemical inventories, technical reports, accident and injury data, and sampling data confirming that exposure to chemicals occurs in all types and sizes of mines.

Potential exposure. The final rule retains the same concept of the term ''exposed'' as in the proposed and interim final rules. In HazCom, ''exposed'' means subjected or potentially subjected to a chemical hazard. In the context of potential exposure, we intend that you interpret the term ''foreseeable'' broadly as ''anticipated'' or ''expected'' eventually. A potential exposure to a hazardous chemical is foreseeable if the miner is in the same work area as the chemical; spills and leaks are commonplace. However, we also intend HazCom to be practical. We do not intend that you interpret ''foreseeable'' to include situations that are highly remote or speculative.

NIOSH commented on our HazCom proposed rule and interim final rule stating that the scope should not limit coverage of HazCom only to hazardous chemicals ''under normal conditions of use or in a foreseeable emergency.'' NIOSH stated that HazCom should cover all hazardous chemicals present on mine property, regardless of intended or expected exposures. Specifically, NIOSH stated in comments to the proposed rule that:

> All workers should be informed about the nature of the risks associated with the hazardous materials found in their workplace. ''When working in the presence of a hazardous material, hazards are always present even under work situations most carefully designed to eliminate risk'' (NIOSH 1974a). The informed worker is prepared to minimize the impact of a hazardous materials incident. The uninformed worker is at risk of causing a hazardous materials incident or contributing to adverse health effects.

In response to the interim final rule, NIOSH wrote:

> Hazard communication programs should include all workers at the worksite for all possible exposures including unplanned catastrophic occurrences that often involve hazardous materials and may result in exposure to any persons at the worksite.

We partly agree with NIOSH's comments. But we also agree with those commenters who expressed concern that by addressing remote or trivial hazards, the purpose of HazCom would be defeated and its effectiveness diluted. If miners are flooded with warnings about all chemical hazards, including

those they perceive as remotely possible, they may be more likely to ignore warnings for the more probable hazards. We also believe that it would be unnecessarily burdensome to require you to address every conceivable chemical hazard, regardless of how unlikely that hazard is to materialize.

For example, suppose a caustic chemical is only present in a certain area of your bauxite mill and you have miners in this area working near pipes carrying the caustic. You have other miners who work in a remote area of your operation who never go near the mill or the caustic. Although you could conceive of circumstances where the miner who does not work near the pipes can be exposed, it would not be reasonably foreseeable. On the other hand, you can conceive of circumstances where the miner who works daily near the pipes can be exposed. The caustic can eat through a pipe; a truck can back into a pipe; pressure can cause joints to leak. Exposure is foreseeable under these circumstances.

Almost all miners are exposed to crystalline silica, but the potential for illness is related to their exposure to the respirable fraction of dust. For example, suppose your miners work on a concrete floor and there is silica in the concrete. If no cutting, grinding, or other activities occur on the floor that would release the respirable fraction, the potential for exposure to respirable crystalline silica is remote, and the miners are not potentially exposed to a hazard. If you must remove the floor through grinding, cutting, or crushing, the potential for exposure is foreseeable and the concrete would become a hazardous chemical subject to HazCom. Base your decision to include a chemical in your HazCom program on its hazards and the potential for miner exposure.

The final rule sets boundaries on the chemicals and operators covered by HazCom. It is our judgment that these boundaries provide miners the protections intended by the Mine Act without causing you to expend resources on remote possibilities.

Significance of exposures. One of the most frequent suggestions received on both the proposed and interim final rules was that the rule should apply only where significant exposure to a chemical occurs. These commenters asserted that a significant exposure involved a likelihood of material impairment of health to a miner, such as when a miner was overexposed to a hazardous chemical. Miners are frequently and seriously harmed by chemicals in their work area, but HazCom is not a risk-based health standard for measuring exposures, requiring controls, or providing personal protective equipment. Other standards address the problems of significant risk and the methods of controlling it. HazCom is an information standard intended to diminish risk by ensuring that operators provide miners with a level of knowledge and awareness that allows them to reduce their exposures and prevent harm by recognizing potential hazards and by following safe work practices.

HazCom is based on the premise that chemicals can have inherent characteristics that pose hazards and miners have a right to know what those hazards are and what their employer is doing to protect them. Many chemicals are considered to be hazardous because evidence indicates that they can threaten a person's physical well-being. Determining that a chemical is hazardous is not the same as determining that there is a significant risk of any specific physical or health effect occurring from its use under a particular set of circumstances at the mine.

HazCom is being promulgated to *anticipate* the possibility of harm from chemical exposures and provide information on ways to avoid it. It is not intended to regulate chemical use. It does not prohibit or limit the use of chemicals in the mining industry or prescribe controls to reduce exposures. HazCom's effectiveness is dependent on the operator's and miner's knowledge and awareness of hazards. Like any information standard, it is through hazard identification and awareness that HazCom addresses hazardous chemical exposure and prevents injuries and illnesses.

Initial HazCom training. Paragraph (b) of § 47.2 of the final rule is a new paragraph. It requires operators of mines to initially instruct each current miner about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program within certain time periods.

Subpart F of the HazCom interim final rule contained all of the requirements for miner training which were, for the most part, the same as the proposed rule. The interim final rule required operators to train each miner about the hazardous chemicals in his work area before the miner's first assignment to that area, when the operator introduced a new hazardous chemical into the miner's work area, and when the operator became aware of significant, new information about a chemical's hazards. Although the interim final rule did not specify a format for this training, it stated that the HazCom training must include instruction on the physical and health hazards of chemicals in the work area; the requirements of HazCom; the mine's HazCom program; the location and availability of the written HazCom program; the operations or locations where hazardous chemicals are present in the miner's work area; the methods and observations that can be used to detect the presence or release of a hazardous chemical in the work area; the measures that a miner can take to protect himself or herself from these hazards; and specific procedures in place at the mine to protect miners from hazardous chemical exposure.

The training requirements of both the proposed HazCom standard and the interim final rule have been an issue throughout this rulemaking. A number of commenters to the proposed and interim final rules anticipated administrative problems both in conducting and documenting the training. Some urged us to fully integrate HazCom training with existing requirements. Some suggested that language be included to permit operators to satisfy the HazCom training provisions by incorporating HazCom training requirements into parts 46 and 48. Some suggested that we not promulgate training requirements under HazCom, asking us to amend parts 46 and 48 to specify HazCom contents instead. Other commenters felt that HazCom training duplicated EPA training and requested that we avoid needless duplication. Some commenters recommended that we require qualified or certified trainers to conduct the training. A commenter objected to the burden created by having to hire trainers and personnel to perform chemical identifications.

In the interim final rule we stated that although we have standards for labeling toxic substances under parts 56 and 57, these standards do not contain any training requirements on hazardous chemicals. With regard to the existing training under parts 46 and 48, we stated that these training regulations were insufficient for purposes of HazCom training because they do not specify the training content. Parts 46 and 48 basically require instruction in hazard recognition and the health and safety aspects of new work tasks.

After carefully reviewing all comments, and testimony presented at the HazCom hearings, we have decided to create a unified training approach for hazardous chemicals by eliminating all but the initial training requirements from the final rule and adding

conforming amendments to parts 46 and 48 for subsequent HazCom training.

Accordingly, this final rule eliminates the training requirements enumerated under Subpart F of the interim final rule. We believe that the conforming amendments to 30 CFR parts 46 and 48 will maintain the level of safety presented by the interim final rule. The final rule initially requires mine operators to instruct each miner about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program, under new paragraph (b) of § 47.2. We have also added amendments to the training subjects of existing 30 CFR parts 46 and 48 to address the subject of hazardous chemicals. This means that subsequent training on HazCom topics after the initial HazCom training required under § 47.2(b) will be conducted under parts 46 and 48. We believe that these conforming amendments to parts 46 and 48 are necessary to ensure that training on hazardous chemicals is provided under these parts.

Hazardous waste. The final rule, consistent with the interim final rule, does not exempt EPA-regulated hazardous waste from training. Miners that have this type of hazardous material in their work area need all the information available to protect themselves from chemical hazards and from inadvertent exposure that could cause or contribute to an injury or illness.

There are a number of cement operations under MSHA jurisdiction which EPA licenses to burn hazardous waste. These operations typically use the waste as a supplemental fuel for their kilns. In addition, EPA regulates a number of mining operations that dispose of hazardous solid or liquid wastes on mine property. In the proposed rule, we specifically requested comments on the appropriateness of requiring HazCom training for miners who are exposed to EPA-regulated hazardous wastes.

One commenter supported our proposed hazardous waste training requirements. Another stated that we should use Resource Conservation and Recovery Act (RCRA) information for training purposes and copy OSHA's HCS. One commenter recommended that we not require HazCom training unless a miner is exposed to the hazardous waste. Another commenter stated that HazCom training in addition to EPA training may be redundant.

We believe that HazCom's provisions for hazardous waste will not result in duplication because MSHA standards do not fully address hazardous waste operations. OSHA can exempt hazardous waste from its HCS because they have a separate standard that covers hazardous waste operations. HazCom fills an important gap in protecting the health and safety of miners who may be exposed to hazardous waste. HazCom requires operators to label hazardous waste, if it is not already labeled, and provide miners access to any information about the hazardous waste that addresses its components, their health and safety effects, or how to prevent exposure.

As discussed earlier in this preamble, we addressed the issue of how to handle EPA-regulated hazardous waste at all stages of the rulemaking process. We are confident that the coverage of EPA-regulated hazardous waste in the HazCom rule eliminates potential duplicate training and minimizes burden on mine operators while providing protection for miners. EPA reviewed MSHA's HazCom interim final rule and saw no errors or omissions or other issues of concern to them.

Administration of training and compliance assistance. Some commenters to the proposed and interim final rules recommended that MSHA administer the HazCom training because it could result in a higher level of consistency and quality in the training. One commenter to the interim final rule suggested that MSHA cite ANSI Z490.1 *Criteria for Best Practices in Safety, Health, and Environmental Training,* in the final rule for you to follow.

Although we do not intend to conduct the initial HazCom training for you, we will provide information and assistance to trainers through our Mine Safety and Health Academy, Educational Field Services, and the MSHA district offices, and state grantees. We have developed a number of aids for the mining industry to use in implementing a successful HazCom program. You can visit our Web site at *http://www.msha.gov* to find out what is available. We intend to publish a Compliance Guide, a Toolbox, and other information as warranted, apart from HazCom, to assist the industry in complying with the standard. We encourage you to use the ANSI document as a guide for your initial HazCom training or subsequent HazCom training under 30 CFR parts 46 and 48.

Like MSHA, OSHA has developed training materials for its industries, some of which may be helpful to you in developing your initial HazCom training or subsequent training. The training materials are available from OSHA's Web site at *http://www.osha.gov.* Additionally, over the past 15 years, various organizations have developed informational materials, training aids, and model training programs to assist industry in complying with OSHA's HCS. You should be able to use some of this material in developing and conducting HazCom training.

Content of initial miner training. As explained above, § 47.2(b) of the final rule requires operators to initially instruct each miner about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program. Consistent with the proposed and interim final rules, this new provision does not specify the format for this training. The rule allows you to determine the best way to instruct your miners about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program. If miners are exposed to a large number of hazardous chemicals, you could conduct the initial HazCom training by categories of hazards and by referring miners to the substance specific information on the labels and MSDSs and the locations or operations within their work areas where such chemicals are used. If miners are exposed to a small number of hazardous chemicals, you could conduct their initial HazCom training specifically on each hazardous chemical.

The interim final rule specified the content of the HazCom training by stating that the HazCom training must include instruction on the physical and health hazards of chemicals in the work area; the requirements of HazCom; the mine's HazCom program; the location and availability of the written HazCom program; the operations or locations where hazardous chemicals are present in the miner's work area; the methods and observations that can be used to detect the presence or release of a hazardous chemical in the work area; the measures that a miner can take to protect himself or herself from these hazards; and specific procedures in place at the mine to protect miners from hazardous chemical exposure. Final § 47.2(b), along with the conforming amendments to existing parts 46 and 48, contains equivalent protection to the interim final rule. We believe that this modification of the HazCom training requirements does not represent a reduction in safety to miners because the specific training elements of the interim final rule are already integrated in other sections of the final rule, final

§ 47.2(b) and the conforming amendments to parts 46 and 48.

Accordingly, consistent with § 47.52(a), (c) and (g) of the interim final rule, final § 47.2(b) requires mine operators initially to instruct each miner about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program. Additionally, subsequent HazCom training under parts 46 and 48 will include instruction on the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program.

For example, miners will continue to have information regarding the requirements of the HazCom standard under paragraph (a) of § 47.32 and § 47.71 of the final rule. Paragraph (a) of § 47.32, *HazCom program contents,* requires mine operators to specify in the written HazCom program how the requirements of the HazCom standard are put into practice at the mine. Section 47.2 requires operators to instruct each miner about the HazCom program. Section 47.71, *Access to HazCom materials,* requires mine operators to provide all miners, upon request, with access to all HazCom materials required by the rule. Consequently, both §§ 47.32 and 47.71 will ensure that information about the HazCom standard is provided to each miner.

With regards to the interim final rule's requirement to train miners on the location and availability of the written HazCom program, the operations and locations where hazardous chemicals are present in the miner's work area, and the specific procedures in place at the mine to protect miners from hazardous chemical exposure, we believe that the final rule, as well as the conforming amendments to parts 46 and 48, include these. Final § 47.2(b), *Operators and chemicals covered; initial training,* requires mine operators to train miners on the protective measures they can take against the physical and health hazards of chemical's in their work area. It also requires mine operators to train miners on the contents of the mine's HazCom program. Section 47.32 of the final rule, *HazCom program content,* requires mine operators to include in the written HazCom program, among other things, a list of hazardous chemicals known to be at the mine. As with the interim final rule, this list may be compiled by individual areas of the mine or the mine as a whole. Access to all HazCom materials, including the HazCom final rule, is provided under § 47.71.

When you train miners on the physical and health hazards of chemicals in the miners' work areas, the training must include the operations and locations where hazardous chemicals are present. In addition, as part of the information provided to each miner regarding protective measures and the content of the HazCom program, you must inform miners about the location and availability of the written HazCom program, as well as the specific procedures in place at the mine to protect them from hazardous chemical exposure. Final §§ 47.2(b), 47.32, and 47.71, together, will ensure that miners are provided with the appropriate information that will provide protection against chemical hazards at the mine.

Instructor qualifications. Some commenters to the proposed and interim final rules recommended that we require you to conduct HazCom training using only qualified or certified trainers. One of these commenters stated that we should require OSHA qualification for HazCom instructors in mining and that we should require your hazard coordinators to maintain their qualifications by attending formal education or training courses. A commenter expressed concern that unqualified mine supervisors may be conducting HazCom training. Another commenter objected to the burden created by having to hire trainers and personnel to perform chemical identifications.

Consistent with the proposed and interim final rules, the final HazCom standard does not specifically require you to use qualified instructors to conduct the initial HazCom training. We expect, however, that you will use the trainers on your staff to train miners about chemical hazards. The hazardous chemicals brought to your mine will have MSDSs and labels. These will provide information for hazard identification and you should not have to hire or train additional persons to conduct the initial HazCom training.

Mine operators must be aware that, even though final § 47.2(b) does not require the use of a qualified instructor for the initial HazCom training, the final HazCom standard amends existing parts 46 and 48 so that subsequent HazCom training is conducted under those training regulations. All subsequent HazCom training, therefore, must be provided in accordance with the applicable training requirements of parts 46 and 48. Existing part 46 requires that the training be conducted by a competent person designated by the mine operator. Existing part 48 requires the use of an MSHA-approved instructor for the administration of part 48 training.

HazCom training records. MSHA and many commenters have a common concern about paperwork requirements and the recordkeeping burden this places on them. Congress requires us to reduce the amount of paperwork you must keep or submit to us. That requirement is balanced against our need to function effectively in meeting the goals of the Agency.

In view of those factors, and to alleviate mine operator's recordkeeping burden, this final rule does not require mine operators to maintain a record of the initial HazCom training required under § 47.2(b). We believe that this modification provides mine operators with relief from their paperwork burden. We also believe that this change does not represent a reduction of miner safety because we will be able to determine through our compliance assistance and inspection activities whether miners received their initial HazCom training.

MSHA inspectors will be providing compliance assistance at every mine. At the times that inspectors visit the mines, the inspectors can easily determine whether or not the miners have been initially trained in accordance with § 47.2. Discovering whether or not such initial training has occurred should be a focus of the compliance assistance which inspectors will be offering. This determination can be easily made by asking the miners if they have received the training outlined in the rule. Miners will be aware of their rights through the outreach programs planned by MSHA. Mine operators will be aware of their responsibilities based on the information which will be provided by MSHA inspectors and MSHA education and training personnel.

Mine operators are reminded that, even though the HazCom final rule does not contain a recordkeeping requirement for initial training, existing training regulations under parts 46 and 48 contain recordkeeping requirements. Subsequent HazCom training conducted under existing parts 46 and 48 must comply with the recordkeeping requirements of those training regulations.

B. Subpart B—Definitions

HazCom is an information standard focused on developing awareness of chemical hazards. Table 47.11 defines the terms needed for understanding the concepts and requirements in the standard. We defined some terms to have a special meaning for this

standard, but tried to stay consistent with the ordinary meaning of the terms.

1. Using MSHA and OSHA terms

The Mine Act defines the terms *miner* and *mine operator* to identify employees and employers on mine properties and we use those terms in the final rule as they were defined in the statute.

Miners/workers/employees. We used the term *employee* in the proposed rule to identify a person ''working in a mine who may be exposed to a hazardous chemical.'' The proposed rule included a sentence to clarify that the standard did not apply to individuals, such as office workers, who encounter hazardous chemicals only in non-routine instances.

Commenters to the proposed rule recommended that we use the term *miner* instead of *employee.* Many commenters pointed out that *miner* is defined in the Mine Act, and that using this term would be consistent with our statute. Because the term *miner,* as defined in the Mine Act, means any individual working in a coal or other mine, including office workers, some suggested that we could add an exemption for office workers in a separate section.

The example of office workers in the proposed rule was an attempt to clarify that HazCom does not apply to individuals exposed to a hazardous chemical in extraordinary, non-routine situations. We intended this statement in the proposed rule to complement the scope and emphasize that individuals exposed to a hazardous chemical under normal conditions of use or in a foreseeable emergency, regardless of their job category, are covered by HazCom.

You must ensure that hazardous chemicals normally used in or around an office are labeled appropriately and that you have an MSDS for them. You also must inform exposed office workers about the physical and health hazards of chemicals in their work area, the protective measures they can take against these hazards, and the contents of the mine's HazCom program.

For example, some toner cartridges for copying machines come labeled and have MSDSs with them because they contain a hazardous chemical. The label and MSDS will comply with OSHA's HCS. Under HazCom, you must make potentially exposed workers aware of the hazards.

In response to comments, we replaced the term *employee* with the term *miner* in the interim final rule. There were a few instances where *employee* was more appropriate because it made the meaning clearer. There were no comments to those revisions and they were unchanged in the final rule.

Operator/independent contractor/employer. We defined *employer* in the proposed rule as a person engaged in a business where chemicals are either used, distributed, or are produced for use or distribution, including a contractor or subcontractor. We intended the term to describe independent contractors on-site, as well as downstream or OSHA jurisdiction customers. In response to the general comment that we should rely on definitions familiar to the mining community, we replaced the term *employer* with the term *operator* in the interim final rule. We retained a few instances where *employer* was more appropriate because it made the meaning clearer. There were no comments to those revisions and they are unchanged in the final rule.

In the final rule, consistent with the interim final rule, we use *operator* to mean both the mine operator and independent contractor as defined in the Mine Act. In the preamble, we often use the term *you* instead of *operator.* We use the separate terms *mine operator* and *independent contractor* when we want to differentiate between the mine operator responsible for the whole operation and the contractors and subcontractors who have the responsibilities of an operator for specific aspects of the mining operation.

Customer. We determined that a definition was not necessary for *customer* because we use the term as it is commonly understood to mean the downstream users who purchase your products.

Mine/workplace. We defined *workplace* in the proposed rule to mean a mine, establishment, job site, or project at one geographical location containing one or more work areas. The term *mine* is defined by the Mine Act and, like *miner,* is more familiar to the mining industry. *Mine* means the same thing as *workplace* for purposes of HazCom. Accordingly, we substituted the term *mine* for *workplace* throughout the interim final rule. There were no comments to those revisions and they are unchanged in the final rule.

Other terms. Some commenters to the proposed rule suggested that we add definitions for terms not proposed. Several commenters requested that coal mine be defined. The definition for *mine* in the Mine Act includes coal mines and coal preparation facilities. A number of commenters wanted independent contractor defined. We believe this term is well understood by the mining industry. It is used in § 3 of the Mine Act in the definition of *operator;* 30 CFR part 45–Independent Contractors defines this term and it is used in other MSHA standards; and it has been clarified in case law. Separate definitions for these terms are unnecessary. No additional comments were made to the interim final rule and the meanings are unchanged in the final rule.

2. Material Impairment and Significant Risk

Commenters to the proposed rule suggested revising definitions for *exposed, hazardous chemical,* and *health hazard,* among others, so the terms would include the concepts of material impairment and significant risk. They suggested deleting the phrase ''or potentially subjected'' from the definition of *exposed.* (The definition would then read: ''Being subjected to a hazardous chemical in the course of employment * * *.'') Commenters also objected to the proposed rule's definition of *hazardous chemical* because it addressed ''any chemical, in any quantity, at any time.'' A health hazard, according to a commenter, should be a health hazard only under conditions of intended use.

We did not change the definitions for *exposed, hazardous chemical,* and *health hazard* in the interim final or final rules to include the concepts of material impairment or significant risk. If these changes were made in HazCom, the final rule would have taken a significant departure from its intended purpose. A fuller discussion of material impairment and significant risk is found under Purpose and Scope in this preamble.

3. Section 47.11 Definitions of Terms Used in This Part

A number of the terms defined in HazCom are commonly used by chemists, physicists, and health and safety professionals to identify and describe specific types of physical and health hazards or physical properties of chemicals. We have defined these terms in the clearest way we could, sometimes balancing technical precision with general clarity. For clarity and ease of reference, the final rule also includes the meanings of the abbreviations CPSC, EPA, and OSHA in the table of definitions. We believe this subpart provides you with the information you need to understand what HazCom requires and how to comply with it.

Access. The final rule, like the proposed and interim final rules, defines *access* as the right to examine and copy records. One commenter to the proposed rule wanted this definition to

specify that you must provide access without cost to the miner. Another commenter to the proposal did not want the definition to include the right to copy records. Other commenters to the proposal suggested that we consolidate the access provisions in a single subpart rather than repeat them for each subpart.

HazCom's final rule is organized consistent with the interim final rule and uses the term *access* principally in the subpart ''Making HazCom Information Available''. We believed the creation of this would make the requirements clearer and easier to use as well as respond to those commenters who asked us to consolidate provisions from several sections of the proposed rule. Because of the amount of detailed, technical HazCom material, particularly MSDSs, we believe that the intent to provide information to miners is best served if miners have the right to a copy of the material. The cost for providing free copies is a condition for providing access and not appropriate in a definition.

Article. The proposed rule defined *article* to mean a manufactured item other than a fluid or a particle that—

(a) Is formed to a specific shape or design during manufacture;

(b) Has end-use functions dependent upon its shape or design; and

(c) Under normal conditions of use, releases no more than small quantities (that is, minute or trace amounts) of a hazardous chemical, such as the off-gassing of plastic pipes, and does not pose a physical or health risk to employees.

Numerous commenters to the proposed rule agreed with the definition in the proposed rule, except for paragraph (c). They claimed that paragraph (c) was unclear about how much of a hazardous chemical released from a manufactured item under normal conditions of use would constitute either small, minute, trace, or *de minimis* quantities. They also asked that we clarify that *article* means conveyor belts, repair steel, and other equipment and supplies commonly found at mines. To determine when an article is a hazardous chemical, some commenters suggested that the definition include a *de minimis* provision, while other commenters wanted a significant risk provision. One commenter to the proposed rule wanted the term ''under normal conditions of use'' deleted from the definition because it would limit the scope of the standard.

Another commenter expressed concern that iron ore pellets would be considered a hazardous chemical under HazCom. Iron ore pellets, like bricks, are manufactured articles. Before they are pellets, however, the iron ore is a raw material which contains respirable crystalline silica. Both the respirable dusts of iron ore and silica are inhalation hazards because they can cause lung damage. When they can pose a hazard to exposed workers, these raw materials are covered by HazCom. As raw material, iron ore is exempt from labeling under HazCom while on mine property. The pellets are exempt from HazCom when they are formed into articles, provided that they do not release more than insignificant or trace amounts of a hazardous chemical and do not pose a physical or health hazard.

We agreed with those commenters to the proposal that the definition created confusion. We believe that the confusion arose because the defined term also included the criteria for exemption, which was contrary to the ordinary understanding of the word. An article is first of all a class of material things. An item manufactured to a shape or design that determines its end-use functions will be an article, in the ordinary sense of the word, whether it gives off trace amounts of a hazardous chemical or larger amounts. The exemption of an article, however, is dependent on how the article is used.

To clarify the standard's intent, we moved proposed paragraph (c) from Definitions to Exemptions to indicate that only articles that give off no more than insignificant or trace amounts of a hazardous chemical, and are neither a physical nor a health hazard, are exempt. The definition in the final rule describes manufactured goods, other than a fluid or particle, without regard to the chemical hazard produced. The Exemptions subpart now addresses the distinction between exempt and non-exempt articles. We believe that this change is non-substantive, and clarifies the final rule. The final rule, like the interim final rule, uses the same language as the proposed rule except for the movement of the last provision to Exemptions.

To illustrate the intent of the change, suppose you purchase a tire and use it on a haul truck. While on the truck, the tire may give off a trace amount of a hazardous chemical. Under this use, the tire is an article exempt from HazCom. When the tire is worn out and can no longer be safely used on the truck, you may send it to a mine that uses tires to supplement the fuel for a kiln. While burning, the tire gives off significant amounts of hazardous chemicals. The tire is still an article, but no longer exempt from HazCom. If they are exposed, the miners working at the kiln must be trained about the chemical hazards associated with the burning tire.

Chemical. The final rule, like the proposed and interim final rules, defines *chemical* as any element, chemical compound, or mixture of these. One commenter to the proposed rule assumed that, for the purposes of HazCom, the definition of *chemical* could be interpreted broadly to include the by-products of chemical reactions. We agree. A by-product of chemical reactions is a separate chemical and may have different hazards than the chemicals used to produce it. We intend that you address any by-products as you address other chemicals you produce.

Chemical name. The proposed rule defined *chemical name* as the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rule of nomenclature, or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation. A commenter to the proposed rule recommended that the definition specify Registry of Toxic Effects of Chemical Substances (RTECS) numbers, as well as CAS numbers. Although RTECS numbers are not as widely accepted as CAS numbers as a means of identifying a specific chemical, they are unique and precise and may be used, as well as IUPAC numbers. HazCom's interim final and final rules retain the proposed rules definition for *chemical name.* There were no subsequent comments received concerning the definitions or this discussion in the interim final or final rules.

Common name. In the proposed rule, we defined *common name* as any designation or identification, such as a code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name. Commenters generally supported the proposed definition for the term *common name,* which remains the same in the final rule. This definition is consistent with the OSHA HCS.

Consumer product; food; food additive; color additive. We exempted *consumer products, foods, food additives,* and *color additives* in the proposed rule, but we did not define them. The exemptions, however, referred to the definitions of these terms in the Consumer Product Safety Act (CPSA) and the Federal Food, Drug, and Cosmetic Act. Commenters to the proposed rule asked us to clarify the meaning of these terms, although the

concerns appeared to center on consumer products.

We did not define *food, food additive,* or *color additive* in the interim final or final rules because we use these terms as they are commonly understood and we believe the public knows what they mean. We received no comments about the use of these terms in response to the interim final rule.

We defined *consumer product* in the interim final rule, in part, by developing it from the exemption in the proposed rule and referring to the CPSA. The proposed rule would have exempted consumer products as defined in the Consumer Product Safety Act (15 U.S.C. 2051) when they are subject to consumer product safety standards or labeling requirements issued under this Act. The interim final rule required you to consider ''the manufacturer's intent,'' ''the level and duration of exposure,'' and its labeling under the CPSA. Commenters to the interim final rule asked that we provide a definition for *consumer product* that would serve as a practical guide, rather than refer to CPSA. One commenter suggested that ''EPA's consumer products definition [in SARA] is more practical than MSHA's and achieves the result MSHA intended.''

In response to comments, we revised the definition for *consumer product* in the final rule to be easier to understand by keying it to packaging, labeling, and distribution rather than referencing another federal statute. We decided to use the Consumer Products Safety Commission's (CPSC's) concept of consumer product, rather than SARA's, because both HazCom and OSHA's HCS refer to CPSC's definition. The CPSC's definition clarifies the exemption, is compatible with HazCom and OSHA's use of the term, and provides the necessary protections for miners. Even so, we intend that the definition and exemption cover the same chemical products and uses as the proposed and interim final rules and OSHA's HCS. We believe that by defining *consumer product* as being packaged, labeled, and distributed in the same form and concentration as it is sold for use by the general public, the definition is simpler and easier to understand. A full discussion of consumer products can be found in Subpart J, Exemptions, later in this preamble.

Container. As in the proposed and interim final rules, the final rule defines *container* as any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like that contains a hazardous chemical. The definition further states that pipes or piping systems; conveyors; and engines, fuel tanks, or other operating systems or parts on a motor vehicle (such as tires) are not considered to be containers.

One commenter to the proposed rule wanted pipes that contain hazardous chemicals to be considered containers. We consider it impractical to label pipes and piping systems containing hazardous chemicals. In numerous cases, these systems are used for different chemicals at different times, depending upon the needs of the operation. Our existing training standards require you to train miners about the hazardous chemicals to which they may be exposed in their work area. These are the same chemicals that would be transported in pipes and piping systems. In addition, the initial HazCom training requirements of this final rule cover the hazards of chemicals contained in pipes or piping systems in the miners' work areas.

Designated representative. The final rule, like the proposed and interim final rules, defines *designated representative* as any individual or organization to whom a miner gives written authority to exercise that miner's right of access to records. A miner's representative, to contrast the two terms, is any individual or organization representing two or more miners.

Many commenters to the proposed rule wanted to limit the miner's choice of a designated representative to the duly selected collective bargaining representative, a member of a safety and health committee chosen by the miners, or an individual miner selected as the walkaround representative by the miners at the same mine. We feel that if we had adopted any of these suggestions, we would have restricted a miner's options.

Consistent with the proposed and interim final rules, the definition of *designated representative* in the final rule allows the miner to choose anyone as his or her designated representative, including the collective bargaining or miners' representative. We anticipate that in most instances, the designated representative will be one of those, but it could also be a miner's personal physician, attorney, or other person or organization of the miner's choosing.

Employee; employer. The proposed rule defined *employee* as any individual working in a mine who may be exposed to a hazardous chemical. Individuals such as office workers who encounter hazardous chemicals in non-routine instances were not covered. Consistent with the interim final rule, we use the term *miner* in the final rule rather than *employee* and HazCom, therefore, does not include a definition for *employee.*

The proposed rule defined *employer* as a person engaged in a business where chemicals are either used, distributed, or are produced for use or distribution, including a contractor or subcontractor. We use the term *operator* in the final rule rather than *employer* and HazCom, therefore, does not include a definition for *employer.* A fuller discussion of OSHA and MSHA terms is found in the preamble just before this section on Definitions.

Exposed. The proposed rule defined *exposed* as being subjected, or potentially subjected, to a hazardous chemical in the course of employment through any route of entry, such as inhalation, ingestion, or skin absorption, during normal operating conditions or in a foreseeable emergency.

A number of commenters to the proposed rule wanted the phrase ''or potentially subjected'' deleted from the definition of *exposed* because it is vague and open to interpretation. Other commenters wanted to modify the definition to read ''reasonably foreseeable emergency,'' and several commenters wanted to delete the entire phrase. Another commenter to the proposed rule wanted the term *exposed* to be defined as being subjected, or potentially subjected, to exposure equal to or above the MSHA limit for a hazardous chemical.

Excluding potential exposure to a hazardous chemical, when the chemical does not have an MSHA limit or when the exposure may be below the limit, would circumvent the intent of HazCom to have miners aware of potential problems and take action to avoid them. In addition, other MSHA standards set requirements for controlling the miner's exposure to hazardous chemicals. The final rule, consistent with the interim final rule, does not incorporate these suggested changes, nor does it retain the phrase ''during normal operating conditions or in a foreseeable emergency'' in the definition of *exposed.* As with the changes in the definition of *article,* this phrase addressed a condition of use and confused the normal understanding of the term *exposed.* The phrase ''potentially subjected'' covers those situations where the threat of exposure to hazardous chemicals exists. We employ the phrase ''during normal operating conditions or in a foreseeable emergency'' with the term *exposed* in § 47.2 to describe when HazCom applies. We intend this definition to cover the same mine conditions as the proposed rule and, therefore, this revision has no reduction in protections for miners.

Foreseeable emergency. The proposed rule defined *foreseeable emergency* as any potential occurrence for which you would normally plan, such as equipment failure, rupture or spill of containers, or failure of control equipment, that could result in an uncontrolled release of a hazardous chemical into the work area. Many commenters to the proposed rule stated that the phrase ''for which operators would normally plan'' is vague and open to interpretation and abuse and should be removed from the definition. Several of these commenters wanted to substitute ''reasonably plan'' for ''normally plan.''

The phrase, ''for which you would normally plan,'' was intended to clarify the scope of ''foreseeable'' emergencies to provide some guidance that HazCom does not apply to remotely possible and speculative emergencies. In response to the commenters, the final rule, unlike the proposed and interim final rules, does not include the phrase ''for which you would normally plan,'' in its definition of *foreseeable emergency.* We believe operators know about normal planning for emergencies because of the mining industry's history of planning to prevent disasters, particularly explosions and cave-ins. We will consider an emergency to be foreseeable if we can reasonably expect you to know that it could occur due to the nature of the mining operation.

Hazard warning. The proposed rule defined *hazard warning* as any word, picture, or symbol appearing on a label or other appropriate form of warning that conveys the specific physical and health hazards of the chemical in the container, including target organ effects. (See the definitions for *physical hazard* and *health hazard* for examples of the hazards that must be communicated.)

One commenter to the proposed rule suggested that appropriate protective measures should be required as part of hazard warnings. Although giving information about protective measures is a vital part of HazCom, we already address this information in the provisions for MSDSs, and initial HazCom training. Additionally, we are also including this subject as a training subject under parts 46 and 48. The purpose of the hazard warning in labeling is to convey critical information immediately. We believe that the most critical information for labeling is the name of the chemical and its hazards.

Consistent with the interim final rule, the final rule defines *hazard warning* as any words, pictures, symbols, or other forms of warning that convey the specific hazards of the chemical. We removed the text specifically referencing target organ effects or containers from the definition for *hazard warning* in the final rule because it was redundant. Labeling requirements in subpart D of HazCom address containers, and the definitions of *health hazard* and *physical hazard* address the effects of hazardous chemicals, including target organs.

Hazardous chemical. To be consistent with changes in the definitions of *health hazard* and *physical hazard,* we changed the definition of *hazardous chemical* in the final rule to mean any chemical that can present a physical hazard or a health hazard. We included the criteria for determining whether a chemical is hazardous in § 47.11, Identifying hazardous chemicals. In the proposed rule, we had defined *hazardous chemical* as any chemical that is a physical hazard or a health hazard.

One commenter to the proposed rule suggested that the definition of *hazardous chemical* convey the concept that a chemical be considered hazardous based on whether it exists in a quantity or is used in a manner that could present a reasonable risk of overexposure to a miner. Several other commenters to the proposed rule suggested that the definition exempt coal and related raw materials and consumer products. Another wanted *hazardous material* to be substituted for *hazardous chemical,* stating that it would be more readily understood. As an example, this commenter stated that asbestos and gasoline are highly hazardous, yet they are not commonly referred to as chemicals.

If we based the application of HazCom on the quantity of a chemical present, it would allow you to ignore chemicals with known hazards if they are in small quantities. Some hazardous chemicals are not evenly dispersed in a mixture of dusts, liquids, or gases, and pockets of high concentration can pose a hazard even if the quantity is low. We believe that it is far more protective, and necessary to prevent injury or illness, to train miners about the presence of the chemical, signs and symptoms of exposure, safe work practices, precautionary measures, and the need to keep engineering controls in proper working order, rather than argue about what level of risk is reasonable or significant and then wait until there is a risk to inform the miners about it.

Exemptions of coal, raw materials, and consumer products from the definition of *hazardous chemical* would, in effect, exempt these substances from HazCom. In conjunction with the definition of *chemical* in this final rule, the definition of *hazardous chemical* adequately addresses our intent that common hazardous substances, such as gasoline, are to be considered hazardous chemicals.

Hazardous substance. Both EPA and CPSC regulate hazardous substances. We borrowed the term *hazardous substance* from those agencies to identify chemicals regulated by them and exempt from HazCom or its labeling provisions. We define the term *hazardous substance* in this final rule specifically to clarify which hazardous substances are exempt from HazCom or HazCom labeling because they are regulated by CPSC under the Federal Hazardous Substance Act (15 U.S.C. 1261 *et seq.*) and which are exempt from labeling because they are regulated by EPA as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*).

The proposed rule did not define the term *hazardous substance,* but used it in the provisions for exemptions. A number of commenters to the proposed rule felt that *hazardous substance* should be defined because it is used in the rule. We did not define *hazardous substance* in the interim final rule; however, its meaning and use was the same as in the proposed rule and consistent with OSHA's HCS.

Hazardous waste. The final rule uses the same definition of *hazardous waste* as in the proposed and interim final rules. We intend that our use of the term *hazardous waste* be consistent with both OSHA's and EPA's use of this term. HazCom defines *hazardous waste* as any chemical regulated by the Environmental Protection Agency (EPA) as a hazardous waste, as such term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901 *et seq.*).

Many commenters to the proposed rule wanted *hazardous waste* re-defined to include only those chemical wastes which, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may result in death or serious illness or pose a substantial hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed. One commenter to the proposed rule requested that HazCom include an operational definition for *hazardous waste.*

We believe that an operational definition of *hazardous waste* specifically for mining operations would cause confusion for you in complying with other federal and state standards. Other wastes from the mining

operation or brought to the mine that are not regulated by EPA also can contain hazardous chemicals. The primary difference between the hazardous waste regulated by EPA from those unregulated by EPA is the amount of information that you can expect from the supplier. Although HazCom exempts EPA-regulated hazardous wastes from labels and MSDSs, the final rule, consistent with the interim final rule, requires you to instruct miners who can be exposed about their hazards. We are especially concerned that you obtain enough information to instruct miners about those wastes that are brought to mine property, the content and hazards of which may be unknown to you.

Health hazard. The term health hazard in the final rule is substantively the same as the proposed and interim final rules. It describes those chemicals that can present a risk of disease or other harmful health effect to an exposed miner. The proposed rule defined *health hazard* as ''[a] chemical for which acute or chronic health effects may occur in exposed employees.'' The proposed rule then listed the types of illness or injury that we consider to be health hazards and also included Appendices A and B to provide more detailed explanations of these hazards.

A few commenters to the proposed rule wanted *health hazard* defined (as in OSHA's HCS) as a chemical for which there is statistically significant evidence of significant risk based on at least one valid study. Another of the proposed rule's commenters stated that much of the information in the definition was overwhelming and that the inclusion of Appendix A and Appendix B as part of the definition was inappropriate and confusing. Some suggested that the final rule reference 30 CFR parts 56, 57, 70, 71, and 75 instead of Appendices A and B.

We agreed with the commenters that the terms were somewhat obscure and drafted the definition in the interim final rule to be clearer. We also deleted the appendices to eliminate that potential source of confusion. In response to comments and for the sake of clarity, we added that there must be statistically significant evidence that the chemical can do harm and described the types of illness and injury in plain language.

In response to comments to the interim final rule, we clarified the definition in two additional ways. First, we deleted the phrase ''psychological and behavioral problems'' from the listing for nervous system disorders. Commenters to the interim final rule had objected to its inclusion, pointing out that operators may be unable to distinguish between psychological disorders and abnormal behavior caused by occupational exposure to a chemical. By deleting those terms, however, we do not mean to suggest that some abnormal behaviors may not be linked to chemical exposures. A number of chemical exposures can result in the appearance of a psychological or behavioral disorder. For this reason, miners need to know when they are working with a chemical that can cause them to act in an apparently abnormal manner and what those symptoms might be. If the MSDS or label lists behavioral or mood changes as a result of exposure to the hazardous chemical, it needs to be addressed in your HazCom program. We deleted this phrase from the rule, but not from the preamble because psychological and behavioral problems, such as mood swings or abnormal behavior, can be a manifestation of central nervous system damage or poisoning.

Our second change adds a category for toxic and highly toxic agents, clarifying that HazCom covers hazardous chemicals that can cause harm not specifically listed in the definition. ''Toxic'' and ''highly toxic'' are technical terms used to describe two levels of danger (virulence).

We believe that the final rule clarifies the intent, meaning, and use of the proposed and interim final rule definitions of *health hazard,* making them more consistent with OSHA's HCS while not reducing protections for miners.

Health professional. We use the term *health professional* in the subpart on Trade Secrets in addressing two situations: an emergency situation when the trade secret information may be needed to save a life, and a non-emergency situation when the information may be needed, but not immediately. The term was undefined in the proposed rule, but, consistent with OSHA, cited examples, referring to a treating physician or nurse. We received comments to the proposal that others, such as emergency medical technicians, may need access to this information in an emergency and should be included.

In the interim final rule, we defined *health professional* as a ''physician, nurse physician's assistant, emergency medical technician, industrial hygienist, toxicologist, epidemiologist, or other person qualified to provide medical or occupational health services.''

One commenter to the interim final rule asked that ''occupational'' not be used restrictively to limit the term *health professional.* Another commenter to the interim final rule asked that health professionals be licensed individuals. This would eliminate industrial hygienists, for example, who may be board certified, as well as some otherwise qualified nurses and technicians.

Some commenters to the proposed and interim final rules asked that we include ''safety professionals'' among those who must be given trade secret information that may otherwise be withheld. They stated that it is necessary to add safety professionals to the definition of *health professional* because many mines do not have industrial hygienists; their safety professionals monitor, review, and make corrective recommendations about the health hazards present at the mine.

In response to comments to the interim final rule, we re-defined *health professional* in the final rule to include a physician, nurse, physician's assistant, emergency medical technician, or other person qualified to provide medical or occupational health services. Rather than listing many professionals which could be misinterpreted as exhaustive, we edited the definition, leaving the ''other person qualified'' to include other individuals, such as those who are qualified by their position or training. Thus, all persons qualified to provide occupational health service are covered. We also discuss this issue under Subpart I, Trade Secrets.

This definition is intentionally flexible to allow you to make decisions that focus first on the needs of the miner. The phrase ''or other person qualified'' allows industrial hygienists, toxicologists, epidemiologists, and safety professionals to obtain trade secret information under the trade secret provisions of this final rule if needed to provide medical or occupational health services to miners.

HazCom does not require that the health professional be licensed. We believe that the definition in the final rule is restrictive enough to protect trade secret information about the chemical composition of a material, but broad enough to give access to those who need it.

We expect that trade secret chemical information may be needed when a miner is being treated as a result of a chemically related injury or illness. Only persons involved in treatment, researchers looking into the causes of injuries or illnesses, or the exposed miners or their designated representatives must be given access to this critical information when it is needed.

Identity; specific chemical identity. The final rule, as did the interim final

rule, retains the proposed definition of *identity* as a chemical's common or chemical name, which must permit cross-references among the required list of hazardous chemicals, the label, and the MSDS. The proposed rule defined *specific chemical identity* as the chemical name, CAS number, or any other designation that precisely identifies the chemical. One commenter suggested that the definition of *specific chemical identity* duplicate that of *identity.*

For purposes of HazCom, we determined that *specific chemical identity* was an unnecessary term because the final rule, consistent with both the proposed and interim final rules, defines the terms *identity, chemical name,* and *common name* which duplicate its definition. The proposed rule had defined *chemical name* to include CAS numbers, *common name* to include other designations, and *identity* to include the chemical name and common name. We do not use or define the term *specific chemical identity* in the final rule because the character of the chemical identity will already be known throughout other definitions and, therefore, there is no reduction of protections for miners.

Immediate use. The term *immediate use* in the proposed rule clarified under what conditions it would be appropriate to use an unlabeled, temporary, portable container. In the proposed rule, *immediate use* meant that the miner who transferred the substance from a labeled container into a temporary, portable, unlabeled container must use it during the same work shift. We removed this term from the Definitions subpart in the interim final rule and, instead, incorporated the proposed definition in the standard. The final rule, the same as the interim final rule, does not include a definition for this term.

Label. The proposed rule defined *label* as ''any written, printed, or graphic material, displayed on or affixed to containers of hazardous chemicals.'' We define *label* in the final rule in essentially the same way. For the final HazCom rule, consistent with the interim final rule, however, we added the phrase ''to identify its contents and convey other relevant information'' and deleted the phrase ''of hazardous chemicals'' in an effort to make this definition consistent with the common understanding of this term. A label on a container usually identifies its contents, whether or not it contains a hazardous chemical.

Material safety data sheet (MSDS). We defined *material safety data sheet (MSDS)* in the proposed rule as written or printed material that an operator prepares in accordance with HazCom's requirements, or which the manufacturer or supplier prepares under OSHA's HCS for hazardous chemicals brought to the mine. One commenter to the proposed rule urged us to include an operational definition for MSDS rather than reference HazCom's requirements or OSHA's HCS. An operational definition, without reference to the standards, misses the purpose we intend for an MSDS, that is, to be an information fact sheet that conforms to the cited regulatory requirements.

A commenter to the interim final rule suggested we allow other data sheets, or allow the operator to use any source so long as that data sheet conveyed comparable information to what was required.

Although HazCom does not require a specific format, we do encourage you to use an established format for consistency within the mining industry and to be in accord with other industries, your customers. Consistent with the interim final rule, in the final rule, we revised the definition of MSDS without changing its requirements. We also expanded the reference beyond OSHA standards to include other reliable, authoritative sources of chemical information, such as a workplace hazardous material information sheet (WHMIS) and an international chemical safety card (ICSC), and by referencing Table 47.52 describing the contents.

Mixture. The final rule, as did the interim final rule, retains the proposed definition of *mixture* as ''any combination of two or more chemicals which is not the result of a chemical reaction.'' We intend that the definition of mixture be applied broadly to include both solutions of chemicals and combinations of chemical solids. A characteristic of any mixture is that its individual components could be separated by mechanical or physical methods.

One commenter felt that this definition would include those chemical by-products or impurities in trace amounts that are contained in otherwise pure chemicals and that we should clarify the definition. We intend that you treat pure compounds or elements as individual chemicals, rather than as mixtures, even when they contain small amounts of other chemicals as impurities. This treatment is similar to our treatment of trace releases from articles and is consistent with OSHA's HCS.

Operator; miner. As discussed above, and in response to commenters to the proposed rule, the final rule uses the mining terms *operator* and *miner,* as defined in the Mine Act, instead of *employer* and *employee,* as we did in the interim final rule. Section 3 of the Mine Act defines *operator* as—

> * * * any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor performing services or construction at such mine * * *

and *miner* as ''any individual working in a coal or other mine.''

Ordinary consumer use. The final rule defines *ordinary consumer use* as ''[h]ousehold, family, school, recreation, or other personal use or enjoyment, as opposed to business use.'' The interim final rule had defined the term as ''a product or article packaged by the manufacturer or retailer for ordinary household, family school, recreation, or other personal use or enjoyment, as opposed to business use, and the miner's exposure is not more than it would be for an ordinary consumer using the product as the manufacturer intended. The proposed rule did not define the term, but the underlying idea was used to explain the *consumer product* exemption. A consumer product was exempt when ''used in the workplace in the same manner as in normal consumer use and the use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers.''

In response to comments to the proposed and interim final rules, the definition for *ordinary consumer use* in the final rule differs from the interim final rule. Commenters suggested that the definition in the interim final rule was vague and too subjective. For the purpose of HazCom and to make the definition easier to understand, we define the phrase *ordinary consumer use* in the final rule to mean ''household, family, school, or other personal use or enjoyment, as opposed to business use.''

To be considered *ordinary consumer use,* the miner cannot be exposed to the product at more than the same concentration, frequency, and duration of time than an ordinary consumer would. For example, using an organic solvent that is an ingredient in a hand soap in a washroom would be considered ordinary consumer use. Using that same solvent as a detergent in a flotation reagent is not.

Pesticide. The term *pesticide* appears in the final rule, as it did in the interim final rule, to clarify that pesticides are regulated by another federal agency and are exempt from HazCom. We do not define this term.

Physical hazard. The term *physical hazard* is used to describe those chemicals with properties that can present a risk of injury to a miner. The proposal defined *physical hazard* as a ''chemical which is a combustible liquid, a compressed gas, an explosive, flammable, an organic peroxide, an oxidizer, a pyrophoric, unstable (reactive) or water-reactive.'' Each component comprising the definition of *physical hazard* was then defined as a separate term under the definitions. The interim final and final rules define *physical hazard* in the same terms, but include the definition for each component within the definition of *physical hazard.* The significant comments to the definition in the proposed, interim final, and final rules are discussed below in the sections for each component.

(1) *Combustible liquid.* We defined *combustible liquid* in the proposed rule as a liquid with a flashpoint at or above 100°F (100 degrees Fahrenheit) which is 37.8°C (37.8 degrees centigrade). The proposed rule listed the following three classes of combustible liquids:

(a) Class II liquids—those having flashpoints at or above 100°F (37.8°C) and below 140°F (60°C).

(b) Class III A liquids—those having flashpoints at or above 140°F (60°C) and below 200°F (93.4°C).

(c) Class III B liquids—those having flashpoints at or above 200°F (93.4°C).

OSHA's HCS had defined a *combustible liquid* as a liquid having a flashpoint at or above 100°F but below 200°F, except any mixture having components with flashpoints of 200°F or higher, the total volume of which make up 99% or more of the total volume of the mixture. Commenters to the proposed rule stated that it would be preferable to have our definition of *combustible liquid* coincide with OSHA's definition, because many facilities are covered by both rules.

We believe that the proposed definition of *combustible liquid* is compatible with OSHA's definition. We had proposed the list of the various classes of combustible liquids to match the definition in other MSHA standards. In response to proposed rule commenters, however, the interim final rule did not list these classes of combustible liquids. The interim final and the final rules, consistent with OSHA's HCS, define *combustible liquid* as a liquid having a flashpoint at or above 100°F (37.8°C) and below 200°F (93.3°C) or a liquid mixture having components with flashpoints of 200°F (93.3°C) or higher, the total volume of which make up 99% or more of the mixture.

(2) *Compressed gas.* We defined *compressed gas* to mean a contained gas or mixture of gases with an absolute pressure exceeding 40 psi (pounds per square inch) [276 kPa (kiloPascals)] at 70°F (21.1°C) or 104 psi (717 kPa) at 130°F (54.4°C) regardless of pressure at 70°F (21.1°C). In the final rule, we consider a liquid to be a compressed gas when its vapor pressure exceeds 40 psi (276 kPa) at 100°F (37.8°C), as determined by ASTM D–323–82.

The proposed and interim final rules had incorrectly referenced ASTM D–323–72, as did the OSHA HCS. We found that this was in error; ASTM D–323–72 does not exist. OSHA's docket for its HCS contains the ASTM D–323–82 standard. Although we corrected the designation for the ASTM standard to D–323–82 in our final rule, the substance of this definition is consistent with OSHA's HCS and the intent of the proposed and interim final rules.

One commenter to the proposed rule stated that the definition of *compressed gas* includes compressed air in motor vehicle tires and air compressors. Although compressed air meets the definition in HazCom for a compressed gas, an inflated tire is an article and exempt from HazCom. Also, an inflated tire is part of a motor vehicle and, thus, is not a container under HazCom. Neither do we consider compressed air in a tire or compressor to be a hazardous chemical under HazCom. A shop compressor contains compressed, ambient air and, unlike compressed gas cylinders, it is equipped with a safety valve to release excess pressure. We recognize that serious hazards exist when working with inflated tires and compressed air receivers, but we address these hazards in our safety standards. We do not require an MSDS or a label for compressors or compressed air.

(3) *Explosive.* We defined *explosive* in the proposed rule in the same way as it is defined in OSHA's HCS and added a reference to Department of Transportation (DOT) requirements. There were a number of comments that objected to the reference to DOT in the standard. In response to proposed rule commenters, we eliminated this reference in the interim final rule, and because we received no significant comments, left the definition unchanged in the final rule. We rely on the more common definition of *explosive* as a substance that undergoes a rapid chemical change causing a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature. Consistent with the interim final rule, we intend this definition to cover the same substances in the final rule that were covered in the proposed rule and, therefore, there will be no reduction of protections to miners. We believe the term will be better understood by the mining industry.

(4) *Flammable.* We defined *flammable* in the proposed rule as a chemical that is an aerosol, a gas, a Class I liquid, or a solid that would meet specific criteria relating to its capability to ignite, to burn, and to sustain a flame. The proposed rule referenced testing methods in 16 CFR and classifications of explosives in 49 CFR, but did not include a specific publication date. A proposed rule commenter requested that we include the dates of publication for references in the definition of *flammable.* This commenter also stated that unless—

> * * * operational definitions are included in the rule, it is difficult to understand, and becomes a deterrent to compliance. The mine supervisor should be able to look at the definition and determine if an item such as a conveyor belt is flammable.

As with the term explosive, we recognize that the proposed definition was highly technical and that a simpler, more generally understood definition would better serve the industry. Accordingly, and in response to comments, the final rule, like the interim final rule, defines a *flammable* chemical as one that will readily ignite and, when ignited, will burn persistently at ambient temperature and pressure in the normal concentration of oxygen in the air. We intend that this definition include the same chemicals as would have been included under the proposed definition and under OSHA's HCS.

We did not define *flashpoint* in the interim final and the final rules. We believe that qualified persons who already know the meaning of the term will be determining a chemical's flashpoint.

(5) *Organic peroxide.* The proposed and interim final rules defined *organic peroxide* as an ''explosive, shock sensitive compound or an oxide that contains a high proportion of oxygen-superoxide.'' We received no specific comments on this definition. It is unchanged in the final rule except for the addition of the word ''organic'' to clarify the description of the chemical to read ''An explosive, shock sensitive, organic compound or an oxide that contains a high proportion of oxygen-superoxide''. Because it is a clarification, this will not reduce protection for miners. We intend the definition in HazCom to be essentially

the same as in OSHA's HCS. OSHA defined organic peroxide as—

> * * * an organic compound that contains the bivalent—O|O structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

(6) *Oxidizer.* The proposed rule defined *oxidizer* as a chemical other than a blasting agent or explosive as classified in 49 CFR 173.53, 173.88, 173.100 or 173.114(a) that initiates or promotes combustion in other materials, thereby causing fire by itself or through the release of oxygen or other gases. This definition is consistent with the definition for *oxidizer* in OSHA's HCS. A commenter to the proposed rule objected to our referencing 49 CFR in our definition of this term. We simplified the definition to make it more understandable, eliminating the reference from the interim final and final rules. This change is not a substantive one and, therefore, does not reduce miner safety and health protections.

(7) *Pyrophoric.* The final rule, as did the interim final rule, retains the proposed definition of *pyrophoric.* We made minor editorial changes for clarity. This definition is consistent with that in OSHA's HCS.

(8) *Unstable (reactive).* The final rule incorporates the language of the proposed and interim final rules. It defines the term as a chemical which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or become self-reactive under conditions of shock, pressure, or temperature. No comments were received concerning the definition of this term. This definition is consistent with OSHA's HCS.

(9) *Water-reactive.* We defined *water-reactive* in the proposed and interim final rules as a chemical that reacts with water to release a gas that is either flammable or a health hazard. The final rule uses this same language. No comments were received concerning the definition of this term. This definition is consistent with OSHA's HCS.

Produce. We defined *produce* in the proposed rule to mean ''manufacture, process, formulate, or repackage.'' This definition, together with the definition for *use,* is intentionally broad to include any situation where a hazardous chemical is present in such a way that a miner may be exposed.

We received a few comments supporting the proposed definition and no comments specifically opposing it. Other comments, however, are applicable to this issue. For example, one commenter to the proposed rule suggested that we exempt certain mine emissions, such as diesel exhaust and welding fumes, from the MSDS requirements of HazCom. This commenter stated that the composition of these produced chemicals can vary so much that not even ''* * * generic MSDSs, created by MSHA as assistance to mine operators, will be very useful.'' Another commenter to the proposed rule writing about the definition of *chemical* also assumed that it included the by-products of mining activities, such as diesel exhausts. This commenter stated that ''constituent ingredients in diesel exhaust—nitrogen, carbon, and sulfur oxides, organic vapor, diesel particulate matter—would have to be the subject of this standard also.''

The final rule, consistent with the interim final rule, defines *produce* to mean ''manufacture, process, formulate, generate, or repackage.'' We added the term ''generate'' to the definition of *produce* in the interim final rule to clarify our intent that HazCom apply to by-products of mining activities. For example, HazCom would apply to diesel emissions, the inadvertent generation of cyanide in a storage tank, welding fumes from construction or repair of machinery, or waste discarded in a tailings pond or solid waste site. As explained under the definition for *chemical,* the by-products of mining activities may be covered in the MSDS for the initial chemical or separately for the hazardous chemical by-product itself. Also, you may develop an MSDS for a process if that is more relevant to the chemical hazard.

For the most part, solid waste sites and tailings ponds are covered by other MSHA, federal, or state standards. These standards address the health and safety hazards to the environment and nearby inhabitants and structures. We know of no other standards that specifically require you to train miners about the physical and health hazards from exposure to these mixtures and protective measures to take.

Raw material. In the proposed rule, we defined *raw material* as a mineral, or combination of minerals, that is extracted from natural deposits by mining or is upgraded through milling. The proposed definition added that the term applied to the ore and valuable minerals extracted, as well as to the worthless material, gangue, or overburden removed during the mining or milling process. One commenter to the proposal agreed that this definition correctly includes the tailings from crushed stone, and sand and gravel operations. Another commenter to the proposal wanted to substitute the word ''material'' for ''mineral'' in the definition of *raw material,* stating that—

> The term ''mineral'' has different uses in different areas of mining and geology that imply different definitions. The term ''material'' should be substituted in this definition as a more generic and less restrictive term for ''mineral.''

The final rule, as did the interim final rule, does not incorporate this suggestion, but retains the proposed definition of *raw material* with minor editorial changes. Our intent is that *raw material* be limited to minerals.

Trade secret. Like the proposed and interim final rules, the final rule defines *trade secret* as any confidential formula, pattern, process, device, information, or compilation of information that is used by the operator to give him or her an opportunity to obtain an advantage over competitors who do not know or use it. This definition is taken from the Restatement of Torts § 757, comment b (1939). HazCom allows you to withhold the *identity* of the chemical declared a trade secret under certain conditions. It requires that you provide the miners with all other pertinent HazCom information, though not process or percentage of mixture information.

One commenter was concerned that *trade secret,* as defined in the proposed rule, would allow you to arbitrarily restrict access. This commenter also recommended that the final rule include Appendix D from OSHA's HCS, which would reprint the entire Restatement of Torts comment, to guide you in applying the trade secret definition. Another commenter to the proposal saw extremely limited utility and could find no reason to include this appendix.

We do not believe that this appendix is necessary. As stated in the preamble to the proposed rule, the Restatement of Torts indicates that there are at least six well accepted factors in establishing a trade secret claim. Those six factors are—

(1) The extent to which the information is known outside of the business;

(2) The extent to which information is known by employees and others involved in the business;

(3) The extent of measures taken by the business to guard the secrecy of the information;

(4) The value of the information to the business and its competitors;

(5) The amount of effort and money expended in developing the information; and

(6) The ease or difficulty with which the information could be properly acquired or duplicated by others.

We believe these principles provide sufficient guidance in determining the legitimacy of a trade secret claim without publishing an appendix. We intend to publish a Compliance Guide, a Toolbox, and other information as warranted, apart from HazCom, to assist the industry with compliance.

Use. We defined *use* in the proposed rule as ''to package, handle, react, or transfer.'' OSHA has defined *use* as ''to package, handle, react, emit, extract, generate as a by-product, or transfer.'' We did not include the terms ''extract, emit, or generate as a by-product'' because we believe they are already covered under the definition for *produce.* The final rule is the same as the proposed and interim final rules in this respect. We intend this definition to be broad enough to include any situation where a hazardous chemical is present in such a way that a miner may be exposed. We received no comments on our definition of *use.*

Work area. We defined *work area* in the proposed rule as a room or defined space in a workplace (now a *mine*) where hazardous chemicals are produced or used and where employees (now *miners*) are present. To make HazCom's definition more consistent with ordinary usage and retain its application to the presence of chemicals, the interim final rule changed the definition of *work area* to mean any place in or about a mine where a miner works and eliminated the language from the proposed rule ''* * * where hazardous chemicals are used or produced.'' The definition is consistent with the intent of the proposed rule, but clarifies the conditions that must be present for a work area and coincides with more common usage of the term. The final rule retains this definition.

Workplace. The proposed rule defined *workplace* as a mine, establishment, job site, or project at one geographical location containing one or more work areas. The term was deleted in the interim final rule of HazCom to use the term *mine* instead of *workplace.* The final rule also did not use the term.

C. Subpart C—Hazard Determination

A hazardous chemical is any chemical whose properties can pose a physical or health hazard. It can be a pure substance (an element or chemical compound), a mixture, or an ingredient in a mixture. A hazardous chemical can be in any physical form: solid, liquid, or gas. The likelihood of harm may be greater under some circumstances than others, but the potential to do harm is inherent in the chemical's properties.

Some commenters to the interim final rule were concerned about what we meant by the availability of the harmful element. An example of how a hazard can be made available is concrete at mines sites. Concrete, a common construction material at mine sites, is made by mixing gravel or crushed stone with sand, cement, and water. The sand and gravel and stone contain silica. When mixing the concrete for a floor, it is a hazardous chemical: dust from the aggregate contains respirable silica; cement can burn abraded skin. When placing the wet mixture, it is a hazardous chemical: the wet cement will burn unprotected skin; the sand and crushed stone are not hazardous components because the silica is unlikely to become respirable when it is wet. The concrete floor, once set, is not a hazardous chemical. Years later, however, when breaking or cutting the floor into small pieces so it can be removed, it is a hazardous chemical again because the silica can once more become respirable. We discuss exposure and its significance under ''purpose and scope'' in this preamble.

HazCom's definition of hazardous chemical in the final rule is consistent with the proposed rule, the interim final rule, and OSHA's HCS. We arranged the criteria for determining whether a chemical is hazardous in Table 47.21 and re-stated the proposed rule's language in a simpler way.

1. Section 47.21 Identifying Hazardous Chemicals

To clarify our intent in the final rule, we made several editorial changes to § 47.21.

- We deleted the sentence ''A hazardous chemical is any chemical that is a physical or health hazard'' from the introduction to Table 47.21.
- We added ''or health'' to the first criteria for determining the hazards of chemicals produced at the mine so it would read ''available evidence concerning its physical or health hazards.''
- We also deleted reference to hazardous waste under ''(a) Chemicals brought to the mine'' in Table 47.21.

Generally, we consider a chemical to be a physical hazard when there is scientifically valid evidence that it is combustible; a compressed gas or liquid; an explosive; a flammable aerosol, gas, liquid, or solid; an organic peroxide; an oxidizer; a pyrophoric (capable of spontaneously igniting); unstable and reactive; or water-reactive. Scientifically valid evidence means that a study was conducted or data obtained in a highly reliable manner that takes into consideration the margin of accuracy and consistency.

We consider a chemical to be a health hazard when there is statistically significant evidence that it can cause acute or chronic health effects. Statistically significant evidence supports a conclusion with a high level of confidence, typically 90% to 95%. This means that there is only a 5% to 10% probability that the observed results are due to chance. Health hazards include chemicals that cause cancer or are irritants, corrosives, or sensitizers. The term also includes chemicals that damage the reproductive system, the liver, the kidneys, the nervous system, the blood or lymphatic system, the digestive system, or the lungs, skin, eyes, or mucous membranes, or are toxic or highly toxic agents.

Most physical hazards of elements and compounds are well known and can be verified in a laboratory through testing. Physical hazards of mixtures can be determined the same way. Health hazards, however, are generally more complex, requiring studies of living systems, and can take much longer. Most health hazards of chemicals are determined through animal studies by extrapolating data from the effects on animals to predict the effects on humans. Even so, many chemicals are identified as hazardous based on the relationship between exposure and known illnesses and injuries. A chemical can be a physical hazard, a health hazard, both, or neither. For example, many organic solvents are both toxic and flammable.

In response to comments to the interim final rule, we modified the definition of *health hazard* in the final rule to clarify our intent. The interim final rule used the phrase ''including psychological or behavioral problems'' to explain nervous system damages. We deleted this phrase from the final HazCom standard after commenters pointed out the difficulty of attributing these conditions to hazardous chemicals. The interim final rule also used the term *irritate* to describe the action of irritants and *corrode* to describe corrosives. We modified these terms in the final rule to make them consistent with OSHA's HCS.

Hazard determination methods. The final HazCom rule, like the proposed and interim final rules, includes two basic ways for determining whether or not a chemical is hazardous: one for chemicals brought to the mine and the other for chemicals produced at the mine. In every instance we reviewed, operators producing chemicals also brought chemicals to their mines. We intend that the hazard determination provisions of HazCom apply to all

hazardous chemicals produced at the mine or brought onto mine property, whether or not they are covered under other MSHA standards.

A number of commenters to the proposed rule wanted the hazard determination requirement in the proposed rule changed to read—

> Operators who ship chemicals shall determine the chemicals' hazards under conditions of intended use based on our standards in 30 CFR parts 56, 57, 71, and 75.

A number of commenters to the proposal wanted operators who received chemicals to determine their hazards based solely on whether the chemical is regulated by us and whether it presents a physical or health hazard under conditions of intended use.

The final rule, like the interim final rule, does not use the word ''ship'' instead of ''produce''; does not add the phrase ''under conditions of intended use''; and does not limit the chemicals covered to those listed in our existing standards. We enforce exposure limits for chemicals listed by the American Conference of Governmental Industrial Hygienists (ACGIH) in its 1972 list of Threshold Limit Values (TLV®) for coal mines and its 1973 list for metal and nonmetal mines. These lists do not address all chemicals known to be present on mine property. The commenters' suggested language to the proposed rule would have significantly changed the intent and scope of HazCom by emphasizing the hazards associated with the manner or process in which chemicals are used by persons off mine property, instead of emphasizing the hazards to miners.

2. Chemicals Brought to the Mine

The final rule is substantively the same as the proposed and interim final rules in its requirements for a chemical brought to a mine. Under the final rule, you must review the chemical's label for any hazard warning and its MSDS for more detailed information. If the label or MSDS indicates a hazard, consider it hazardous. You must then include the chemical on the list of hazardous chemicals at the mine; keep a copy of the MSDS accessible to miners; and train miners about the physical and health hazards, the protective measures they can take against these hazards, and the content of the HazCom program. If you do not want to rely on the chemical manufacturer or supplier, you may evaluate the chemical yourself. If you do, we will require you to demonstrate that you have conducted a thorough evaluation of the available evidence.

The number and types of different hazardous chemicals brought to the mine depends on the size and type of the operation. These chemicals can range from bulk raw materials, such as ammonium nitrate for use in blasting agents, to small quantities of highly hazardous chemicals used in quality control laboratories. Diesel fuel, antifreeze, motor or hydraulic oil, brake fluid, lubricants, adhesives, paints, and solvents are a few of the materials commonly brought to mining operations that would require you to ask the question: Is this a hazardous chemical?

The written HazCom program requires you to document how you determined the hazards of the chemicals at your mine and to make a list of those found to be hazardous. For a chemical brought to the mine, you need to review its label and MSDS. The final rule, consistent with the interim final rule, requires you to make a hazard determination for each chemical at your mine to which miners can be exposed regardless of how the chemical is used.

3. Chemicals Produced at the Mine

The final rule, as in the proposed rule and interim final rule, defines a *chemical* as any element, chemical compound, or mixture of these and requires you to identify what chemicals you produce at your mine. Chemicals produced at your mine include—

- Those that you mine or process to sell, such as coal or crushed stone;
- The mixtures you create, such as flotation reagents or blasting agents;
- The by-products of mining and milling, such as diesel exhaust, hydrogen sulfide, or gases from combustion or blasting; and
- The materials discarded from mining operations, such as tailings.

Every mine product is a chemical, but not all are hazardous for the purposes of HazCom. You must determine if the chemical has any harmful properties that could pose a physical or health hazard. You must determine what the hazards and protective measures are so that you can prepare an appropriate label and MSDS. Again, HazCom does not require you to take additional protective action, as might be required by a risk-based rule. HazCom requires you to inform miners about a chemical's hazards that are based on scientifically valid evidence from either your own testing or the published results of other testing or studies.

For example, if your product is sand and gravel or crushed limestone, respirable crystalline silica is likely to be the only hazardous component, and you are already training your miners about its hazards. Because respirable crystalline silica is so prevalent in mine products, we expect that you will be required to produce an MSDS for your product. You will have to ensure that your label identifies the product as containing silica and that crushing or grinding may produce respirable crystalline silica, which is a human carcinogen.

Sources for identifying hazardous chemicals. The proposed and interim final rules were essentially identical to each other and OSHA's HCS. In the proposed and interim final rules, the primary difference with OSHA's HCS was the use of MSHA's list of substances in place of OSHA's. The final rule requires that, if you produce a chemical, you must determine its physical hazards based on available evidence or testing. You must consider the chemical to be a health hazard if it is listed in any one of the following five recognized authorities or sources:

- Title 29 Code of Federal Regulations (29 CFR) part 1910, subpart Z, *Toxic and Hazardous Substances.*
- Title 30 Code of Federal Regulations (30 CFR) chapter I.
- ACGIH® Worldwide (American Conference of Governmental Industrial Hygienists), *2001 TLV®s and BEI®s,* Threshold Limit Values for Chemical Substances and Physical Agents & Biological Exposure Indices.
- National Toxicology Program (NTP), Ninth Annual Report on Carcinogens (January 2001).
- International Agency for Research on Cancer (IARC), Monographs and related supplements, Volumes 1 through 77.

In the final rule, we have responded to comments to the interim final rule by removing ACGIH's TLV® list as a reference for determining if a mixture produced at the mine would have been considered carcinogenic. It remains as a source in determining whether a chemical is hazardous. While ACGIH provides valuable, it is not recognized as a special authority on carcinogens in the same way that NTP and IARC are. We believe that NTP and IARC have current and comprehensive lists of carcinogens and that miners would lose no protections by our deletion of ACGIH as a reference for determining carcinogenicity. We also have added OSHA's list of substances to ease the burden of mine operators who have operations in both OSHA and MSHA jurisdiction and who would prefer to use a single source (OSHA) in their HazCom program for all their operations.

In response to comments to the interim final rule, that you should not be held accountable for the future actions of these referenced organizations, we also revised the final

rule so you only need to refer to the chemical lists compiled by ACGIH, NTP, and IARC as of 2001.

Reference to these documents in HazCom does not set exposure limits, does not define criteria for determining the chemical's hazards, and does not otherwise set standards for mine operator behavior. This final rule does not require you to determine whether the concentration of the chemical in the mine environment or whether the exposure of a miner exceeds a limit recommended by one or more of these five sources. If there is a potential for harm and a potential for exposure, the chemical is hazardous for the purposes of HazCom. You must tell your miners about the hazards that are known and give them information relevant to the safe performance of their tasks.

Using ACGIH, NTP, and IARC to determine if a chemical is hazardous. Some commenters to the interim final rule recommended that we rewrite this provision to require that ''operators who produce chemicals must determine the chemicals'' hazards' and not specify the basis for the determination. These commenters felt that this language would make the requirement more performance oriented, would avoid incorporation by reference, and would allow operators to choose the best methods for this assessment based on the best available sources at the time of the assessment.

Referencing these sources in HazCom complies with the requirements of § 101(a)(6)(A) of the Mine Act, which requires the agency, when developing mandatory standards, to consider ''the latest scientific evidence in the field.'' Our references in HazCom are not ''incorporations-by-reference'' because they are merely used as screening and identification aids. You can conduct chemical testing as an alternative.

The American Conference of Governmental Industrial Hygienists (ACGIH), the National Toxicology Program (NTP), and the International Agency for Research on Cancer (IARC) publish authoritative documents that are recognized worldwide for the high quality of their impartial, science-based assessments of chemical hazards. Their committees are composed of experts known and esteemed in their fields. The IARC Monographs and related supplements, the ACGIH TLV®s, and the NTP Annual Report on Carcinogens consider large numbers of studies and take into account the conclusions of other groups who peer review data about a chemical's hazards.

Our 1990 proposed rule and the 2000 interim final rule would have required mine operators to refer to MSHA standards and the latest editions of publications by the ACGIH, NTP, and IARC when deciding if a chemical produced at the mine was to be considered hazardous. For mixtures produced at the mine, we set 1% of a mixture's concentration for health hazards and 0.1% for carcinogenic hazards as the cut-off or trigger points for the mixture's inclusion under HazCom using these same organizations' documents.

In response to comments to the interim final rule, the final rule requires operators to use MSHA and OSHA standards, the 2001 edition of the ACGIH TLV®s; NTP's Ninth Annual Report on Carcinogens, January 2001; and IARC Monographs and related supplements, Volumes 1 through 77. We have also added OSHA standards 29 CFR part 1910, subpart Z, *Toxic and Hazardous Substances* as a reference for initiating a chemical's inclusion in the mine's HazCom program.

Many commenters to the proposed and interim final rules strongly opposed including ACGIH, NTP, or IARC in the hazard determination section of a final rule. These commenters also objected to our use of IARC and NTP publications as authoritative sources for identifying certain chemicals as carcinogens. Some of these commenters felt that these organizations may identify a substance as a possible human carcinogen based upon the results of a single animal study and that animal studies alone should not be relied on to identify human carcinogens. Others felt that these organizations only considered positive studies (those showing an adverse health effect) and not negative studies (those that were inconclusive or did not show a health effect) when determining that a chemical is a carcinogen or a suspected carcinogen.

Some commenters opposed our reliance on an automatic trigger, such as a hazard determination made by one of these organizations, to deem a chemical as hazardous without considering the risk posed in a given situation. One commenter stated that any reference to ACGIH, NTP, or IARC in the rule is inappropriate because these institutions make determinations based on ''strength of evidence analysis'' and defer ''weight of evidence determinations'' to regulatory authorities. This commenter felt that, as in our proposed air quality rule, we should adhere to the guidelines of the Office of Science and Technology Policy (OSTP) because HazCom ultimately would reference our final air quality standard. OSTP guidelines address the use of ''strength of evidence'' and ''weight of evidence'' analysis in quantitative risk assessment.

Most commenters on our use of these publications opposed such use, stating that including references to these would be an incorporation-by-reference without following the proper rulemaking procedures. They stated that ACGIH's, NTP's, and IARC's decision-making processes are deficient because they restrict public or peer input. They further stated that the absence of public comment and external peer review raises significant questions regarding the quality of any science-based decision-making process. These commenters added that our rulemaking, because it goes through an established process, provides the only basis for establishing valid references for hazard determination purposes.

Some commenters also strongly objected to referencing either the latest edition or subsequent monographs or supplements of these sources because such references fail to advise the regulated community of the standard of conduct to which they are expected to conform. They commented further that we may only incorporate-by-reference materials in existence at the time we promulgate a final rule.

Several commenters to the interim final rule asserted that the incorporation by reference of NTP, IARC, and ACGIH constitutes an impermissible delegation of authority and a violation of the Administrative Procedure Act, and relying on these standards organizations constitutes an illegal federal advisory committee. Finally, these commenters claim that our participation in these entities' committees and our subsequent incorporation of their standards constitute a conflict of interest.

We acknowledge that the final rule refers to IARC, ACGIH, and NTP documents. We disagree with those commenters that assert that referencing these sources in the rule constitutes a delegation of authority. As stated in the preamble to the interim final rule, as well as the proposed rule, the inclusion of these sources in the HazCom standard rule aids in the identification of hazardous chemicals.

As stated previously, we wrote HazCom so its substance would be similar to OSHA's HCS. We wanted to provide the same protections to miners that employees under OSHA's jurisdiction have and make enforcement predictable (to the extent possible) for operators who have operations under both OSHA's and MSHA's jurisdiction. OSHA requires that—

> Chemical manufacturers, importers or employers evaluating chemicals shall identify and consider the available scientific evidence concerning such hazards. For health hazards, evidence which is

statistically significant and which is based on at least one positive study conducted in accordance with established scientific principles, is considered to be sufficient to establish a hazardous effect if the results of the study meet the definitions of health hazards in this section.

We believe that the referenced organizations are recognized as authorities on hazardous chemicals and knowledgeable about established scientific principles. Their decision-making committees are composed of noted, credentialed experts in their fields. Documents such as the IARC Monographs and related supplements, the ACGIH TLV®s, and the NTP Annual Report on Carcinogens, do not attempt to quantify the degree of risk. Their findings summarize large numbers of studies and include conclusions made by groups that peer review the data submitted as evidence about a chemical's hazards. We believe that the findings of these groups provide sufficient evidence to warrant informing miners of the hazard, even though in some cases the data may not be sufficient to support further regulatory action, such as establishing specific exposure levels and requiring use of control technology to limit exposure. Using these lists as a screening tool reduces the resources an operator would otherwise have to use to determine if a chemical is hazardous. Including these sources in the HazCom standard does not increase compliance obligations for mine operators.

If the commenters objecting to the use of these references meant to address whether or not the chemicals are known to be hazardous, the chemicals are listed in the five sources (MSHA, OSHA, NTP, IARC, ACGIH) because scientific studies have indicated that they are hazardous. Although mines use a large number and variety of hazardous chemicals, mines produce only a limited number. We expect most hazardous chemicals produced at mines to be listed.

The alternative to using these five sources as a screening tool would be for an operator to conduct a thorough search of available literature to determine if the chemical is hazardous, in addition to finding any statistically significant, scientifically valid studies that report the chemical's hazards. This may involve locating a document that could be outdated or out of print, or operators conducting their own chemical testing. We believe that listing these sources aids many smaller operators, in particular, who otherwise would not know what sources they could rely on to determine if a chemical is truly hazardous.

OSHA's HCS defines a health hazard as—

* * * a chemical for which there is statistically significant evidence based on *at least one study* conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. (Emphasis added)

By using these five sources as a screening tool, we intend to minimize the number of literature searches and, thus, the compliance burden.

As stated previously in the preamble to the interim final rule, we expect most hazardous chemicals produced at mines to be listed in these sources. Other sources not cited in the proposed, interim final, or final rules also can provide valuable information. Other reputable sources of scientific information can be referred to, such as the NIOSH *Registry of Toxic Effects of Chemical Substances,* the NIOSH *Pocket Guide to Chemical Hazards,* or chemical databases on the internet.

We disagree with comments that MSHA personnel participating on ACGIH committees or with other private standards-setting groups (consensus standards) is, inherently, a conflict of interest. The U.S. Office of Management and Budget (OMB) encourages scientists, engineers, and other professionals in federal service to work with such organizations knowing that the opportunities for improved understanding can be achieved by exchanges of information with industry, labor, and representatives of other federal agencies.

In summary, if evidence exists that a chemical is hazardous, the HazCom final rule requires a mine operator to inform potentially exposed miners about these hazards whether they are listed by ACGIH or not. The actions of ACGIH to adopt a different or additional exposure limit do not change the hazards of a chemical. ACGIH actions, therefore, do not create additional compliance obligations under HazCom.

We have other regulations that incorporate-by-reference ACGIH publications as well as those of other national standards setting groups, such as American National Standards Institute (ANSI) and the American Society for Testing and Materials (ASTM). The incorporation of these standards into our regulations has been done in accordance with the standard-setting requirements of § 101 of the Mine Act, the rulemaking requirements of the Administrative Procedures Act, and the procedures established by the **Federal Register**. For example, referencing these sources in HazCom complies with the requirements, of § 101(a)(6)(A) of the Mine Act, which requires the agency, when developing mandatory standards, to consider ''the latest scientific evidence in the field.'' Our references in HazCom are not ''incorporations-by-reference'' because they are simply used as identification aids. A chemical can be hazardous and not be listed in one of these documents. If listed, however, experts have found the chemical to be hazardous and you do not have to make your own determination.

Using ACGIH, NTP, and IARC to determine a chemical's hazards. If the commenters objecting to the use of the references meant to address the nature of the harm, the circumstances under which the chemical can cause harm, or the level of exposure at which harm becomes likely, we recognize that there may be conflicting information in the scientific literature. For example—

- NTP classifies carcinogens as either ''known to be carcinogenic to humans'' or ''reasonably anticipated to be carcinogenic to humans'';
- IARC classifies carcinogens as either ''carcinogenic to humans'', ''probably carcinogenic to humans'', or ''possibly carcinogenic to humans''; and
- NIOSH classifies carcinogens as either a ''potential occupational carcinogen'' or not.

We agree that relying solely on the information from any of these sources may not be sufficient to determine the types of health hazards of a chemical for the purpose of developing an MSDS. That is because, except for identifying certain chemicals as either carcinogens or suspected carcinogens, these sources contain little specific information on the types of health hazards posed or the other information required on the MSDS.

Some commenters to the proposed rule stated that it would be a great burden on the mining community to find out if recent scientific studies show their product to be a carcinogen or other type of chemical hazard. Although determining the hazards of a chemical you produce could be more time consuming, we do not believe that it is overly burdensome, infeasible, or impractical. An entire segment of the publishing industry, the trade press, exists to inform the mining industry about new production equipment, legislative and regulatory affairs, commodity pricing, changes in construction specifications, bid proposals, and scientific studies that can affect the commercial value of mining products. We expect that the media, trade associations, or unions will also provide the mining industry with any significant new information

concerning the hazards of their products.

Table 1: Removed from Proposed Rule. To simplify your access to the information from these sources, we compiled a table of all the chemicals listed in them and included this table in the proposed rule. The table indicated which of the four sources (MSHA, NTP, IARC, ACGIH) would give you more information about a chemical's health hazards and carcinogenicity. Operators could use the proposed table to determine quickly if the chemical they produced was a health hazard rather than having to refer to the sources. We thought this would save resources if the chemical was not hazardous. We intended to spare operators from looking beyond this table to determine whether a chemical posed a health hazard. We had intended to update the table as needed.

Several commenters to the proposed rule agreed that we should allow operators to use Table 1 to determine if the chemicals they produce are hazardous. One of these commenters felt that we should publish this table as an appendix to the rule and that it should state explicitly that operators may use this table to determine whether a chemical is a health hazard rather than having to refer to the four sources. Another of these commenters suggested that we include Chemical Abstract Service (CAS) registry numbers in the table to help operators identify the chemical.

Some commenters to the proposed rule asked that we not include the table in the final rule. One commenter felt that the average person would find this list of hazardous chemicals difficult and impractical to use. Others expressed concern that the list may not indicate all the potentially hazardous materials produced or used at the mine and favored the OSHA HCS's one-study approach.

One commenter objected to the proposed rule's reference to a table in the proposed air quality standard before we published the air quality standards as a final rule. Some commenters supported our intention to reference the final air quality standards in the hazard determination provision. That support, however, was contingent upon our establishing permissible exposure limits (PELs) at levels that prevent material impairment of health or functional capacity. These commenters further stated:

PEL's and carcinogens validated through the rulemaking process will enable operators who ship chemicals to evaluate whether those chemicals present a health hazard under conditions of intended use. When proposed 30 CFR Parts 58 and 72 are validly promulgated, MSHA should amend proposed 30 CFR Part 46.3(a) to incorporate those provisions.

Although the final rule continues to reference NTP, IARC, and ACGIH, it does not include a table of hazardous chemicals. We deleted the list from the interim final and final rules because it would have required continual updating to be relevant and timely for miners and mine operators. Instead, we decided to put a list of chemicals known to be hazardous in the MSHA Toolbox for this final rule. We intend to place both of these references on our website and provide links to other websites, such as NIOSH and university collections of MSDSs. Access to the MSHA web site, internet news services, libraries, and databases will allow you to obtain the most recent and reliable information soon after it becomes available.

4. Mixtures Produced at the Mine

The best way to determine the hazards of a mixture is to test the mixture as a whole. You would then use the results of that testing to make a determination as to whether or not the mixture poses a hazard and the nature of the hazard. We recognize that most operators do not have the facilities and equipment to conduct this testing.

For mixtures not tested as a whole, the final rule establishes the same criteria as the OSHA HCS and as the proposed and interim final rules for determining the hazards of the mixture based on its ingredients. You must use available scientifically valid evidence to determine the mixture's physical hazards and rely on available health hazard information for the mixture's ingredients to determine its health hazards.

- You must conclude that the mixture is a health hazard if at least 1% of the mixture is a chemical that is a health hazard.
- You must conclude that the mixture is a carcinogenic hazard, a special class of health hazard, if at least 0.1% of the mixture is a chemical that is a known or suspected carcinogen.

Determining the hazards of mixtures. Hazardous mixtures are commonly created at mines to capture the valuable components of an ore and produce a mining commodity. In writing HazCom's requirements for mixtures, we needed to ensure that operators would inform miners about the potential hazards of chemicals in mixtures before they reached an unsafe concentration. Setting a cutoff point had to account for a broad band of chemical toxicity from the mildly hazardous to the mortally dangerous. Carcinogens posed such a serious potential harm that they needed to be treated separately. We also recognized that we needed a simple threshold that would help operators to decide when to include a chemical mixture in their HazCom program.

A number of commenters to the proposed rule wanted the final rule to allow you to determine the hazards of mixtures of chemicals in the same way you would determine the hazards of individual chemical compounds or elements, i.e., under conditions of intended use. They believed that mixtures should not be treated differently from other chemicals, although they may present additional health or physical hazards. These commenters stated that you should—

- Test the mixture as a whole;
- If not tested as a whole, determine whether a component of the mixture presents a health hazard under conditions of intended use and if it constitutes a physical hazard; or
- Assume that a component presents a health hazard under conditions of intended use and that the mixture presents the same hazard, and use whatever scientifically valid evidence is available on the components of the mixture to determine the mixture's physical hazards.

Several commenters to the proposed rule objected to the requirement that if a mixture has not been tested as a whole, you must assume that it will pose the same health hazards and carcinogenic hazards as each of its components. Other commenters to the proposed and interim final rules recommended that the health hazards of mixtures be based on either experimental evidence or weight of experience and, if known, dosage and exposure. Others argued that the concentration levels of 1.0% for hazardous components of a mixture, and 0.1% for carcinogenic components, had been chosen arbitrarily and that there are no studies showing relevance to these levels with regard to health hazards.

We believe that a concentration of 1.0% of a hazardous chemical's mixture and 0.1% of a carcinogen's mixture will set a reasonable trigger or cutoff point that will provide enough notice to miners that they will be able to protect themselves while giving clear guidance to operators that they will know when they must include a chemical in their HazCom program.

OSHA had determined that 1.0% of the mixture was a reasonable concentration to include a hazardous chemical in an employer's HCS program. Like OSHA, we found that the commenters who objected to these

levels did not suggest an alternative. We believe that common criteria for hazard determination with other industries is beneficial. Uniform criteria allow for the free flow of hazard information among all industry sectors regardless of which agency promulgates the regulations. This reduces burden. The final rule sets concentration levels of 1.0% for hazardous components of a mixture and 0.1% for carcinogenic components to absolve the operator from having to evaluate and list chemicals present in small quantities, which are not likely to result in substantial exposures to known hazards.

We added language to the final rule to clarify that carcinogenicity is a subset of health hazard. The 1.0% level refers to non-carcinogenic health hazards and the 0.1% level refers to carcinogenic health hazards. This provision is substantively the same as the proposed and interim final rules and OSHA's HCS. As discussed above, ACGIH has been dropped as one of the carcinogenic references.

Trace ingredients. The proposed rule stated that, if you have evidence indicating that a component of the mixture could be released in concentrations that would exceed an established MSHA PEL or ACGIH TLV®, or could present a health risk to miners, you must assume that the mixture presents the same hazard. A number of commenters opposed the proposed rule's reference to the ACGIH TLV®s and suggested that the final rule reference only MSHA health standards. Commenters to the proposed rule expressed concern that the resources spent on determining the potential release of a hazardous trace component of a mixture dilutes the resources available to address real hazards. We contend, however, that if a trace ingredient can be released from the mixture at concentrations that can pose a health risk to miners, such as concentrations exceeding its PEL or TLV®, this trace component is properly considered a hazard.

Another commenter to the proposed rule recommended that the final rule be more performance oriented and suggested that we reword this section to state:

> If the operator has reason to believe that lesser amounts than listed in item (2) could reasonably present a health risk they will be assumed to present the same hazard.

In response to these comments, we used more performance-oriented language in the interim final and final rules. HazCom requires you to assume that a mixture presents the same hazard as a component if you have evidence that the component could be released from the mixture in a concentration that could present a health risk to miners. For example, the MSDS may indicate that a particular trace component reacts with other components, diffuses into the packaging, or evaporates over time. In this example, if the trace component is hazardous, you must inform miners about this information and its implications for them, and comply with the applicable HazCom provisions.

We do not intend that you conduct research for chemicals brought to the mine; however, you must obtain an MSDS for them to determine whether or not a trace component can be released from the mixture in a hazardous concentration. Our intent is that, if you determine the trace ingredient can present a hazard, then you must include this information in your initial HazCom training, as well as in parts 46 and 48 training. Similarly, you must determine potential hazards from trace ingredients in hazardous chemicals you produce, including mixtures and by-products of mining activities. This requirement is consistent with MSHA's HazCom proposed and interim final rules and OSHA's HCS, and provides consistency in the level of protection for miners.

The final rule eliminates unnecessary language but retains generally the same requirement as the proposed and the interim final rules. This provision recognizes that even trace components of a mixture could cause harm if a sufficient quantity is released from the mixture.

Respirable crystalline silica. A number of commenters to the proposed rule expressed concern that IARC has designated respirable crystalline silica as a probable human carcinogen. Several commenters were concerned that the requirements for determining the hazards of mixtures that had not been tested as a whole did not take into account that a chemical is hazardous only when it is encountered in a specific physical state or form. Specifically, they felt that the proposed rule would have required you to determine that any untested mixture that contains 0.1% or greater of respirable crystalline silica is carcinogenic. They pointed out that IARC's Monograph No. 42 and Supplement 7 and NTP's addition of this substance to its list in its 6th Edition address only the respirable crystalline form of silica as a human carcinogen and not other forms of crystalline silica.

We agree that it is the respirable form of crystalline silica that is designated as a human carcinogen in the sources listed in the final rule. Therefore, if the mixture contains 0.1% or greater of crystalline silica, you must determine the percentage that is respirable or capable of being liberated. Any required label and MSDS for products containing concentrations of 0.1% or more of respirable crystalline silica must indicate this potential health hazard. HazCom also requires you to inform miners about the carcinogenic hazard from exposure to respirable crystalline silica.

Physical hazards. Comments on the proposed rule indicated that you may find it difficult to categorize the physical hazards of some mixtures because of the stratification or deterioration that may occur in these mixtures during storage and handling. To ensure that all hazards of a mixture are properly addressed, this commenter felt that we should require you to use persons who are qualified by education, experience, and training to determine the hazards of a mixture with respect to its use in mines. We expect that most of the information necessary to determine the hazards of a mixture are available in MSDSs or other publications. Because you are responsible for making this determination, and often the most qualified, we expect that you will make the determination yourself or select a competent person to do it.

The proposed rule stated that if a chemical is not tested as a whole, you must use ''whatever'' scientifically valid evidence is available to determine the mixture's physical hazard. The word ''whatever'' was removed from the final rule at the request of commenters to the interim final rule. This minor syntactical change did not affect the meaning of the standard and, therefore, does not reduce protection for miners.

5. Hazardous Chemical

One commenter to the proposed rule felt that *chemical* may be interpreted restrictively to mean that only the chemicals you produce require a hazard determination. This commenter felt that we should state clearly that all mining products, including minerals, ore, and miscellaneous materials, require a hazard determination. Another commenter to the proposed rule recommended that we use the term *hazardous material* rather than *hazardous chemical* because operators and miners are more likely to associate that term with minerals, ores, and other materials that occur naturally.

We use the term *hazardous chemical* in HazCom to be consistent with its use in OSHA's HCS. It is used by a wide variety of industries and has been the subject of much clarification in the 15 years since OSHA promulgated its HCS.

We believe that the definition of *chemical* in the proposed, interim final, and final rules is more widely applicable and less open to misinterpretation than the alternatives suggested.

D. Subpart D—HazCom Program

All mines must have a written HazCom program. The written program does not have to be lengthy or complicated, and some operators may be able to rely on existing HazCom programs to comply with the requirements of the final rule. As mining processes change and as new chemicals are brought onto mine property, you must update your written program to reflect these changes.

Commenters to the proposed and interim final rules stated that written programs are an unnecessary paperwork burden, rarely if ever used. They declared that the written program requirement in particular seemed unnecessary if training requirements were retained, since operators will be training miners on their mine's HazCom policies and procedures. These commenters asked that we exempt those mines where hazardous chemicals are neither used nor produced from the requirement to have a written HazCom program.

We do not agree with these commenters. In our experience, we have found that the mining industry is highly dependent on processes and machinery that use, to name a few common examples, explosives, diesel fuel, or gasoline in order to extract mine products from the earth. Maintenance of equipment or facilities, even at the simplest operations, is in an industrial environment.

MSHA intends that the written hazard communication program be your plan for how you will implement HazCom at your mine. The final rule requirements on HazCom program are flexible, allowing you to design your HazCom program taking into account the specific circumstances at your mine.

Mines are dynamic work environments that change their methods to adjust to changing needs. If a mine does not have a hazardous chemical, we believe the miners at that property are better served by requiring the mine operators to review their processes and inventories and know with certainty that chemicals are not present. It is important that operators conduct at least a one-time review of their mines to ensure that no harmful chemicals exist which under normal conditions of use or in foreseeable emergencies can put their miners at risk.

1. Section 47.31 Requirement for a HazCom Program

This section of the final rule is substantively the same as the proposed and interim final rules and is consistent with OSHA's HCS. It requires you to develop, establish, and maintain a written HazCom program. You must ensure that you have an effective method to communicate hazards to miners and other operators at the mine if their miners can be exposed to your hazardous chemicals. You must also retain the written program for as long as a hazardous chemical is known to be at the mine.

The scope of HazCom, § 47.2, clearly states that the final rule applies to all operators with miners who can be exposed to a hazardous chemical ''under normal conditions of use or in a foreseeable emergency.'' The scope applies to all sections of HazCom and all operators at a mine, including independent contractors. Therefore, we did not need to repeat the language of the scope in the requirements for the contents of the written program.

You must make the written program available to miners, their designated representatives, and MSHA and Department of Health and Human Services (HHS) personnel. In the final rule, the provisions on access and copies are in a separate subpart on making HazCom information available. This administrative re-ordering of HazCom's provisions is unchanged from the interim final rule, but different from the proposed rule.

Generic programs. Some commenters to the proposed and interim final rules stated that development of the written HazCom program was beyond the capabilities of most operators and would impose a technological and financial burden. Other commenters to the proposed and interim final rules suggested that we develop a generic written HazCom program for use as an example.

You are responsible for developing a HazCom program for the chemicals that you produce or bring to the mine. Your written program must include all the information that you need—

- To implement the HazCom program;
- To provide hazard information to miners so that they will know what is expected and can participate in supporting the protective measures in place; and
- To ensure that other operators at the mine receive the HazCom information they need.

Although the development and implementation of a HazCom program may pose a technological and financial burden on some small operators, we determined that the final rule is technologically and economically feasible. To relieve the burden for small operators, we have delayed the application of the final rule, planned an extensive outreach effort, and developed a wide variety of compliance aids. As part of our efforts, we will provide examples of a written HazCom program in the MSHA HazCom Toolbox for this rule and place model programs on our website. You can also adapt the model programs on OSHA's website because the two standards are similar, or obtain assistance from organizations that have developed generic guides to meet OSHA's HCS. The availability of generic programs reduces your technical and financial burden.

Some commenters to the interim final rule asked us to clarify that one HazCom program will meet both OSHA's and MSHA's requirements. We wrote the HazCom program requirements to be, at least in part, interchangeable with OSHA's HCS so that programs written to comply with OSHA will also comply with MSHA. We intended that companies with operations under both MSHA and OSHA, such as those with MSHA-inspected quarries and OSHA-inspected asphalt plants, would be able to use a single plan to meet both sets of requirements. We have a few mines, such as those with hazardous waste facilities, where differences between MSHA's HazCom and OSHA's HCS might require that written programs be amended. Even then, however, you should be able to prepare a written program that will satisfy both OSHA and MSHA requirements. We urge you to contact the MSHA District Manager for help in resolving any concerns you may have in this regard.

2. Section 47.32 HazCom Program Contents

Under the final rule, like the proposed and interim final rules, your HazCom program has to describe how you meet the standard's requirements for hazard determination, labels and other forms of warning, MSDSs, and initial miner training. It also must include a list of the hazardous chemicals that you produce or bring to the mine and use the same identity for a chemical on this list, the label, and the MSDS.

Exchanging HazCom information. Where more than one operator works at a mine, your HazCom program also has to describe—

- How you inform these other operators about hazardous chemicals to which their miners can be exposed and any protective measures;

• How you provide other operators with access to MSDSs and other relevant HazCom information; and

• How you identify hazards on labels and other warnings (the system or symbols you use).

Several commenters to the proposed and interim final rules expressed concern about how information would be exchanged between operators. One commenter to the proposed rule wanted the final rule to give the primary operator at the mine the latitude to determine how to exchange information. Another commenter to the proposal wanted MSHA to prescribe how operators exchange information.

The final rule deliberately uses performance-oriented language to give you the flexibility to establish how to exchange information with other operators and tailor your written program. At many mines, independent contractors, service personnel, and production miners are exposed to hazards of chemicals from many sources. For example, when independent contractors bring hazardous chemicals onto mine property, it is their responsibility to provide the primary operator and other operators (such as other independent contractors at the same site) with information about those chemicals. Likewise, it is the responsibility of the primary operator to inform these independent contractors about the chemical hazards at the mine. A systematic and orderly transfer of information ensures that all miners are informed. Specific, detailed requirements could reduce flexibility and become unnecessarily burdensome.

Hazard determination procedures. One commenter to the proposed rule wanted the final rule to require you to describe, in writing, the procedures you use to determine the hazards of the chemicals you evaluate and to maintain these written procedures. This commenter stated that these detailed written procedures would be a valuable source of information for workers, their representatives, and the government. This commenter also stated that such a record is the means to determine if you are following procedures to assess the hazards associated with a chemical's inherent properties and know how you use it. Another commenter to the proposed rule said that we do not need to know the basis of your hazard determination.

Consistent with the proposed and interim final rules, the final rule requires that your HazCom program include how you are putting the provision for hazard determination into practice at your mine. This requirement is performance oriented; it does not specify format or criteria. We expect your description of your hazard determination procedures to be sufficient to allow others to understand how you made the determination.

Hazardous chemical list. The final rule requires you to compile a list of hazardous chemicals and maintain it for as long as a hazardous chemical is known to be at the mine. You are responsible for listing only the hazardous chemicals that you produce or bring to your work areas. The list, or inventory, of hazardous chemicals is a quick reference so that you, miners, other operators working at your mine, and MSHA and NIOSH personnel can see what hazardous chemicals are present. It also must use a chemical identity that permits cross-referencing between the list, a chemical's label, and its MSDS. For example, if a chemical is identified by a trade name on the MSDS or the label, the list should be indexed and the chemical identified using the trade name. This requirement is unchanged from the proposed and interim final rules.

One commenter to the interim final rule expressed concern that a chemical manufacturer may prepare the MSDS with one chemical identity, but a supplier may label the product with another, making you unable to cross-reference them. As in the proposed and interim final rules, the final rule does not hold you responsible for the accuracy of information received from a chemical supplier or manufacturer. You should, however, notify the manufacturer of any problem and ask them to remedy the situation.

Other commenters to the interim final rule asked that we clarify our requirements and give one month to update the HazCom program. The final rule, consistent with the proposed and interim final rules, does not specify a time limit for updating a HazCom program, but because the rule requires you to maintain the list, it implies that you will need to keep the list current.

You can compile the list for the mine as a whole or you can compile lists for individual work areas. For example, if few chemicals are used in one work area, such as a mine's quarry, and many are used in another work area, such as its shop, lists for the individual work areas would avoid confusing the miners in the quarry who would have no exposure to most of the chemicals that would be on a comprehensive list. You are in the best position to judge the most effective and efficient way to maintain this list. In maintaining this list, you must keep it up-to-date, whether for the whole mine or a specific work area.

E. Subpart E—Container Labels and Other Forms of Warning

Labeling containers of hazardous chemicals is a major provision of HazCom. A label is an immediate source of information about a hazardous chemical in the work area, providing the identity of the chemical and a brief summary of the chemical's most serious hazards. Commenters to the proposed rule endorsed the content of the label requirements, asking that they stay consistent with OSHA's. The labeling requirements in the final rule are substantively the same as in the proposed and interim final rules and consistent with OSHA's HCS. Labels that comply with OSHA's HCS will meet HazCom's requirements.

The proposed rule contained the labeling exemptions under the ''Scope and Application'' and again under ''Labels and Other Forms of Warning.'' In response to comments to the proposed rule, we eliminated this repetition. We also put the labeling exemptions in a table, so that they are visually more accessible, and restated the proposed rule's provisions using clearer language. We moved the exemptions to a separate subpart near the end of the rule rather than placing them in the ''Scope'' section at the front of the rule. Except for ''raw materials being mined or processed while on mine property,'' the chemicals listed are exempt from labeling under HazCom because they are covered by the labeling requirements of other federal agencies. These exempt chemicals, therefore, are already labeled when you receive them at the mine. We will discuss these exemptions in detail later in the section called ''Exemptions from Labeling'' (§ 47.92).

The proposed rule and the interim final rule contained provisions addressing a miner's and designated representative's right to examine the labeling information and have a copy without cost. In response to comments to the proposed rule, we consolidated HazCom's provisions on access and cost for copies in a new, separate subpart, Making HazCom Information Available (§ 47.71 through § 47.73), in the interim final rule.

The final rule, like the interim final rule, does not include proposed § 46.5(d). The proposed rule would have required you to ensure that the label for a hazardous chemical complies with the labeling requirements in an MSHA substance specific standard, rather than the labeling requirements in HazCom. We determined that this provision was unnecessary because a substance

specific standard would apply before a general standard like HazCom.

1. Labeling Requirement in General

Among those commenters supporting a HazCom labeling requirement in the proposed rule, many urged us to be consistent with OSHA's HCS. Several of these commenters, especially those with operations in both mining and general industry, said that it would be extremely burdensome if they had to comply with two significantly different requirements. For example, they said that it would be a great burden if you had to re-label incoming containers of hazardous chemicals to meet unique MSHA requirements. Other commenters to the proposed rule stated that they already provide labeling information and MSDSs for their products consistent with OSHA's standard because their customers are asking for them.

The final rule is consistent with the proposed and interim final rules, as well as OSHA's HCS. Labels that comply with OSHA's HCS will meet our labeling requirements because HazCom requires the same information on a label as OSHA's HCS. Likewise, we expect that labels meeting MSHA's HazCom criteria will meet OSHA's requirements for labels under its HCS.

Among those commenters to both the proposed and interim final rules generally opposed to labeling requirements under HazCom, many stated that our existing labeling standards are adequate and HazCom is redundant. Some commenters to the interim final rule asked us to accept labels developed under our existing standards, such as 30 CFR 56/57.20012 labeling of toxic materials, to be in compliance with HazCom.

The HazCom labeling requirements are more comprehensive than existing warning label standards. MSHA's existing labeling standards were developed before 1968 and were for chemicals brought to the mine and put in unlabeled containers. HazCom's requirements for labels are broader in scope and more flexible. HazCom also requires you to make sure that existing hazard warning labels on hazardous chemicals brought to the mine are maintained. For example, a gas can that says ''gasoline'' on it, is acceptable labeling under HazCom for a temporary, portable container.

As in the proposed rule and the interim final rule, this final rule requires you to make sure a chemical identity can be cross-referenced between the chemical inventory, the MSDS, and a label. It also requires that the label be in English and specifies when it must be updated. These are different provisions from the existing requirements. We expect, however, that most operators are already complying with HazCom's labeling requirements because of the labeling requirements under OSHA or CPSC.

Consistent with the proposed rule and the interim final rule, this final rule unifies labeling requirements for hazardous chemicals in HazCom and expands existing requirements to include underground coal mines and clarify requirements for all mines.

2. Section 47.41 Requirement for Container Labels

The final rule, consistent with the proposed and interim final rules, requires that each container of a hazardous chemical be labeled, tagged, or marked with the identity of the hazardous chemical and appropriate hazard warnings. You should only have to deal with three categories of labels: labels on containers of hazardous chemicals brought to the mine; labels on mixing, storage, or transport containers on mine property; and labels on the containers that you use to ship a hazardous chemical that you produce.

A commenter to the interim final rule asked that we remove language saying ''tagged'' or ''marked'' because a label might, as a result, not be meaningful. The commenters concern was that a tag or mark was less specific than a label. The definition of label under HazCom states that it is any written, printed, or graphic material displayed on or affixed to a container to identify its contents and convey other relevant information. Tagged and marked containers must meet the requirements of labels and, therefore, carry the same information as a label.

Existing container labels. HazCom requires you to check the label on a chemical brought to the mine to determine if it is hazardous so you will know whether you need to obtain and keep an MSDS, list the chemical on the list of hazardous chemicals, and train miners about the chemical's hazards. You also must ensure that the labels and other forms of hazard warning are legible. You do not have to re-label these containers unless there is no label, the label is unreadable, or the manufacturer sends a revised label. Likewise, you must not remove or deface the labels on hazardous chemicals brought to the mine unless you immediately mark the container with the chemical's identity and its hazards. You must also ensure that the container remains labeled as long as you use it to contain a hazardous chemical.

Hazardous chemicals brought to the mine normally arrive with labels or labeling information. We expect that the label on the original container of a hazardous chemical provides adequate information about its hazards. The EPA, the Consumer Product Safety Commission (CPSC), OSHA, and other federal agencies have rules addressing the labeling of hazardous chemicals. For this reason products or chemicals subject to their standards are exempt from labeling under HazCom.

Commenters' suggestions about label content and format indicated that they perceived the proposed rule as requiring much more operator labeling than we intended. Some seemed to think that we required operators to evaluate and label containers of hazardous chemicals brought to the mine. One commenter pointed out that manufacturers may not identify new information on the label and MSDS they provide and stressed that operators should not have to update existing labels.

The final rule, consistent with the interim final rule, does not require you to re-label containers of hazardous materials that are labeled in accordance with other federal standards or are otherwise marked or tagged with the required information. You are not responsible for inaccurate information on a label prepared by the chemical's manufacturer or supplier, which you accept in good faith. We do not expect, and HazCom does not require, you to update the hazard warnings on labels you did not prepare. We do expect, however, that as you replace your inventory, you will do so with containers already labeled by the manufacturer with the new information. If the manufacturer sends you a new label with instructions to replace the existing label, you must do so.

Labels on mine products. Commenters to the proposed rule expressed concern that some operators might be unable to prepare a label for their mine's products because they lack the technical knowledge. We expect that you can easily compile the hazard information for the chemicals produced at your mine because our existing standards already require you to train miners about the safety and health aspects of their job. While underground coal mines are not required to label hazardous materials, they do conduct miner training.

A commenter to the proposed rule asked that we clarify whether the requirement to update the label with significant new hazard information within 3 months applied to small quantities of hazardous chemicals in transfer, or temporary portable containers.

Significant new hazard information about a chemical develops infrequently.

Most new information confirms, clarifies, or expands knowledge about the hazards already known. We intend the provision to apply to labels you make for your product or other containers of hazardous chemicals at the mine, excluding temporary portable or transfer containers. If you have to label the container of a hazardous material, it is our intent that you ensure that the label is accurate and update the label when you become aware of significant new hazard information. However, you must tell miners about significant new information when you discover it or a manufacturer notifies you about it.

Maintenance. Some commenters to the proposed rule stated that labels would be difficult to maintain in a mining environment or that they would be difficult for miners to read and understand. Although it may be difficult to maintain labels in some areas of the mining environment, these labeling requirements are realistic and achievable. OSHA's HCS provisions are successfully met at heavy and highway construction sites as well as at tunneling operations, situations that are comparable to mining sites. Many of the containers coming onto mine property will have permanent labels affixed, suitable for use in the mining environment, and effective training will help miners to understand the labeling information.

Label accuracy. Consistent with the interim final rule, final § 47.41 (b), *Requirement for container labels,* requires that for each hazardous chemical produced at the mine, the operator prepare a container label and update this label with any significant, new information about the chemical's hazards within 3 months of becoming aware of this information. Paragraph (c) of the same standard requires the mine operator to replace outdated labels of hazardous chemicals brought to the mine when a revised label is received from the chemical's manufacturer or supplier.

3. Section 47.42 Label Contents

HazCom requires that you label containers of the hazardous chemicals you produce. The label must be prominently displayed, legible, accurate, and in English. It must display appropriate hazard warnings and use a chemical identity that permits cross-referencing between the list of hazardous chemicals, a chemical's label, and its MSDS. The label must also contain the name and address of the operator or another responsible party who can provide additional information about the hazardous chemical.

Although the hazard warnings on the labels should be concise and easy to see, they also must convey the chemical's identity and its physical and health hazards. The label, tag, or other marking that you prepare must communicate enough information to users of your product and other employers so that they can recognize the hazards and make correct decisions about safe procedures and protective equipment. We do not intend the label to be the only or most complete source of information on the hazardous chemical.

One commenter stated:

> We urge you to consider the possible effects of a world in which every conceivable threat is labeled, stickered, highlighted until the senses are saturated and the desired effect of the entire message is lost. We are rapidly creating such a world, and we caution you against needlessly furthering this unnerving trend.

We recognize that it may not be feasible to include every hazard on the chemical's label that is listed in the MSDS. We expect, however, that you will address all chemical hazards in the miner's work area in your initial HazCom training program, as well as your parts 46 and 48 training programs. The selection of hazards to be highlighted on the label will involve some assessment of the weight of the evidence regarding each hazard. This does not mean, however, that only acute hazards are to be covered on the label or that well substantiated hazards can be omitted from the label because they appear on the MSDS.

For those chemicals posing multiple hazards, we expect you to prioritize the hazards and use that as the basis for the warnings. At a minimum, you must specify all serious hazards on the label. For example, if chromium (VI) in a welding fume is carcinogenic, causes liver and kidney damage, and blood abnormalities, as well as respiratory irritation, perforation of the nasal septum, damage to the eyes, sensitization dermatitis, and skin ulcers, the label could say: ''Causes cancer, liver and kidney damage, blood abnormalities, and irritation of the skin, eyes, and mucous membranes.'' The warning about it causing sensitization dermatitis, respiratory irritation, skin ulcers, perforation of the nasal septum, or conjunctivitis could be covered by the less specific phrase, ''irritation of the skin, eyes, and mucous membranes.''

You may have to reconcile inconsistent information in different sources by evaluating the evidence used in making the hazard classification. For example, if the chemical causes severe burns upon contact with skin, eyes, or mucous membranes, you would not also have to say that some evidence reported it to be a skin irritant. You also may need to distinguish between acute and chronic hazards. For example, some chemicals present a hazard only from prolonged exposure to high concentrations. When determining what hazard information to include on a label for your product, you must evaluate the evidence for each hazard listed on the MSDS. The label does not have to include all the hazards, but must show the most serious.

The proposed rule would have required you to provide your name and address or the name and address of a responsible party who could provide additional information about the chemical. To simplify the language of the requirement, we changed the interim final rule's access to information provision to require a label with the name and address of a responsible party. A commenter to the interim final rule asked that this be changed back because persons often change jobs and the MSDS would be inaccurate. We agree. Accordingly, the final rule, consistent with the proposed rule and OSHA's HCS, requires that the name, address, and telephone number of the operator or other responsible party be included in the contents of the label. The provision was moved from ''Making HazCom Information Available'' to ''Container Labels and Other Forms of Warning'' because it seemed more appropriate there.

Hazard warning. The definition of *hazard warning* in this final rule, consistent with the proposed and interim final rules, states that the warning must convey the specific hazard of the chemical. The hazard warning can be any type of message, words, picture, or symbol that provides at least general information regarding the hazards of the chemical in the container such as ''flammable'' or ''human carcinogen''. If applicable, the warning must include the organs affected. For example, if the chemical causes lung damage when inhaled, then ''causes lung damage'' is the appropriate warning. ''Lung damage'' would be the hazard and ''do not inhale'' would be the protective measure. Phrases such as ''caution,'' ''danger,'' or ''harmful if inhaled'' are precautionary statements.

Some commenters to the proposed rule suggested that the labels would need to state the container's contents and provide a general hazard warning, using words like ''combustible,'' ''flammable,'' or ''poison.'' A general statement, however, would not convey enough information to enable miners to adequately protect themselves. Other

commenters to the proposal believed that only a precautionary statement, such as ''Danger!'' would be needed. Some suggested that we require operators to include precautionary statements on the label, in addition to the other information. A few commenters to the proposed rule stated that warning labels should summarize acute and chronic health effects and safety hazards and should provide advice and a phone number in case of emergency. Others recommended that labels include the target organ(s) affected by the chemical.

Consistent with the proposal and interim final rules, the final rule intends that the label include the target organ effects, if such information is available. There are some situations where the specific target organ effect is not known. When this is the case, you can use a more general warning statement. For example, if the only information available is an LC_{50} test result, ''harmful if inhaled'' is appropriate. (An $LC_{50,}$ or the lethal concentration by inhalation for 50% of the animals tested, is the exposure concentration at which half of the animal test subjects died.)

Our existing standards (§§ 56/57.16004; §§ 56/57.20012; § 77.208) require you to label hazardous materials appropriately. In addition to the required information, we encourage you to include other helpful information on the label. For example, the symbols on the label representing precautionary measures or safe work practices, such as ''chemical goggles,'' ''respiratory protection,'' or ''use only in a well ventilated area,'' serve as reminders about the hazard and increase the likelihood that miners will use these measures.

Label format. Many commenters to the proposed rule suggested various format criteria and coding schemes for labels, affirming the benefits of uniformity. In this final rule, as with the proposed and interim final rules, we recognize that there are a variety of different labeling systems to warn persons of chemicals and their hazards. Some systems rely on numeric codes and specific colors to convey the hazards of chemicals. These systems, however, usually convey the degree of risk that a chemical poses and not specific hazard information. You can use these types of systems for labels used at the mine if you communicate the specific physical and health hazards of the chemicals through other parts of the HazCom program, such as MSDSs and training. HazCom's labeling requirements are performance oriented. The rule recognizes that a specific system is not necessary to communicate the chemical's identity and its hazards, and that some mine operators already have an effective labeling system.

The final rule is deliberately flexible to allow for the adoption of an international system for classifying and displaying hazard information, when it becomes available. Commenters to the interim final rule asked that we delay implementation of HazCom because it would be a burden to unify the provisions with anticipated global harmonization requirements. We have held discussions with representatives to this international committee and we were informed that no prediction could be made as to when worldwide labeling standards are expected. Moreover, postponing HazCom requirements would forestall vital information and training requirements that enhance miner protections.

Although the final rule does not require a specific labeling system, we encourage you to adopt a label format that is in accordance with an established standard. In its comments on the proposed rule, the Chemical Manufacturers Association (CMA) suggested that operators use the ''American National Standard for Industrial Chemicals '' Precautionary Labeling'' (ANSI Z129.1–1988) for their labeling system. Uniformity in the format, content, and terminology of MSDSs and labels aids understanding and simplifies their development. It also allows miners and others to find critical information quickly. Consistent labeling requirements between MSHA and OSHA will make communication among industries more effective and will make it easier for them to adopt global hazard communication standards.

Other languages. The final rule, consistent with OSHA's HCS and the proposed and interim final rules, requires that the label be in English. If a significant number of your miners do not read English, or if their English is poor, you could provide the labeling information in another language in addition to English or add symbols to communicate the chemical's hazards. HazCom's purpose is the communication of chemical hazard information. You must make sure that your miners receive the information in a manner that they can understand. For example, if your workforce speaks Spanish, you could add a label in Spanish that gives the chemical's identity and hazard information or provide a translation of the labeling information to the affected miners. If your workforce speaks several different languages, or there are other literacy issues, you could add symbols to the label to communicate the chemical's hazards and train the workforce in the meaning of the symbols.

Carcinogen labeling. As discussed under ''Identifying Hazardous Chemicals,'' the final rule and OSHA's HCS both require that the employer consider a chemical to be hazardous if it is listed in the specified NTP or IARC publications or regulated under agency standards. You must include a carcinogenic warning on the label if one of these sources classifies the hazardous chemical as a probable or known human carcinogen. Other categories, such as potential or suspected, must be listed on the MSDS only.

Many commenters to the proposed rule suggested that we allow operators to determine what should be listed on the label based on an assessment of the weight of the evidence. Several pointed out that both IARC and NTP acknowledge that their classification evaluations are not complete hazard assessments. IARC and NTP use a strength-of-evidence approach that does not take into consideration negative studies for evaluating a chemical's carcinogenic hazard. In regard to the use of ACGIH, one commenter stated:

> ACGIH lists chemicals identified as carcinogens from ''other sources'' without identifying these sources. The ACGIH documentation of TLV's and BEI's lists five sources of information on carcinogens (IARC, MAK, NTP, NIOSH, and TLV). Since these sources often use each other as their reference point rather than come to independent conclusions, we believe that the ''carcinogen'' tag can be inappropriate unless there is conclusive evidence of carcinogenicity. While fuller explanations may be given on an MSDS, we believe that automatic triggers should not be used to determine warnings on labels.

Although some commenters specifically objected to using IARC, NTP, or ACGIH as a trigger for cancer labeling, others supported carcinogen labeling based on the judgment of these organizations, but only for those chemicals identified as known human carcinogens. Another commenter objected to carcinogen labeling for those chemicals listed in IARC Group 2A. Group 2A carcinogens (probably carcinogenic) are known to induce cancer in animals, but the evidence of human carcinogenicity is limited. These commenters believed that requiring carcinogen labeling for potential or probable carcinogens would result in ''over-labeling'' and detract from the focus that should be given to more serious hazards. In addition, one pointed out that ''over-labeling'' could have the adverse marketplace consequence of encouraging shifts to unlabeled products, typically without

an assessment of whether the unlabeled product is, or is not, safer than the labeled product. Several commenters supported including IARC's, NTP's, and ACGIH's carcinogenicity findings on the MSDS, but not on the label. A few commenters, however, recommended that we require labeling for all carcinogens, including those listed as potential or probable.

In considering the comments, we find that IARC and NTP base their cancer classifications on valid scientific evidence. This evidence warrants informing miners of the cancer hazard associated with any chemical on these lists. Miners have a right to know about this hazard information. If one or more of these organizations has associated a potential, probable, or confirmed carcinogenic hazard with a chemical at the mine, you must inform the miners who can be exposed. A fuller discussion about the use of these organizations as sources is in the Hazard Determination section of this preamble.

We intend to interpret HazCom consistent with OSHA's interpretation of its HCS, to the extent applicable. If valid studies include positive evidence of human carcinogenicity, OSHA requires hazard warnings of carcinogenicity on the label. With this intent, the label on your product only has to include a carcinogenic designation for ''known'', ''probable'', or ''reasonably anticipated'' human carcinogens.

We included the carcinogen designation by the ACGIH in the interim final rule intending for you to notify miners about it. NTP and IARC are recognized world authorities on carcinogens and their studies often form at least a part of the basis of ACGIH classifications. Some commenters to the interim final rule pointed out that ACGIH is not a source for OSHA carcinogen labeling. To be consistent with OSHA's HCS and minimize the effect of those discrepancies, the final rule refers only to carcinogen designations by NTP and IARC. Deleting reference in the final rule to the carcinogen designations of ACGIH does not diminish protection for miners because NTP and IARC are respected sources for comprehensive and reliable carcinogen designations.

Silica labeling. IARC is one of the sources listed in HazCom for establishing whether a chemical is a carcinogen. In 1997, IARC classified inhaled (respirable) crystalline silica as Group 1, a confirmed human carcinogen.

A number of commenters to the proposed rule expressed concern that the proposed rule would have required the labeling of silica as a carcinogen. Several argued that labeling silica as a carcinogen was both impractical and unnecessary. One of these commenters stated:

> Silica is, as MSHA recognizes, a natural substance occurring in the great majority of the earth's crust and labeling over one billion tons annually of naturally occurring stone produced by American quarries would clearly be impractical and unnecessary by the standards of good science.

Some commenters to the proposal stressed that the labeling requirement should apply to respirable silica because the size of the silica particle determines whether or not it is a health hazard. One commenter stated:

> OSHA has taken the position in interpreting its HCS that it applies only to crystalline silica available for respiration. * * * Mr. Gerald F. Scannel, Assistant Secretary of Labor for OSHA, stated that kaolin dust products containing less than 0.1% respirable crystalline silica would be exempt from coverage under the provision of paragraph (d) of the [OSHA's] HCS, ''Hazard Determination.''

In addition, this commenter cited a statement by Dr. David Rall of the NTP that, ''Only crystalline silica in respirable form will be added to the list of substances in the [NTP] 6th annual report.''

The final rule does not address the labeling of containers of hazardous chemicals when they leave the mine because OSHA, EPA, CPSC, and other federal agencies already regulate labeling for other industries, consumer use, and commerce. To meet OSHA's HCS labeling requirements for your customers, you will have to label as a carcinogen, containers of any product containing 0.1% or more of respirable crystalline silica. The HazCom final rule exempts the raw material being mined or processed from labeling only while on mine property. For example, if you operate a ground silica (silica flour) mill, you do not have to label containers of the raw material, such as crushers, bins, or hoppers.

Under HazCom's hazard determination criteria, you must consider crystalline silica to be a human carcinogen when it is in respirable form and capable of being released in the work area or when an activity, such as crushing, would create respirable dust. Although you do not have to label it for purposes of HazCom, you must train miners about silica's carcinogenicity.

4. Section 47.43 Label Alternatives

Mines typically process materials in bulk quantities. They keep chemicals, such as cyanide, anhydrous ammonia, ammonium nitrate, or fuel oil, in large retaining ponds, silos, stockpiles, or tanks. The scale of operations can make an ordinary label inappropriate. ''Label alternatives'' allows performance-oriented options for identifying chemical hazards to miners. The label alternatives may be signs, placards, process sheets, batch tickets, operating procedures, or other means appropriate for individual, stationary process containers. The alternative must identify the container to which it applies, communicate the same information as a label, and be readily available throughout the shift to miners in the work area. Because it addresses only mine-site chemicals, the name, address, and telephone number of a responsible party is not required.

HazCom's primary label requirements state that the hazardous chemical's label warn miners about the presence, chemical identity, and specific health and physical hazards of the chemical. Neither the proposed rule, the interim final rule, nor the final rule includes specific criteria for the format of the label. The final rule, consistent with the proposed and interim final rules, requires that the label—

- Be prominently displayed, legible, accurate, and in English;
- Display appropriate hazard warnings; and
- Use a chemical identity that permits cross-referencing between the list of hazardous chemicals, a chemical's label, and its MSDS.

In the case of a trade secret, you must comply with the requirements of §§ 47.81 through 47.87 (trade secrets).

Commenters supplied a wide variety of suggestions for a label format. Several recommended that we require a standardized label format. Some commenters suggested that a coding or rating system might be helpful. Some requested that we permit flexibility in our labeling requirements and allow batch labeling, color coding, standardized containers, or stenciling a generic name on the container. Others did not support the use of a coding or rating system on labels because they thought that miners would find such a system confusing. Some commenters suggested that we require labels to have large bold print with pictorial or color warnings. Another suggested that operators could label containers using markers or paint.

The label requirements in the final rule are performance oriented, flexible, and consistent with OSHA's HCS. Labels made with markers or paint are acceptable as long as they identify the hazardous chemical and its hazards and are maintained in legible condition. Any name may be used to identify the

chemical contents of a container as long as it can be cross-referenced with the MSDS and the hazardous chemical list. You may substitute various types of standard operating procedures, process sheets, batch tickets, blend tickets, and similar written materials for container labels on stationary process equipment. The alternative, however, must identify the container to which it applies, communicate the same information as required on the label, and be readily available throughout each work shift to miners in the work area. You can post signs or placards that convey the hazard information if there are a number of stationary containers within a work area that have similar contents and hazards.

In the final rule, we changed the term ''readily accessible'' to ''readily available'' to clarify how soon you have to provide this labeling information to miners. This language is consistent with other MSHA standards. You are still required to provide miners access to this labeling information under § 47.71, ''Access to HazCom materials.''

5. Section 47.44 Temporary, Portable Containers

Temporary, portable containers are a common convenience on mine properties, particularly for miners servicing equipment from lube trucks. The final rule, consistent with the interim final rule, does not require you to label a portable container if you make sure that the miners using it know the identity of the chemical in the portable container, its hazards, and any protective measures. The final rule, consistent with the interim final rule, requires that the temporary, portable container be left empty ''at the end of the shift.'' We have also added an alternative to the final rule that was not in the interim final rule which permits you to label a temporary, portable container with the hazardous chemical's common name. If you label a temporary, portable container with at least the common name of its contents, you do not have to leave it empty at the end of the shift. We discuss this alternative later in this preamble.

Most commenters supported the proposed portable container exemption, but some claimed that it was too restrictive. These commenters recommended that we not require labeling of portable containers if they are subject to operating procedures that provide a means of alerting miners to their contents. Other commenters recommended that we expand this exemption to include any designee of the miner who performs the transfer. One of these commenters stated that adding the word designee would allow those individuals working with the miner who transferred the hazardous chemical, also to use that chemical. Otherwise, each miner working on the job would need his or her own portable container, perhaps creating a bigger hazard. Another commenter opposed expanding the portable container exemption to include the miner's designee because of concern that the miners would not communicate the hazard information to each other.

Other commenters opposed our proposal to exempt portable containers, believing that it was too lenient and could create a serious hazard. Commenters expressed concern that—

- Unattended, misplaced, or forgotten unlabeled portable containers could present a high risk of exposure to hazardous materials due to inappropriate handling or disposal by other workers;
- Unlabeled portable containers could be potentially dangerous because of the residues left in them;
- If the chemical in the portable container was not completely used by the end of the shift, we should require that the unused portion be returned to a labeled container;
- All containers of hazardous chemicals should be labeled under this law or other applicable laws; and
- This section should be clarified because it seems to imply that you have no responsibility to maintain labeling information if a product is repackaged or transferred to another container at the mine site.

After considering these comments and observing the use of portable containers in mining, we determined that it will not reduce the miner's protection to allow the miner who transfers a hazardous chemical from a labeled to an unlabeled container to use the unlabeled container. One common use of temporary, portable containers is when a miner transfers a chemical, such as brake fluid, from a 55-gallon drum into a small plastic or galvanized container in order to safely access and properly service machinery. We recognize that it would be impractical, or at least inconvenient in some instances, to access many pieces of equipment without the use of these containers. The numbers of fluids on a lube truck would force operators to choose between providing numerous containers (one for each fluid) which might prove impractical on a lube truck, or greatly increase the number of trips a lube person would have to make onto the serviced machine. This Hobson's choice could encourage people to ignore the requirement unless an inspector were present.

In response to commenters concerns, we expanded this exemption in the final rule. This provision is less restrictive than the one in OSHA's HCS and is more appropriate to the narrow range of working conditions in the mining industry. Under HazCom, you can allow other miners to use a hazardous chemical from an unlabeled, temporary, portable container provided you ensure that they know the chemical's identity, its hazards, and the protective measures needed; and that the container is left empty at the end of the shift. You can leave the chemical in the portable container for the next shift if you label the container with at least the common name of the chemical the container will have in it.

F. Subpart F—Material Safety Data Sheet (MSDS)

The MSDS is a detailed information document that serves as the principal source of important information about hazardous chemicals used or produced at the mine. This final rule requires you to have an MSDS for each hazardous chemical to which a miner can be exposed under normal conditions of use or in a foreseeable emergency. Although we revised the format and language of HazCom's MSDS requirements to reduce redundancy and use plain language, the final rule is substantively the same as the proposed and interim final rules and OSHA's HCS.

An MSDS that complies with OSHA's HCS will meet our MSDS requirements because HazCom requires the same information on the MSDS as OSHA's HCS. Likewise, we expect that MSDSs meeting MSHA's criteria will meet OSHA's criteria for MSDSs under its HCS.

In the proposed rule, provisions for determining hazards of single substances and mixtures were repeated under both ''Hazard Determination'' and ''MSDS.'' To eliminate this duplication, the final rule includes these provisions in the hazard determination section only. Also, in response to comments, we consolidated HazCom's provisions on access and cost for copies of MSDSs in a new, separate section on ''Making HazCom Information Available'' (§§ 47.71 through 47.73).

1. Section 47.51 Requirement for an MSDS

The final rule requires you to have an MSDS for each hazardous chemical at the mine. You must prepare an MSDS for any hazardous chemical produced at the mine. If you do not have an MSDS for a chemical brought to the mine and its label indicates that it is hazardous,

the final rule, consistent with the interim final rule, requires you to—

- Obtain one from the manufacturer or supplier,
- Develop one on your own, or
- Obtain one from another source.

In response to comments to the interim final rule, we amended this provision to require that operators have an MSDS ''for each hazardous chemical they produce or use'' rather than ''before using'' the chemical. Commenters said that at companies with centralized purchasing, a chemical may be sent to a mine site, but the MSDS may be sent with the bill to the office address that placed the order. Consistent with the OSHA HCS, we intend to give you time to have the MSDS forwarded to the mine where the chemical is used.

As a common business practice, mine operators introduce a new chemical as part of a process change only after careful planning and thought. In rare instances, you may have to use a new chemical that poses a new hazard before you receive its MSDS. Before a miner can be exposed to a new chemical hazard, you must inform the miner about the chemical's hazards, instruct miners as to how they can recognize the hazard, and how they can protect themselves. We believe that it will take less than 1 week from when the MSDS is received at a central purchasing office before it is in the mine that has the hazardous chemical. This should be enough time to ship and handle the MSDS.

Chemicals brought to the mine. The proposed rule would have allowed you to request, but not require you to obtain, an MSDS prior to using a hazardous chemical. Several commenters to the proposed rule stated that requesting an MSDS was not sufficient and that you should have to obtain the MSDS before using the chemical on mine property. MSHA's provisions on MSDSs are substantially similar to those in OSHA's standard. You must have an MSDS available to miners in their work area for each hazardous chemical to which they may be exposed. OSHA requires MSDSs for hazardous chemicals produced at non-mining operations. For this reason, we expect that most, if not all, MSDSs prepared by chemical manufacturers or suppliers are readily available by fax or from the internet. Consequently, you can ''have'' an MSDS before using the hazardous chemical even if a hard copy is not in the work area.

Another commenter to the proposed rule suggested that we allow you the flexibility to have either an MSDS or appropriate information about the chemical's hazards, safe work procedures, means of control, and first aid and emergency procedures immediately available. We did not respond to this commenter by changing the interim final rule, but did revise the final rule in response to additional comments to the interim final rule. We added International Chemical Safety Cards and Workplace Hazardous Material Information Sheets to the definition of *material safety data sheet.* This change is discussed in more depth in the Definitions section of this preamble and below in this section. Nevertheless, we understood the commenter to the proposed rule to suggest limited, informally gathered information in lieu of an MSDS and this did cause us some concerns. Information kept in place of an MSDS must be from a reliable and authoritative source of chemical information, such as an international chemical safety card (ICSC) or workplace hazardous material information sheet (WHMIS). Substituting the information suggested by the commenter for the MSDS may not be sufficient because the MSDS contains much more information than outlined in the comment. If you have a document available to miners that contains all the information required in § 47.52 (MSDS contents), however, we would consider that to be an MSDS. HazCom does not require a specific MSDS format, but the MSDS must contain all the information required to the extent that it is available.

As mentioned above, in response to comments to the interim final rule, we revised the final rule to provide more flexibility in MSDS requirements. We are allowing you to use alternative sources of MSDSs, including international chemical information, such as Workplace Hazardous Material Information Sheets (WHMIS) and International Chemical Safety Cards (ICSC). The proposed and interim final rules defined material safety data sheet in the limited context of OSHA requirements. The final rule revises the MSDS definition to allow these well recognized sources of chemical information. We determined that WHMIS and ICSC are comparable to MSDSs in communicating critical chemical hazard information. By allowing alternative, equivalent sources of MSDS information, we allow the operator to choose a format that fits the needs of the reader.

Several commenters to the proposed rule stated that we should require MSDSs to be accurate. You are responsible for the accuracy of MSDSs that you prepare for a hazardous chemical produced at your mine. HazCom does not require you to be responsible for the accuracy of an MSDS that you receive with a shipment of a hazardous chemical and accept in good faith. Because OSHA requires that information contained in MSDSs accurately reflect the scientific evidence that formed the basis for determining that the chemical is hazardous, we believe that chemical manufacturers and suppliers develop MSDSs correctly. On the other hand, since you are responsible for communicating accurate health and safety information about the mine and the job to the miner, the MSDS that you maintain must be current and updated when there is a material revision to the contents. For example, an updated version would be required when there is a change in the composition of the chemical. One would not be required for merely an administrative matter, such as a date.

Commenters to the proposed and interim final rules stated that manufacturers do not indicate what information is new on the MSDS and it is impractical and overly burdensome to require operators to update MSDSs they do not prepare. We do not see this as a problem. The MSDS will show the date it was prepared or last changed. If you receive an MSDS that has a later date than the one you have on file, you should keep the one with the most recent date and discard the older. If you receive an MSDS that is obviously inaccurate or which you suspect is inaccurate, or if a category of information is missing, you should bring this to the attention of the party responsible for preparing the MSDS. There should be an address and telephone number on the MSDS.

Some commenters to the proposed and interim final rules stated that requiring MSDSs as part of HazCom would be burdensome to operators and of no real value to miners because of the complexity of information required to be provided on the MSDS. Another commenter to the proposal stated that to keep track of which materials may or may not require MSDSs places an overwhelming burden on operators.

MSDSs are essential in supplying information to the miner, as well as to the mine operator and independent contractor. Information, such as the chemical's properties, for example, may not be found on labels. The MSDS contains the information that we require you to communicate to miners about the hazardous chemicals to which they may be exposed. Although it may be an administrative burden to keep track of MSDSs, obtaining the MSDS from the manufacturer or supplier of the hazardous chemical relieves you of

conducting independent searches for the required information. We expect that MSDSs will be an important resource for you in writing the HazCom program and modifying or developing training courses.

As a result of the OSHA HCS, MSDSs have become widespread in general industry and many operators voluntarily obtain and use them. We suggest that you check the list of all the hazardous chemicals at your mine against the MSDSs that you have collected to discover if there are any MSDSs missing. If the list indicates that you use a hazardous chemical at the mine, but do not have an MSDS for it, you must contact the manufacturer or supplier to obtain the missing MSDS. Alternatively, you may be able to download the MSDS from an internet chemical database.

Chemicals produced at the mine. The final rule requires you to prepare an MSDS for each hazardous chemical produced at the mine and update this MSDS with significant new information within 3 months of becoming aware of it. Significant new information is any that has or is likely to have a major effect that was unknown before and that is important to the health and safety of miners. For example, discovering that a certain chemical causes cancer in addition to having an acute effect on the liver, would be significant. By contrast, the change in the percentage or composition of an inert ingredient is not significant. Through our frequent presence at mines, MSHA intends to inform mine operators about significant new information concerning the hazards of their mine's products. This provision is the same as the proposed rule, OSHA's HCS, and the interim final rule.

Many states have HazCom programs that are identical to OSHA's and require the use and distribution of MSDSs. A few apply to mining operations. Even so, many mine operators are supplying MSDSs with their product as a good business practice, in response to requests from their customers, or to comply with state or local laws.

A few commenters to the proposed rule requested that the final rule remove the reference to ''significant'' and ''new'' information and add the phrase ''scientifically valid'' to prevent the incorporation of questionable information into the MSDS. Another commenter to the proposed rule indicated that his operation updates the MSDS every 3 months. This time period is consistent with provisions in the final, interim final, and proposed rules and OSHA's HCS for including significant new information on the MSDS and label.

We intend that the MSDSs you prepare accurately reflect the available scientific evidence that formed the basis for your determination that the chemical is hazardous (§ 47.21 contains criteria for determining a chemical's hazards). If the chemical presents more than one hazard, you have to address each of them on the MSDS. We encourage you to check regularly for new information on the hazardous chemicals you produce. HazCom only requires you to update your MSDSs (and labels) within 3 months after becoming aware of significant new information, not every 3 months. However, HazCom requires you to tell your miners this significant new information when you provide miner training.

MSDSs for common minerals. In the proposed rule, we requested comments on the usefulness of requiring operators to develop or provide MSDSs for common minerals such as sand and gravel, crushed stone, or coal. These minerals are the hazardous chemicals produced by over 90% of the mines. We also requested comments on whether we should develop MSDSs for common minerals and provide them upon request to all interested parties. A few commenters agreed that we should develop MSDSs for common minerals. Two commenters said that we should not develop them. One of these stated that generic MSDSs would not be useful and that we should not require MSDSs for these common minerals. In reviewing information for generic MSDSs, we determined that mineral deposits had specific characteristics, particularly with respect to the percent of silica they contain. We recognize that you know the geology of your mine and the makeup of your products better than anyone. We believe you will put the appropriate information in the MSDS for your product.

If you determine that a common mineral is hazardous using the criteria in § 47.21, hazard determination, you must comply with the provisions of HazCom to the extent applicable.

2. Section 47.52 MSDS Contents

Some commenters to the interim final rule thought that we intended them to add the MSHA exposure limit to every MSDS they maintained, including those for chemicals brought to the mine. Commenters to the interim final rule also pointed out that most of their downstream customers are in OSHA jurisdiction and are required to have MSDSs with the OSHA limits. In response to these comments, we revised the contents of an MSDS in the final rule to allow OSHA exposure limits as an alternative to MSHA exposure limits. This does not reduce miners' protection because the inclusion of exposure limits on the MSDS is for information purposes only. Neither MSHA nor OSHA enforce exposure limits based on the chemical's MSDS.

In the final rule, as in the proposed and interim final rules, we require that MSDSs be in English, but do not otherwise include a requirement for the format. Although the proposed rule did not specifically require that the MSDS be legible and accurate, we added these terms in the interim final rule and retain them in the final rule to clarify your compliance responsibilities.

Some commenters to the proposed rule suggested that we require MSDSs to be made available in alternative languages. Although the MSDS must be in English, you also may provide it in other languages. Just as you have to communicate job duties and work procedures to those miners who may not read or understand English, you must communicate the required information about a hazardous chemical to them. MSDSs for hazardous chemicals brought to the mine are probably available in Spanish or other languages from the manufacturer or supplier or other sources, such as trade associations and websites. If you employ miners who do not read English but read another language, having an MSDS in the language the miner can read makes it easier for you to communicate the chemical's hazards. At those mines where multiple languages are spoken, you may wish to use symbols to help communicate the nature of the hazard and protective measures, and reinforce the miner's understanding of this information.

Similarly, some commenters to the interim final rule claimed that miners would be unable to understand the MSDS because the language is too technical. As stated earlier, you must balance technical language against miner understanding. For example, you can use simple, clear language when preparing the MSDS: you could use ''lungs'' as a route of entry rather than ''inhalation'' or ''causes nerve damage'' rather than ''neurotoxin.'' Again, this requirement only applies to the MSDSs you prepare for the hazardous chemicals you produce.

Information required in MSDS. HazCom requires that each MSDS include the following information about the chemical:

1. *Identity.* The chemical and common names of the hazardous chemical if it is a single substance and of the hazardous ingredients if it is a mixture. The identity used must permit cross-referencing between the list of

hazardous chemicals at the mine (§ 47.32), a chemical's label (§ 47.42), and its MSDS (§ 47.52).

2. *Properties.* The chemical's physical and chemical characteristics as appropriate, such as boiling point, melting point, vapor pressure, evaporation rate, solubility in water, appearance (e.g., crystalline form, liquid, clear, color, etc.), odor, flash point, and flammability limits.

3. *Physical hazards.* The chemical's potential for fire, explosion, and reactivity.

4. *Health hazards.* The chemical's potential to cause an illness or injury, such as its acute and chronic health effects, signs and symptoms of exposure, any medical conditions that are generally recognized as being aggravated by exposure to the chemical, the primary routes of entry (for example, the lungs, the stomach, the skin or eyes). Carcinogens are a special class of health hazard that we address separately.

5. *Carcinogenicity.* The chemical's carcinogenic classification, if any, such as whether the chemical is listed as ''known to be a human carcinogen'' or ''reasonably anticipated to be a human carcinogen'' (NTP 1996) as specified in § 47.21 ''Identifying hazardous chemicals''.

6. *Exposure limits.* In response to comments to the interim final rule, we have amended the language of this requirement in the final rule to allow the alternative of an OSHA or MSHA exposure limit. Commenters pointed out to us that the MSDSs will be sent to downstream customers who are typically in OSHA jurisdictions. In an effort to conform with OSHA's HCS and reduce this unanticipated burden, we are allowing you to use the OSHA limit or the MSHA limit or both. This option preserves safety and health for miners, but offers more flexibility for you.

HazCom only requires one exposure limit, the MSHA or OSHA limit, if there is one, unless the preparer of the MSDS recommends others. Consistent with the proposed and interim final rules, and based on the judgment of the person preparing the MSDS, we also require that the MSDS include any other exposure limit used or recommended by its preparer, such as its ACGIH TLV'' or NIOSH recommended exposure limit (REL). This means that your MSDS is in compliance with HazCom if it contains an MSHA or OSHA exposure limit, if there is one, and any other exposure limits included by the preparer of the MSDS. It is possible then, if there is no MSHA or OSHA exposure limit, and the preparer of the MSDS does not include an alternative, that you could write ''not applicable'' in the exposure limit space on the MSDS and still be in compliance.

7. *Safe use.* Any generally applicable precautions for safe handling and use that are known to you or the responsible party preparing the MSDS, such as appropriate hygienic practices, protective measures during repair and maintenance of contaminated equipment, procedures for clean-up of spills and leaks, and special disposal requirements.

8. *Control measures.* Generally applicable control measures, such as ventilation, process controls, restricted access, protective clothing, respirators, and goggles.

9. *Emergency information.* Emergency procedures, such as special instructions for firefighters; first-aid procedures; and the name, address, and telephone number of the operator, or that of a responsible party who can provide additional information about the hazardous chemical and appropriate emergency procedures.

The proposed rule would have required a name, address and telephone number of the operator or a responsible party preparing the MSDS who can provide additional information on the hazardous chemical and appropriate emergency procedures. The interim final rule required only the name and telephone number of a person who can provide additional information on the hazardous chemical and appropriate emergency procedures. A commenter to the interim final rule asked that this again reflect the proposed rule's requirement because persons often change jobs and if the person listed on the MSDS was no longer at the mine, the MSDS would be inaccurate even though the substantive information was correct. We agree. Accordingly, the final rule, consistent with the proposed rule and OSHA's HCS, requires that the MSDS include the name of the operator or other responsible party who can provide additional information on the hazardous chemical and appropriate emergency procedures.

We did not include the proposed phrase ''preparing the MSDS'' in the final rule because it would limit your options unnecessarily. If the person who prepared the MSDS left, the MSDS would be inaccurate even though the person listed could provide additional information on the hazardous chemical and appropriate emergency procedures.

10. *Date prepared.* The date of preparation of the MSDS or the last change to it.

The categories of MSDS information in the final rule are substantively the same as the proposed rule, the interim final rule, and OSHA's HCS. The difference, as noted above, is that HazCom gives you the option to list either the OSHA or MSHA exposure limit or both for the chemical.

Numerous commenters to the proposed rule asked that additional information be required on the MSDS, such as (1) Department of Transportation (DOT) requirements, (2) IARC and NTP conclusions, (3) CAS numbers, (4) NIOSH Recommended Exposure Limits, (5) Hazardous Material Information System (HMIS) hazard code information, (6) upper and lower explosive levels, and (7) how products are covered by other agencies' programs, such as EPA requirements under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Resource Conservation and Recovery Act of 1976 (RCRA), and Superfund Amendments and Reauthorization Act of 1986 (SARA). We do not include additional requirements for the content of the MSDS in the final rule. The OSHA requirements are well known, and adding to the contents could obscure crucial information needed for miner protection.

Standardized format. Consistent with the interim final and the proposed rules, the final rule does not prescribe a specific format for the MSDS. Both HazCom and OSHA's HCS allow the preparer to determine the format, provided that it addresses all the required categories.

Numerous commenters to the proposed rule requested that we require a standardized format for MSDSs. Several of these commenters stated that they wanted us to adopt OSHA's MSDS form (OSHA–174), and others recommended ANSI Z400–1 *Guide for Preparing Material Safety Data Sheets.* Another commenter to the proposed rule recommended that we require operators who prepare MSDSs to present the same information in the same manner for the same hazardous chemical. One commenter to the proposed rule was concerned that you would have to prepare duplicate MSDSs: One for OSHA and one for us.

There are numerous sources for MSDSs in addition to the manufacturer or supplier: university databases, chemical information services, trade association or union collections. We established minimum requirements for information that must be on the MSDS. Each MSDS must contain the same minimum categories of information.

If you cannot find the appropriate information to complete a specified category or if the category is not applicable to the chemical involved, you must indicate on the MSDS that no

applicable information was found. For example, if the chemical does not have an exposure limit or is not classified as a carcinogen, mark these spaces ''not applicable.'' The MSDS must not contain blanks, even if you choose to use a form with categories beyond those required, because blanks may be misinterpreted. This requirement is the same as in the proposed rule, OSHA's HCS, and the interim final rule. HazCom allows you the flexibility to develop an MSDS in any format you wish, as long as it contains all required information. We encourage you to use a standardized format and suggest OSHA's non-mandatory MSDS form (OSHA–174) or ANSI Z400–1 as a guide.

Alternatives. The final HazCom rule, as the proposed and interim final rules, allows you to use a single MSDS for a class or family of chemicals with similar hazards or for mixtures with similar hazards and contents, such as organic solvents or lubricants in which the ingredients are the same but their percentages vary from mixture to mixture. The few commenters on this provision agreed with the proposed rule.

Also, the final HazCom rule, as the proposed and interim final rules, allows you to use a single MSDS to address the hazards of a process rather than individual hazardous chemicals when it is more appropriate. For example, the chemical composition of a flotation reagent changes as it evolves through the processing of a mineral. A few commenters to the proposed rule objected to this option, but we decided to retain it for the following reasons:

- We saw this option as relating to format, not scope.
- It is not a requirement, but rather an option intended to maximize flexibility and to acknowledge the practical limitations of dealing with chemicals.
- For the purposes of HazCom, ''hazards of a process'' refer to the physical and health hazards of chemicals in the process. If you choose to prepare an MSDS for a process, you have to include all the chemical hazards created during the process and any likely to be created if there is a malfunction or accident, even if the hazardous chemical is a short-lived intermediate. In accordance with § 47.51(d) you do not have to prepare an MSDS for an intermediate chemical if its hazards are addressed on the MSDS of the source chemical.

3. Section 47.53 Alternative for Hazardous Waste

A number of mine operators have EPA permits to burn hazardous waste in their kilns or to dispose of liquid or solid hazardous waste. If you have hazardous waste at your mine, the final rule requires you to provide exposed miners and designated representatives with ready access to any materials you have that can help them know about the hazardous waste. Suppliers typically send a manifest with the hazardous waste. Some may send an MSDS. If no MSDS is available, however, you must give the miner access to any information about the hazardous waste which—

- Indicates its identity or that of its components;
- Describes its physical and health hazards; or
- Specifies the appropriate protective measures.

Our proposed rule would have exempted EPA-regulated hazardous waste from HazCom's labeling and MSDS requirements. It still would have required you to determine the nature of the waste's hazards and instruct miners about them. Proposed § 46.3 ''Hazard determination'' stated:

> (b) Operators who receive chemicals shall determine their hazards based on the chemicals' material safety data sheets and container labels, except that the procedures in paragraph (a) of this section shall be followed for hazardous waste received by operators when a material safety data sheet cannot be obtained.

Paragraph (a) contained the criteria for determining the hazards of chemicals produced at the mine.

OSHA's HCS includes an exemption for hazardous waste regulated by EPA under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended (42 U.S.C. 6901 *et seq.*). Although OSHA's HCS excludes coverage of hazardous waste regulated by EPA, OSHA has other specific standards directed to hazardous waste operations (29 CFR 1910.120). OSHA was required to issue these standards by § 162, Title 1 of the Superfund Amendments and Reauthorization Act of 1986 (SARA), as amended (29 U.S.C. 655 note). We do not have similar standards regarding hazardous waste operations.

EPA standards require training of personnel at a hazardous waste facility, but this training appears to be directed primarily at limiting environmental impact. EPA standards also require an analysis of the hazardous waste as part of the process for obtaining a permit to burn or dispose of it. EPA does not require that this analysis specify the chemicals' hazards to workers or that the employer make this analysis available to employees.

Some commenters to the proposed rule expressed concern that exempting EPA-regulated hazardous waste from HazCom would omit a segment of the mining population that is exposed to hazardous waste on a routine basis. These commenters believed that MSDSs should be available to miners exposed to hazardous waste, including miners working at facilities where hazardous waste is processed or used as a fuel.

We revised the language in the interim final rule to clarify that, although you do not have to prepare an MSDS for hazardous waste, you must give miners access to the MSDS if you have one. In addition, as an alternative to an MSDS, the interim final rule required that you provide miners with access to all available information that identified the components of the hazardous waste, its hazards, or protective measures.

Commenters to the interim final rule expressed confusion about whether or not HazCom required an MSDS for hazardous waste. Neither the interim final rule nor the final rule requires the operator to prepare or obtain an MSDS for hazardous waste. We revised the language in the final rule to clarify that you have to provide miners with access to all available information specified in § 47.53, ''Alternative for hazardous waste.'' The final rule, as did the interim final rule, does not require any specific format for this information. An MSDS or a shipping manifest will contain some of this information. This means that if you have an MSDS for the hazardous waste, you must give miners access to it.

Commenters to the proposed rule and the interim final rule requested clarification about the wastes covered by this section. Some commenters asked that we exempt wastes that are discarded from the mining process or those collected for recycling.

This alternative specifically addresses EPA-regulated hazardous wastes. We do not exempt mine wastes from HazCom unless they are regulated by EPA. If you collect waste chemicals from your mining operation, you should know what these wastes contain and the hazards of the ingredients. If the hazardous chemical waste produced at your mine is regulated by EPA, you do not have to produce an MSDS under HazCom. You can use the information that you develop to comply with EPA regulations as an alternative to the MSDS. Operations that receive EPA-regulated hazardous wastes for disposal or to use as a supplemental fuel should receive a manifest with each shipment. The manifest should contain much of the information found on an MSDS, often in greater detail, and you can use

this manifest as an alternative to the MSDS.

4. Section 47.54 Availability of an MSDS

In response to comments to the proposed rule about the difficulty of keeping paper copies in a harsh mining environment, we revised the interim final rule to clarify in § 47.51 and § 47.54 our intention to allow internet access or a commercial database as a way to comply with the requirement that you have an MSDS for each hazardous chemical.

We revised the final rule to allow MSDSs to be kept at an alternative location. This change in language is intended to allow you to access MSDSs from an internet or commercial database. It requires that you provide miners with access to MSDSs while they are in their work area. You can keep MSDSs at an alternative location, such as a central location, if you ensure that they are readily available to miners in an emergency. The proposed rule had allowed you to keep MSDSs at a central location when it was not practical to maintain the MSDSs in the work area, if the miners had access to them at some time during their work shift, and if you ensured that miners could obtain the required information in an emergency.

Numerous commenters to the proposed rule requested that the MSDSs be kept in a central location when mining conditions were not favorable for keeping these documents in the work area. A few of theses commenters said that we should not specify how MSDSs are to be made available to miners, only that they should be available. Several commenters to the proposed and interim final rules asked that access to MSDSs be available through electronic means, such as computers.

The purpose of requiring MSDSs in the work area where the chemical is stored, handled, or used is so that miners have quick access to critical information in emergency situations. The final rule provides flexibility for you to determine the best way to meet this requirement. We recognize that independent contractors especially need this flexibility because they work at different types of mines, typically multiple employer sites. Independent contractors, therefore, must coordinate the accessibility of MSDSs to other operators and miners, as well as their own employees.

If you wish to comply by retrieving MSDSs electronically from an internet site or a commercial database of chemicals, you must still meet the requirement that MSDSs be readily available to miners. The computer does not have to be connected full time to the internet site. However, we still expect you to make MSDSs available to miners in accordance with the requirements of § 47.54(b). Miners must know how to use the computer or someone who knows how to access the MSDS electronically must be available anytime miners are exposed. For example, you have a lead mechanic and regular mechanic who perform maintenance work at night. If you are providing access to MSDSs electronically, these miners must be able and know how to retrieve an MSDS from the computer whenever they need or want one. This means that you may not lock the computer away from their use unless you give them a key. Otherwise, the MSDS is not readily available and you are denying them access to the MSDSs.

We are aware that the failure to have a current MSDS represents a significant portion of OSHA's HCS violations. By clarifying that HazCom allows the use of internet access to MSDSs, and by establishing links on MSHA's home page, we hope to improve the accuracy and availability of information for miners. We believe we will also reduce paperwork violations by allowing operators to retrieve information from a computer.

The final rule allows you to maintain paper copies of the MSDSs or to keep copies on a computer or computer disk. You may also use fax or other data transmission or any other method that provides access. If you keep MSDSs in the mine office, you must tell the miners where they are and how to access them. Access means that the office must remain open while miners are working or you must make provisions for them to immediately unlock the office if needed. If the MSDS information is kept on a computer, it may be necessary to make provision for backup electrical power in the event of an emergency.

Commenters to the interim final rule asked that we clarify our intent in regard to keeping an MSDS on a computer. HazCom does not require that the MSDS be stored on the individual computer's hard drive. It is acceptable to access the MSDS from a CD–ROM or through an on-line internet database if the MSDS is readily available to miners in an emergency.

If you intend to comply with this provision by using MSDSs from an internet database or chemical manufacturer's website, you must ensure your source is available when it is needed. You should bear in mind that access to an MSDS on the internet depends on many businesses and facilities beyond your control: an electricity provider, electric transmission and generating companies, a telephone company, a long distance provider, an internet provider, and whoever is the source of the MSDS. If you have difficulty accessing the internet because the internet provider's lines are often busy, for example, you may need to change to a provider who is more accessible.

5. Section 47.55 Retaining an MSDS

The final rule requires that you keep the MSDS for as long as the chemical is at the mine and notify miners at least 3 months prior to disposing of the MSDS. The proposed rule did not specify how you were to notify the miner about the intent to dispose of these MSDSs. You would have had the flexibility to use any method that notified each miner who may have been exposed. We intended that you be able to use methods such as a safety meeting announcement, a notice in a company newsletter, or by notifying and posting the MSDS on a bulletin board for 3 months.

Commenters to the interim final rule asked us to clarify that you do not have to notify miners before replacing an outdated MSDS with an updated version. A primary purpose of HazCom is to ensure that miners have access to information about the chemicals in their work areas. As an alternative to this notification, however, you can maintain the old MSDS indefinitely and mark on it the interval of dates and the locations where the chemical was used.

The intent of the proposed rule's requirement to notify miners prior to disposing of an MSDS was to ensure a miner had the opportunity to request a copy. The miner could then retain this information for future reference and you would not need to maintain the MSDS for an extended period of time.

Several commenters to the proposed rule suggested that the 3-month retention period was not sufficient because the chronic effect of a hazardous chemical may take years to manifest itself. Some recommended that we be consistent with OSHA and require a 30-year retention period. One suggested a retention period of 20 years. A few agreed with the proposed 3-month retention period and others felt that there should be no retention requirement at all. One suggested that these notices be posted. Comments to the interim final rule were similar.

We considered a 30-year retention period to be consistent with OSHA requirements. The OSHA retention period for MSDSs derives from that agency's generic rule on recordkeeping, (29 CFR 1904), which was not

developed specifically for hazard communication purposes. As an alternative to retaining the MSDS for 30 years, OSHA's recordkeeping rule allowed employers to keep a record of the identity of the chemical, where it was used, and when it was used.

Because of the nature of the mining industry, mines open and close frequently and there is a large turnover in miners each year. The records from closed mines would be impractical, if not impossible, to retain if the mine operator does not continue in business and there is no succeeding operator. Also, it would be impractical, if not impossible, to find the miners who may have been exposed to the chemical if the miner were no longer employed at the mine.

A requirement to retain MSDSs for a lengthy period of time could result in the accumulation of a great number of MSDSs. A manufacturer may change the formulation of a chemical as processes or new technologies improve, requiring a revision to its MSDS. We expect operators to keep the current MSDSs for the chemicals they use. Maintaining many MSDSs for a single brand name that has changed composition a number of times could lead to confusion and potentially cause greater harm than not having the old MSDSs available in case a miner develops a disease 10, 20, or 30 years after exposure. Some mines use a large number and variety of chemicals briefly, depending on which product is cheapest or which the distributor is carrying at a specific time. Mines may also try a variety of chemicals for brief intervals to find a desired effect.

For the above reasons, we believe the 30-year retention period would be excessively burdensome for the mining industry. We also believe, however, that it would not be a great burden for you to notify miners 3 months before disposing of an MSDS.

The final rule, consistent with the interim final rule, requires that you maintain the MSDS at the work area or an alternate location as long as the hazardous chemical is at the mine, and notify miners at least 3 months before you dispose of an MSDS. We require you to provide copies of MSDSs to miners because they have a right to specific information about their chemical exposures. We determined that this access provision is adequate to ensure that a miner could obtain a copy of the MSDS if the miner wants one.

We believe miners request copies of MSDSs because they are concerned about a chemical's effect on their health. If a miner has a health concern, he or she usually requests a copy immediately rather than later. The effects of some chemicals, however, have a long latency period between the exposure and the onset of a disease. Miners can get a copy at any time the chemical is at the mine, but may not think to get a copy until you notify them that you intend to dispose of it. As stated previously, you may use any effective method to notify the miners, such as a verbal announcement in a safety meeting, a personal written notice, an all-employee newsletter, or a notice posted on the mine bulletin board.

G. Conforming Amendments: HazCom Training Requirements Under 30 CFR Parts 46 and 48

In response to public comments submitted both in writing and at the public hearings, MSHA is removing the training requirements from the HazCom standard in 30 CFR part 47, except for initial training of currently employed miners. We are also making conforming amendments to 30 CFR parts 46 and 48 to accommodate HazCom training. These changes are a logical outgrowth of the interim final rule because commenters urged MSHA to integrate HazCom training with existing training standards in parts 46 and 48. In response to commenters' concerns, the final rule fully integrates HazCom training provisions into parts 46 and 48.

In the interim final rule, MSHA disagreed with the recommendation that all HazCom training requirements should be incorporated under parts 46 and 48. However, we now believe that the emphasis on hazardous chemicals can be incorporated into your training program. We have added specific language to existing parts 46 and 48 to make clear that these subjects will be a part of the mine's training program.

These conforming amendments clarify MSHA's intent that HazCom training will take place under parts 46 and 48 after the initial HazCom training is conducted. The conforming amendments to parts 46 and 48 make clear that for initial training, new miner training, newly employed experienced miner training, annual refresher training, and whenever a new task is assigned, miners will now have a unified approach to provide a better training focus on working with hazardous chemicals. We developed the interim final rule requirements to be fully compatible with existing training standards. The amendments to parts 46 and 48 provide integration of the interim final rule requirements with existing training standards. In addition, it is MSHA's intent to allow mine operators to use relevant training conducted in compliance with other MSHA, federal, or state regulations to meet the HazCom training requirement of this part. You can also use relevant training conducted in compliance with this part to meet the comparable requirements of other parts of this chapter. This means that relevant training provided to miners under other MSHA standards, such as parts 46 and 48, OSHA, EPA, DOT, and state requirements, can be credited toward HazCom training.

1. HazCom Training Under 30 CFR Part 46

Under the conforming amendments to existing part 46, mine operators must provide each new miner and newly hired experienced miner with instruction on the health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, the mandatory health and safety standards pertinent to such tasks, information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program.

Mine operators must provide any miner who is reassigned to a new task, in which he or she has no previous work experience, with training in the health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, information about the physical and health hazards of chemicals in the miner's work area, the protective measures the miner can take against these hazards, and the contents of the mine's HazCom program. Additionally, the conforming amendments to part 46 recommend that mine operators include information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program as part of the topics covered under the miners' annual refresher training.

Under the conforming amendments to annual refresher training in § 46.8(b), miners will receive instruction on changes at the mine which could adversely affect the miners' health or safety. It is under this section that miners will get information on potential exposures to chemicals which are not in their immediate work area, but which could potentially impact them while at the mine.

New miner training and newly employed experienced miner training. Under existing § 46.5, new miners are to receive 24 hours of new miner training, with a minimum of 4 hours of training in specific areas which, with the addition of these conforming

amendments, now will include information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program, before they begin work. They also must have instruction in additional subjects specified in the regulation no later than 60 days after beginning employment; and the balance of new miner training no later than 90 days after beginning employment.

For newly hired experienced miners, the conforming amendment to § 46.6 requires instruction in the same subjects required for new miners specified above, before they begin work. Existing part 46 also requires that they must have instruction in one additional subject specified in the regulation no later than 60 days after beginning work.

New task training. Existing § 46.7 requires training for every miner before the miner is reassigned to a task for which he or she has no previous experience. Training must also be given when a miner's task has changed. Existing part 46 already requires that the training must cover the health and safety aspects and safe work procedures of such tasks. The conforming amendment to § 46.7 requires information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program. This training will ensure that miners are adequately trained about new chemical hazards when they are assigned new tasks.

In addition, if a miner's task requires him to use a chemical and the chemical is changed by the mine operator to a chemical that poses a new chemical hazard, the miner must get information about those new hazards through task training. Task is defined under existing § 46.2(n) as ''a work assignment or component of a job that requires specific job knowledge or experience.'' In this instance, even though the miner's work assignment has remained the same, a component of his job that requires new job knowledge or experience has changed by the introduction of a new chemical hazard in his work area. The introduction of this new chemical hazard would require new ''job knowledge'' on the miner's part on how to safely use this chemical. We believe that this new information must be provided to the miner under the conforming amendment to § 46.7 as part of the miner's training in the health and safety aspects related to the assigned task, which include the safe operating procedures of such task. This interpretation is consistent with the purpose of part 46 task training, which is to provide miners with fundamental health and safety information regarding all aspects of their work assignments, so that they can perform their job duties safely.

MSHA wants to emphasize that if the introduction of a new chemical does not involve the introduction of a new hazard, mine operators do not have to conduct new task training and, consequently, no paperwork requirement is triggered. Thus, the conforming amendments to part 46 are not requiring any different training beyond that which is already required under § 46.7. New task training is only required when a new chemical hazard is introduced into a miner's work area, and not each instance when a new chemical is introduced into a miner's work area. Introducing a new hazard is not the same as introducing a new hazardous chemical. For example, if the mine operator is replacing a solvent with a new solvent that presents the same hazards as the old one, the mine operator is not required to conduct new task training. By contrast, if the new solvent poses a new hazard, the mine operator must conduct new task training to provide affected miners with new ''job knowledge'' regarding their work assignment and comply with the pertinent recordkeeping requirements of part 46. The mine operator also must include the new solvent in the list of hazardous chemicals and keep a copy of the MSDS available.

MSHA believes that this interpretation regarding task training is appropriate, and is also consistent with the training provision of the proposed and interim final rules regarding the introduction of a new chemical hazard into the miner's work area. We acknowledge that the traditional focus of the definition of ''task'' under part 46 has been on new work assignments. With these paragraphs, however, we are making clear our intent that task training must be conducted when a new chemical hazard is introduced into a miner's work area. We believe that this interpretation will achieve a safer workplace, and does not result in an increase in the administration of task training to miners, because mine operators may be less likely to replace chemicals with chemicals that are more hazardous.

Annual refresher training. Under existing § 46.8(b) annual refresher training, miners were already required to have refresher training that includes instruction on changes at the mine that could adversely affect the miner's health or safety. MSHA believes that this paragraph would include training about new chemical hazards introduced at the mine. In addition, the conforming amendment to § 46.8 recommends subjects to include information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program.

Part 46 and the interim final rule training elements. As noted below, all of the training elements which were contained in the interim final rule are appropriately provided to miners based on the type of training the miner receives during his course of employment at a mine.

All of the training elements which were contained in the interim final rule are covered by the language of the conforming amendments to part 46, or are covered by existing provisions of part 46. For example, new miners and newly hired experienced miners will continue to have information regarding the requirements of the HazCom standard under §§ 46.5(b)(4) and 46.6(b)(4), respectively, because mine operators were already required to train each miner on the mandatory health and safety standards pertinent to their tasks. The provision of this information will ensure that miners receive information about the location and availability of the HazCom program. The conforming amendments to these training provisions require mine operators to provide each miner with information about the physical and health hazards of chemicals in the miner's work area and the protective measures the miner can take against these hazards. The protective measures that a miner can take against these hazards must also include how a miner can detect the presence or release of a hazardous chemical in the work area because such detection is the natural first step that a miner would take to protect himself from any developing hazard. Finally, the mine operator must inform each miner about the contents of the HazCom program. These requirements are consistent with the training requirements that were specified in the interim final rule.

Training about the content of the HazCom program (the specifics of the program are enumerated under § 47.32) requires that mine operators identify how HazCom is put into practice at the mine through the use of hazard determination, labels and other forms of warning, MSDSs, and miner training. It also requires a list or other record of the identity of all hazardous chemicals known to be at the mine, and must be compiled for the whole mine or by

individual work areas. It is through this training that miners will be notified of the locations where hazardous chemicals are present.

In addition, when a miner is reassigned to a new task in which he or she has no previous work experience, the conforming amendment to § 46.7(a) provides that the miner must receive training in the health and safety aspects of the tasks to be assigned, including the safe work procedures of such task, information about the physical and health hazards of the chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program. These requirements are all consistent with the training requirements that were addressed in the interim final rule.

Finally, the conforming amendment addressing annual refresher training under § 46.8(c) recommends that mine operators provide information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program.

Training plans. Mine operators are reminded that training plans that include the minimum information specified in existing part 46 are considered approved by us and are not required to be submitted to us for formal review, unless you, the miners, or miners' representatives requests it.

To minimize the paperwork burden and assist mine operators with compliance with the HazCom requirements, we will provide assistance and guidance to all mine operators with training plan modifications. Our HazCom compliance guide will further explain the required training plan modifications and will include a model training plan addendum which mine operators can attach to their existing training plan. Mine operators can use this model addendum when revising their training plans. Also, mine operators who submitted their training plan to us for approval can attach this model addendum to their MSHA approved training plan, eliminating the need to resubmit. Mine operators are reminded that, under existing part 46 requirements, they must provide the miners' representative, if any, with a copy of the approved plan within one week after approval. Mines with no designated miners' representative must post a copy of the plan at the mine, or provide a copy to each miner within one week after approval.

Records of training. Under existing part 46 requirements, you are required to certify that a miner has received required training and retain a copy of each miner's training records and certificates for the duration of the miner's employment, except that you must keep certificates of annual refresher training for at least 2 years. You must keep training records and certificates for miners who have terminated their employment with you for at least 60 days after the employment ends. You may use our existing form for the certification (MSHA Form 5000–23) or maintain the certificate in another format. If you choose to use Form 5000–23, you should be aware that the form was not designed for use under part 46 and you need to ensure that you include on the form all the required information. Under part 46, you also are required to maintain a copy of the current training plan at the mine or have the capability to produce it upon request within one business day. You may keep training records and certificates at the mine site or at a different location, but must provide copies of the records to us and to miners and their representatives upon request.

Instructor qualifications. Under existing part 46 requirements, instructors do not need to be approved by us. Instead, training must be provided by a competent person, defined as someone with sufficient ability, training, knowledge, or experience in a specific area, who is also able to communicate the subject of the training and evaluate the effectiveness of the training provided.

Compatibility with other training. Existing part 46 allows you, where appropriate, to substitute equivalent training required by OSHA or other federal or state agencies to satisfy your training obligations under part 46. It is MSHA's intent to allow mine operators to use relevant training conducted in compliance with other MSHA, federal, or state regulations to meet the new HazCom training requirements of part 46. This means that relevant training provided to miners under other MSHA standards, such as parts 46 and 48, OSHA, EPA, DOT, and state requirements, can be credited toward HazCom training.

2. HazCom Training Under 30 CFR Part 48

As with part 46, the conforming amendments to existing part 48 require mine operators to provide new miners and experienced miners with instruction in the health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, the mandatory health and safety standards pertinent to such tasks, information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program. Training of miners assigned to a task in which they had no previous experience must include instruction in the health and safety aspects related to the assigned tasks, including the safe operating procedures of such tasks, information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program.

Training of new miners. Under existing §§ 48.5 and 48.25, new underground miners are to receive 40 hours and new surface miners are to receive 24 hours of new miner training in specific areas, with approximately 8 hours of training given at the mine site. Under the new conforming amendments to §§ 48.5 and 48.25, the training now includes instruction in the health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, the mandatory health and safety standards pertinent to such tasks, information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program. This training must be provided before such miner is assigned to work duties.

Experienced miner training. Experienced miners must complete training in the areas specified under existing §§ 48.6 and 48.26. Under the new conforming amendments, the training must include instruction in the health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, the mandatory health and safety standards pertinent to such tasks, information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program, before beginning work duties. Each experienced miner returning to mining following an absence of 5 years or more, must receive at least 8 hours of training.

Training of miners assigned to a task in which they have had no previous experience. Under existing §§ 48.7 and 48.27, miners assigned to new work tasks as specified in the regulation, must receive the required training before the new tasks are performed. The minimum subjects to be covered in this training program are specified under the regulation. In accordance with the

conforming amendments to existing part 48, this training program must now include instruction in the health and safety aspects related to the assigned tasks, including the safe operating procedures of such tasks, information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program.

These conforming amendments to part 48 will ensure that miners are adequately trained about new chemical hazards as part of their task training when they are assigned new tasks. In addition, if a miner's task requires him to use a chemical and the chemical is changed by the mine operator to a chemical that included a new chemical hazard, the miner must get information about those new hazards through task training.

Task is defined under existing §§ 48.3(f) and 48.22(f) as ''a work assignment that includes duties of a job that occur on a regular basis and which requires physical abilities and job knowledge.'' In this instance, even though the miner's work assignment has remained the same, the introduction of a new chemical hazard in the miner's work area would require new ''job knowledge'' on the miner's part on how to safely use this chemical. We believe that this new information must be provided to the miner under the conforming amendments to §§ 48.7 and 48.27 as part of the miner's training in the health and safety aspects related to the assigned task, which include the safe work procedures of such task. This interpretation is consistent with the purpose of part 48 task training, which is to provide miners with fundamental health and safety information regarding all aspects of their work assignments so that they can perform their job duties safely.

MSHA wants to emphasize that if the introduction of a new chemical does not involve the introduction of a new hazard, mine operators do not have to conduct new task training and, consequently, no paperwork requirement is triggered. Thus, the conforming amendments to part 48 are not requiring any different training beyond that which is already required under §§ 48.7 and 48.27. New task training is only required when a new chemical hazard is introduced into a miner's work area, and not each instance when a new chemical is introduced into a miner's work area. Introducing a new hazard is not the same as introducing a new hazardous chemical. For example, if the mine operator is replacing a solvent with a new solvent that presents the same hazards as the old one, the mine operator is not required to conduct new task training. By contrast, if the new solvent poses a new hazard, the mine operator must conduct new task training to provide affected miners with new ''job knowledge'' regarding their work assignment and comply with the pertinent recordkeeping requirements of part 48. The mine operator also must include the new solvent in the list of hazardous chemicals and keep a copy of the MSDS available.

MSHA believes that this interpretation regarding task training is appropriate, and is also consistent with the training provision of the proposed and interim final rules regarding the introduction of a new chemical hazard into the miner's work area. We acknowledge that the traditional focus of the definition of ''task'' under part 48 has been on new job duties or work assignments. With these paragraphs, however, we are making clear our intent that task training must be conducted when a new chemical hazard is introduced into a miner's work area. We believe that this interpretation will achieve a safer workplace, and does not result in an increase in the administration of task training to miners, because mine operators may be less likely to replace chemicals with chemicals that are more hazardous.

Annual refresher training. Existing §§ 48.8(b)(1) and 48.28(b)(1) already require that the annual refresher training course include the requirements of mandatory health and safety standards which are related to the miner's tasks. Under §§ 48.8(b) and 48.28(b), miners were already required to have refresher training that includes instruction on the mandatory health and safety standard requirements which are related to the miner's tasks and on the health provisions of the Mine Act, as well as an explanation of the warning labels. We believe that instruction about significant new information would be included in the above provisions as part of the training on the mandatory health and safety standard requirements related to the miner's tasks and the warning labels. Under §§ 48.8 and 48.28, the conforming amendments recommend subjects to include information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program.

Additionally, the conforming amendments to §§ 48.8 and 48.28 for annual refresher training recommend that training on health and safety standards relevant to mining operations at the mine be included. Significant, new information about the hazard of a chemical in a miner's work area would be covered by this recommendation.

Part 48 and the interim final rule training elements. All of the training elements which were contained in the interim final rule are covered by the language of the conforming amendments to part 48, or are covered by existing provisions of part 48. For example, new miners will be trained and have information regarding the requirements of the HazCom standard under §§ 48.5(b)(13) and 48.25(b)(13) because the miner is already required to have instruction in the health and safety aspects of the tasks to be assigned and the mandatory health and safety standards pertinent to such tasks. Also, when an experienced miner is trained pursuant to §§ 48.6(b)(11) and 48.26(b)(11), the course must include instruction in the health and safety aspects of the tasks assigned and the safe work procedures of the tasks. The conforming amendments to these training provisions require mine operators to provide each miner with information about the physical and health hazards of chemicals in the miner's work area and the protective measures the miner can take against these hazards. The protective measures that a miner can take against these hazards must also include how a miner can detect the presence or release of a hazardous chemical in the work area because such detection is the natural first step that a miner would take to protect himself from any developing hazard. Finally, the mine operator must inform each miner about the contents of the HazCom program. These requirements are consistent with the training requirements that were specified in the interim final rule.

Training about the content of the HazCom program (the specifics of the program are specified under § 47.32) requires that mine operators identify how HazCom is put into practice at the mine through the use of hazard determination, labels and other forms of warning, MSDSs, and miner training. It also requires a list or other record of the identity of all hazardous chemicals known to be at the mine, and must be compiled for the whole mine or by individual work areas. It is through this training that miners will be notified of the locations where hazardous chemicals are present.

In addition, when a miner is reassigned to a task in which he or she has no previous work experience, the conforming amendments to §§ 48.7(a)(1) and (c) and 48.27(a)(1) and (c) provide

that the training must include instruction in the health and safety aspects and the safe work procedures related to the assigned tasks, including information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program. These requirements are all consistent with the training requirements that were addressed in the interim final rule.

The conforming amendments addressing annual refresher training under §§ 48.8(c) and 48.28(c) recommend that mine operators provide information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program. Existing §§ 48.8(a)(1) and 48.28(a)(1) already require that the course include mandatory health and safety standard requirements which are related to the miner's tasks. These provisions will provide information regarding the requirements of the HazCom standard during annual refresher training because mine operators were already required to train each miner on the mandatory health and safety standards pertinent to their tasks. The provision of this information will ensure that miners receive information about the location and availability of the HazCom program. Finally, under part 48, existing §§ 48.5(b)(7), 48.6(b)(10), 48.8(b)(11), 48.25(b)(7), 48.26(b)(10), and 48.28(b)(8) already require mine operators to explain warning labels to miners.

Training plans. Mine operators are reminded that under existing part 48 regulations, they must submit to us for approval their plans for training new miners, training experienced miners, training miners for new tasks, annual refresher training, and hazard training for miners.

To minimize the paperwork burden and assist mine operators with compliance with the HazCom requirements, we will provide assistance and guidance with training plan modifications to all mine operators. Our HazCom compliance guide will further explain the required training plan modifications and will include a model training plan addendum. Mine operators can attach this model addendum to their existing training plan or use it when revising their training plans. Also, mine operators who submitted their training plan to us for approval can attach this model addendum to their MSHA approved training plan, eliminating the need to resubmit. Mine operators are reminded that, under existing part 48 requirements, they must post a copy of revisions to the training plan on the mine's bulletin board.

Records of training. Under existing part 48, you are required to record and certify on MSHA Form 5000–23 that a miner has received required training. A copy of the training certificate must be given to the miner at the completion of the training. The training certificates for each miner must be available at the mine for inspection by us and for examination by the miners, the miner's representative, and State inspection agencies. When a miner leaves your employment, he is entitled to a copy of his training certificates. Copies of training certificates for currently employed miners must be kept at the mine for 2 years, or for 60 days after termination of employment.

Compatibility with other training. It is MSHA's intent to allow mine operators to use relevant training conducted in compliance with other MSHA, federal, or state regulations to meet the new HazCom training requirements of part 48. This means that relevant training provided to miners under other MSHA standards, such as parts 46 and 48, OSHA, EPA, DOT, and state requirements, can be credited toward HazCom training.

Instructor qualifications. Under existing part 48 requirements, instructors must be approved by us. The regulations specify the requirements instructors must meet to receive MSHA approval.

H. Subpart H—Making HazCom Information Available

The proposed and interim final rules defined *access* as the right to examine and copy records. The final rule uses this same language. In providing access, the proposed rule required you to make written HazCom information available, but the requirements were repeated under each major provision. In response to comments to the proposed rule that HazCom, as published in 1990, was difficult to understand, we consolidated these requirements in a single place in the interim final rule and, subsequently, in the final rule. We included language in the labeling and MSDS sections to emphasize the need to have this critical information readily available.

Hazard determination and awareness, labels and MSDSs, and training provide miners with essential information about hazardous chemicals. Each of these components of the HazCom program complements the others. They, along with the requirements for a written program and access to the HazCom materials, are necessary for the effective communication of chemical hazard information to miners and operators.

Chemical information can be complex and lead to confusion. When you give miners access to your written HazCom materials, you will have taken an important step toward eliminating the mystery, clarifying any misinformation and erroneous concepts, and defusing worker concerns about these chemicals. If miners are not given access to the information, they can grow suspicious about what you tell them and may disregard the information entirely, thus reducing the effectiveness of the HazCom program. If you give miners access—allowing them to examine the material, copy it, and review it when they have time—they are more likely to share in the goals of the program, follow safe and healthful work procedures, and seek early medical help in case of exposure.

1. Section 47.71 Access to HazCom Materials

The proposed rule required you to give miners and their designated representatives access to written HazCom materials: the written HazCom program, the list of hazardous chemicals, labeling information, MSDSs, and training records. The proposed rule also explicitly required that you give representatives of the Secretaries of Labor and Health and Human Services access to HazCom materials.

This provision in the final rule is substantially the same as it was in the proposed rule, and unchanged from the interim final rule, except for training records. It is consistent with OSHA's HCS and provides the miner valuable information about the chemical hazards at their mine. Providing access means that if the miner requests a copy of material associated with the HazCom program, you must give the miner a copy of the relevant material. If you prefer, you can give the miner the records and the use of a copy machine so that he or she can make a copy. If you have an internet website, you could put the MSDSs on the website for access by your miners and customers, thus reducing the number of requests for paper copies.

Some commenters to the proposed rule asked that we not require operators to copy records for miners, citing an administrative burden. Others commenting on the proposed rule suggested miners put their requests for access in writing to ''verify and effectively communicate actual requests for copies.'' Commenters also pointed out that § 103(a) of the Mine Act already

gives representatives of the Secretaries of Labor and Health and Human Services access to HazCom materials.

Commenters to the interim final rule asked us to clarify miner's access to HazCom information and records. They expressed concern that some training materials, like videotapes or booklets, would be costly to duplicate and may violate copyright laws if they must make copies. As was our intent in the interim final rule, the final rule does not require that you provide miners copies of training materials. You must allow miners to examine that information, however, and to have access to all HazCom materials required by the final rule, such as the chemical inventory, MSDSs, and your product's labeling information.

As in the proposed standard, the final access provisions require operators to provide a copy of the records for the miner to examine or to retain a copy. In the interest of flexibility, the final rule, like the interim final rule, does not specify the time period in which you have to provide copies. Because you are required to keep all these HazCom materials available at the mine, including those available by computer, you should be able to provide them to miners, designated representatives, and federal officials on the same day or, at most, within 24 hours of receiving the request. We believe this timely availability of materials to miners will provide the same protection as the proposed rule because it will be available when requested.

While we agree that a written request would ''verify'' and ''effectively communicate * * * an actual request,'' there are numerous ways to achieve this goal other than having the miner put the request in writing. Requiring a written request is unnecessary because better alternatives are available. For example, you can have miners sign a receipt for the copies or initial a log. Requiring written requests could delay miners' access to essential HazCom materials. Therefore, the final rule does not require requests for copies of HazCom materials to be in writing.

Although it is not stated, you must provide access to representatives of the Secretaries of Labor (*e.g.,* MSHA inspectors) and Health and Human Services (*e.g.,* NIOSH investigators). The final rule does not explicitly include this provision because it is mandated under the Mine Act.

2. Section 47.72 Cost for Copies

The final rule, as in the proposed and interim final rules, requires you to provide one copy of written HazCom material without cost to the miner. This includes a single copy of any revisions or updates. Some commenters to the proposed rule were concerned that operators would have to provide copies at no cost to the miner. They stated that this was not reasonable and recommended that we require you to provide one copy, but not additional copies of the same document, at no cost. For this reason, if the miner or designated representative requests another copy of material you have already given them, the final rule allows you to charge for subsequent copies of the same material. These administrative fees must be reasonable and they must be the same for everyone. You may not refuse to provide these additional copies. These provisions will ensure that miners have access to information about hazardous chemicals without placing an undue burden on you.

3. Section 47.73 Providing Labels and MSDSs to Customers

If you produce a hazardous chemical, HazCom requires you to provide the labeling information and the MSDS to customers when they request them. If you have an internet website, you could put the labeling information and MSDSs on the website for access by your miners and customers, thus reducing the number of requests for paper copies. You also have the option of sending copies by e-mail or facsimile (fax). The final rule is the same as the interim final rule. There were no significant new comments received from the public on the interim final rule.

The proposed rule would have required you to provide a copy of the labeling information with the initial shipment of a hazardous chemical to another employer. You could have included this labeling information with the chemical's shipping papers rather than attach it to each container. If you became aware of any significant new information concerning the hazards of the chemical, you would have had to incorporate this new information, as appropriate, into a new label within 3 months and provide it with the next shipment of the chemical to that employer. In addition to the identity of the hazardous chemical and appropriate hazard warnings, the proposed rule also would have required you to provide that employer with your name and address or the name and address of a responsible party who could provide additional information about the hazardous chemical. The proposed rule did not specifically address customers who were not employers, such as an individual homeowner buying a load of stone for her driveway.

Some commenters to the proposed rule said that HazCom should require this labeling information on all containers shipped from the mine. They stated that it would be easier to label each shipment to avoid the extra recordkeeping associated with tracking which shipments to employers must contain labeling information. Others questioned our authority to require you to provide labels on products leaving mine property. Several commenters wanted us to cover hazardous chemicals shipped from a mine in a way that was consistent with the OSHA HCS.

MSHA has authority under the Mine Act to require operators to comply with the provisions of this standard, including providing labeling information to commercial carriers and contractors while they are on mine property. The final rule, as did the interim final rule, requires you to make the label information and MSDSs for your products available upon request. If you want to label each container or send the MSDS with each shipment, that is your choice. Our experience indicates that many mine products are already labeled and MSDSs are sent in a manner consistent with OSHA's HCS. Market forces and the requirements of other agencies serve to ensure that you label your product appropriately for downstream users. You are responsible for the accuracy of the information on any label you prepare.

Several commenters to the proposed rule stated that 3 months is too long and that you should inform miners immediately of significant new hazard information. These commenters suggested 5 days, 30 days, and 45 days as adequate time for you to incorporate the new information into a new label. We disagree that 3 months is too long for operators to incorporate new information into a new label. We believe that 3 months is a reasonable amount of time for the design and production of a new label and the final rule retains this requirement in § 47.41(b).

I. Subpart I—Trade Secrets

The ''Trade Secrets'' subpart balances two important interests: The miner's interest in obtaining information on hazardous chemicals and your proprietary interest in protecting your business. In general, we believe miner safety and health is best served by full disclosure of a chemical's identity. We recognize, however, the need to protect trade secrets. Once a trade secret is disclosed, its value may be lost. Under the Subpart I—Trade Secrets:

- You may always protect information about trade secret processes and percentages of mixture.

• You may protect trade secret chemical identities except in emergency and specified non-emergency situations.

• You must always disclose the properties, the safe use, and the safety and health effects of trade secret chemicals.

Our proposed rule was, in essence, a restatement of the existing OSHA trade secret provision. The OSHA rule has worked for other industries for years, has withstood the test of experience, and can ensure that trade secrets will not be disclosed beyond what is necessary to protect miners. The comments we received on this subpart were generally supportive. The interim final and final rules, while revised stylistically, retain the substance of the proposed rule and the OSHA rule.

We understand that most operators are probably not concerned with trade secrets. One commenter to the proposed rule said that the Trade Secrets subpart had limited utility for the coal industry. Another commenter to the proposed rule said the provision was unnecessary for crushed stone. Both of these commenters wanted us to delete the trade secret provisions.

We disagree with those commenters. To the operators who create unique processing compounds, trade secret protection may be vitally important. One commenter thought that we were downplaying that importance by anticipating limited interest in the provision. On the contrary, we recognize the value of trade secrets where they exist. Although the subpart may appear elaborate, it provides a proven framework to accommodate both the interests of protecting trade secrets and miners' health and safety. We have considered all comments submitted to the ANPRM, the proposed rule, and interim final rule. We determined that the Subpart I–Trade Secrets will effectively provide for the investigation and settlement of disputes.

The final rule is the same as the interim final rule. There were no significant new comments received from the public on the interim final rule and, subsequently, no changes were made in the language of the rule except for stylistic changes.

1. Section 47.81 Provisions for Withholding Trade Secrets

Once a particular chemical has been classified as a trade secret, HazCom allows you to withhold the chemical name and other specific identification of the hazardous chemical from the written HazCom program, label, and MSDS, provided that—

• You identify the trade secret chemical in a way that it can be referenced without disclosing the secret;

• You disclose the properties and effects of the chemical in the MSDS;

• You indicate in the MSDS that the chemical's identity is being withheld as a trade secret; and

• You make the chemical's identity available to MSHA, health professionals, miners, and designated representatives following other provisions in this subpart.

HazCom does not require you to disclose process or percentage of mixture information. The final rule, consistent with the interim final rule, incorporates the language of the proposed rule with a few editorial changes.

A commenter to the interim final rule was concerned that exempting percentage of mixture and process information from disclosure would be a loophole in the rule's protection. This exemption is taken from the OSHA rule. Even if a trade secret is involved in an exposure, the affected miners are entitled to know the properties and effects, alternative name, protections and treatments associated with the trade secret. When required, you must also disclose the specific chemical identity of the trade secret. We believe this gives miners all the necessary information that they would practically need for prevention or treatment of harmful exposures from a trade secret chemical.

2. Section 47.82 Disclosure of Trade Secret Information to MSHA

This section requires you to disclose to us, upon request, any information required by this subpart. If you are going to make a trade secret claim, you must do so no later than when you provide the information to us so that we can determine the validity of the claim and provide the necessary protection. This provision in the final rule is essentially the same as the proposed and interim final rules with a few non-substantive editorial changes. There were no comments on giving trade secret information to MSHA.

3. Section 47.83 Disclosure in a Medical Emergency

Upon request, you must immediately disclose the identity of a trade secret chemical to a health professional in a medical emergency. You are required to make this disclosure when the professional is treating the miner and determines that—

• A medical emergency exists, and

• The specific chemical identity is necessary to provide emergency or first aid treatment.

The proposed rule required you to identify the trade secret chemical to a treating ''physician or nurse'' in the event of an emergency. One commenter to the proposed rule suggested that we revise the provision to read ''physicians' assistants and other health-care professionals who provide treatment'' instead of ''physician or nurse'' so that HazCom includes other health-care professionals involved in treatment and patient care. This subject is also addressed in Subpart B—Definitions of this preamble under health professional.

You must provide the chemical's identity to the treating health professional immediately in an emergency. After the emergency, however, HazCom allows you to require that the health professional provide you with a written statement of need, as well as enter into a confidentiality agreement to protect against the unauthorized disclosure of trade secret information. In general, the statement of need verifies that the health professional will be using the trade secret information only for the needs permitted by HazCom. The confidentiality agreement ensures that the health professional will not make any unauthorized disclosures of the trade secret.

Under § 47.84, non-emergency disclosure, we state that you may be subject to a citation. One commenter to the proposed rule recommended that similar language be added for unwarrantable failures if disclosure is denied in an emergency. We did not adopt this recommendation. The § 47.84 citation provision is part of a procedure for reviewing denials of disclosures and balancing interests, which applies only to non-emergency situations. In any event, a violation of the emergency disclosure standard would, like other violations of mandatory standards, be subject to Mine Act enforcement.

A commenter to the interim final rule questioned whether the request for a trade secret under the rule could be made by fax or e-mail in lieu of a letter. The rule does not specify the form of the request in an emergency; the request may be made orally. In a non-emergency situation, the request must be in writing. Fax and e-mail are acceptable forms of a written request for purposes of the rule.

4. Section 47.84 Non-Emergency Disclosure

Commenters to the proposed rule generally agreed with the proposed provisions for non-emergency disclosure of trade secret chemical identity. These provisions remain substantively unchanged in the interim and final rules. In a non-emergency

situation, you must disclose the trade secret information to a health professional providing medical or other occupational health services to a miner if they give you a written statement of need requesting the information. Under this section, miners and designated representatives also have the same access. The statement of need must address the reasons specified in the rule, and explain why other available information will not suffice. In addition, the requester has to enter into a confidentiality agreement.

A commenter to the interim final rule asked how many occupational health needs must be specified in the written request. The request must contain at least one of the needs listed in § 47.84(b). Another commenter to the interim final rule said that process and percentage of mixture information should have to be disclosed in a non-emergency situation. We disagree. Although some health effects may differ depending on the percentage of mixtures, these health effects are supposed to be listed on the MSDS, even if the chemical's identity is not.

5. Section 47.85 Confidentiality Agreement and Remedies

The confidentiality agreement may restrict the use of the trade secret chemical identity to the health purposes indicated in the statement of need, and may provide for legal remedies in the event of a breach of confidentiality. You may not require a penalty bond in the confidentiality agreement; however, you may pursue other non-contractual remedies to the extent permitted by law.

The proposed rule would have required that you allow the health professional, miner, or designated representative to disclose the trade secret chemical identity to MSHA if they decide there is a need. This is the same as the interim final and final rules. The proposed rule would also have required that they let you know before or at the time they make the disclosure. This requirement is not mandatory in the final rule, the same as the interim final rule, because we determined that we could not enforce it. Accordingly, we are leaving it to the parties entering the confidentiality agreement. This provision only applies to disclosure of the trade secret chemical identity. In any event, miners and miners' representatives have the right under the Mine Act to confidentially report an imminent danger or health and safety violation to MSHA and explain how a trade secret chemical may be involved.

One commenter to the interim final rule asked whether confidentiality agreements can be legally required in light of the decision in *United Steelworkers of America* v. *Auchter,* 763 F. 2d 728 (3d Cir. 1985). The court in that case expressly acknowledged the usefulness and validity of confidentiality agreements in protecting trade secrets.

6. Section 47.86 Denial of a Written Request for Disclosure

You may deny a written request for disclosure of trade secret information in non-emergency situations. Your denial must—

- Be in writing, which includes e-mail and facsimile (fax) communication;
- Be given to the person requesting the information within 30 days of the request;
- Include evidence that the chemical's identity is a trade secret;
- State why the request is being denied; and
- Explain how alternative information will satisfy the medical or occupational health need identified in the request.

Commenters to the interim final rule agreed with the proposed provisions for denying a request for non-emergency disclosure of trade secret information and we included these provisions in the final rule. The section is unchanged from the interim final rule.

7. Section 47.87 Review of Denial

If you deny a request for trade secret information, the person or organization making the request can refer the denial to us for review. In order for the request to be reviewed, it must include a copy of the request for disclosure, the confidentiality agreement, and your written denial. This provision is essentially unchanged in the proposed, interim final, and final rules. We will consider the appropriateness of the denial based on the evidence you submit to support your claim that the chemical's identity is a trade secret, the medical or occupational health need for the information, and the proposed means to protect confidentiality.

If we determine that you wrongfully denied the request for disclosure, you will be subject to a citation. If you can demonstrate to us that the execution of a confidentiality agreement would not protect you against the potential harm of an unauthorized disclosure of the trade secret information, we may set conditions to ensure that medical services are provided without undue risk of harm to you.

Finally, if you contest a citation for failure to disclose trade secret information, the Federal Mine Safety and Health Review Commission will review the citation.

Commenters to the proposed rule generally agreed with the proposed provisions for reviewing a denial and we included these provisions in the interim final rule.

One commenter to the interim final rule, however, questioned our ability to provide conditions in addition to those that would be provided under a confidentiality agreement to protect the trade secret. While we anticipate that a confidentiality agreement would normally suffice, the provision allows that in any event adequate protections can be fashioned to meet the circumstances of the case so that affected miners, their representatives, or health professionals have access to critical trade secret information. This provision is essentially the same as the OSHA rule.

J. Subpart J—Exemptions

The final rule, consistent with the interim final rule, has two categories of exemptions under HazCom. The exemptions from the HazCom standard and the exemptions from labeling. With some differences that are noted in the discussion, the final and interim final rules are essentially the same. They were constructed in a way different from the proposed rule, but we believe they convey the same meaning and, therefore, the same application of HazCom as that intended by the proposed rule.

The proposed rule included both the exemptions from the rule and the exemptions from labeling in the section on ''scope.'' It then repeated the labeling exemptions under ''labeling.'' Commenters to the proposed rule remarked that this repetition was unnecessary. In the final rule, consistent with the interim final rule, we placed each set of exemptions in a table in a separate Exemptions subpart near the end of the rule. This change in format brings the compliance requirements closer together at the beginning of the rule while, at the same time, eliminating repetition and making the exemptions more noticeable.

The following table summarizes those chemicals exempt from HazCom or HazCom labeling because they are regulated under other federal statutes or regulations.

Chemical	Statute	Responsible agency
Chemical substance (exempt from labeling)	Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*).	EPA.
Consumer product (exempt from rule and labeling)	Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*).	CPSC.
Hazardous substance (exempt from rule and labeling).	Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*).	CPSC.
Hazardous substance (exempt from labeling)	Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*).	EPA.
Hazardous waste (exempt from labeling)	Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended (42 U.S.C. 6901 *et seq.*).	EPA.
Any food, food or color additive, drug, cosmetic, or medical or veterinary device or product, including materials intended for use as ingredients in such products (e.g. flavors and fragrances) (exempt from rule and labeling).	Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) or Virus-Serum-Toxin Act of 1913 (21 U.S.C. 151 *et seq.*).	Food and Drug Administration or Department of Agriculture.
Alcoholic beverages (exempt from rule and labeling)	Federal Alcohol Administration Act (27 U.S.C. 201 *et seq.*).	Bureau of Alcohol, Tobacco, and Firearms (BATF).
Pesticide (exempt from labeling)	Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*).	EPA.
Pesticides (seed treated with) (exempt from labeling)	Federal Seed Act (7 U.S.C. 1551 *et seq.*)	Department of Agriculture.

1. Section 47.91 Exemptions From the HazCom Standard

The final rule exempts the following materials from the full scope of the standard. These exemptions are substantively the same as in the proposed and interim final rules.

Articles. The final rule exempts *articles* from HazCom under normal conditions of use if they release no more than insignificant amounts of a hazardous chemical and if they pose no physical or health risk to miners. This exemption has the same substantive application as the proposed rule, though constructed differently, and is unchanged from the interim final rule.

The exemption in the proposed rule appeared to exempt *articles* without any conditions or limits to the exemption. The definition of *article,* rather than the exemption, contained the operative conditions. The proposal's definition described *article* as a manufactured item, other than a fluid or particle, that is formed to a specific shape or design during manufacture and has end-use functions dependent upon its shape or design. For example, even though polyaromatic hydrocarbons are hazardous chemicals, their presence in a plastic bucket or seat cushions or ventilation curtains is exempt from HazCom because the bucket, seat cushions, and ventilation curtains are articles. Polyaromatic hydrocarbons in diesel exhaust or adhesives, however, are covered by HazCom. Even though chromium is a hazardous chemical capable of causing poisoning, chromium in a steel bar or chisel would be exempt from HazCom, regardless of its percent composition, because the bar and the tool are articles.

The definition also included paragraph (c), which stated that an article is exempt if, under normal conditions of use, it releases no more than trace amounts of a hazardous chemical and presents no physical or health hazard. For example, chromium in a welding rod is not exempt. Even though the welding rod is formed to a specific shape or design during manufacture and has end-use functions dependent upon its shape or design, the rod releases more than trace amounts of the hazardous chemical under normal conditions of use.

Commenters to the proposed rule generally agreed with the exemption of ''articles'' and with its definition in the HazCom proposed rule. Some of the proposed rule commenters suggested that we eliminate paragraph (c) of the definition. Paragraph (c) said an article, under normal conditions of use, does not release enough of a hazardous chemical to pose a physical or health hazard. These commenters to the proposed rule maintained that paragraph (c) was unnecessary and contrary to the thrust of the exemption for articles. Other commenters to the proposed rule suggested, however, that the definition must address risk for this exemption to be effective. To determine when an article is a hazardous chemical, some commenters to the proposed rule suggested that the definition include a *de minimis* provision establishing a low threshold concentration below which the rule would not apply. Other commenters to the proposed rule wanted a significant risk provision. Several commenters to the proposed rule recommended that we link this provision to the Mine Act by stating that an article is exempt if it ''does not release a quantity of a hazardous chemical that poses a risk of material impairment of health or functional capacity to miners.'' Another commenter to the proposed rule suggested that HazCom clearly state our intent to exempt trivial risks. This commenter cited a court decision on OSHA's HCS which interpreted this exemption to mean that ''any amount of release that could conceivably cause damage eliminates exemption as an 'article'.''

Commenters to the proposed rule also questioned what we meant by the terms ''minute'' or ''trace'' as applied to releases of chemicals from an article and by the phrase ''normal conditions of use.'' These commenters stated that we must clarify this provision for the HazCom final rule to be effective. One stated that—

> * * * If exposures are negligible, labeling products as hazardous causes needless concern to workers. If warnings are provided for all measurable releases of chemicals, regardless of risk, workers will be unable to distinguish between meaningful/significant and trivial risks and the standard will be severely diluted.

We agree with commenters' concerns that paragraph (c) of the proposed definition of article is unclear about how much of a hazardous chemical released from a manufactured item under normal conditions of use would constitute either small, minute, trace, or *de minimis* quantities. In many cases, it may be both time consuming and difficult to accurately determine whether an item is an article or a hazardous chemical. For example, one commenter to the proposed rule stated

that ''[u]sing present day analytical chemical technology, extremely low levels of chemicals can be detected everywhere.''

To clarify our intent, in the interim final rule we separated the criteria for exemption from the definition for *article.* We also used the term ''insignificant amount'' instead of ''very small quantity'' and ''minute or trace amounts.'' By using these terms, we intend to shift the emphasis from the quantity of a hazardous chemical release to the significance of the release as it relates to risk. We believe that these language changes do not change the substantive intent of this exemption. There were no substantive comments on this exemption in the interim final rule and it remains unchanged in the final rule.

Biological hazards. The final rule exempts all biological hazards, such as poisonous plants, insects, micro-organisms, from HazCom. This exemption is unchanged from the interim final rule, and though the construction of the standard is different from the proposed rule, it is substantively unchanged.

We proposed to exempt biological hazards from the HazCom standard, following OSHA's HCS. We received a few comments supporting this exemption. Some commenters to the proposed rule objected to our exemption of biological hazards because there are dangers at the mine associated with these substances, and information concerning their hazards should be communicated to miners. We agree with the commenters, however, biological hazards are beyond the scope of this rulemaking.

Fungus, molds, and poison ivy are found virtually everywhere in our environment. If there is a hazardous chemical present in addition to the biological hazard, however, it would be subject to the requirements of HazCom. For example, a bottle containing a biological sample in a hazardous solvent would have to be labeled for the hazardous solvent.

Consumer products. The final rule, consistent with the proposed and interim final rules, exempts *consumer products* from HazCom if the miner uses the product for the purpose the manufacturer intended and the use does not expose the miner more often and for longer periods of time than ordinary consumer use would. There is also a discussion of *consumer products* under the Definitions section of this preamble (§ 47.11).

We proposed to exempt consumer products and hazardous substances from the full scope of HazCom when operators or miners use them at the mine in the same manner as an ordinary consumer (normal consumer use). The proposed rule would have exempted consumer products as defined in the Consumer Product Safety Act (15 U.S.C. 2051) and hazardous substances as defined in the Federal Hazardous Substance Act (15 U.S.C. 1261), when they are subject to consumer product safety standards or labeling requirements issued under these Acts. The Federal Hazardous Substances Act (FHSA), administered by the Consumer Product Safety Commission (CPSC), regulates hazardous substances in interstate commerce. The CPSC specifically exempts pesticides subject to the Federal Insecticide, Fungicide, and Rodenticide Act, and foods, drugs, and cosmetics subject to the Federal Food, Drug, and Cosmetic Act, from the term ''hazardous substance'' under FHSA. In the proposed rule, we also specifically requested comments on the need to exclude from coverage any consumer product excluded by Congress from the definition of hazardous chemical under § 311(e)(3) of the Superfund Amendments and Reauthorization Act (SARA) of 1986, Pub. L. 99–499.

Commenters to the proposed and interim final rules suggested that we define the term *consumer product* using a working definition for exempt materials rather than referencing statutes that mean nothing to most operators. One commenter stated that the EPA's consumer product exemption under SARA represents a more reasonable approach than that in the proposed rule and urged us to incorporate SARA's definition of consumer product. SARA does not define consumer product. It defines a *hazardous chemical* and excludes—

> * * * any substance to the extent it is used for personal, family or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

This commenter reasoned that keying the consumer product exemption to consumer packaging and concentration would achieve the same result as the proposed exemption, but without requiring you to demonstrate that your miners use the consumer product as an ordinary consumer.

Another commenter indicated that many mining uses of consumer products may result in exposure that was not contemplated by the manufacturer packaging the product for consumer use. Some commenters questioned how individuals using consumer products in an unintended manner would affect our exemption of consumer products from HazCom. Another recommended that we delete the requirement that you must demonstrate that the consumer product is being used in the same manner as in normal consumer use. The commenter further stated that there is no evidence to demonstrate that significant risks are present where such materials are used in a manner or amount not consistent with normal consumer use.

Commenters objected to the term ''normal consumer use'' in the proposed rule and recommended that we delete it from the final rule. Another commenter stated that requiring an additional determination, as to whether the product is used at the mine in the same manner as in normal consumer use, places an exceptional burden on you and recommended that we exempt all consumer products from HazCom regardless of how they are used. One commenter stated that consumer products should be included in the final rule because mines use the materials more frequently and in larger quantities than do private homes. Another stated that comparing the use of a consumer product by a miner with its use by a normal consumer is neither practical nor possible, because the duration and frequency of use are highly variable. Comments to the interim final rule were basically the same as those to the proposed rule.

We recognize that there are situations where a miner's exposure is significantly greater than that of an ordinary consumer and that, under these circumstances, consumer products or hazardous substances which are safe for contemplated consumer use may pose unique hazards at the mine. For this reason, we limit the exemption in such cases to labeling. You must comply with the other requirements of HazCom, such as those concerning an MSDS and training, to inform miners about the hazardous chemical. This is consistent with OSHA's HCS.

For a consumer product to be exempt at your mine, you must be able to show that miners use it in their work areas the same way (*i.e.* the same concentration, duration, and frequency of exposure) as a normal consumer would use it. How the chemical is used determines if it is exempt. If the chemical is not hazardous, or if there is no potential for exposure, HazCom does not apply.

We received a number of comments in the public hearings to the interim final rule about the concern of operators that their judgment about applying the exemption for consumer products might differ from an inspector's judgment and result in a citation. After considering all comments and various options for small

mines, we determined that all options for exempting consumer products require an exercise of judgment. In response to commenters concerns, we simplified the definition of consumer product in the final rule to tie it to concentration, packaging, and labeling.

A guide for determining if a consumer product is exempt from HazCom, however, is to look at how the chemical is used at the mine. For example, a consumer may own two or three cars and change brake pads and rotors once a year. The consumer uses brake cleaner, scrubbing parts, and being exposed to the cleaner for about 1 hour during each brake job. A small mine may need to do brake work (using the cleaner to clean brake parts) monthly. If a particular miner acts as a mechanic, doing all the brake work at the mine, the miner's exposure is more than that of normal consumer use and the brake cleaner is not exempt. It must be included in your HazCom program. If an individual miner only changes brakes (uses the brake cleaner) two or three times a year, that is within the range of ordinary consumer use and it is exempt from the program.

Here's another example: suppose you assign a miner to paint a hazard warning on an explosives magazine using a can of spray paint that contains hazardous chemicals. That use would be one time and of short duration, typical of an ordinary consumer's use of the product. If the miner's job is painting and he or she is required to use the spray paint frequently, the exposure would be greater than ''normal consumer use'' and the paint must be included in the HazCom program.

Many mines buy consumer products to use in their daily operations. The consumer products exemption does not depend on whether you buy the product wholesale or retail. For example, a 5-gallon container of paint from a retailer may not have an MSDS. If you purchased this paint from an industrial supplier, it would be labeled to comply with HazCom and the supplier would probably provide an MSDS.

We expect you to determine if the use of a consumer product on mine property is as the manufacturer intended, and if the exposures is of longer duration or more frequent than ordinary consumer use. Although a complete exemption may be easier to comply with and enforce than a partial one, the issue of concern to us is whether miners have sufficient information to use the hazardous chemical safely.

In response to comments on the proposed rule, and reiterated in comments to the interim final rule, we simplified the definition of *consumer product* in the final rule to tie it to concentration, packaging, and labeling.

Items for personal consumption. The final rule exempts ''items for personal consumption'' from HazCom when those items are labeled and packaged for retail sale and intended for personal consumption or use. The application of this standard is unchanged from both the interim final and proposed rules although the language and structure of the exemption are much simpler. Because the requirements are substantially the same in the proposed, interim final, and final rules, the final rule does not reduce miner protections.

We proposed to exempt foods, drinks, drugs, cosmetics, and tobacco or tobacco products from HazCom when they were intended for personal consumption or use by miners while on mine property. Commenters to the proposed rule generally supported these exemptions. The proposed rule did not exempt distilled spirits. One commenter to the proposed rule recommended that HazCom exempt them, consistent with OSHA's exemption. Other commenters to that rule recommended that this exemption also include the condition that the product be packaged for retail sale and for use by the general public. A few commenters recommended that we not exempt any hazardous chemical. There were no comments on this issue to the interim final rule.

The proposed rule did not specifically exempt alcoholic beverages sold, used, or prepared in a retail establishment, because we thought these exemptions did not apply to mining. Our existing standards for metal and nonmetal mines (§§ 56.20001 and 57.20001) prohibit intoxicating beverages in and around mines. Because we do not have standards for coal mines which specifically address intoxicating beverages, we included an exemption for alcoholic beverages in the interim final rule to be consistent in both mining sectors and to avoid confusion. The final rule is unchanged from the interim final rule.

The final rule exempts foods, drinks, including alcoholic beverages, drugs, cosmetics, tobacco, and tobacco products intended for personal consumption or use by miners while on mine property. For example, HazCom does not cover items such as aspirin in a first aid kit or food served at a mine cafeteria or vending machine.

Nuisance particulates. We proposed to exempt nuisance particulates that do not pose a covered health or physical hazard from the full scope of HazCom. However, the final rule, the same as the interim final rule, does not exempt nuisance particulates from the provisions of HazCom.

Many commenters to the proposed rule supported the exemption of nuisance particulates and nonspecific mine dust. Commenters to the proposed rule stated that nuisance particulates do not present any known irreversible health effects and that there are no standards in existence to use as a baseline. Several commenters to the proposed rule stated that inclusion of nuisance particulates in HazCom could reduce the effectiveness of a HazCom program by transmitting too much information to employees and diluting the focus on more serious or less recognized chemical hazards.

A number of commenters to the proposed rule objected to the exemption of nuisance particulates and nonspecific mine dust from HazCom. These commenters stated that many particles thought to be nuisances are found later to be important health hazards and that if the hazard exists at the mine, regardless of the amount, it should be subject to the provisions of HazCom. One commenter stated that nuisance particulates are not excluded by OSHA and we should not exclude them. This commenter stated further that it would be useful to have MSDSs for nuisance particulates to provide miners with reliable information. Another commenter recommended that we omit the nuisance particulate exemption from the standard because there is no proper classification of these substances.

The final rule, consistent with the interim final rule, does not include an exemption for nuisance particulates because we believe there is no need for a specific exemption. If a nuisance particulate poses no health or safety hazard to miners, other than mechanical irritation, then it is not a hazardous chemical and not covered by HazCom. If a nuisance particulate causes chemical irritation, contains >0.1% respirable crystalline silica, or poses another health or safety hazard to miners, it is a hazardous chemical, not a nuisance particulate, and would be covered by HazCom. For this reason, a separate exemption for nuisance particulates is unnecessary. The particulates would be included or not included in the HazCom program based on whether they pose a health or safety hazard to miners.

Commenters to the interim final rule strongly objected to our decision not to exempt nuisance particulates from HazCom. We disagree for several reasons. First, there is no comprehensive list of nuisance dusts. They are not the same as ''not otherwise classified'' mine dusts. Second, we

explained in the preamble to the interim final rule that we do not consider simple mechanical irritation as a health or physical hazard. Finally, some dusts, formerly classified as nuisance particulates, contain >0.1% of respirable crystalline silica which IARC and NTP classify as a carcinogen.

The final rule does not include a specific exemption for nuisance particulates. MSHA clearly states in the preamble to the interim final rule and here that any dusts not presenting a health or physical hazard, including those that only cause physical or mechanical irritation, are already exempt from HazCom by definition of a *physical hazard* and *health hazard.* Also, as stated in the preamble to the interim final rule and this preamble, we intend that ''irritant'' means the same as OSHA's HCS. HCS Appendix A defines ''irritant'' as:

> A chemical, which is not corrosive but which causes a reversible inflammatory effect on living tissue by chemical action at the site of contact. A chemical is a skin irritant if, when tested on the intact skin of albino rabbits by the methods of 16 CFR 1500.41 for four hours exposure or by other appropriate techniques, it results in an empirical score of five or more. A chemical is an eye irritant if so determined under the procedure listed in 16 CFR 1500.42 or other appropriate techniques.

Radiation. The final rule exempts all ionizing and non-ionizing radiation, such as alpha, gamma, microwave and x-ray from HazCom. The exemption is unchanged from the interim final rule, and though constructed differently, it has the same substantive application as the proposed rule.

We proposed to exclude ionizing or non-ionizing radiation from HazCom, consistent with OSHA's HCS. We also incorporated this exemption in the interim final rule and retain it in the final rule.

Some commenters to the proposed rule suggested that we not exempt radiation from HazCom because, if radiation is a potential hazard in the work area, this should be communicated to miners. Commenters to the interim final rule also expressed concern that miners be told about radiation hazards. Another commenter to the proposed rule suggested an exemption for non-product-specific physical hazards, such as noise, vibration, and hot environments, associated with the mining environment.

Radiation is covered under other federal requirements and we have standards for metal and nonmetal mines that require hazard notification for radiation, including the posting of hazard warning signs. A chemical with radioactive properties that also presents other types of health and physical hazards is not exempt from HazCom. We do not consider non-chemical-specific physical hazards (such as heat stress, ergonomic hazards, or hearing loss) relevant to this rulemaking because HazCom is meant to address chemical hazards.

Wood and wood products, including lumber. Our proposed rule would have exempted wood and wood products, including lumber if they did not release or otherwise result in exposure to a hazardous chemical under normal conditions of use. The final rule provides an example that wood is not exempt if it is treated with a hazardous chemical or if it will be subsequently cut or sanded. This exemption is the same as in the interim final and final rules, and though constructed different from the proposed rule, has the same substantive application.

Wood products, such as lumber, plywood, and paper, are easily recognizable in the work area and pose a risk of fire that is obvious and well known to the miners working with them. Wood dust is not generally a wood ''product'' but is created as a by-product during sawing, sanding, and shaping of wood. We believe that it is necessary for you to inform miners about the hazards of wood dust and chemically-treated wood and precautionary measures to minimize or prevent exposure. In response to comments to the proposed rule, however, the interim final and final rules exempted wood and wood products from the labeling requirements if, for some reason, they were not exempt from the entire standard. Commenters to the interim final rule did not address this exemption.

2. Hazardous Waste

Consistent with the proposed and interim final rule, the final rule does not exempt *hazardous waste.* Hazardous waste, therefore, is not an entry in Table 47.91.

Some commenters to both the proposed and interim final rules urged us to exclude hazardous waste because it was covered by the Environmental Protection Agency (EPA). EPA's regulations are intended as environmental safeguards for the protection of the public rather than the health and safety of miners on mine property who come in direct contact with mining hazards on a daily basis. The final rule does not exempt hazardous waste regulated by the EPA under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

Hazardous waste would have been exempt from the labeling and MSDS requirements under the proposed rule. We did not propose to exempt EPA-regulated hazardous waste from the other requirements of HazCom. If a hazardous waste had been brought to the mine without an MSDS and you could not obtain one, the proposed rule would have required you to determine its hazards using the same methods as if it had been produced at the mine. You would either have had to test it or have used any valid, available, scientific information to determine its nature.

Because the proposed rule would have required you to have information on the hazards of this waste, and because there is no specific format for the MSDS, it follows that a compilation of such information could be considered an MSDS. For this reason, we did not specifically exempt EPA-regulated hazardous waste from the MSDS requirements in the final rule. Rather, we address this waste separately in § 47.53, Alternative for hazardous waste. You must make sure that miners have access to the best information you can find about the waste's chemical hazards.

Under EPA standards, a waste analysis is required as part of the permit to burn or dispose of hazardous waste. However, EPA does not require the waste analysis to specify the chemicals' hazards or provide that it be made available to employees.

In most cases, the shipping manifest or EPA permit required to accompany the waste will provide detailed information about the character of the chemical. Even if the ingredients are listed generically, you should request that the supplier provide you with hazard information.

MSHA indicated in the preamble to the proposed rule, that OSHA also excluded hazardous waste regulated by EPA from coverage under its rule. MSHA requested comments on the appropriateness of exempting other hazardous waste not regulated by EPA from the labeling and MSDS requirements of the proposed rule.

We received numerous comments on this proposed exemption of hazardous waste from label and MSDS requirements. Some commenters supported the proposed hazardous waste exemption in general, agreeing with our rationale. Commenters suggested that we make the following specific revisions to our proposed hazardous waste exemption:

- Exempt wastes not regulated by EPA, particularly those reused on-site or sent off-site for recycling, such as waste oil, antifreeze, and solvents.

• Exempt process-related waste, such as tailings, mine waste, and other hazardous waste generated by the mine, because they are already regulated by us and EPA and the inclusion of these materials in HazCom labeling and training requirements could lead to serious conflicts with other standards.

• Define *hazardous waste* to include garbage, refuse, sludge, and other discarded materials including solid, liquid, semisolid, or contained gaseous material resulting from mining because you should inform potentially exposed miners about the hazards associated with scrap and discarded material at the mine.

• Extend our exemption to include hazardous waste regulated under state programs pursuant to the requirements of RCRA.

Several commenters to the proposed rule suggested that we treat hazardous waste exposures as OSHA does, by not requiring HazCom training for those miners who are exposed to EPA-regulated hazardous waste. One commenter specifically suggested that we follow OSHA's requirements for hazardous waste operations in 29 CFR 1910.120(e) by requiring training only for specific hazardous waste operations and not for all types of hazardous waste handling.

Since our proposed rule was published, an increasing number of mining operations have obtained permits to burn hazardous wastes in their kilns. Some bury waste in a landfill or dispose of their own wastes from the mining process. There are 55 mining operations burning hazardous waste and waste products with an average of 16 miners per site. Wastes burned include biological wastes, pesticides, herbicides, waste oil, heavy metals, and tires. Some, but not all, of these hazardous wastes are regulated by EPA. A few operations have EPA issued permits that allow them to burn hundreds of kinds of hazardous wastes, up to 260 different kinds. Many are burning thousands of gallons of waste products a year in their kilns. Two operations handle more than 15 million gallons per year and 12 operations handle more than 1 million gallons per year. Most handle either liquid or solid wastes; some can accommodate both. Some of these wastes would meet HazCom's definition of a health or physical hazard or both.

NIOSH stated that hazardous waste not regulated by the EPA or other existing statutes should not be exempt from HazCom because to do so would be contrary to the intent of HazCom. The rulemaking record indicates the need for miners working with hazardous waste to be informed of its hazards either as a mixture or its individual components. We have determined that, for HazCom to be effective, it must include all hazardous chemicals to which miners may be exposed and, therefore, the final rule, like the interim final rule, does not specifically exempt hazardous waste regulated by the EPA. If they are hazardous, other waste chemicals are subject to the same HazCom requirements as every other hazardous chemical on site.

Commenters to the interim final rule asked us to reconsider our decision not to exempt hazardous waste. They argued that OSHA exempts hazardous waste, leaving it to EPA to regulate. After a careful review of all comments received on this issue, we have determined that it is necessary to cover hazardous waste under our standard. Although OSHA excludes coverage of hazardous waste regulated by EPA, OSHA has other specific standards directed to hazardous waste operations. (29 CFR 1910.120). OSHA was required to issue these standards by § 162, title 1 of the Superfund Amendments and Reauthorization Act of 1986 (SARA). We do not have similar statutory requirements or standards regarding hazardous waste operations and believe that we would be denying protection to miners handling hazardous waste if we were to exempt it from coverage. Accordingly, the final rule does not exempt hazardous waste from coverage.

Under the final rule, you must provide each potentially exposed miner with access to MSDS information about the hazardous waste to the extent that it is available. You must make any information available to the miner or designated representative which identifies its hazardous chemical components, describes its physical or health hazards, or specifies appropriate protective measures. Some of this information is available from the EPA permit, your analysis of the waste, or the supplier of the waste material. If the supplier of the hazardous waste prepares any document for compliance with EPA or OSHA standards that contains the same types of information as required for the label and MSDS, we expect you to obtain a copy of these documents and to provide miners with access to them.

Commenters to the interim final rule mistakenly thought that we defined *hazardous waste* to include ''garbage, sludge, and other discarded materials.'' MSHA does not intend to include any material as *hazardous waste* other than that regulated by EPA.

3. Section 47.92 Exemptions From Labeling

The final rule exempts ''chemical substances'', ''hazardous substances'', ''consumer products'', and ''pesticides'' when they are kept in their manufacturer's or supplier's original packaging and the packaging is done under other federal labeling requirements. Although the exemption is constructed differently from the interim final rule, the application under the final rule, as discussed below is the same. The interim final rule named the federal authorities under which the packing had to be done. The final rule simply refers to appropriate other agencies. This does not reduce miner protections because the final rule is substantively the same as the proposed and interim final rules.

We proposed to exempt from HazCom's labeling requirements those hazardous substances regulated and labeled under the authority and standards of other federal agencies. Commenters objected to the proposed rule's referencing the laws and standards of other organizations and agencies, considering their inclusion to amount to ''incorporation-by-reference.'' They stated that the rule does not include these documents, that they are not useful in understanding HazCom, and that our rules will become dependent on out-of-date material or require rulemaking to keep them current. The proposed rule had referenced the Consumer Product Safety Act; the Federal Hazardous Substances Act; the Federal Food, Drug, and Cosmetic Act; the Federal Insecticide, Fungicide, and Rodenticide Act; the Solid Waste Disposal Act; and the Resource Conservation and Recovery Act. Commenters to the proposed and interim final rules suggested that we replace these references with simple operational definitions that would be understood by the miner.

Like the proposed rule, the interim final rule included these references to clarify which toxic materials, hazardous substances, hazardous wastes, and consumer products are exempt from HazCom labeling. We consider these references as informational because they inform you of the limits of your responsibility rather than imposing an obligation. In response to comment on the interim final rule, the final rules includes an operational definition for most exemptions. For others, to the extent practical, the final rule simplifies the references by not including legal citations. Use of these references to specify exemptions from HazCom means that another federal agency

requires labeling of the hazardous chemical. A simple operational definition would be that you do not have to further label a hazardous chemical brought onto mine property if it already has a label indicating its identity and appropriate hazard warnings.

We expect that most hazardous chemicals regulated by another federal agency are labeled by the manufacturer with information about their identity, hazards, precautions for normal use and emergencies, and phone numbers for additional information. To avoid duplicate federal standards, we will accept pre-existing hazard labels that comply with the labeling requirements of another federal statute or standard for compliance with HazCom. We believe that this change in the final rule does not impose an additional burden on you because existing labels on containers of hazardous waste brought onto mine property that meet the comparable requirements of other federal or state regulations fulfill the labeling requirements of this final rule.

Also, MSHA will accept the labeling of mine products that comply with another comparable state or federal requirements. For example, if a hazardous substance or waste is produced at the mine, and it is covered by the standards of another federal agency, you must label it first in accordance with those standards. Consistent with the purpose of HazCom, if the hazardous chemical is not labeled in accordance with another federal statute or standard, you must label it in accordance with the requirements in § 47.32 (label contents) of HazCom.

Raw material. We proposed to exempt the raw material mined or milled from the labeling requirements of HazCom while on mine property. Many commenters strongly supported the proposed raw material exemption. Some of these commenters recognized the impracticality of affixing and maintaining labels on every ore car or on each bin or hopper containing the mined material and believed that such labels would be of little benefit. One commenter stated that they currently labeled bins of their raw material but found that the labels were difficult to read due to the dust covering them. Other commenters believed that, generally, operators inform miners about the hazards of the raw material being mined and this information could be considered common knowledge.

Another commenter to the proposed rule stated that while they did not disagree with a labeling exemption for the raw material mined—

> * * * the final rule should re-state the operator's duty to train and inform miners about the hazards inherent in the mineral being mined and by-products of the mining process such as crystalline silica, radon progeny, *etc.*

This commenter stated further that you should at least make an MSDS on these substances available and warn miners in a variety of ways. Among those commenters supporting the raw material exemption, one recommended that we clarify that a container of a raw material that has undergone a chemical reaction with other constituents, and thus is not a mixture, would not have to be labeled even if a hazardous chemical may have been added to it during processing at the mine.

This commenter further stated that—

> [w]hile the process container where the hazardous chemical is added may need to be labeled (at least where the process does not result in an instantaneous chemical reaction), the container subsequently holding the commodity produced for sale by the operator would not constitute a ''mixture'' and should not be labeled.

A few commenters disagreed with our proposed raw material exemption and requested that HazCom require labeling of all containers of hazardous raw material. One of these commenters expressed concern about the legibility and adhesion of labels, yet was confident that you could develop workable solutions. Other commenters stated that unlabeled containers of hazardous chemicals must be labeled under our existing labeling standards.

Commenters to the interim final rule asked that we also exempt mine wastes from labeling. They stated that the reasons labeling will not work for mine waste, such as tailings, are the same as the reasons given for exempting raw materials. Signs along the perimeter of tailings ponds or along drainage ditches are especially burdensome because the content of the ponds and ditches can change frequently.

The final rule exempts containers of raw materials from labeling while they are on mine property because we expect that miners are familiar with the hazards of the material being mined. Under HazCom, ponds and ditches are not considered containers for the purpose of labeling. HazCom requires, however, that you train miners about the hazardous chemicals to which they may be exposed and the location of hazardous chemicals in their work areas. Also, other MSHA standards require signs or barricades to warn miners about hazards that are not obvious.

Another commenter to the interim final rule asked us to clarify that raw materials altered through chemical reaction during processing, thus not a mixture, are still exempt from labeling. If you add a hazardous chemical to a container of raw material to form a mixture, you must label the container for the hazardous ingredient. If you add a chemical to a container of raw material to form a new compound which is no longer the raw material and which meets the criteria in the hazard determination section of HazCom (§ 47.21), then you must label the container for the newly created hazardous chemical.

Pesticides, food, and consumer products. The proposed rule included exemptions from labeling for pesticides; food, food additives, and color additives; and consumer products which are required to be labeled under standards issued by other federal agencies. The final rule is generally consistent with the proposed and interim final rules and with OSHA's HCS. The applicable definitions of the substances addressed in these exemptions are those provided by the governing statutes and standards.

Although there were some commenters to the proposed rule who addressed these exemptions, few had specific comments. Among those who did comment, many supported our exemption of consumer products. Several suggested that we not require coal mine operators to include consumer products in HazCom programs because this would result in meaningless storage of countless MSDSs. Another believed that we should clarify that you have a responsibility to maintain the labels that come on these hazardous materials.

Commenters to the proposed rule agreed with our intent to have a provision similar to OSHA's HCS, stating that separate rules for consumer products would be redundant and serve no purpose. Another commenter suggested that we also exempt, as per OSHA's standard, drugs, cosmetics, medical or veterinary devices, and materials intended for use as ingredients in such products (e.g., flavors and fragrances). In regard to our proposed consumer product exemption, one commenter stated:

> * * * consumer products already possess adequate labels with hazard identification and safe use instructions. Since no one knows the hazards of a product better than its manufacturer, the safest possible use of the product is in accordance with the manufacturer's recommendations * * *. Using products according to manufacturer's recommendations would result in exposures

that are very small (this is minute or trace amounts) and would not pose a physical or health risk to miners.

We received a few comments to the proposed rule objecting to the exemption of consumer products from HazCom's labeling requirements. Others suggested that consumer product labels provided by manufacturers may not provide adequate warning, given the use of these products at the mine. One of these commenters stated:

> * * * consumer products with warnings on adequate ventilation or that require the use of personal protective equipment cannot be presumed safe for use in the underground mining environment. Further, many mining uses of consumer products may result in exposures that were not contemplated by the manufacturer packaging the product for consumer use. * * * Many consumer products are potential fuel sources for fires (*e.g.,* aerosol solvents or paints). Further, exposure to these volatile solvents may adversely affect the seals and insulators on permissible equipment or adversely alter the explosive characteristics of the atmosphere in underground coal mines.

Commenters to the interim final rule expressed concern that there is nothing in the rule to require an operator to tell miners about the hazards of consumer products; and that miners may think that a consumer product is safe when it is not.

In response to the concerns expressed by commenters, the final rule states specifically that consumer products are exempt from labeling when they are labeled under the standards of another federal agency, such as the Consumer Product Safety Commission (CPSC). When the consumer product is not exempt from HazCom, but exempt from labeling, all other provisions, such as training and MSDSs, would still apply. Consumer products are exempt from HazCom where you can demonstrate that they are used at the mine in the same manner as in normal consumer use. Because consumer products are labeled under the authority of another federal agency, and these labels generally provide for the listings of chemical identities and hazard warnings, hazard information is available to miners and there is no need for additional labeling standards.

One commenter to the proposed rule suggested that we provide operators with a list of exempt products commonly found on mine property. We have determined that a list of exempt products commonly found on mine property is neither simple nor appropriate. These products are only exempt when used in the same way as they would normally be used by a consumer. A list could lead you to believe these were exempt under all circumstances. Some exempt items could be overlooked and some that are exempt from labeling may not be exempt from other provisions of HazCom. Even for exempt products, for example, you may not deface or remove labels from containers of hazardous chemicals brought onto mine property. If they are repackaged or transferred at the mine, you must communicate such labeling information to the miner and, if necessary, label the new container.

The final rule, consistent with the proposed and interim final rules, also includes an exemption from HazCom's labeling requirements for pesticides labeled under standards issued by other federal agencies. As long as the pesticide is kept in the original container with its label intact and legible, it is exempt from the labeling provisions of this rule. We believe that this partial exemption informs and protects the miner and does not place an undue burden on you. We intend that all pesticides be labeled with their identity, hazards, and precautions for safe use. We believe that existing labels on containers of pesticides brought onto mine property that meet the labeling requirements of other federal or state standards will fulfill the labeling requirements of HazCom.

The purpose of pesticide labeling is mainly the protection of workers exposed to the pesticide either while handling it or through inadvertent contact with something that has been treated with it. In the case of the other substances, the purpose of the labels is more general consumer protection. The final rule does not include a specific labeling exemption for foods, food additives, and color additives used for personal consumption because they are exempt from the full scope of HazCom.

There were no substantive comments to the interim final rule concerning labeling exemptions for pesticides or items for personal consumption.

Other suggested exemptions. Many commenters to the proposed rule specifically recommended that we exempt *de minimis* exposures to, or *de minimis* amounts or concentrations of, hazardous chemicals from the labeling requirements. Most of the commenters believed that labeling should focus on serious risks rather than on those that are trivial. Some suggested that we use 5% silica in the mined ore as a *de minimis* threshold below which labeling would not be required. One recommended 1% silica, rather than 5%, for a *de minimis* threshold. Another recommended basing a *de minimis* threshold on a chemical's TLV® or PEL. This commenter suggested that employers would simply need to assess whether a hazardous chemical is present in the work area at a level meeting or exceeding its PEL or TLV®. Further, this commenter stated that if the chemical did not have a PEL or TLV®, no *de minimis* threshold would apply.

We determined that a *de minimis* threshold for silica is inappropriate because silica is the most common element in the earth's crust. All mining operations disturb the earth's crust. It is safe to say that miners are potentially exposed to silica from mining operations. This is not the same as saying that they are definitely exposed or overexposed. We discuss this issue more fully in the next section of this preamble (4. Other Exemptions Discussed in Proposed Rule).

Commenters to the proposed rule also recommended that we exempt treated wood products from any labeling requirements because labeling every timber in a mine would create an excessive burden on operators with no increase in protection to the miner. MSHA agreed and the interim final rule included a labeling exemption for treated wood. There were no comments to the interim final rule that addressed the labeling exemption for wood products.

The final rule is substantively the same as the interim final rule except it clarifies that wood and wood products are exempt from HazCom's labeling requirements. Wood and wood products, including lumber, that do not present a health or physical hazard are exempt from the full scope of HazCom as an ''article.''

4. Other Exemptions Discussed in Proposed Rule

In the preamble to the proposed rule, we requested comments on a variety of options for the scope of the HazCom standard. These alternatives covered exemptions for the size of the mine, the commodity extracted, the work area, or the amount of hazardous substance. Comments to the interim final rule reiterated the perspectives expressed in comments to the proposed rule. For the most part, consistent with the interim final rule, we did not include these exemptions in the final rule for the reasons discussed in the following paragraphs. This discussion is the same as in the interim final rule. We retained this discussion in the preamble to the final rule for the sake of completeness.

Small mines. The rulemaking record contains a number of comments suggesting that we exempt small mines from HazCom. Commenters stated that HazCom would create additional

expenses and recommended that we modify the final rule to exempt small operations, especially those with a workforce of 10 or fewer.

We do not exempt small mines from overall compliance with HazCom because chemical hazards are present at all mines, regardless of size, and miners at small operations have the right to know if they are exposed to hazardous chemicals. To address the needs of small mines, however, as well as the variability in the mining industry, the final rule allows you to design the HazCom program for the conditions at your mine. In addition, MSHA has delayed the compliance date of the final rule for small mines employing five or fewer miners. To further assist you, and especially small mine operators, we will prepare generic HazCom programs. Many of these aids are available now and the remainder will be available soon. You can contact the National Mine Health and Safety Academy at 304–256–3257 or visit our Web site at *http://www.msha.gov* to find out what is available. Also, OSHA has developed training materials for its industries, such as a generic MSDS form, a model hazard communication program, and the HCS Compliance Guide. Many are available from OSHA's Web site at *http://www.osha.gov* and can be adapted for use at mining operations. You can use these as models for your own program.

Common minerals. We considered an exemption from HazCom for certain common minerals (such as coal, sand and gravel aggregates, crushed stone aggregates, and clay) and those minerals containing less than 5% silica and no other hazardous chemicals. In the preamble to the HazCom proposed rule, we requested comments on—

- The appropriateness of exempting certain minerals;
- The appropriate criteria for making a determination for exemption;
- The degree to which miners are aware of the hazards of these minerals;
- The level of silica in such minerals necessary before the mineral would be considered hazardous;
- How these minerals are used and handled by downstream employers; and
- How we could best publicize and provide hazard information on these substances to you and miners.

A number of commenters addressed the scope of the common minerals exemption. Some expressed support for the exemption and stated that natural rocks and minerals should not be classified as chemicals for the purpose of an MSDS or other HazCom requirements. Others stated that the exemption for minerals containing less than 5% silica is warranted because these minerals do not constitute a hazard, and the exemption would preclude duplicate regulatory requirements and unnecessary expenditures. One commenter stated that such an exemption is especially appropriate for minerals designated as carcinogenic merely because they contain greater than 0.1% silica. Another commenter stated that labeling common minerals is unnecessary because part 48 (and part 46) requires miners to be trained to recognize the hazards of the product being mined.

Commenters also suggested that we exempt specific minerals from HazCom. For example, one commenter stated that we should exempt coal and limestone. In addition, with regard to exempting coal, other commenters stated that the hazards of respirable coal mine dust are strictly controlled through extensive sampling and monitoring programs. Other commenters recommended that we modify the standard to exempt dimension stone quarries and iron ore pellets. One commenter urged us to specify which minerals are of concern to us and suggested an exemption for silica flour or certain industrial sands based upon their purity and particle size.

Several commenters objected to our proposed exemption of common minerals. One stated that most mining products are used by OSHA-regulated facilities and, as such, OSHA already requires that these facilities keep MSDS forms up-to-date for customers, label containers, and fill out the appropriate transport forms. Another commenter expressed concern that, if operators are responsible for preparing the MSDSs and labels, the common minerals exemption could lead to violations of the OSHA HCS for downstream general industry customers. Others objected to the common minerals exemption because it would send conflicting signals to miners; it is inconsistent with OSHA triggers and MSDS requirements; and it fails to provide health protection for miners in the sand and gravel, stone, clay, and shell dredging operations. One commenter stated that these minerals still present sufficient hazards to require MSDSs and training and HazCom should cover them, even though they are common or silica is present in small proportion to the total material.

Some commenters suggested that we exempt or provide limited coverage to mining industry sectors with a low degree of risk. One suggested specifically that we exempt the brick industry from HazCom because the risk posed to miners in the brick industry is lower than that experienced in other mining operations due to the way the industry handles the clay and shale. According to this commenter, there is no reason to regulate clay and shale, the brick industry's principal raw materials, because HazCom relates to free silica and most clay and shale have 5% or less free silica. In addition, this commenter indicated that MSDSs are unnecessary because exposure to silica is a primary part of the training programs administered by brick manufacturers.

We do not agree that the overall degree of risk encountered by miners in a given industry segment is a viable argument for totally exempting an entire mine or commodity from coverage under HazCom. A major concern is that miners are exposed to chemicals without knowing their hazards and, thus, they may not follow the proper procedures for handling or using these chemicals. The extent of risk is not a determining factor in deciding whether or not you have to communicate information on hazardous chemicals. Miners have the right to know that they are being exposed to a potential hazard. As long as the potential for exposure exists in the work area and the chemical is hazardous, HazCom applies.

For these reasons, the final rule does not exempt minerals containing 5% silica or less or other hazardous chemicals or certain common minerals, such as coal, clay, and dimension stone. Depending on the airborne concentration of the dust and other circumstances regarding exposure, respirable crystalline silica in these minerals or respirable coal mine dust may cause pneumoconiosis or cancer. The final rule is consistent on this point with OSHA's HCS.

Nonfuel mining. One commenter recommended that we exempt the nonfuel mining industry from HazCom. This commenter questioned whether we have demonstrated that such a broad-based standard is necessary for the nonfuel mining industry, given that HazCom would duplicate our existing training and labeling standards.

Based on the findings of the NIOSH National Occupational Health Survey of Mining (NOHSM) and our experience in the mining industry, we concluded that a HazCom rule applicable to coal, metal, and nonmetal mines is appropriate because all mines use hazardous chemicals, and there are a number of hazardous chemicals common to all types of mines, including non-fuel mines. Fuel oil, solvents, and paint are just three examples of hazardous chemicals used at non-fuel mines. Non-fuel mines report the most chemical burn injuries to MSHA. HazCom is broadly written and performance oriented in recognition of the diversity among mining operations and

independent contractors. Our intent is that all miners, including those working in the nonfuel mining industry, have access to information about the chemical hazards to which they are exposed at the mine. This decision is consistent with the mandate of the Mine Act to protect all miners to the extent feasible.

De minimis requirements. In the HazCom proposed rule, we solicited comments on whether we should establish *de minimis* criteria for hazardous chemical exposure in general. *De minimis* or trivial risks are those below the threshold of regulatory concern.

A few commenters stated that, for HazCom to be effective, the final rule must contain an exemption for *de minimis* chemical exposures. These commenters urged us to specify minimum quantities for the substances covered by the standard. Commenters suggested that we exclude exposures that are less than one-half of any applicable PEL or ACGIH TLV®, or where the health risk is not significant. Some felt that HazCom should address only those chemicals that exceed a PEL or ACGIH TLV®. One commenter stated that a meaningful *de minimis* provision could be provided—

- By clarifying the definition of article similar to that found in the mixture definition;
- By defining a significant health risk; and
- By stating a reasonable and consistent interpretation of the terms ''minute'' or ''trace.''

A few commenters recommended that we exclude trivial exposures to avoid unnecessary and misleading labeling and the creation of the functional equivalent of a ''Delaney Clause.'' (**Note:** The Delaney Clause is an amendment to the Food, Drug, and Cosmetic Act (21 U.S.C. 348). It requires the Food and Drug Administration to prohibit the use of any food additive that is carcinogenic without regard to the quantitative level of risk.)

Commenters wanted us to set a *de minimis* concentration below which you would not have to consider whether a substance is hazardous. There are highly toxic substances, however, which can cause adverse health effects from the absorption or inhalation of tiny amounts. HazCom is intended to address all hazardous chemicals at mines. The range of hazards and concentrations are too diverse to address through a single measurement. A *de minimis* exemption, therefore, would not provide sufficient protection to miners and would not address the true issue of concern, informing miners of potential hazards.

Likewise, requiring information disclosure only in situations where exposure might exceed a PEL or ACGIH TLV® is not consistent with the purpose of the rule. Exposure limits address a limited number of the hazardous chemicals encountered at the mine. Also, PELs are used to control inhalation exposures. Because the definition of exposure in HazCom includes absorption through the stomach or skin, in addition to the lungs, the exposure limits might be unrelated to the total exposure experienced by a miner. In certain circumstances, the most significant route of exposure may be through the stomach or skin. We have received reports of injuries and illnesses among miners as a result of skin contact with cyanide solutions, cement and trona dusts, and mercury, and as a result of ingesting lead.

Laboratories. The proposed rule requested comments on whether laboratories should be exempt from HazCom, primarily because OSHA's HCS (29 CFR 1910.1200(b)(3)) partially exempted laboratories. OSHA, however, regulates laboratories under both its HCS (29 CFR 1910.1200) and its laboratory standard (29 CFR 1910.1450). The laboratory standard supplements the HCS.

The OSHA HCS requires labels, MSDSs, training, and access. The heart of the OSHA laboratory standard is the Chemical Hygiene Plan. The Plan, which contains elements similar to HazCom's written program, must be reviewed annually. It also requires detailed descriptions of personal protective equipment, standard operating procedures, and engineering controls. Whatever OSHA does not cover under its HCS, it covers in its laboratory standard. The OSHA laboratory standard requires training; access to the plan and all known reference material; labels and MSDSs; hazard determination for chemicals produced, including by-products; hazard determination, labels, and MSDSs for chemicals produced for users outside the lab itself; and records of exposure monitoring and medical exams.

Unlike OSHA, we do not have specific standards addressing hazardous chemicals in laboratories. At this time, we do not plan to develop a separate standard to address laboratory hazards.

Several commenters urged us to exempt laboratories. One commenter stated that small laboratories are exempt from OSHA's standards. Another commenter stated that both OSHA's HCS and EPA's SARA exempt laboratories of any size when under the direct supervision of a technically qualified individual. Some commenters supported the application of training requirements to laboratories on mining property unless the lab has trained chemists. Others recommended that we exempt laboratory use of chemicals from HazCom because such use is unique and our training standards already cover laboratory hazards.

Most commenters, however, supported our coverage of laboratories within HazCom. Some commenters found our approach reasonable because covering mine laboratories would preclude the need for us to develop a separate standard to address laboratory hazards, as was done by OSHA.

We agree that laboratories in mining should be subject to the full scope of the standard with no specific exemptions. Laboratories found in the mining industry differ in several respects from those common to general industry, such as research facilities. Although there may be a few large-scale laboratories in the mining industry supervised by trained chemists, our experience indicates that most mine laboratories are small-scale operations devoted to quality control or process control, with relatively few trained chemists.

Compared to research facilities or laboratories in the chemical manufacturing industry, quality control laboratories in the mining industry use relatively few chemicals and analytical methods. Most of these mine laboratory workers receive on-the-job training. This training can be inadequate in addressing the hazards of the chemicals to which the laboratory workers are exposed. MSHA data, reported under the requirements of 30 CFR part 50, cite illnesses or injuries in laboratories caused by improper mixing of chemicals, mercury spills, use of inadequate or inappropriate personal protective equipment, use of improper procedures, and improper use of controls or inadequate ventilation.

The final rule does not exempt laboratories on mine property, but gives you the latitude to create a HazCom program based upon the hazards identified. We recognize that these programs may differ from work area to work area because of the different chemicals used. Therefore, we expect the HazCom program to vary depending on the circumstances at the mine. To exclude miners working in laboratories from HazCom would not be in keeping with our mandate to prevent mine-related occupational injuries and illnesses. After reviewing the comments and the rulemaking record, and based

on the presence of hazardous chemicals in the laboratories, we have concluded that it is necessary to include mine laboratories under the scope of the final rule.

K. Appendices

The proposed rule contained three appendices:

Appendix A, Health Hazard Definitions, was a mandatory section providing additional details for the proposed rule's definitions.

Appendix B, Information Sources, was a comprehensive advisory list of sources to evaluate the physical hazards of chemicals and their specific health effects.

Appendix C, Guidelines for Operator Compliance, provided additional advisory guidance for complying with the HazCom standard.

The final rule does not include these appendices. Much of this information, which you can use as a guide, will be included in a HazCom Compliance Guide and Toolbox.

III. Legal Authority and Feasibility

A. HazCom as a § 101(a)(6)(A) Standard

The primary purpose of the Federal Mine Safety and Health Act of 1977 (Mine Act) is to ensure safe and healthful working conditions for the Nation's miners. One means established by Congress to achieve this goal is the authority vested in the Secretary of Labor (Secretary) to set mandatory safety and health standards. Authority for issuance of the HazCom final rule is found in §§ 101(a) and 115 of the Mine Act.

Some commenters to the proposed and interim final rules stated that the HazCom standard is not the type of standard Congress intended to fall within the scope of § 101(a)(6)(A) of the Mine Act. They alleged that the legislative history of that section indicates that Congress intended the provision to authorize standards that would address specific limits for individual or classes of hazardous chemicals. In their opinion, because HazCom does not establish permissible exposure limits for the chemicals covered, the standard can only be promulgated under § 101(a)(7). We disagree with these commenters.

One of the findings made by Congress supporting the enactment of the Mine Act is the urgent need to provide *more effective means and measures* for improving the working conditions and *practices* in the Nation's mines to prevent death and serious physical harm to the miners. As stated previously, one of the means established by Congress to effectuate this statutory mandate is through the development of mandatory health and safety standards under § 101(a)(6)(A) of the Mine Act.

Section 101(a)(6)(A) applies to all mandatory standards involving *toxic materials* or harmful physical agents. It requires us to set standards to ensure that a miner will not suffer a material impairment of health or functional capacity as a result of *exposure to the hazard,* even if the miner is exposed for his or her working life. It also requires us to consider the latest scientific data in the field, feasibility of the standard, and experience gained under this and other health and safety laws.

Section 101(a)(7) requires that any health or safety standard promulgated under the authority of § 101(a) of the Mine Act must prescribe the use of labels or other appropriate forms of warning, as are necessary, to ensure that miners are appraised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure.

Contrary to commenters' allegations, the legislative history of the Mine Act does not state that the use of § 101(a)(6)(A) is restricted to the promulgation of mandatory health standards that address specific limits for individual or classes of hazardous chemicals. The legislative history concerning § 101(a)(6)(A) specifically states that:

> The Secretary's authority under this section includes not only the promulgation of standards covering individual substances but also standards covering classes or groups of substances. The Committee believes that ''generic'' standards of this kind may often provide more effective protection to miners. *The committee believes that the overriding consideration in setting health standards dealing with toxic substances and harmful physical agents must be the protection of the health of miners.* S. Conf. Rep. No. 95–181, 95th Cong., 1st Sess. 21 (1977). [Emphasis added.]

Additionally, the legislative history of § 101(a)(7) states that:

> The Secretary, in determining the most effective means of appraising [sic] miners of hazards, should bear in mind the diminished effectiveness that may result from excess labeling, and *should consider other means of informing miners of hazards*, such as safety and health training of requiring period briefings of miners. *Id.* at 22. [Emphasis added.]

Both § 101(a)(6)(A) and § 101(a)(7) work in conjunction to identify and reduce a specific risk. In HazCom, the identified risk is miners' lack of information regarding the hazards of chemicals they are exposed to at their workplace. By providing this information to miners, the standard is intended to reduce the incidence of chemically related injuries and illnesses in the mining industry.

The information requirements of the HazCom standard provide basic protections for miners without the need to set specific permissible exposure limits. The provision of information under the HazCom standard, about the physical and health hazards of chemicals and protective measures designed to minimize those effects, are intended to reduce the incidence of chemical-source illnesses and injuries in the mining industry by modifying the behavior of mine operators and miners. The three information components in this standard (labels, MSDSs, and initial miner training) are all essential to the effective functioning of the HazCom program. The MSDS provides comprehensive technical information and serves as a reference document for exposed miners, as well as health professionals providing services to those miners. The labels provide a brief synopsis of the hazards of the chemicals and provide the first and most immediate source of information in the work area. Each component reinforces the other and all are directed not only at the identification of workplace chemicals, but also at the reduction of their hazards.

The information provided under the standard will also help health and safety professionals provide better services to exposed miners. The ready availability of health and safety information, such as signs and symptoms of exposure, will aid medical surveillance and the early detection and treatment of illnesses and injuries. It also will help mine operators to make better decisions regarding exposure monitoring, process or exposure controls, and appropriate personal protective equipment.

In sum, § 101(a)(7) does not limit the Secretary's authority to promulgate a HazCom standard under § 101(a)(6)(A). The fact that HazCom does not set exposure limits for hazardous chemicals and prescribes the use of labels and initial training to inform miners of the physical and health hazards of the chemicals they are exposed to in their work areas, does not alter our authority to promulgate the standard as a mandatory health and safety standard under § 101(a)(6)(A) of the Mine Act.

B. Finding of Significant Risk

Some commenters to the proposed and interim final rules stated that we must establish a significant risk for every chemical and mining sector covered under HazCom. They specifically stated that we have not

substantiated our general finding of significant risk because nothing in the rulemaking record or in the preamble to the interim final rule documents the relationship between HazCom's information collection and dissemination requirements and the reduction of alleged occupational risks miners face through exposure to hazardous chemicals.

We continue to disagree with these commenters that we must establish a significant risk for every chemical and mining sector covered under HazCom. We also disagree with their statement that nothing in our rulemaking record or preamble to the interim final rule documents the relationship between HazCom's information collection and dissemination requirements and the reduction of occupational risks miners face through exposure to hazardous chemicals.

As stated in the preamble to the interim final rule, HazCom is not a risk-based health standard for measuring exposures, requiring controls, or providing personal protective equipment. HazCom is an information standard intended to diminish risk by ensuring that operators provide miners with a level of knowledge that allows miners to reduce their exposures to hazardous chemicals by recognizing potential hazards and following safe work practices.

HazCom is being promulgated to anticipate the possibility of harm or loss from chemical exposures and provide information on ways to avoid them. The standard does not regulate chemical use; does not prohibit or limit the use of chemicals in the mining industry; does not set exposure limits; and does not prescribe controls to reduce exposures. HazCom's effectiveness is dependent on the operator's and miner's knowledge and awareness of hazards. Like any information standard, it is through hazard identification and awareness that HazCom addresses the information needed to limit hazardous chemical exposure and prevents injuries and illnesses.

It is clear from relevant court decisions involving OSHA's HCS, that a specific finding of significant risk is not required for a standard such as this, where the significant risk being regulated is that of inadequate knowledge. Section 101(a)(6)(A) of the Mine Act and § 6(b)(5) [8] of the Occupational Safety and Health Act (OSH Act) contain similar statutory language. Both statutory sections contain provisions indicating that mandatory standards must be designed to prevent ''material impairment of health or functional capacity * * *.''

The Supreme Court has indicated, in discussing significant risk of material impairment of health in the context of litigation under § 6(b)(5) of the OSH Act, that the significant risk determination constitutes a finding that, absent the change in practices mandated by the standard, the workplaces in question would be ''unsafe'' in the sense that workers would be threatened with a significant risk of harm. [*Industrial Union Dept.* v. *American Petroleum Institute*, 448 U.S. 607, 642 (1980)(Benzene)]. This finding, however, does not require mathematical precision or anything approaching scientific certainty if the ''best available evidence'' does not warrant that degree of proof. [Id. at 655–656]. Rather, the agency may base its findings largely on policy considerations, and the agency has considerable leeway with the kinds of assumptions it applies in interpreting the supporting data. [Id. at 656].

As previously stated, we believe that lack of knowledge regarding the hazards of chemicals in the workplace increases a miner's risk of suffering a chemically related occupational illness or injury, because precautions and appropriate protective measures would only be taken when the presence of a chemical hazard is known. The 3rd Circuit Court in *United Steelworkers of America* v. *Auchter*, 763 F.2d 728, 735 (1985) (discussion of ''significant risk'' in § 6(b)(5) of the OSH Act), concluded that as a threshold matter, the hazard communication rule is a § 6 standard under the OSH Act which is aimed at correcting a particular ''significant risk'' in the workplace. The court specifically indicated that ''inadequate communication is itself a hazard, which the standard can eliminate or mitigate.''

In *Associated Builders & Contractors* v. *Brock*, 862 F.2d 63 (1988), industry confronted the 3rd Circuit Court of Appeals with a similar argument involving the OSHA HCS and OSHA's general finding of significant risk. Industry argued that the standard was invalid because OSHA had promulgated it without a significant risk determination. Industry also claimed that OSHA needed to find a significant risk for each chemical covered and for each industry covered. The court disagreed with industry and ruled that the general significant risk finding for the original 1983 rule was appropriate for the entire manufacturing sector, and that it was also applicable to each of the 20 major Standard Industrial Classification (SIC) Code manufacturing subdivisions [Id. at 67].

The court also stated that OSHA was not required to determine significant risk for each chemical covered under the rule because the rule was not a substance based rule, but an information disclosure standard. The court concluded that—

> * * * for this performance-oriented information disclosure standard covering thousands of chemical substances used in numerous industries, the significant risk requirement must of necessity be satisfied by a general finding concerning all potentially covered industries. A requirement that the Secretary assess risk to workers and the need for disclosure with respect to each substance in each industry would effectively cripple OSHA's performance of the duty imposed on it by 29 U.S.C. 655(b)(5); a duty to protect all employees, to the maximum extent feasible. [Id. at 68]

OSHA was not required to assess individually the significant risk that would be alleviated by the HCS's application to each of the 70 major business classifications, much less for each of the hazardous substances used in those industries. Moreover, OSHA's application of the 1983 general finding of significant risk to the construction and grain processing and storage industries was upheld by the 5th Circuit in *National Grain and Feed Association* v. *OSHA,* 866 F.2d 717 (1989) (petition for review of OSHA's modified HCS as it applied to the construction and grain processing and storage industries).

Because our HazCom rule is modeled on OSHA's HCS, and the Mine Act and OSH Act are similar with respect to the regulatory requirements for the promulgation of mandatory safety and health standards, we believe we have satisfied our statutory threshold of establishing significant risk with the general finding of risk presented in this preamble. Also, contrary to commenters' allegations, our rulemaking record clearly indicates that inadequate communication about serious chemical hazards endangers miners, and that the requirements of this standard are necessary and appropriate for the elimination or mitigation of these hazards.

For example, the rulemaking record contains the National Occupational Health Survey of Mining (NOHSM) which NIOSH conducted between 1984 and 1989. In this survey, NIOSH examined almost 500 individual mines

[8] Section 6(b)(5) of the OSH Act states in part—

> The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which must adequately assure, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.

covering 70 commodities and about 60,000 miners. The NOHSM documented over 10,000 individual hazardous chemicals and mixtures of hazardous chemicals to which miners could be exposed. The NIOSH NOHSM report (September 1996) lists the 100 chemical substances with the highest projected number of miners potentially exposed. We used these data to develop Part VII as an addendum to this preamble. Part VII contains a list of 58 chemicals, to which 1,000 or more miners are projected to be exposed, and the acute and chronic health effects that can result from that exposure.

In reviewing the data presented in Part VII, it is obvious that a large number of miners could be exposed to hazardous chemicals on their jobs and that many of these chemicals have serious acute health effects, as well as life-shortening, chronic health effects due to exposure. Based on our experience and the rulemaking record, we have determined that mine operators have not communicated to miners many of the potential hazards associated with chemicals. In many cases, the mine operators do not know what the chemical hazards are and, thus, cannot take into account the potential impact the use of a particular chemical may have on miners.

Additionally, in considering this standard, MSHA reviewed reports of chemically related injuries and illnesses reported to the agency which are part of this rulemaking record. Those reports indicate that from January 1990 through December 1999, the mining industry reported over 2,500 chemical burns. More than 1,200 of these burns were lost work time cases. This same accident and injury data indicates more than 400 poisonings.

It is important to note that these chemically related injuries and illnesses data take into account only some of the acute effects reported as a result of chemical exposures. MSHA experience indicates that the health effects of some chemicals may contribute to the occurrence of injuries that are reported, but are not causatively linked to chemical exposures. For example, a miner was overcome while climbing down a ladder into a tank to retrieve his hard hat that had fallen off as he leaned over the tank opening. The resultant injury was reported as a ''fall of person.''

The data do not include the chronic effects that can occur from chemical exposure for several reasons. First, lack of knowledge about health effects associated with chemical exposures contributes to the chronic under-reporting of occupational illnesses. Second, because of an incomplete or non-existent occupational history, physicians may misdiagnose an illness and treat symptoms of chemically related occupational illnesses without realizing that the cause is an occupational chemical exposure. Third, worker turnover also increases the likelihood that the link between a workplace chemical exposure and subsequent illness will be overlooked and will not be reported. This is particularly true for long-term health effects which develop over time, or after repeated exposures.

Some commenters to the interim final rule claim that the above database does not support findings of significant risk because some entries in the database fall outside the scope of the regulation; others would not have been prevented by HazCom; and many would have been prevented by existing MSHA regulations. These comments are addressed fully in ''Reasons for Not Exempting Aggregate Producers'' in the introductory section of this preamble. We believe, however, that the above data understate the extent of the health and safety problems caused by chemicals in the workplace for the reasons cited above.

Finally, testimony by miners, as well as industry representatives at the most recent public hearings includes numerous accounts of miners injured because of their lack of knowledge regarding the health effects of chemicals in their workplace. Several commenters testified regarding their personal experience with illnesses and diseases due to their exposure to hazardous chemicals. These commenters indicated that they could not protect themselves from these injuries and illnesses because they had not received adequate training regarding these substances' health effects, and the appropriate protective equipment which would have been appropriate to use to protect themselves from these adverse health effects.

In sum, our rulemaking record clearly indicates that exposure to chemical hazards occurs in every type of mine with miners typically experiencing multiple exposures to different chemical hazards at one point of time, or over a long period of employment. Neither the record evidence nor policy considerations support commenters' argument that we should apply HazCom only where chemical exposures pose known significant risks.

Chemicals pose myriad hazards to exposed miners that range from mild health effects, such as irritation, to serious health effects, such as blindness or even death. Some chemicals cause or contribute to chronic diseases, such as heart disease, kidney disease, sterility, or cancer. Many chemicals cause acute injuries or illnesses such as rashes, burns, and poisoning. Additionally, numerous chemicals pose physical hazards to miners by contributing to accidents like fires and explosions. Miners have an inherent right to know about hazardous chemicals at their workplaces, and a need to know how they can safely work with such chemicals, because they are at significant risk of experiencing adverse health or physical effects in the absence of such knowledge.

Even inert substances can pose a hazard when mixed or heated. For example, calcium chloride has limited toxicological information available. Contact with skin or eyes may cause severe irritation or burns; dust may irritate nose and throat; ingestion may cause nausea and vomiting. The MSDS for the compound, however, lists its toxic decomposition products as chlorine fumes or hydrogen chloride. The final HazCom rule requires operators to instruct each miner about the physical and health hazards of chemicals in the miner's work area, protective measures that miners can take against these hazards, and the mine's HazCom program.

We find that the risk of harm to miners will increase if operators allow a condition to develop that poses a significant risk of harm to miners, before providing the potentially exposed miners with chemical hazard information.

We also find that the information collection and dissemination requirements of this rule will reduce the occupational risks that miners face through exposure to hazardous chemicals. The HazCom standard provides miners with the right to know the hazards and identities of the chemicals they are exposed to while working, as well as the measures they can take to protect themselves from these hazards. With this final rule, mine operators will now have the necessary information regarding the hazards of chemicals present at their mine, so that work methods can be improved or instituted to minimize exposure to these chemicals. Miners will have access to this information, so that they can take action to protect themselves.

Some commenters stated that we failed to consider OSHA's experience under its HCS in promulgating HazCom. We disagree with these commenters. To the extent possible, we reduced the compliance burden on mine operators based on OSHA's experience and industry's experience under OSHA. We

believe that we addressed OSHA's experience in both the rule and our discussion in the preamble. We reviewed reports, OSHA letters of interpretation, compliance directives, court cases, and conferred with OSHA personnel, applying what we learned to HazCom. In promulgating HazCom, we considered among other things, OSHA's entire HCS rulemaking record; OSHA's compliance directives; National Advisory Committee on Occupational Safety and Health (NACOSH) reports of the Hazard Communication Workgroup; and a number of states' right-to-know laws. Moreover, we considered all comments submitted by the mining industry addressing our request for comments concerning their experience under the OSHA's HCS. In fact, some of the revisions in the interim and final HazCom rules such as electronic access to, content, and retention of MSDSs, reflect commenters suggestions based on their experience with OSHA's HCS.

C. Finding of Feasibility

After we have determined that a significant risk exists and that such risk can be reduced or eliminated by a standard, § 101 (a)(6)(A) requires a determination of feasibility.

The Mine Act and the OSH Act also have similar statutory requirements regarding ''feasibility.'' While § 6(b)(5) of the OSH Act requires that standards assure, ''to the extent feasible, * * * that no employee will suffer material impairment of health or functional capacity,'' § 101(a)(6)(A) of the Mine Act requires us to consider ''the feasibility of the standard * * *.''

The legislative history of the Mine Act specifically cites feasibility cases decided under the OSH Act and strongly suggests that ''feasibility'' principles applicable to OSHA standards are also applicable to our standards. [S. Rep. No. 95–181, 95th Cong., 1st Sess. 21 (1977)]. The legislative history of the Mine Act specifically states that—

> In adopting the language of [this section], the Committee wishes to emphasize that it rejects the view that cost benefit ratios alone may be the basis for depriving miners of the health protection which the law was intended to insure. *Id.*

Though the Mine Act and its legislative history are not specific in defining feasibility, the Supreme Court clarified its meaning in *American Textile Manufacturers' Institute* v. *Donovan,* 452 U.S. 490, 508–509 (1981)(Cotton Dust), in discussing significant risk of material impairment of health in the context of litigation under § 6(b)(5) of the OSH Act. In that case, the Court defined the word ''feasible'' as ''capable of being done, executed, or affected.'' The Court stated, however, that a standard would not be considered economically feasible if it threatened an entire industry's competitive structure. The Court also stated that in promulgating standards, agencies do not have to rely on hard and precise predictions regarding feasibility. They need only base their projections on reasonable inferences drawn from existing facts. Thus, to establish the economic and technological feasibility of a new rule, we must assess the likely range of costs that it will impose on mines, and show that a reasonable probability exists that a typical mine will be able to meet the standard.

We received numerous comments on the burden and cost of this standard. In general, commenters claimed that HazCom was unnecessarily burdensome in that compliance requires a continuing time and paperwork demand with little or no effect on reducing hazards. We address these comments in Part IV (The Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, and Executive Order 12866) and Part V (Paperwork Reduction Act) of this preamble.

The rulemaking record does not contain credible evidence that HazCom would be technologically or economically infeasible for the mining industry. On the contrary, the record contains substantial evidence of feasibility. In fact, testimony presented by industry at the most recent public hearings indicates that some operators on their own initiative have established programs that meet HazCom's provisions and goals, and have integrated OSHA's HCS requirements into the work practices at their mines.

We conclude that all of the administrative requirements contained in the HazCom standard can be merged economically into present practices. HazCom gives mine operators wide latitude with both individual requirements and optional compliance measures. The informational provisions of HazCom are capable of being done and will not threaten the viability or long-term profitability of the mining industry. The informational requirements contained in this final rule are not the types of obligations that approach the limits of feasibility. Also, this standard does not relate to activities on the frontiers of scientific knowledge. There are no technological barriers preventing implementation of the HazCom requirements because most of these requirements are accepted, common business practices that are administrative in nature. As previously stated, according to both comments and testimony to the proposed and interim final rules, some of these practices have already been implemented at certain mining operations.

As estimated in our Regulatory Economic Analysis (REA) supporting this HazCom final rule, the mining industry will incur costs of about $7.8 million annually to comply with the final rule. These compliance costs, which represent much less than 1% (about 0.01%) of mining industry annual revenues of $57.9 billion, provide convincing evidence that the final rule is economically feasible.

D. Petitions for Modification

As explained in the interim final rule, our classification of HazCom as both a safety and a health standard impacts whether operators or representative of miners can petition us for a modification. Under § 101(c) of the Mine Act, operators or representatives of miners may petition us to modify the application of a mandatory safety standard, but not a health standard. Because the HazCom final rule is being promulgated as both a health and safety standard, operators may not petition us for a modification. One of the purposes of a petition for modification is to provide a mine operator with an alternative method of compliance. To allow as much compliance flexibility as possible, however, the final HazCom requirements already provide the mine operator with the following alternatives for compliance, among others.

Temporary, portable containers. OSHA's HCS does not require the employer to label a temporary, portable container into which a hazardous chemical is transferred from a labeled container for the immediate use of the employee who performs the transfer. Under MSHA's HazCom standard, mine operators do not have to label the container if their miners know the identity, hazards, and protective measures for the chemical in the container, and leave the container empty at the end of the shift. Otherwise, mine operators must label the container, at least with the common name of its contents.

Existing labels. Under HazCom's labeling requirements, pre-existing hazard labels that comply with the labeling requirements of another federal statute or standard are in compliance with the labeling requirements of HazCom.

Inventory. HazCom will require mine operators to include in the HazCom program list or other record identifying all hazardous chemicals known to be at the mine. For compliance purposes, mine operators may compile the list for

the mine as a whole or for individual work areas. For example, if few chemicals are used in one work area, such as a mine's quarry, and many are used in another work area, such as its shop, the mine operator may decide to compile the list by individual work areas to avoid confusing the miners in the quarry who would have no exposure to most of the chemicals that would be on a mine's comprehensive list.

IV. The Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, and Executive Order 12866

The Regulatory Flexibility Act (RFA) requires a regulatory agency to evaluate each proposed and final rule and to consider alternatives so as to minimize the rule's impact on small entities (businesses and local governments). Under the RFA, we must use the Small Business Administration's (SBA's) definition of a small entity in determining a rule's economic impact unless, after consultation with SBA, we establish a different definition.

In the preamble to our HazCom proposed rule, we certified that this rule would not have a significant economic impact on a substantial number of small mining operations. The preamble also included a full discussion of the regulatory alternatives that we were considering and invited the public to comment.

In 1996, Congress enacted the Small Business Regulatory Enforcement Fairness Act (SBREFA) amending the RFA. SBREFA requires a regulatory agency to include in the preamble to a rule the factual basis for that agency's certification that the rule has no significant impact on a substantial number of small entities. The agency then must publish the factual basis in the **Federal Register**, followed by an opportunity for public comment. Although SBREFA did not exist when we published the HazCom proposed rule, we published a notice re-opening the record in March 1999 to give you an opportunity to comment on the factual basis for our previous certification that the HazCom proposed rule would pose ''no significant impact.''

For the interim final rule, we determined that the rule would not have a significant impact on a substantial number of small entities, and we so certified that finding to the Small Business Administration. The factual basis for that certification was provided in the Regulatory Economic Analysis in support of the interim final rule.

This final rule has been drafted and reviewed in accordance with Executive Order (E.O.) 12866, § 1(b), Principles of Regulation. Executive Order 12866 requires a regulatory agency to assess both the costs and benefits of proposed and final rules and to complete a Regulatory Economic Analysis (REA) for any rule having major economic consequences for the national economy, an individual industry, a geographic region, or a level of government. We prepared a REA and Regulatory Flexibility Certification Statement to fulfill the requirements of the RFA and E.O. 12866. Based on our REA, we determined that this final rule is not an economically significant regulatory action pursuant to § 3(f)(1) of E.O. 12866. Because it affects all mining operations, almost all of which are small businesses using SBA's definition of a small business, we determined that this final rule is significant under § 3(f)(4) of E.O. 12866. This section defines a significant regulatory action as one that may—

> * * * Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

The REA is available on request from MSHA, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Arlington, VA 22203 or from our Internet home page at *http://www.msha.gov.*

A. Alternatives Considered

In accordance with § 604 of the RFA, we are including a discussion of the regulatory alternatives considered in developing this final rule. We used OSHA's HCS as a model for the proposed rule. For the final rule, we also considered suggestions from commenters to the proposed and interim final rules. At this stage of the rulemaking process, we did not consider alternatives to the rule, which we did at the ANPRM stage, but alternatives within the rule. In part, the limited impact of the final rule on small mines reflects our decision not to require more costly alternatives. Most of the alternatives suggested addressed the scope of the standard—what would be covered and what would be exempt. In response to comments, we did adopt several provisions that differ from the proposed rule or OSHA's HCS.

(1) The proposed rule would have exempted hazardous waste regulated by EPA under the Resource Conservation and Recovery Act (RCRA) from both the labeling and MSDS provisions of HazCom. The interim final rule provided an alternative compliance option for the MSDS provision, but inadvertently left out the exemption for labeling. The final rule corrects this oversight and exempts hazardous waste regulated by EPA under RCRA from labeling. We determined that exempting EPA hazardous waste from the entire HazCom standard would put miners at risk of a potential injury or illness.

(2) Consistent with the proposed and interim final rules, the final rule exempts the raw material being mined or milled from labeling while on mine property. OSHA's HCS does not address raw material being mined or milled on mine property.

(3) The proposed rule exempted from HazCom's labeling requirements certain categories of hazardous chemicals regulated and labeled under the authority and standards of other federal agencies. These include consumer products, hazardous substances, drugs, tobacco products, foods, food additives, and color additives which are labeled in accordance with the requirements of the Food and Drug Administration or the Department of Agriculture. The interim final rule extended these exemptions to the full scope of the rule rather than to labeling only. The final rule retains these exemptions but simplifies the conditions for exemption to when they are intended for personal consumption or use.

(4) To be consistent with OSHA's HCS, the proposed, interim final and final rules included an exemption from labeling for hazardous substances that EPA or other federal agencies require to be labeled for hazards.

(5) The proposed rule would have allowed you not to label temporary, portable containers of a hazardous chemical that was to be used only by the miner who transferred it from its labeled container. The final rule, consistent with the interim final rule, allows other miners to use the hazardous chemical from the unlabeled container if you ensure that all miners know the chemical's identity, its hazards, and protective measures; and that you ensure the container is left empty at the end of the shift. The final rule, however, also adds a new compliance alternative for labeling temporary, portable containers.

(6) In the proposed rule, we would have required you to label containers of your hazardous product or provide a copy of the labeling information with the first shipment to an employer. The final rule does not require you to label your hazardous product for sale to customers who are employers. Rather, we require you to provide the label or labeling information and an MSDS when requested. This requirement in the final rule is the same as that in the interim final rule.

B. Consultation with SBA

The RFA requires regulatory agencies to consult with SBA's Chief Counsel for Advocacy about regulations that have an impact on small entities. The RFA also requires us to use SBA's definition of a small entity in determining a rule's economic impact. To comply with this law, we consulted with SBA about this rule and our certification of no significant economic impact on small mines. For the mining industry, SBA defines *small* as a business with 500 or fewer employees (13 CFR 121.201). Almost all of the coal and M/NM mines fall into this category. To establish an alternative definition for the mining industry, after consultation with SBA, we must publish that definition in the **Federal Register** providing an opportunity for public notice and comment.

Traditionally, for regulatory purposes over the past 20 years, we have considered a mine ''small'' if it employs fewer than 20 miners and ''large'' if it employs 20 or more. These small mines differ from larger mines not only in the number of employees, but also, among other things, in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Typically, their costs of complying with the final rule and the impact of the final rule on them will also differ. It is for this reason that ''small mines,'' as traditionally defined by the mining community, are of special concern to us.

For purposes of the REA and to comply with the RFA, we analyzed the impact of the final rule on mines using SBA's definition of ''small,'' as well as our traditional definition.

C. Compliance Costs

We estimate that the total net yearly cost of the final HazCom rule (30 CFR part 47) will be about $7.8 million. Table 1 summarizes our estimate of the yearly costs by mine size and by major provision. These costs reflect first year (one-time, start-up) costs of $25.5 million and annually recurring costs of $6.1 million. HazCom will affect all coal and M/NM mines, some only insignificantly.

TABLE 1.—YEARLY COSTS FOR HAZCOM FINAL RULE BY PROVISION, COMMODITY, AND MINE SIZE (× $1000)*

Mine Size	Provision					Total
	Written Program	Labels	MSDSs	HazCom Training	Access	
Coal Mines and Independent Contractors						
<20	$465	$32	$291	$452	$196	$1,436
≥20	262	52	86	319	136	846
M/NM Mines and Independent Contractors (M/NM)						
<20	$1,289	$76	$496	$1,204	$1,238	$4,303
≥20	304	72	82	424	293	1,175
All Mining	2,320	231	955	2,400	1,855	7,761

*Values are rounded.

D. Regulatory Flexibility Certification and Factual Basis

Based on our analysis of costs and benefits in the REA, we certify that this HazCom final rule will not have a significant economic impact on a substantial number of small mining entities using either SBA's or our traditional definition of ''small.''

1. Derivation of costs and revenues

In this final rule, both coal and M/NM mines must incur compliance costs. We examined the relationship between costs and revenues for the coal and M/NM mine sectors as two independent entities, rather than combining them into one category. All cost estimates in this preamble are presented in 2001 dollars.

For this final rule, we estimated the one-time costs, annualized costs (one-time costs amortized over a specific number of years), and annual costs. One-time costs are those that are incurred once and do not recur. For example, the cost to develop a written procedural program occurs only once. For the purpose of this REA, we amortized one-time costs over an infinite life resulting in an annualized cost equal to 7% of the one-time cost. Converting one-time costs to annualized costs allows us to add them to annual costs in order to compute a combined yearly cost for the rule. Annual costs are those that normally recur annually. Three examples of annual costs are maintenance costs, operating expenses, and recordkeeping costs.

Commenters on the interim final rule argued that MSHA had overestimated the percentage of mine operators, particularly larger operators and contractors, which are currently in compliance with OSHA's HCS and would already be in substantial compliance with MSHA's HazCom rule. In addition, commenters on the interim final rule argued that MSHA had failed to include costs for operators to obtain and assemble MSDSs and had underestimated the time required to comply with a variety of other provisions of MSHA's HazCom rule.

Based on our review and in response to these comments, we have introduced three major sets of changes in the REA for the final HazCom rule. First, we re-examined and subsequently modified our estimates of compliance rates for all operator types for all ten mine size classifications.[9] The most important changes were that we no longer assumed that all operators with more than 500 employees would be in substantial compliance with the final rule.[10] We revised these non-compliance rates as follows:

[9] See U.S. Department of Labor, Mine Safety and Health Administration, ''Compliance Rates by Mine Size and HazCom Provision for Mines and Contractors,'' December 12, 2001.

[10] MSHA's estimates of non-compliance rates were 0 percent in the interim final rule for all provisions, for all operators with more than 500 employees.

Mine type	HazCom program (Percent)	Labels (Percent)	MSDSs (Percent)	Training (Percent)	Access (Percent)
Coal Mine	10	5	5	30	75
M/NM Mine	10	5	5	5	5
Coal Mine	50	50	50	50	100
M/NM Contractor	50	50	50	50	100

We also dramatically increased our estimates of the number of contractors not currently in compliance with the various provisions of the final rule.[11] Second, we added costs to reflect the effort required by an operator to obtain and assemble physical copies of MSDSs or alternatively, under the option provided in the final rule, the effort required by an operator to establish access to MSDSs from an internet or commercial database. Third, in several instances, we increased our estimates of the time required for mine operators in specific size classes to comply with particular provisions of the final rule. These include time estimates for mine operators with more than 500 employees for all provisions of the final rule (except the time for operators with an existing HazCom program to review their existing program) and time estimates for mine operators in other size classes to develop MSDSs and to prepare lesson materials for HazCom training.

In addition, because many operators will not have sufficient time to integrate HazCom training into their part 46 or part 48 training before the final rule takes effect, we have added first-year costs for current miners to attend initial HazCom training. The effect of these changes has been to increase MSHA's total compliance cost estimates from about $5.7 million yearly for the interim final rule to about $7.8 million yearly for this final rule or, equivalently, from about $270 per operator, including independent contractors, to about $370 per operator.

Several commenters on both the proposed and the interim final rule also expressed their belief that we had underestimated the cost for operators to train miners and label containers and that the wage rates for conducting hazard evaluations should be two to three times higher than we estimated because consultants, not miners, would be conducting the evaluation. Nevertheless, we believe that the cost estimates in the REA supporting the final rule represent a reasonable approximation of the burden on operators for the following reasons.

First, we have existing standards for training. We did not calculate a cost for miners to attend training (except, now, in the first year the rule takes effect) because the HazCom training can be accomplished during annual refresher training or task training, both of which require operators to cover health and safety hazards. Our recent final training rules, both the new part 46 and the modified part 48, allow operators more flexibility in developing training courses to meet the changing needs of the miners and the changing hazards of the mine environment. Also, we intend to allow mine operators to use relevant training conducted in compliance with other MSHA, federal, or state regulations to meet the HazCom training requirement of this part. Mine operators can also use relevant training conducted in compliance with this part to meet the comparable requirements of other parts of this chapter. This means that relevant training provided to miners under other MSHA standards, such as parts 46 and 48, OSHA, EPA, DOT, and state requirements, can be credited toward HazCom training. HazCom training costs include the time to develop a HazCom training course, time for the instructor to prepare the lesson, and the cost for training materials.

Second, we have existing standards for labeling for metal/nonmetal mines and surface coal mines. We calculated only a small cost for labels because most hazardous chemicals are already labeled by the manufacturer or supplier before they are brought to the mine, and the HazCom rule exempts the raw materials being mined or milled from labeling. The small cost is for labeling storage tanks of bulk hazardous materials and portable transport containers, as necessary; for labeling containers of hazardous chemical mixtures produced and used at the mine; for labeling containers in underground coal mines; and for replacing damaged or missing labels.

Third, 39 states have employee right-to-know laws. OSHA's HCS has had widespread impact on state right-to-know regulations and, indirectly, on the mining industry. All operators comply with some of the provisions of this final rule. Some independent contractors work in industries under OSHA jurisdiction, as well as in the mining industry, and some large companies have other businesses in industries under OSHA jurisdiction. These operators comply with some or most of the provisions of this final rule because of existing federal, state, or local regulations. A few operators comply because the state regulations also cover mining. Others comply voluntarily because of corporate policy.

Finally, we are developing compliance aids to reduce the burden on operators, especially small operators. These include generic HazCom programs, generic training programs, training materials, and videos (some to help the operator develop a HazCom program and some to use in training the miner under the final rule and under parts 46 and 48). We will also provide training and compliance assistance through state grants, MSHA health specialists, and our Educational Field Services so that operators can understand and comply with the rule. MSHA's state grant recipients will be supporting HazCom through free training and program assistance. The benefit we see is that if operators develop their own programs to meet the unique needs of their operations, they will be better prepared to maintain it. We will help the mining community understand the requirements of this regulation before it goes into effect. Every first inspection after HazCom's publication will include HazCom outreach.

Because of our commitment to help the mining industry, especially small operators, implement a HazCom program with minimum burden, we do not anticipate a need for them to hire consultants. We anticipate that the vast majority of hazard determinations will be made by reading the MSDS and label and acting accordingly. We have no definitive information about the use of consultants under OSHA's HCS, however, numerous training and information materials have been developed in response to OSHA's HCS. We know that the industry's trade associations have model HazCom

[11] MSHA's estimates of contractor non-compliance rates increased by at least 44 percentage points for all mine size classes and all provisions relative to those in the interim final rule. See U.S. Department of Labor, Mine Safety and Health Administrator, ''Compliance Rates by Mine Size and HazCom Provision for Mines and Contractors,'' December 12, 2001.

programs, generic MSDSs, and a number of aids developed for their members. Because we intend to have extensive outreach programs, particularly for small mine operators, and reduce the need for outside consultants, we assumed in our calculation of wage rates that miners will conduct the hazard determination rather than consultants.

In determining revenues for coal mines, we multiplied mine production data (in tons) by the estimated price per ton of the commodity ($16.78 per ton in 2000). We obtained production data from our CM441 reports [12] and the price estimates from the Department of Energy.[13] Because we do not collect data on M/NM mine production, we took the total revenue generated by the M/NM industry ($40.2 billion) [14] and divided it by the total number of employee hours to arrive at the average revenue of $70.45 per hour of employee production. We then took the $70.45 and multiplied it by the employee hours in specific size categories to arrive at the estimated revenues for the size category.

2. Factual basis for certification

Whether or not compliance costs impose a ''significant'' impact on small entities depends on their effect on the profits, market share, and financial viability of small mines. To address these issues, we had to determine whether compliance with HazCom will place small mines at a significant competitive disadvantage relative to large mines or impose a significant cost burden on small mines.

The first step in this determination is to establish whether the compliance costs impose a significant burden on small mines in absolute terms. For this purpose, we began with a ''screening'' analysis of compliance costs relative to revenues for small mines. When estimated compliance costs are less than 1% of estimated revenues, we conclude that there is no significant impact on a substantial number of small entities. When estimated compliance costs approach or exceed 1% of revenue, we conclude that further analysis is needed.

The second step in this determination is to establish whether compliance with the HazCom rule will impose substantial capital or first-year, start-up costs on small mines. Because financing is typically more difficult or more expensive to obtain for small mines than for large mines, initial costs may impose a greater burden on small mines than on large mines. HazCom, however, does not require engineering controls or other items requiring a substantial initial capital expenditure. The initial costs associated with HazCom are those necessary to develop and implement a HazCom program. Because this cost is well below 1% of revenues, we do not consider it to be significant.

The third step in this determination is to establish whether there are significant economies of scale in compliance that place small mines at a competitive disadvantage relative to large mines. We investigated economies of scale by calculating whether compliance costs are proportional to mine employment. Although the annual compliance cost per miner is greater for small operations than for large, this difference is unlikely to provide strategic leverage because small mines generate over 95% of the revenues in their respective markets. Furthermore, total compliance costs will be greater, on average, for a large mine than for a small mine.

3. Results of screening analysis

In all size categories, the cost of complying with the final rule is well below 1% of revenues.

- For coal operations with fewer than 20 miners, the estimated average yearly cost of the HazCom rule is $400 per operation, which is about 0.24% of the average annual revenue per operation.
- For coal operations with 500 or fewer miners, the estimated average yearly cost of the HazCom rule is $481 per operation, which is about 0.02% of the average annual revenue per operation.
- For M/NM mines with fewer than 20 miners, the estimated average yearly cost of the HazCom rule is $334 per operation, which is about 0.05% of the average annual revenue per operation.
- For M/NM mines with 500 or fewer miners, the estimated average yearly cost of the HazCom rule is $361 per operation, which is about 0.01% of the average annual revenue per operation.

As shown in Table 2, compliance costs represent only about 0.01% to 0.02% of the value of mine production.

TABLE 2.—COMPLIANCE COSTS COMPARED TO REVENUE*

Small mines (1–500)	Average cost per mine	Total yearly cost (millions)	Total revenue (millions)	Cost as % of revenue (percent)
Coal	$481	$2.3	$15,093	0.02
M/NM	361	5.5	36,802	0.01

*Includes independent contractors and their employees.

Because the cost of HazCom as a percentage of revenue is considerably less than 1%, we believe that this result, in conjunction with the previous analysis, provides a reasonable basis for the certification of ''no significant impact'' in this case.

E. Benefits

In considering a HazCom standard, we reviewed chemically related injuries and illnesses reported to MSHA between January 1983 and June 1999. During this period, the mining industry reported almost 4,700 chemical burns crossing 57 commodities and 70 job classifications and involving exposures to chemicals at all sizes and types of mines. This same accident and injury data indicated more than 800 poisonings, 2,600 eye injuries, and 2,100 cases of dermatitis or skin injury as a result of chemical exposures. These data only account for the acute effects of chemical hazards, not the chronic effects which we know exist.

We conclude that miners face a significant risk from exposure to hazardous chemicals. We further conclude that compliance with this rule will prevent a substantial number of acute illnesses, injuries, and fatalities, as well as long term cancer cases.

HazCom is an important means of ensuring that both operators and miners are aware of the chemical hazards to which they may be exposed at the mine. We anticipate that our HazCom standard will enhance both operator and miner awareness of the physical and health hazards associated with hazardous chemicals in such a way that both

[12] MSHA's 2001 CM441 Report, cycle 1998/198.

[13] U.S. Department of Energy, Energy Information Administration, *Coal Industry Annual 2000,* January 2002, p. 206.

[14] U.S. Department of the Interior, U.S. Geological Survey, *Mineral Commodity Summaries 2001,* January 2001, p. 7.

parties will take positive steps to lower exposures, resulting in lower incidence of chemically related injuries and illnesses. Also, if the miner and operator know the potential health effects from exposure to a chemical, they can forewarn their doctor to watch for signs and symptoms of exposure and further reduce the risk of injury by obtaining early diagnosis and treatment.

Based on our review and analysis of the available data, we estimate that compliance with this rule will prevent one fatality every four years, beginning when the rule takes effect, as well as an annual average of 57 chemically related acute injuries and illnesses (15 in coal mines and 42 in M/NM mines). Of these 57 injuries and illnesses, 32.5 will result in 392 lost workdays and 24.8 will not require lost workdays.

In addition, we expect that HazCom will prevent a total of 50 cancer deaths (16 in coal and 34 in M/NM) from year 11 through year 20 after promulgation and 9.4 cancer deaths every year thereafter.

V. Paperwork Reduction Act

When we published the HazCom proposed rule in 1990, its information collection and paperwork requirements were not an information collection burden under the 1980 Paperwork Reduction Act because they were third-party disclosures. In August 1995, the Office of Management and Budget (OMB) published its final rule (60 FR 44978) implementing the new Paperwork Reduction Act of 1995 (PRA 95). These OMB rules expanded the definition of *information* to clarify that PRA 95 also covers agency rules that require businesses or individuals to maintain information for the benefit of a third-party or the public, rather than the government. The requirements for information collection and dissemination in HazCom are now an information collection burden because of this expanded definition. Most of the provisions in this HazCom final rule fit this definition: §§ 47.2, 47.31, 47.32, 47.41, 47.42, 47.43, 47.44, 47.51, 47.52, 47.53, 47.54, 47.55, 47.71, 47.72, 47.73, 47.81, 47.82, 47.83, 47.84, 47.85, 47.86, and 47.87. The HazCom training provisions that appeared in the interim final rule (§§ 47.51, 47.52, 47.53) have been moved to 30 CFR parts 46 and 48 and do not pose an additional paperwork burden. The final rule also removes the labeling requirements from existing §§ 56.16004, 57.16004, and 77.208, and adds conforming amendments to parts 46 and 48 for subsequent HazCom training. We submitted the interim final rule to OMB for its review and approval under § 3507 of PRA 95. OMB approved the information collection provisions for MSHA's Hazard Communication Interim Final Rule, 30 CFR part 47, under OMB Control No. 1219–0133, contingent on our addressing the comments. This approval expires on May 31, 2002.

Description of requirements. HazCom is primarily an information collection and dissemination rule. The annual information collection burden includes the time to inventory chemicals, determine the hazards of chemicals present, develop a HazCom program, develop or obtain labels or MSDSs as necessary, prepare training materials, provide initial training to current miners, and provide copies of HazCom materials. The information collection and paperwork burden encompasses each section of this part, as summarized in Table 3.

TABLE 3.—DESCRIPTION OF INFORMATION COLLECTION PROVISIONS

Provision	Information collection burden
Written HazCom Program	Prepare, administer, and review annually; determine hazards of chemicals; list hazardous chemicals at the mine.
Labels or other warnings	Prepare for hazardous chemicals produced; maintain legibility and accuracy.
Material Safety Data Sheets	Develop for hazardous chemicals produced; obtain for other hazardous chemicals; maintain availability and accuracy.
Training Program	Develop or obtain training courses and materials; conduct initial training for miners; administer program.
Copies of HazCom information	Distribute written HazCom program information to miners, HazCom designated representatives, and customers when requested; distribute to other operators.

All written information can be either paper or electronic format provided that you meet access requirements.

Description of respondents. The respondents are operators, including independent contractors. The final HazCom rule will be applicable to all 21,166 operations under MSHA jurisdiction: 2,459 surface and underground coal mines; 3,801 coal contracting firms; 11,337 surface and underground metal and nonmetal (M/NM) mines; and 3,569 M/NM contracting firms.

The percentage of mines complying with a specific HazCom requirement varies depending on the type of mine and the specific provision. For example, some mines label containers and keep MSDSs, but do not have a written program or provide HazCom information to miners. As a matter of corporate policy or to comply with state hazard communication or right-to-know laws, most existing HazCom programs are modeled on OSHA's HCS. For these reasons, we believe that operators can adjust their existing programs to comply fully with HazCom with little effort and few resources.

We assumed that many independent contractors conduct some work at locations under OSHA jurisdiction and would have an existing hazard communication program. The contractor's program, however, may need modification for a particular mine. The magnitude of the burden for any individual mine operator or independent contractor, therefore, will vary greatly by the size, type, and location of the operation.

Information Collection Burden. The greater portion of HazCom's burden accrues when the operator is developing and implementing the program. The first-year only information collection burden for coal mine operators, including independent contractors, will be 162,240 burden hours, and the associated burden hour costs will be $6,350,339 ($444,524 in annualized terms). The annual information collection burden for coal mine operators, including independent contractors, will be 62,249, and the associated burden hour costs will be $1,909,557. The first-year only information collection burden for M/NM mine operators, including independent contractors, will be 320,244 burden hours, and the associated burden hour costs will be $11,494,762 ($804,633 in annualized terms). The annual information collection burden for M/NM mine operators, including independent contractors, will be 149,287, and the

associated burden hour costs will be $3,870,336.

The final rule does not require records for initial miner training and 30 CFR parts 46 and 48 already requires training records. This change from the interim final rule results in a reduction in the information collection and paperwork burden of the final rule.

VI. Other Regulatory Considerations

We recognize that the mining industry has changed since 1990 when we developed the Preliminary Regulatory Impact Analysis (PRIA) and published the HazCom proposed rule. Most of the changes, however, decreased the impact of HazCom on the mining industry. For example, the number of mines and miners has decreased while the number of independent contractors has increased. Independent contractors are more likely than mines to have an existing hazard communication program because they are more likely to work in operations under OSHA jurisdiction, as well as in mines under MSHA jurisdiction. Similarly, more mines have a hazard communication program now than in 1990 because the parent company also has operations in industries subject to OSHA's HCS, or the mine is located in a state with a state right-to-know law that covers mining. We believe that these existing programs decrease the economic impact of the HazCom rule on the mining industry.

Another change that affects the hazard communication environment is increased public awareness due to the length of time that the OSHA HCS has been in effect. There is an abundance of hazard communication information, supplies, training, and training aids readily available to the public off-the-shelf or through the Internet.

On March 30, 1999, we re-opened the rulemaking record (64 FR 15144) for the limited purpose of receiving comments on several regulatory mandates, some of which were not in existence when the Agency published the hazard communication proposed rule in 1990. Current statutory mandates and Executive Orders require the Agency to evaluate the impact of a regulatory action on small mines; on the environment; on expenditures by state, local, and tribal governments (Unfunded Mandates); on constitutionally protected property rights; on the federal court system; on children; on federalism; on Indian tribal governments; and on energy.

A. The National Environmental Policy Act of 1969

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires each federal agency to consider the environmental effects of its actions. NEPA also requires an agency to prepare an Environmental Impact Statement for major actions significantly affecting the quality of the environment. We have reviewed the HazCom final rule in accordance with the requirements of NEPA, the regulations of the Council on Environmental Quality (40 CFR part 1500), and the Department of Labor's NEPA regulations (29 CFR part 11). As a result of this review, we have determined that this final rule has no significant environmental impact.

B. Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any federal mandate that may result in increased expenditures by state, local, and tribal governments in the aggregate of more than $100 million annually, or increased expenditures by the private sector of more than $100 million annually.

C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

The HazCom final rule is not subject to Executive Order 12630 because it does not involve implementation of a policy with takings implications.

D. Executive Order 12988: Civil Justice Reform

We have reviewed Executive Order 12988 and determined that the HazCom final rule will not unduly burden the federal court system. We wrote the final rule to provide a clear legal standard for affected conduct and have reviewed it carefully to eliminate drafting errors and ambiguities.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

We have evaluated the environmental safety and health effects of the HazCom final rule on children and have determined that the final rule will have no disproportionate effect on children. HazCom is a health and safety information standard. It does not set exposure limits or require controls. It can, however, benefit children indirectly. One commenter to the re-opened record supported the interim final rule stating that—

- Parents exposed to a genotoxic material could have their reproductive genes damaged which, in turn, could result in miscarriages or congenital or developmental impairments in their children;
- Parents could bring home hazardous chemicals on their clothing or their person which could result in children being injured by contact with the parent; and
- If parents knew that a chemical could adversely affect their children, they would take more precautions to prevent their own and their children's exposures.

F. Executive Order 13132: Federalism

We have reviewed this rule in accordance with Executive Order 13132 regarding federalism, and have determined that it does not have ''federalism implications.'' The rule 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.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

We certify that the final rule does not impose substantial direct compliance costs on Indian tribal governments. Further, MSHA provided the public, including Indian tribal governments which operated mines, the opportunity to comment on the interim final rule. No Indian tribal government applied for a waiver or commented on the interim final rule.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, we have reviewed the final HazCom rule for its energy impacts. The rule has no effect on the distribution or use of energy. The only impacts of the rule on the supply of energy would be through its effect on the price of coal or the production of coal. Impacts of the rule on metal/nonmetal mines do not affect the supply of energy.

The final rule has no direct effects on the production of coal. The rule does not prevent the mining of particular coal deposits, nor does the rule require coal deposits to be mined at a slower pace. The only impacts of the rule on coal mine production are indirect, via the cost or price of coal.

The estimated annual cost of the final rule for the coal mining industry is $2.3 million.[15] The annual revenues of the coal mining industry in 2000 were

[15] Estimate obtained from Table IV–1 of the Regulatory Economic Analysis.

$17,663,646,512.[16] The cost of the rule for the coal mining industry is 0.01% of revenues. Even if we were to suppose that the increased cost caused by the rule would be fully reflected in coal prices, the impact would be negligible.

Accordingly, we have determined that the final HazCom rule has no significant adverse effect on the supply, distribution, or use of energy. Therefore, no reasonable alternatives to this action are necessary.

VII. Addendum: Physical and Health Effects of Chemical Substances Normally Used by Miners

In Appendix O of its National Occupational Health Survey of Mining (NOHSM) report, NIOSH projects the number of miners potentially exposed to various chemicals, not including the number of workers employed in the corresponding mineral commodity's mining industry. An asterisk (*) identifies those chemicals where the number of miners exposed does not include those who mine the listed chemical commodity. The following is a list of chemicals for which NIOSH projected more than 1,000 miners potentially exposed and their health effects. We found the listed health effects for most of these substances on material safety data sheets (MSDSs) available free on the Internet. The number in parentheses is the projected number of miners potentially exposed.

Common Chemical Hazards in Mining

Acetic Acid (1,066) Irritation of eyes, skin, nose, throat; eye, skin burns; skin sensitization; black skin, hyperkeratosis; dental erosion; conjunctivitis, lacrimation (discharge of tears); pharyngeal edema, chronic bronchitis.

Acetone (1,013) Irritation of eyes, nose, throat; dermatitis; headache, dizziness, central nervous system depressant, depression.

Acetylene (66,665) Headache, dizziness; asphyxia; frostbite (liquid).

Aluminum Sulfate (2,527) Health hazard acute and chronic: acute: irritation of eyes, skin and liquid alum is an acidic salt that can irritate the eyes, skin, open wounds and mucous membranes. Inhalation of mists can be irritating to the Respiratory tract and lungs. Chronic overexposure signs/symptoms of overexposure: health hazard: Cause contact dermatitis.

Ammonium Hydroxide (1,452) Inhalation: Vapors and mists cause irritation to the respiratory tract. Higher concentrations can cause burns, pulmonary edema and death. Brief exposure to 5000 ppm can be fatal. Ingestion: Toxic! May cause corrosion to the esophagus and stomach with perforation and peritonitis. Symptoms may include pain in the mouth, chest, and abdomen, with coughing, vomiting and collapse. Ingestion of as little as 3–4 mL may be fatal. Skin Contact: Causes irritation and burns to the skin. Eye Contact: Vapors cause irritation. Splashes cause severe pain, eye damage, and permanent blindness. Chronic Exposure: Repeated exposure may cause damage to the tissues of the mucous membranes, upper respiratory tract, eyes and skin. Aggravation of Pre-existing Conditions: Persons with pre-existing eye disorders or impaired respiratory function may be more susceptible to the effects of this material.

Ammonium Nitrate (4,333) Inhalation: May cause irritation to the respiratory tract; symptoms may include coughing, sore throat, and shortness of breath. At high temperatures, exposure to toxic nitrogen oxides decomposition products can quickly cause acute respiratory problems. Inhalation of large amounts causes systemic acidosis and abnormal hemoglobin. Ingestion: Large oral doses of nitrates may cause dizziness, abdominal pain, vomiting, bloody diarrhea, weakness, convulsions, and collapse. Harmful if swallowed. May cause methemoglobinemia resulting in cyanosis. Skin Contact: Causes irritation to skin. Symptoms include redness, itching, and pain. Eye Contact: Causes irritation, redness, and pain. Chronic Exposure: Small repeated oral doses of nitrates may cause weakness, depression, headache, and mental impairment.

Argon (1,587) Argon is odorless and nontoxic, but may produce suffocation by diluting the concentration of oxygen in air below levels necessary to support life. Personnel, including rescue workers, should not enter areas where the oxygen concentration is below 19%, unless provided with a self-contained breathing apparatus or airline respirator. Exposure to oxygen-deficient atmospheres may produce dizziness, nausea, vomiting, loss of consciousness, and death. Death may result from errors in judgement, confusion, or loss of consciousness which prevents self rescue. At low oxygen concentrations unconsciousness and death may occur in seconds without warning. Extensive tissue damage or burns can result from exposure to liquid argon or cold argon vapors.

95% Argon 5% Oxygen (5,516) Asphyxiant: Effects are due to lack of oxygen. Moderate concentrations may cause headache, drowsiness, dizziness, excitation, excess salivation, vomiting, and unconsciousness. Lack of oxygen can kill.

75% Argon 25% Carbon Dioxide (8,493) The main health hazard associated with this gas is asphyxiation by displacement of oxygen. If the concentration of carbon dioxide (a component of this gas mixture) reaches 10% or more, suffocation can occur within minutes. At concentrations between 2-l0%, carbon dioxide can cause nausea, dizziness, headache, mental confusion, and increased blood pressure and respiratory rate. Moisture in the air could lead to the formation of carbonic acid, which can be irritating to the eyes and skin.

Calcium Chloride (10,513) Contact with skin or eyes may cause severe irritation or burns; dust may irritate nose and throat. Toxic gas produced: hydrogen chloride. Ingestion: May cause nausea and vomiting.

Calcium Hydroxide (2,411) Irritation eyes, skin, upper respiratory system; eye, skin burns; skin vesiculation; cough, bronchitis, pneumonia.

Calcium Oxide (4,252) Irritation eyes, skin, upper respiratory tract; ulcer, perforation nasal septum; pneumonia; dermatitis.

Carbon Dioxide (2,054) Headache, dizziness, restlessness, paresthesia; dyspnea (breathing difficulty); sweating, malaise (vague feeling of discomfort); increase(d) heart rate, cardiac output, blood pressure; coma; asphyxia; convulsions; frostbite (liquid, dry ice)

Carbonic Acid, Monosodium Salt (1,454) Not Available (disodium salt MSDS is available).

Carbonic Acid, Disodium Salt (2,729) Inhalation: dust may cause irritation to respiratory tract. Known to cause damage to nasal septum. Ingestion: only slightly toxic, but large doses may be corrosive to GI tract. Signs/symptoms of overexposure: skin: excessive contact may cause irritation w/Blistering and redness. Solutions may cause severe irritation or burns. Eye: contamination may be corrosive to eyes and cause conjunctivitis. Edema and corneal destruction. Chronic: prolonged or repeated skin exposure may cause sensitization.

Carbonic Acid, Dithio, o-Pentyl Ester, Potassium Salt (1,084) Not Available (o-ethyl MSDS is available).

Chloroprene (1,558) Health Hazard Acute And Chronic: Inhalation: central nervous system. Vapor emitted during

[16] Data for revenues derived from: U.S. Department of Labor, Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, based on 1998 Final MIS data (quarter 1–quarter 4), CM441, cycle 1998/198; and U.S. Department of Energy, Energy Information Administration, Annual Energy Review 1998, DOE/EIA–0384(98), July 1999, p. 203.

processing above 200c are highly irritating causing soreness in eyes, nose and throat. Ingestion: central nervous system and severe stomach distress. Eyes: irreversible damage. Skin: irritation. Signs/symptoms of overexposure: inhalation: headaches, drowsiness, lack of coordination. Skin: redness, itching; in severe cases, blisters. Don't induce vomiting. Eyes: flush with water for 15 min. Skin: wash thoroughly w/soap and water. Obtain medical attention in all cases.

*Coal** (11,193) Chronic bronchitis, decreased pulmonary function, emphysema.

Coke (Petroleum) (1,887) or *Coke* (1,561) Eye: Dusts may be abrasive and irritating to the eyes and cause stinging, watering, and redness. Skin: Dusts may be abrasive and mildly irritating to the skin. No harmful effects from skin absorption are expected. Inhalation (Breathing): Low degree of toxicity by inhalation. Ingestion (Swallowing): No harmful effects expected. Signs and Symptoms: Repeated overexposure to dusts may result in irritation of the respiratory tract, pneumoconiosis (dust congested lungs), pneumonitis (lung inflammation), coughing and shortness of breath. Pre-Existing Medical Conditions: Conditions aggravated by exposure may include skin and respiratory (asthma-like) disorders. (See above.)

Denatured Alcohol (1,091) Inhalation: Causes irritation to the respiratory tract. Symptoms may include coughing, shortness of breath. Prolonged exposures to high concentration may cause drowsiness, loss of appetite, and inability to concentrate. Ingestion: Cause headaches, gastritis, intoxication, blindness and, in acute cases, death. Skin Contact: Causes skin irritation, cracking or flaking due to dehydration and defatting action. Eye Contact: Can cause eye irritation. Splashes may cause temporary pain and blurred vision. Chronic Exposure: Prolonged skin contact causes drying and cracking of skin. May affect the nervous system, liver, kidneys, blood, G.I. tract and reproductive system. Continued ingestion of small amounts could result in blindness. Aggravation of Pre-existing Conditions: Persons with pre-existing skin disorders or eye problems or impaired liver or kidney function may be more susceptible to the effects of the substance.

Dichloro, Difluoro-Methane (1,178) Dizziness, tremor, asphyxia, unconsciousness, cardiac arrhythmias, cardiac arrest. Liquid: frostbite.

Diesel Fuel, NEC (2,664) Central Nervous System (CNS) depression; possible irritation of eyes, nose, and lungs; and dermal irritation. Signs of kidney and liver damage may be delayed.

Diesel Fuel, No. 1 (16,852) Central nervous system depression; possible irritation of eyes, nose, and lungs; dermal irritation; delayed signs of kidney and liver damage.

Diesel Fuel, No. 2 (109,097) Central nervous system depression; possible irritation of eyes, nose, and lungs; dermal irritation; delayed signs of kidney and liver damage.

Gasoline (3,901) Irritation eyes, skin, mucous membrane; dermatitis; headache, fatigue, blurred vision, dizziness, slurred speech, confusion, convulsions; chemical pneumonia (aspiration liquid); possible liver, kidney damage; [Potential occupational carcinogen].

Gasoline, Leaded (19,893) Headache; nasal and respiratory irritation; drowsiness, fatigue; pneumonitis, pulmonary edema; central nervous system depression; and kidney damage. Long-term exposure to rats has resulted in kidney cancer. Regular leaded gasoline contains lead. Lead can be a cumulative poison.

Gasoline, Unleaded (30,811) Eyes, skin, respiratory system, central nervous system, liver, kidneys.

Graphite (1,420) Cough, dyspnea (breathing difficulty), black sputum, decreased pulmonary function, lung fibrosis.

*Gypsum** (6,701) Irritation eyes, skin, mucous membrane, upper respiratory system; cough, sneezing, rhinorrhea (discharge of thin nasal mucous).

Hydrogen Chloride (4,578) Irritation nose, throat, larynx; cough, choking; dermatitis; solution: eye, skin burns; liquid: frostbite; in animals: laryngeal spasm; pulmonary edema.

Fe, Iron (1,079) Inhalation: May cause irritation to the respiratory tract. Symptoms may include coughing and shortness of breath. Ingestion: Extremely large oral dosages may produce gastrointestinal disturbances. An overdose of iron may cause vomiting, abdominal pain, bloody diarrhea, vomiting blood, lethargy, and shock. In severe cases, toxicity may progress and develop into an increase in acidity in the blood, bluish skin discoloration, fever, liver damage, and possibly death. Skin Contact: No adverse effects expected. Eye Contact: May cause irritation, redness and pain. Eye contact may cause conjunctivitis and deposition of iron particles can leave a ''rust ring'' or brownish stain on the cornea. Chronic Exposure: Long-term inhalation exposure to iron has resulted in mottling of the lungs, a condition referred to as siderosis. This is considered a benign pneumoconiosis and does not ordinarily cause significant physiological impairment. Ingestion of greater than 50 to 100 mg of iron per day may result in pathological iron deposition in body tissues. Repeated iron ingestion can produce cardiac toxicity. Aggravation of Pre-existing Conditions: Persons with impaired respiratory function may be more susceptible to the effects of the substance.

*Iron Ore** (1,410) Dust may be harmful if inhaled.

Iron Oxide (Fe_3O_4) (2,423) Benign pneumoconiosis with X-ray shadows indistinguishable from fibrotic pneumoconiosis (siderosis).

Iron Scale (1,455) Caustic.

Kerosene (10,712) Irritation of eyes, skin, nose, throat; dermatitis; headache, nausea, weakness, restlessness, lack of coordination, confusion, drowsiness; vomiting, diarrhea; burning sensation in chest; chemical pneumonia (aspiration of liquid).

Lignin Sulfonate (1,719) MSDS could not be found.

*Limestone** (8,918) Irritation of eyes, skin, mucous membrane; cough, sneezing, rhinorrhea (discharge of thin nasal mucous); lacrimation (discharge of tears).

Magnetite (2,668) Eye: May cause eye irritation. Exposure to iron particles may cause toxic effects. Skin: May cause skin irritation. Ingestion: May cause gastrointestinal irritation with nausea, vomiting and diarrhea. The toxicological properties of this substance have not been fully investigated. Inhalation: May cause respiratory tract irritation. Inhalation of fumes may cause metal fume fever, which is characterized by flu-like symptoms with metallic taste, fever, chills, cough, weakness, chest pain, muscle pain and increased white blood cell count. The toxicological properties of this substance have not been fully investigated. Chronic: No information found.

Methyl Acetylene-Propadiene Mixture (1,215) Inhalation: short term exposure: difficulty breathing, drowsiness, symptoms of drunkenness, disorientation. Long term exposure: no information on significant adverse effects. Skin contact: short term exposure: blisters, frostbite. Long term exposure: no information is available. Eye contact: short term exposure: irritation, blurred vision. Long term exposure: no information is available. Ingestion: short term exposure: frostbite. Long term exposure: no information is available.

Methyl Alcohol (1,504) Irritation eyes, skin, upper respiratory system;

headache, drowsiness, dizziness, vertigo (an illusion of movement), lightheadedness, nausea, vomiting; visual disturbance, optic nerve damage (blindness); dermatitis.

Methyl Chloroform (4,412) Irritation eyes, skin; headache, lassitude (weakness, exhaustion), central nervous system depressant/depression, poor equilibrium; dermatitis; cardiac arrhythmias; liver damage.

Methyl Isobutyl Carbinol (1,039) Irritation of eyes, skin; dermatitis; headache, drowsiness; narcosis in animals.

Mineral Oil (1,563) Inhalation: Causes irritation to the respiratory tract. Symptoms may include coughing, shortness of breath. Inhalation of mist or vapor may produce aspiration pneumonia. Ingestion: Material is a cathartic and can cause serious diarrhea. Nausea and vomiting may also occur and possibly abdominal cramping. Aspiration of mineral oil into the lungs can cause chemical pneumonia. Skin Contact: Prolonged contact may cause irritation; occasionally dermatitis due to hypersensitivity occurs. Eye Contact: Mists or fumes can irritate the eyes. Can cause discomfort similar to motor oil. Chronic Exposure: Prolonged or repeated skin exposure may cause dermatitis. Highly refined mineral oils are not classified as human carcinogens. However, related forms (untreated and mildly-treated oils) are listed as human carcinogens by both N.T.P. and IARC. Aggravation of Pre-existing Conditions: Persons with pre-existing skin disorders or impaired respiratory function may be more susceptible to the effects of the substance.

Naphtha, Coal Tar (3,227) Irritation eyes, skin, nose; lightheadedness, drowsiness; dermatitis; in animals: liver, kidney damage.

Natural Gas (8,040) Light hydrocarbon gases are simple asphyxiants which, at high enough concentrations, can reduce the amount of oxygen available for breathing. Symptoms of overexposure can include shortness of breath, drowsiness, headaches, confusion, decreased coordination, visual disturbances and vomiting, and are reversible if exposure is stopped. Continued exposure can lead to hypoxia (inadequate oxygen), cyanosis (bluish discoloration of the skin), numbness of the extremities, unconsciousness and death. High concentrations of carbon dioxide can increase heart rate and blood pressure.

Nitric Acid (1,245) Nitric acid is extremely hazardous; it is corrosive, reactive, an oxidizer, and a poison. Inhalation: Corrosive! Inhalation of vapors can cause breathing difficulties and lead to pneumonia and pulmonary edema, which may be fatal. Other symptoms may include coughing, choking, and irritation of the nose, throat, and respiratory tract. Ingestion: Corrosive! Swallowing nitric acid can cause immediate pain and burns of the mouth, throat, esophagus and gastrointestinal tract. Skin Contact: Corrosive! Can cause redness, pain, and severe skin burns. Concentrated solutions cause deep ulcers and stain skin a yellow or yellow-brown color. Eye Contact: Corrosive! Vapors are irritating and may cause damage to the eyes. Contact may cause severe burns and permanent eye damage. Chronic Exposure: Long-term exposure to concentrated vapors may cause erosion of teeth and lung damage. Long-term exposures seldom occur due to the corrosive properties of the acid. Aggravation of Pre-existing Conditions: Persons with pre-existing skin disorders, eye disease, or cardiopulmonary diseases may be more susceptible to the effects of this substance.

Nitrogen (4,042) Can cause rapid suffocation when concentrations are sufficient to reduce oxygen levels below 19.5%.

Petroleum White (3,110) Acute: Large doses may produce diarrhea. Chronic: not a hazard.

*Portland Cement** (1,002) Irritation of eyes, skin, nose; dermatitis; cough, expectoration; exertional dyspnea (breathing difficulty), wheezing, chronic bronchitis.

Propane (11,437) Dizziness, confusion, excitation; asphyxia; frostbite (liquid).

Silica, Crystalline (2,620) Cough, dyspnea (breathing difficulty), wheezing; decreased pulmonary function, progressive respiratory symptoms (silicosis); irritation eyes; [Potential occupational carcinogen].

Silicic Acid, Disodium Salt (1,067) A strong alkaline irritant. Inhalation: Can cause severe irritation of mucous membranes and upper respiratory tract. Symptoms may include burning sensation, coughing, wheezing, laryngitis, shortness of breath, headache, nausea and vomiting. High concentrations may cause lung damage. Ingestion: Causes irritation to the gastrointestinal tract. Symptoms may include nausea, vomiting, and diarrhea. Solid sodium silicate: Alkaline corrosive ingestion may produce burns to the lips, tongue, oral mucosa, upper airway, esophagus, and occasionally stomach. Skin Contact: Causes severe irritation. Symptoms include redness, itching, and pain. Dries to form a glass film which can cut skin. Solid sodium silicate: Dermal contact with alkaline corrosives may produce pain, redness, severe irritation or full thickness burns. Eye Contact: Alkaline eye exposures produce severe irritation with effects similar to those of dilute caustics. Inflammation or burns with possible damage to the eye tissues can occur together with tearing and considerable pain. Chronic Exposure: No information found. Aggravation of Pre-existing Conditions: Persons with pre-existing skin disorders or impaired respiratory function may be more susceptible to the effects of the substance.

Sodium Cyanide (1,063) Irritation of eyes, skin; asphyxia; weakness, headache, confusion; nausea, vomiting; increased respiratory rate; slow gasping respiration; thyroid, blood changes.

Sodium Hydroxide (4,567) Irritation eyes, skin, mucous membrane; pneumonitis; eye, skin burns; temporary loss of hair.

Stoddard Solvent (4,307) Irritation eyes, nose, throat; dizziness; dermatitis; chemical pneumonia (aspiration liquid); in animals: kidney damage.

Sulfate (2,025) Not Available.

Sulfuric Acid (4,626) Irritation eyes, skin, nose, throat; pulmonary edema, bronchitis; emphysema; conjunctivitis; stomatis; dental erosion; tracheobronchitis.

Xylene (2,994) Ingest: practically non-toxic; >2g/kg. Aspiration hazard. Inhale: harmful if inhaled. Eyes: irritant. Skin: practically non-irritating, but may cause defatting.

List of Subjects

30 CFR Part 42

Education, Intergovernmental relations, Mine safety and health.

30 CFR Part 46

Education, Mine safety and health, Reporting and recordkeeping requirements.

30 CFR Part 47

Chemicals, Hazardous substances, Labeling, Mine safety and health, Reporting and recordkeeping requirements.

30 CFR Part 48

Education, Mine safety and health, Reporting and recordkeeping requirements.

30 CFR Part 56

Chemicals, Electric power, Explosives, Fire prevention, Hazardous substances, Metals, Mine safety and health, Noise control, Reporting and recordkeeping requirements.

30 CFR Part 57

Chemicals, Electric power, Explosives, Fire prevention, Gases, Hazardous substances, Metals, Mine safety and health, Noise control, Radiation protection, Reporting and recordkeeping requirements.

30 CFR Part 77

Communications equipment, Electric power, Emergency medical services, Explosives, Fire prevention, Mine safety and health, Reporting and recordkeeping requirements.

Dated: June 14, 2002.

Dave D. Lauriski,

Assistant Secretary for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, we are amending chapter I of title 30 of the Code of Federal Regulations as follows.

PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

Authority: 30 U.S.C. 811, 825.

2. Paragraph (b)(4) of § 46.5 is revised to read as follows:

§ 46.5 New miner training.

* * * * *

(b) * * *

(4) Instruction on the health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, the mandatory health and safety standards pertinent to such tasks, information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program;

* * * * *

3. Paragraph (b)(4) of § 46.6 is revised to read as follows:

§ 46.6 Newly hired experienced miner training.

* * * * *

(b) * * *

(4) Instruction on the health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, the mandatory health and safety standards pertinent to such tasks, information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program;

* * * * *

4. Paragraph (a) of § 46.7 is revised to read as follows:

§ 46.7 New task training.

(a) You must provide any miner who is reassigned to a new task in which he or she has no previous work experience with training in the health and safety aspects of the task to be assigned, including the safe work procedures of such task, information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program. This training must be provided before the miner performs the new task.

* * * * *

5. The second sentence of paragraph (c) of § 46.8 is amended by inserting the phrase ''information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program;'' after the phrase ''including mandatory health and safety standards;''.

PART 47—[REDESIGNATED AS PART 42]

6. The authority for part 47 continues to read as follows:

Authority: 30 U.S.C. 957.

7. Part 47—National Mine Health and Safety Academy is transferred to subchapter G–Filing and Other Administrative Requirements, and redesignated as part 42.

PART 47—[ADDED]

8. Add a new part 47 to subchapter H in chapter I, title 30 of the Code of Federal Regulations to read as follows:

PART 47—HAZARD COMMUNICATION (HazCom)

Sec.

Subpart A—Purpose, Scope, Applicability, and Initial Miner Training

47.1 Purpose of a HazCom standard; applicability.
47.2 Operators and chemicals covered; initial miner training.

Subpart B—Definitions

47.11 Definitions of terms used in this part.

Subpart C—Hazard Determination

47.21 Identifying hazardous chemicals.

Subpart D—HazCom Program

47.31 Requirement for a HazCom program.
47.32 HazCom program contents.

Subpart E—Container Labels and Other Forms of Warning

47.41 Requirement for container labels.
47.42 Label contents.
47.43 Label alternatives.
47.44 Temporary, portable containers.

Subpart F—Material Safety Data Sheets (MSDS)

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47.52 MSDS contents.
47.53 Alternative for hazardous waste.
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Subpart G—Reserved

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47.71 Access to HazCom materials.
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47.86 Denial of a written request for disclosure.
47.87 Review of denial.

Subpart J—Exemptions

47.91 Exemptions from the HazCom standard.
47.92 Exemptions from labeling.

Authority: 30 U.S.C. 811, 825.

Subpart A—Purpose, Scope, Applicability, and Initial Miner Training

§ 47.1 Purpose of a HazCom standard; applicability.

The purpose of this part is to reduce injuries and illnesses by ensuring that each operator—

(a) Identifies the chemicals at the mine,

(b) Determines which chemicals are hazardous,

(c) Establishes a HazCom program, and

(d) Informs each miner who can be exposed, and other on-site operators whose miners can be exposed, about chemical hazards and appropriate protective measures.

(e) As of September 23, 2002, all mines employing six or more miners are required to comply with this part.

(f) As of March 21, 2003, all mines employing five or fewer miners are required to comply with this part.

§ 47.2 Operators and chemicals covered; initial miner training.

(a) This part applies to any operator producing or using a hazardous chemical to which a miner can be exposed under normal conditions of use or in a foreseeable emergency. (Subpart

J of this part lists exemptions from coverage.)

(b) Operators of mines which employ six or more miners must instruct each miner with information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program by September 23, 2002. Operators of mines that employ five or fewer miners must instruct each miner with information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program by March 21, 2003.

Subpart B—Definitions

§ 47.11 Definitions of terms used in this part.

The definitions in Table 47.11 apply in this part as follows:

TABLE 47.11—DEFINITIONS

Term	Definition for purposes of HazCom
Access	The right to examine and copy records.
Article	A manufactured item, other than a fluid or particle, that— (1) Is formed to a specific shape or design during manufacture, and (2) Has end-use functions dependent on its shape or design.
Chemical	Any element, chemical compound, or mixture of these.
Chemical name	(1) The scientific designation of a chemical in accordance with the nomenclature system of either the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS), or (2) A name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.
Common name	Any designation or identification (such as a code name, code number, trade name, brand name, or generic name) used to identify a chemical other than by its chemical name.
Consumer product	A product or component of a product that is packaged, labeled, and distributed in the same form and concentration as it is sold for use by the general public.
Container	(1) Any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like. (2) The following are not considered to be containers for the purpose of compliance with this part: (i) Pipes or piping systems; (ii) Conveyors; and (iii) Engines, fuel tanks, or other operating systems or parts in a vehicle.
Cosmetics and drugs	(1) Cosmetics are any article applied to the human body for cleansing, beautifying, promoting attractiveness, or altering appearance. (2) Drugs are any article used to affect the structure or any function of the body of humans or other animals.
CPSC	The U.S. Consumer Product Safety Commission.
Designated representative	(1) Any individual or organization to whom a miner gives written authorization to exercise the miner's rights under this part, or (2) A representative of miners under part 40 of this chapter.
EPA	The U.S. Environmental Protection Agency.
Exposed	Subjected, or potentially subjected, to a physical or health hazard in the course of employment. ''Subjected,'' in terms of health hazards, includes any route of entry, such as through the lungs (inhalation), the stomach (ingestion), or the skin (skin absorption).
Foreseeable emergency	Any potential occurrence that could result in an uncontrolled release of a hazardous chemical into the mine.
Hazard warning	Any words, pictures, or symbols, appearing on a label or other form of warning, that convey the specific physical and health hazards of the chemical. (*See* the definitions for *physical hazard* and *health hazard* for examples of the hazards that the warning must convey.)
Hazardous chemical	Any chemical that can present a physical or health hazard.
Hazardous substance	Regulated by CPSC under the Federal Hazardous Substances Act or EPA under the Comprehensive Environmental Response, Compensation, and Liability Act.
Hazardous waste	Chemicals regulated by EPA under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act.
Health hazard	A chemical for which there is statistically significant evidence that it can cause acute or chronic health effects in exposed persons. *Health* hazard includes chemicals which— (1) Cause cancer; (2) Damage the reproductive system or cause birth defects; (3) Are irritants, corrosives, or sensitizers; (4) Damage the liver; (5) Damage the kidneys; (6) Damage the nervous system; (7) Damage the blood or lymphatic systems; (8) Damage the stomach or intestines; (9) Damage the lungs, skin, eyes, or mucous membranes; or (10) Are toxic or highly toxic agents.
Health professional	A physician, physician's assistant, nurse, emergency medical technician, or other person qualified to provide medical or occupational health services.
Identity	A chemical's *common name* or *chemical name.*

TABLE 47.11—DEFINITIONS—Continued

Term	Definition for purposes of HazCom
Label	Any written, printed, or graphic material displayed on or affixed to a container to identify its contents and convey other relevant information.
Material safety data sheet (MSDS)	Written or printed material concerning a hazardous chemical which— (1) An operator prepares in accordance with Table 47.52—Contents of MSDS; or (2) An employer prepares in accordance with 29 CFR 1910.1200, 1915.1200, 1917.28, 1918.90, 1926.59, or 1928.21 (OSHA Hazard Communication regulations); or (3) An independent source prepares which contains equivalent information, such as International Chemical Safety Cards (ICSC) and Workplace Hazardous Material Information Sheets (WHMIS).
Mixture	Any combination of two or more chemicals which is not the result of a chemical reaction.
Ordinary consumer use	Household, family, school, recreation, or other personal use or enjoyment, as opposed to business use.
OSHA	The Occupational Safety and Health Administration, U.S. Department of Labor.
Physical hazard	A chemical for which there is scientifically valid evidence that it is— (1) *Combustible liquid:* (i) A liquid having a flash point at or above 100°F (37.8°C) and below 200°F (93.3°C); or (ii) A liquid mixture having components with flashpoints of 200°F (93.3°C) or higher, the total volume of which make up 99% or more of the mixture. (2) *Compressed gas:* (i) A contained gas or mixture of gases with an absolute pressure exceeding: (A) 40 psi (276 kPa) at 70°F (21.1°C); or (B) 104 psi (717 kPa) at 130°F (54.4°C) regardless of pressure at 70°F. (ii) A liquid having a vapor pressure exceeding 40 psi (276 kPa) at 100°F (37.8°C) as determined by ASTM D–323–82. (3) *Explosive:* A chemical that undergoes a rapid chemical change causing a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature. (4) *Flammable:* A chemical that will readily ignite and, when ignited, will burn persistently at ambient temperature and pressure in the normal concentration of oxygen in the air. (5) *Organic peroxide:* An explosive, shock sensitive, organic compound or an oxide that contains a high proportion of oxygen-superoxide. (6) *Oxidizer:* A chemical, other than an explosive, that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases. (7) *Pyrophoric:* Capable of igniting spontaneously in air at a temperature of 130°F (54.4°C) or below. (8) *Unstable (reactive):* A chemical which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or become self-reactive under conditions of shock, pressure, or temperature. (9) *Water-reactive:* A chemical that reacts with water to release a gas that is either flammable or a health hazard.
Produce	To manufacture, process, formulate, generate, or repackage.
Raw material	Ore, valuable minerals, worthless material or gangue, overburden, or a combination of these, that is removed from natural deposits by mining or is upgraded through milling.
Trade secret	Any confidential formula, pattern, process, device, information, or compilation of information that is used by the operator and that gives the operator an opportunity to obtain an advantage over competitors who do not know about it or use it.
Use	To package, handle, react, or transfer.
Work area	Any place in or about a mine where a miner works.

Subpart C—Hazard Determination

§ 47.21 Identifying hazardous chemicals.

The operator must evaluate each chemical brought on mine property and each chemical produced on mine property to determine if it is hazardous as specified in Table 47.21 as follows:

TABLE 47.21—IDENTIFYING HAZARDOUS CHEMICALS

Category	Basis for determining if a chemical is hazardous
(a) Chemical brought to the mine	The chemical is hazardous when its MSDS or container label indicates it is a physical or health hazard; or the operator may choose to evaluate the chemical using the criteria in paragraphs (b) and (c) of this table.
(b) Chemical produced at the mine	The chemical is hazardous if any one of the following that it is a hazard: (1) Available evidence concerning its physical or health hazards. (2) MSHA standards in 30 CFR chapter I.

TABLE 47.21—IDENTIFYING HAZARDOUS CHEMICALS—Continued

Category	Basis for determining if a chemical is hazardous
	(3) Occupational Safety and Health Administration (OSHA), 29 CFR part 1910, subpart Z, *Toxic and Hazardous Substances.* (4) American Conference of Governmental Industrial Hygienists (ACGIH), *Threshold Limit Values and Biological Exposure Indices* (2001). (5) U.S. Department of Health and Human Services, National Toxicology Program (NTP), *Ninth Annual Report on Carcinogens,* January 2001. (6) International Agency for Research on Cancer (IARC), Monographs and related supplements, Volumes 1 through 77.
(c) Mixture produced at the mine	(1) If a mixture has been tested as a whole to determine its hazards, use the results of that testing. (2) If a mixture has not been tested as a whole to determine its hazards— (i) Use available, scientifically valid evidence to determine its physical hazard potential; (ii) Assume that it presents the same health hazard as a non-carcinogenic component that makes up 1% or more (by weight or volume) of the mixture; and (iii) Assume that it presents a carcinogenic health hazard if a component considered carcinogenic by NTP or IARC makes up 0.1% or more (by weight or volume) of the mixture. (3) If evidence indicates that a component could be released from a mixture in a concentration that could present a health risk to miners, assume that the mixture presents the same hazard.

Subpart D—HazCom Program

§ 47.31 Requirement for a HazCom program.

Each operator must—

(a) Develop and implement a written HazCom program,

(b) Maintain it for as long as a hazardous chemical is known to be at the mine, and

(c) Share relevant HazCom information with other on-site operators whose miners can be affected.

§ 47.32 HazCom program contents.

The HazCom program must include the following:

(a) How this part is put into practice at the mine through the use of—

(1) Hazard determination,

(2) Labels and other forms of warning,

(3) Material safety data sheets (MSDSs), and

(4) Miner training.

(b) A list or other record identifying all hazardous chemicals known to be at the mine. The list must—

(1) Use a chemical identity that permits cross-referencing between the list, a chemical's label, and its MSDS; and

(2) Be compiled for the whole mine or by individual work areas.

(c) At mines with more than one operator, the methods for—

(1) Providing other operators with access to MSDSs, and

(2) Informing other operators about'

(i) Hazardous chemicals to which their miners can be exposed,

(ii) The labeling system on the containers of these chemicals, and

(iii) Appropriate protective measures.

Subpart E—Container Labels and Other Forms of Warning

§ 47.41 Requirement for container labels.

(a) The operator must ensure that each container of a hazardous chemical has a label. If a container is tagged or marked with the appropriate information, it is labeled.

(1) The operator must replace a container label immediately if it is missing or if the hazard information on the label is unreadable.

(2) The operator must not remove or deface existing labels on containers of hazardous chemicals.

(b) For each hazardous chemical produced at the mine, the operator must prepare a container label and update this label with any significant, new information about the chemical's hazards within 3 months of becoming aware of this information.

(c) For each hazardous chemical brought to the mine, the operator must replace an outdated label when a revised label is received from the chemical's manufacturer or supplier. The operator is not responsible for an inaccurate label obtained from the chemical's manufacturer or supplier.

§ 47.42 Label contents.

When an operator must make a label, the label must—

(a) Be prominently displayed, legible, accurate, and in English;

(b) Display appropriate hazard warnings;

(c) Use a chemical identity that permits cross-referencing between the list of hazardous chemicals, a chemical's label, and its MSDS; and

(d) Include the name and address of the operator or another responsible party who can provide additional information about the hazardous chemical.

§ 47.43 Label alternatives.

The operator may use signs, placards, process sheets, batch tickets, operating procedures, or other label alternatives for individual, stationary process containers, provided that the alternative—

(a) Identifies the container to which it applies,

(b) Communicates the same information as required on the label, and

(c) Is readily available throughout each work shift to miners in the work area.

§ 47.44 Temporary, portable containers.

(a) The operator does not have to label a temporary, portable container if he or she ensures that the miner using the portable container—

(1) Knows the identity of the chemical, its hazards, and any protective measures needed, and

(2) Leaves the container empty at the end of the shift.

(b) Otherwise, the operator must mark the temporary, portable container with at least the common name of its contents.

Subpart F—Material Safety Data Sheets (MSDS)

§ 47.51 Requirement for an MSDS.

Operators must have an MSDS for each hazardous chemical which they produce or use. The MSDS may be in any medium, such as paper or electronic, that does not restrict availability.

(a) For each hazardous chemical produced at the mine, the operator must

prepare an MSDS, and update it with significant, new information about the chemical's hazards or protective measures within 3 months of becoming aware of this information.

(b) For each hazardous chemical brought to the mine, the operator must rely on the MSDS received from the chemical manufacturer or supplier, develop their own MSDS, or obtain one from another source.

(c) Although the operator is not responsible for an inaccurate MSDS obtained from the chemical's manufacturer, supplier, or other source, the operator must—

(1) Replace an outdated MSDS upon receipt of an updated revision, and

(2) Obtain an accurate MSDS as soon as possible after becoming aware of an inaccuracy.

(d) The operator is not required to prepare an MSDS for an intermediate chemical or by-product resulting from mining or milling if its hazards are already addressed on the MSDS of the source chemical.

§ 47.52 MSDS contents.

When an operator must prepare an MSDS for a hazardous chemical produced at the mine, the MSDS must—

(a) Be legible, accurate, and in English;

(b) Use a chemical identity that permits cross-referencing between the list of hazardous chemicals, the chemical's label, and its MSDS; and

(c) Contain information, or indicate if no information is available, for the categories listed in Table 47.52 as follows:

TABLE 47.52—CONTENTS OF MSDS

Category	Requirements, descriptions, and exceptions
(1) Identity	The identity of the chemical or, if the chemical is a mixture, the identities of all hazardous ingredients. *See* § 47.21 (Identifying hazardous chemicals).
(2) Properties	The physical and chemical characteristics of the chemical, such as vapor pressure and solubility in water.
(3) Physical	The physical hazards of the chemical including the hazards potential for fire, explosion, and reactivity.
(4) Health hazards	The health hazards of the chemical including— (i) Signs and symptoms of exposure, (ii) Any medical conditions which are generally recognized as being aggravated by exposure to the chemical, and (iii) The primary routes of entry for the chemical, such as lungs, stomach, or skin.
(5) Exposure limits	For the chemical or the ingredients of a mixture—(i) The MSHA or OSHA permissible limit, if there is one, and (ii) Any other exposure limit recommended by the preparer of the MSDS.
(6) Carcinogenicity	Whether the chemical or an ingredient in the mixture is a carcinogen or potential carcinogen. See the sources specified in § 47.21 (Identifying hazardous chemicals).
(7) Safe use	Precautions for safe handling and use including—(i) Appropriate hygienic practices, (ii) Protective measures during repair and maintenance of contaminated equipment, and (iii) Procedures for clean-up of spills and leaks.
(8) Control measures	Generally applicable control measures such as engineering controls, work practices, and personal protective equipment.
(9) Emergency information	(i) Emergency medical and first-aid procedures; and (ii) The name, address, and telephone number of the operator or other responsible party who can provide additional information on the hazardous chemical and appropriate emergency procedures.
(10) Date prepared	The date the MSDS was prepared or last changed.

§ 47.53 Alternative for hazardous waste.

If the mine produces or uses hazardous waste, the operator must provide potentially exposed miners and designated representatives access to available information for the hazardous waste that—

(a) Identifies its hazardous chemical components,

(b) Describes its physical or health hazards, or

(c) Specifies appropriate protective measures.

§ 47.54 Availability of an MSDS.

The operator must make MSDSs accessible to miners during each work shift for each hazardous chemical to which they may be exposed either—

(a) At each work area where the hazardous chemical is produced or used, or

(b) At an alternative location, provided that the MSDS is readily available to miners in an emergency.

§ 47.55 Retaining an MSDS.

The operator must—

(a) Retain its MSDS for as long as the hazardous chemical is known to be at the mine, and

(b) Notify miners at least 3 months before disposing of the MSDS.

Subpart G—Reserved

Subpart H—Making HazCom Information Available

§ 47.71 Access to HazCom materials.

Upon request, the operator must provide access to all HazCom materials required by this part to miners and designated representatives, except as provided in § 47.81 through § 47.87 (provisions for trade secrets).

§ 47.72 Cost for copies.

(a) The operator must provide the first copy and each revision of the HazCom material without cost.

(b) Fees for a subsequent copy of the HazCom material must be non-discriminatory and reasonable.

§ 47.73 Providing labels and MSDSs to customers.

For a hazardous chemical produced at the mine, the operator must provide customers, upon request, with the chemical's label or a copy of the label information, and the chemical's MSDS.

Subpart I—Trade Secret Hazardous Chemical

§ 47.81 Provisions for withholding trade secrets.

(a) Operators may withhold the identity of a trade secret chemical, including the name and other specific identification, from the written list of hazardous chemicals, the label, and the MSDS, provided that the operator—

(1) Can support the claim that the chemical's identity is a trade secret,

(2) Identifies the chemical in a way that it can be referred to without disclosing the secret,

(3) Indicates in the MSDS that the chemical's identity is withheld as a trade secret, and

(4) Discloses in the MSDS information on the properties and effects of the hazardous chemical.

(b) The operator must make the chemical's identity available to miners, designated representatives, and health professionals in accordance with the provisions of this subpart.

(c) This subpart does not require the operator to disclose process or percentage of mixture information, which is a trade secret, under any circumstances.

§ 47.82 Disclosure of information to MSHA.

(a) Even if the operator has a trade secret claim, the operator must disclose to MSHA, upon request, any information which this subpart requires the operator to make available.

(b) The operator must make a trade secret claim, no later than at the time the information is provided to MSHA, so that MSHA can determine the trade secret status and implement the necessary protection.

§ 47.83 Disclosure in a medical emergency.

(a) Upon request and regardless of the existence of a written statement of need or a confidentiality agreement, the operator must immediately disclose the identity of a trade secret chemical to the treating health professional when that person determines that—

(1) A medical emergency exists, and

(2) The identity of the hazardous chemical is necessary for emergency or first-aid treatment.

(b) The operator may require a written statement of need and confidentiality agreement in accordance with the provisions of § 47.84 and § 47.85 as soon as circumstances permit.

§ 47.84 Non-emergency disclosure.

Upon request, the operator must disclose the identity of a trade secret chemical in a non-emergency situation to an exposed miner, the miner's designated representative, or a health professional providing services to the miner, if the following conditions are met.

(a) The request is in writing.

(b) The request describes in reasonable detail an occupational health need for the information, as follows:

(1) To assess the chemical hazards to which the miner will be exposed.

(2) To conduct or assess health sampling to determine the miner's exposure levels.

(3) To conduct reassignment or periodic medical surveillance of the exposed miner.

(4) To provide medical treatment to the exposed miner.

(5) To select or assess appropriate personal protective equipment for the exposed miner.

(6) To design or assess engineering controls or other protective measures for the exposed miner.

(7) To conduct studies to determine the health effects of exposure.

(c) The request explains in detail why the disclosure of the following information would not satisfy the purpose described in paragraph (b) of this section:

(1) The properties and effects of the chemical.

(2) Measures for controlling the miner's exposure to the chemical.

(3) Methods of monitoring and analyzing the miner's exposure to the chemical.

(4) Methods of diagnosing and treating harmful exposures to the chemical.

(d) The request describes the procedures to be used to maintain the confidentiality of the disclosed information.

(e) The person making the request enters a written confidentiality agreement that he or she will not use the information for any purpose other than the health needs asserted and agrees not to release the information under any circumstances, except as authorized by § 47.85, by the terms of the agreement, or by the operator.

§ 47.85 Confidentiality agreement and remedies.

(a) The confidentiality agreement authorized by § 47.84—

(1) May restrict the use of the trade secret chemical identity to the health purposes indicated in the written statement of need;

(2) May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages;

(3) Must allow the exposed miner, the miner's designated representative, or the health professional to disclose the trade secret chemical identity to MSHA;

(4) May provide that the exposed miner, the miner's designated representative, or the health professional inform the operator who provided the trade secret chemical identity prior to or at the same time as its disclosure to MSHA; and

(5) May not include requirements for the posting of a penalty bond.

(b) Nothing in this subpart precludes the parties from pursuing non-contractual remedies to the extent permitted by law.

§ 47.86 Denial of a written request for disclosure.

To deny a written request for disclosure of the identity of a trade secret chemical, the operator must—

(a) Put the denial in writing,

(1) Including evidence to substantiate the claim that the chemical's identity is a trade secret,

(2) Stating the specific reasons why the request is being denied, and

(3) Explaining how alternative information will satisfy the specific medical or occupational health need without revealing the chemical's identity.

(b) Provide the denial to the health professional, miner, or designated representative within 30 days of the request.

§ 47.87 Review of denial.

(a) The health professional, miner, or designated representative may refer the written denial to MSHA for review. The request for review must include a copy of—

(1) The request for disclosure of the identity of the trade secret chemical,

(2) The confidentiality agreement, and

(3) The operator's written denial.

(b) If MSHA determines that the identity of the trade secret chemical should have been disclosed, the operator will be subject to citation by MSHA.

(c) If MSHA determines that the confidentiality agreement would not sufficiently protect against unauthorized disclosure of the trade secret, MSHA may impose additional conditions to ensure that the occupational health services are provided without an undue risk of harm to the operator.

(d) If the operator contests a citation for a failure to release the identity of a trade secret chemical, the matter will be adjudicated by the Federal Mine Safety and Health Review Commission. The Administrative Law Judge may review the citation and supporting documentation ''in camera'' or issue appropriate orders to protect the trade secret.

Subpart J—Exemptions

§ 47.91 Exemptions from the HazCom standard.

A hazardous chemical is exempt from this part under the conditions described in Table 47.91 as follows:

TABLE 47.91.—CHEMICALS AND PRODUCTS EXEMPT FROM THIS HAZCOM STANDARD

Exemption	Conditions for exemption
Article	If, under normal conditions of use, it— (1) Releases no more than insignificant amounts of a hazardous chemical, and (2) Poses no physical or health risk to exposed miners.
Biological hazards	All biological hazards, such as poisonous plants, insects, and micro-organisms.
Consumer product or hazardous substance regulated by CPSC.	(1) If the miner uses it for the purpose the manufacturer intended; and (2) Such use does not expose the miner more often and for longer periods than *ordinary consumer use.*
Cosmetics, drugs, food, food additive, color additive, drinks, alcoholic beverages, tobacco and tobacco products, or medical or veterinary device or product, including materials intended for use as ingredients in such products (such as flavors and fragrances).	When intended for personal consumption or use.
Radiation	All ionizing or non-ionizing radiation, such as alpha or gamma, microwaves, or x-rays.
Wood or wood products, including lumber	If they do not release or otherwise result in exposure to a hazardous chemical under normal conditions of use. For example, wood is not exempt if it is treated with a hazardous chemical or if it will be subsequently cut or sanded.

§ 47.92 Exemptions from labeling.

A hazardous chemical is exempt from subpart E of this part under the conditions described in Table 47.92 as follows:

TABLE 47.92—HAZARDOUS CHEMICALS EXEMPT FROM LABELING

Exemption	Conditions for exemption
Chemical substance, consumer product, hazardous substance, or presticide.	When kept in its manufacturer's or supplier's original packaging labeled under other federal labeling requirements.
Hazardous substance	When the subject of remedial or removal action under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) in accordance with EPA regulations.
Hazardous waste	When regulated by EPA under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act.
Raw material being mined or processed	While on mine property, except when the container holds a mixture of the raw material and another hazardous chemical and the mixture is found to be hazardous under § 47.21, Identifying hazardous chemicals.
Wood or wood products, including lumber	Wood or wood products are always exempt from labeling.

PART 48—[AMENDED]

9. The authority citation for part 48 continues to read as follows:

Authority: 30 U.S.C. 811, 825.

10. Paragraph (b)(13) of § 48.5 is revised to read as follows:

§ 48.5 Training of new miners; minimum courses of instruction; hours of instruction.

* * * * *

(b) * * *

(13) *Health and safety aspects of the tasks to which the new miner will be assigned.* The course shall include instruction in the health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, the mandatory health and safety standards pertinent to such tasks, information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program.

* * * * *

11. Paragraph (b)(11) of § 48.6 is revised to read as follows:

§ 48.6 Experienced miner training.

* * * * *

(b) * * *

(11) *Health and safety aspects of the tasks to which the experienced miner is assigned.* The course must include instruction in the health and safety aspects of the tasks assigned, including the safe work procedures of such tasks, information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program. Experienced miners who must complete new task training under § 48.7 do not need to take training under this paragraph.

* * * * *

12. Paragraphs (a)(1) and (c) of § 48.7 are revised to read as follows:

§ 48.7 Training of miners assigned to a task in which they have had no previous experience; minimum courses of instruction.

(a) * * *

(1) *Health and safety aspects and safe operating procedures for work tasks, equipment, and machinery.* The training shall include instruction in the health and safety aspects and the safe operating procedures related to the assigned tasks, including information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program. The training shall be given in an on-the-job environment; and

* * * * *

(c) Miners assigned a new task not covered in paragraph (a) of this section shall be instructed in the safety and health aspects and safe work procedures of the task, including information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take

against these hazards, and the contents of the mine's HazCom program, prior to performing such task.

* * * * *

13. Paragraphs (c) and (d) of § 48.8 are redesignated as paragraphs (d) and (e) respectively, and new paragraph (c) is added to read as follows:

§ 48.8 Annual refresher training of miners; minimum courses of instruction; hours of instruction.

* * * * *

(c) Refresher training may include other health and safety subjects that are relevant to mining operations at the mine. Recommended subjects include, but are not limited to, information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program.

* * * * *

14. Paragraph (b)(12) of § 48.25 is revised to read as follows:

§ 48.25 Training of new miners; minimum courses of instruction; hours of instruction.

* * * * *

(b) * * *

(12) *Health and safety aspects of the tasks to which the new miner will be assigned.* The course shall include instructions in the health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, the mandatory health and safety standards pertinent to such tasks, information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program.

* * * * *

15. Paragraph (b)(11) of § 48.26 is revised to read as follows:

§ 48.26 Experienced miner training.

* * * * *

(b) * * *

(11) *Health and safety aspects of the tasks to which the experienced miner is assigned.* The course must include instruction in the health and safety aspects of the tasks assigned, including the safe work procedures of such tasks, information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program. Experienced miners who must complete new task training under § 48.27 do not need to take training under this paragraph.

* * * * *

16. Paragraphs (a)(1) and (c) of § 48.27 are revised to read as follows:

§ 48.27 Training of miners assigned to a task in which they have had no previous experience; minimum courses of instruction.

(a) * * *

(1) *Health and safety aspects and safe operating procedures for work tasks, equipment, and machinery.* The training shall include instruction in the health and safety aspects and safe operating procedures related to the assigned task, including information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program. The training shall be given in an on-the-job environment; and

* * * * *

(c) Miners assigned a new task not covered in paragraph (a) of this section shall be instructed in the safety and health aspects and safe work procedures of the task, including information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program, prior to performing such task.

* * * * *

17. Paragraphs (c) and (d) of § 48.28 are redesignated as paragraphs (d) and (e) respectively, and new paragraph (c) is added to read as follows:

§ 48.28 Annual refresher training of miners; minimum courses of instruction; hours of instruction.

* * * * *

(c) Refresher training may include other health and safety subjects that are relevant to mining operations at the mine. Recommended subjects include, but are not limited to, information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program.

* * * * *

PART 56—[AMENDED]

18. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

19. Section 56.16004 is revised to read as follows:

§ 56.16004 Containers for hazardous materials.

Containers holding hazardous materials must be of a type approved for such use by recognized agencies.

§ 56.20012 [Removed]

20. Section 56.20012 is removed.

PART 57—[AMENDED]

21. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

22. Section 57.16004 is revised to read as follows:

§ 57.16004 Containers for hazardous materials.

Containers holding hazardous materials must be of a type approved for such use by recognized agencies.

23. Section 57.20012 is removed.

PART 77—[AMENDED]

24. The authority citation for part 77 continues to read as follows:

Authority: 30 U.S.C. 811.

25. Paragraph (c) of § 77.208 is revised to read as follows:

§ 77.208 Storage of materials.

* * * * *

(c) Containers holding hazardous materials must be of a type approved for such use by recognized agencies.

* * * * *

[FR Doc. 02–15396 Filed 6–17–02; 8:45 am]

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Federal Register

Friday,
June 21, 2002

Part III

Environmental Protection Agency

40 CFR Part 180

Pesticide Tolerance Nomenclature Changes; Technical Amendment; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0043; FRL–7180–1]

Pesticide Tolerance Nomenclature Changes; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This document makes minor revisions to the terminology of certain commodity terms listed under 40 CFR part 180, subpart C. EPA is taking this action to establish a uniform listing of the commodity terms.

DATES: This document is effective June 21, 2002.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9368; and e-mail address: jamerson.hoyt@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development. To access an electronic copy of the commodity data base entitled *Food and Feed Commodity Vocabulary* go to: http://www.epa.gov/pesticides/foodfeed/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–2002–0043. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

A. What Does this Technical Amendment Do?

EPA's Office of Pesticide Programs (OPP) has developed a commodity vocabulary data base entitled *Food and Feed Commodity Vocabulary*. The data base was developed to consolidate all the major OPP commodity vocabularies into one standardized vocabulary. As a result, all future pesticide tolerances issued under 40 CFR part 180 will use the ''preferred commodity term'' as listed in the aforementioned data base. This final rule is the second in a series of documents revising the terminology of commodity terms listed under 40 CFR part 180. This revision process will establish a uniform presentation of existing commodity terms under 40 CFR part 180. In this rule, EPA is making the following format changes to the terminology of commodity terms in 40 CFR part 180 to the extent the terminology is not already in this format:

1. The first letter of the commodity term is capitalized. All other letters, including the first letter of proper names, are changed to lower case.

2. Commodity terms are listed in the singular although there are the following exceptions: including the terms ''leaves'', ''roots'', ''tops'', ''greens'', ''hulls'', ''vines'', ''fractions'', ''shoots'', and ''byproducts''.

3. Hyphens are removed from commodity terms. Example - ''Cattle, meat by-products'' is revised to read ''Cattle, meat byproducts''.

4. Commodity terms are amended so that generic terms, such as ''corn'', ''pea'', ''cattle'', precede modifying terms, such as ''field'', ''dry'', ''summer''.Examples - ''Corn, field''; ''Pea, dry''; and ''Squash, summer'', not ''field corn'', ''dry pea'', or ''Summer squash''.

5. Abbreviated terms are replaced with the appropriate commodity terms. Examples - ''Hog MBYP'' is replaced with ''hog, meat byproducts''. K+CWHR is replaced with ''kernal plus cob with husks removed''.

6. Parenthesis are replaced with commas. Example - ''Cattle meat byproducts (except kidney)'' is replaced with ''Cattle, meat byproducts, except kidney''.

7. Combined commodity entries are listed separately. Examples - ''Goat, kidney and liver'' is revised to read as follows: ''Goat, kidney'', and ''Goat, liver''.

''Fat of cattle, goat, horse and sheep'' is revised to read as follows: ''Cattle, fat'', ''Goat, fat'', ''Horse, fat;'', ''Sheep, fat''

8. Crop group terms are revised to standardize with the ''Food and Feed Vocabulary''. Examples:

i. ''Stonefruit group'' is revised to read ''Fruit, stone, group''.

ii. ''Cucurbit Vegetables Crop Group'' is revised to read ''Vegetable, cucurbit, group''.

iii. ''Brassica (cole) leafy vegetables'' is revised to read ''Vegetable, brassica leafy, group''.

B. Why is this Technical Amendment Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical amendment final without prior proposal and opportunity for comment, because today's action revises commodity terms listed under 40 CFR part 180, subpart C, in a manner that clearly will have no impact on the meaning of the tolerance regulations. For example, today's action revises commodity terms so that most are in singular (e.g., ''peach'') instead of the plural (e.g., ''peaches''). A complete description of the types of changes that are being made has been provided above. EPA has determined that there is no need to public comment on such ministerial changes and thus that there is good cause under 5 U.S.C. 553(b)(B) for dispensing with public comment. While EPA believes that it has correctly identified all instances where these above-listed revisions need to be made, the Agency would appreciate readers notifying EPA of discrepancies, omissions, or technical problems by submitting them to the address or e-mail under **FOR FURTHER INFORMATION CONTACT.** These will be corrected in a future rule.

III. Regulatory Assessment Requirements

This final rule implements technical amendments to the Code of Federal Regulations which have no substantive impact on the underlying regulations, and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical amendment is not a ''significant regulatory action'' subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since the action does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IV. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 11, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I, part 180, subpart C is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

Part 180, Subpart C [Amended]

2. In the following table, change the term exactly as it appears in the ''Existing Term'' column to read exactly like the term in the ''New Term'' column wherever they appear in subpart

C and realphabetize the entry where appropriate:

Existing Term	New Term
Animal feeds	Animal feed
Artichoke (globe)	Artichoke, globe
Barley (grain)	Barley, grain
Barley grain	Barley, grain
Barley (hay)	Barley, hay
Bean (succulent)	Bean, succulent
Berry (crop group 13)	Berry group
Bluegrass hay	Bluegrass, hay
Cherries	Cherry
Chestnuts	Chestnut
Chili peppers	Pepper, chili
Chinese cabbage	Cabbage, chinese
Cowpeas	Cowpea
Crabapples	Crabapple
Dried Hops	Hop, dried cones
Elderberries	Eldeberry
Figs, dried	Fig, dried fruit
Figs	Fig
Filberts	Filbert
Flax seed	Flax, seed
Galangal root	Galangal, roots
Goat kidney	Goat, kidney
Globe artichoke	Artichoke, globe
Grapefruit oil	Grapefruit, oil
Grass hay	Grass, hay
Greens, turnip	Turnip, greens
Huckleberries	Huckleberry
Kidney of cattle	Cattle, kidney
Kidney, cattle	Cattle, kidney
Kidney, goat	Goat, kidney
Kidney, hog	Hog, kidney
Kidney, horse	Horse, kidney
Kidney, sheep	Sheep, kidney
Kiwi fruit	Kiwifruit
Kumquats	Kumquat
Lentils, hay	Lentil, hay
Lespedeza hay	Lespedeza, hay
Lettuce (head)	Lettuce, head
Lettuce (leaf)	Lettuce, leaf
Macadamia nut	Nut, macadamia
Mamey sapote	Sapote, mamey
Muskmelons	Muskmelon
Mustard, greens	Mustard greens
Mustard green	Mustard greens
Mustard seed	Mustard, seed
Oats	Oat
Oysters	Oyster
Papayas	Papaya
Parsley, leaf	Parsley, leaves
Parsnips (root)	Parsnip, root
Parsnips	Parsnip
Passion fruit	Passionfruit
Pineapples	Pineapple
Plums	Plum
Pome fruit	Fruit, pome
Quinces	Quince
Radishes	Radish
Safflower (meal)	Safflower, meal
Safflower seed	Safflower, seed
Safflower seeds	Safflower, seed
Squash (summer)	Squash, summer
Squash (winter)	Squash, winter
Sweet corn	Corn, sweet
Taniers	Tanier
Taro (corms)	Taro, corm
Timothy (forage)	Timothy, forage
Timothy (hay)	Timothy, hay
Turnip greens	Turnip, greens
Turnip roots	Turnip, roots
Turnips (roots)	Turnip, roots
Turnips	Turnip
Vetch hay	Vetch, hay
Wheat (forage)	Wheat, forage
Wheat (grain)	Wheat, grain
Wheat (hay)	Wheat, hay
Wheat (straw)	Wheat, straw
Wheat bran	Wheat, bran
Wheat flour	Wheat, flour
Wheat forage	Wheat, forage
Wheat grain	Wheat, grain
Wheat hay	Wheat, hay
Wheat straw	Wheat, straw

3. In the following table, change the term exactly as it appears in the ''Existing Term'' column to read exactly like the term in the ''New Term'' column wherever they appear in subpart C and realphabetize the entry where appropriate:

Existing Term	New Term
Apple, dried pomace	Apple, dry pomace
Artichoke, Jerusalem, postharvest	Artichoke, jerusalem, postharvest
Beet, garden, root	Beet, garden, roots
Beet, garden (roots)	Beet, garden, roots
Beet, garden (tops)	Beet, garden, tops
Beet, sugar (roots)	Beet, sugar, roots

Existing Term	New Term
Beet, sugar (tops)	Beet, sugar, tops
Beet, sugar, pulp (dried)	Beet, sugar, dried pulp
Bean, lima (succulent form)	Bean, lima, succulent
Bean, lima (succulent)	Bean, lima, succulent
Bermuda grass, forage	Bermudagrass, forage
Bermuda grass, hay	Bermudagrass, hay
Birdseed mixtures, postharvest	Birdseed, mixtures, postharvest
Birdsfoot trefoil, forage	Trefoil, birdsfoot, forage
Birdsfoot trefoil, hay	Trefoil, birdsfoot, hay
Brazil nuts, postharvest	Nut, brazil, postharvest
Caneberries crop subgroup	Caneberry subgroup
Corn, field, stove	Corn, field, stover
Corn, forage (field)	Corn, field, forage
Corn, forage, field	Corn, field, forage
Corn, forage, pop	Corn, pop, forage
Corn, forage, sweet	Corn, sweet, forage
Chicory, red (tops) (also known as radicchio)	Radicchio
Citrus pulp, dried	Citrus, dried pulp
Citrus, pulp (dried)	Citrus, dried pulp
Citrus fruits (except mandarins)	Fruit, citrus, except mandarin
Citrus fruits crop group	Fruit, citrus, group
Citrus fruits group	Fruit, citrus, group
Citrus fruits	Fruit, citrus
Citrus pulp, dried, postharvest	Citrus, dired pulp, postharvest
Dried citrus pulp	Citrus, dried pulp
Field corn forage	Corn, field, forage
Field corn grain	Corn, field, grain
Field corn stover (fodder)	Corn, field, stover
Fruit group, vegetable	Vegetable, fruiting, group
Fruit, citrus, crop group 10	Fruit, citrus, group
Fruit, pome, crop group 11	Fruit, pome, group
Fruit, stone, except plum prune, fresh	Fruit, stone, except fresh prune plum
Fruit, stone, group (except plums)	Fruit, stone, group, except plum
Goat meat byproducts	Goat, meat byproducts
Grape, raisin waste	Grape, raisin, waste
Grapefruit pulp, dried	Grapefruit, dried pulp
Grass, canary, annual, seed	Canarygrass, annual, seed
Grass (forage)	Grass, forage

Existing Term	New Term
Grass forage	Grass, forage
Grass, forage, fodder, and hay, group	Grass, forage, fodder and hay, group
Grain sorghum, postharvest	Sorghum, grain, postharvest
Leafy greens, subgroup	Leafy greens subgroup
Leafy Brassica greens crop subgroup	Brassica, leafy greens, subgroup
Leaf petioles crop subgroup	Leafy petioles subgroup
Legume vegetable foliage	Vegetable, legume, foliage
Legume vegetable, cannery waste	Vegetable, legume, cannery waste
Pea, black-eyed, postharvest	Pea, blackeyed, postharvest
Peanut soapstock	Peanut, soapstock
Peanuts	Peanut
Plum (fresh prunes)	Plum, prune, fresh
Plums (fresh prunes)	Plum, prune, fresh
Pome fruits crop group	Fruit, pome, group
Pome fruits group	Fruit, pome, group
Prune, dried	Plum, prune, dried
Prunes, dried	Plum, prune, dried
Prunes (dried)	Plum, prune, dried
Prunes, fresh	Plum, prune, fresh
Prunes	Plum, prune
Sorghum, bran	Sorghum, grain, bran
Sorghum, grain (milo)	Sorghum, grain, grain
Sorghum, grain forage	Sorghum, grain, forage
Sorghum, grain, fodder (stover)	Sorghum, grain, stover
Soybean hulls	Soybean, hulls
Soybean seed	Soybean, seed
Soybean meal	Soybean, meal
Soybean soapstock	Soybean, soapstock
Soybean straw	Soybean, straw
Soybeans	Soybean
Sugar beet, dried pulp	Beet, sugar, dried pulp
Sugar beet, pulp, dried	Beet, sugar, dried pulp
Sugar beet, molasses	Beet, sugar, molasses
Sugar beet (roots)	Beet, sugar, roots
Sugar beet, roots	Beet, sugar, roots
Sugar beets, tops	Beet, sugar, tops
Sugarbeet tops	Beet, sugar, tops
Sugarbeet, top	Beet, sugar, tops

Existing Term	New Term
Sugarbeet, tops	Beet, sugar, tops
Sugarbeet, root	Beet, sugar, roots
Sugarbeet, roots	Beet, sugar, roots
Sugarbeet molasses	Beet, sugar, molasses
Sugar beet	Beet, sugar
Sugar cane, cane	Sugarcane, cane
Sugar-cane	Sugarcane
Sugarcane forage	Sugarcane, forage
Sunflower meal	Sunflower, meal
Sunflower oil	Sunflower, oil
Sunflower seed	Sunflower, seed
Sunflower seeds	Sunflower, seed
Sunflower, hulls	Sunflower, seed, hulls
Sweet corn, forage	Corn, sweet, forage
Tomato (products) concentrated	Tomato, concentrated products
Tomato products, concentrated	Tomato, concentrated products
Tomato paste	Tomato, paste
Tomato pomace, dried	Tomato, dry pomace
Tomato puree	Tomato, puree
Tree nut group	Nut, tree, group
Tree nuts group (except almond hulls)	Nut, tree, group
Tree nuts group	Nut, tree, group

§§ 180.106, 180.121, 180.182, 180.205, 180.254, 180.298, 180.317, 180.328, 180.377, 180.378, 180.379, and 180.381 [Amended]

4. The tables to §§ 180.106(a), 180.121(a)(3), 180.182(a)(1), 180.205(b), 180.254(c), 180.298(a)(1), 180.317(a), 180.328(a), 180.377(a)(1), 180.378(b), 180.379(a)(1), and 180.381(a), are amended by changing the term ''Artichoke'' to read ''Artichoke, globe''.

5. Section 180.275 is amended by removing from the table in paragraph (a)(1) the term entry ''Cherry (sweet and sour)'' and by adding the following entries alphabetically:

§ 180.275 Chlorothalonil; tolerances for residues.

Commodity	Parts per million
* * *	* *
Cherry, sweet	0.5
Cherry, tart	0.5
* * *	* *

* * * * *

6. Section 180.412 is amended by removing from the table in paragraph (a) the entry for the term ''Cherry (sweet and sour) and by adding alphabetically the following entries:

§ 180.412 Sethoxydim; tolerances for residues.

Commodity	Parts per million	Expiration/ Revocation Date
* *	* *	*
Cherry, sweet	0.2	None
Cherry, tart	0.2	None
* *	* *	*

* * * * *

7. Section 180.443 is amended by deleting from the table in paragraph (a) the entry for the term ''Cherry (sweet and sour)'' and by adding the following entries:

§ 180.443 Myclobutanil; tolerances for residues.

Commodity	Parts per million
* * *	* *
Cherry, sweet	5.0
Cherry, tart	5.0
* * *	* *

* * * * *

[FR Doc. 02–15464 Filed 6–20–02; 8:45 a.m.]

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Federal Register

Friday,
June 21, 2002

Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7223–7]

RIN 2060–AH02

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for wood building products surface coating operations. The EPA estimates that there are approximately 205 major source facilities in the wood building products (surface coating) source category that emit hazardous air pollutants (HAP), such as xylene, toluene, ethyl benzene, ethylene glycol butyl ether (EGBE), other glycol ethers, methyl ethyl ketone (MEK), methyl isobutyl ketone (MIBK), methanol, styrene, and formaldehyde. As proposed, the standards are estimated to reduce HAP emissions by 3,200 megagrams per year (Mg/yr) (3,500 tons per year (tpy)) or by 61 percent. The reduction in HAP emissions would be achieved by requiring all major source facilities that apply a surface coating to a wood building product to meet the HAP emission standards reflecting the application of the maximum achievable control technology (MACT).

DATES: *Comments.* Submit comments on or before August 20, 2002.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing, they should do so by July 11, 2002. If requested, a public hearing will be held within approximately 30 days following publication of this notice in the **Federal Register**.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–52, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–52, U.S. EPA, 401 M Street, SW, Room M–1500, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT.**

Public Hearing. If a public hearing is held, it will be held at our Office of Administration auditorium in Research Triangle Park, North Carolina. You should contact Ms. Janet Eck, Coatings and Consumer Product Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–7946, to request to speak at a public hearing or to find out if a hearing will be held.

Docket. Docket No. A–97–52 contains supporting information used in developing the proposed standards. The docket is located at the U.S. EPA, 401 M Street, SW, Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Vinson Hellwig, Coatings and Consumer Products Group, Emissions Standards Division (C539–03), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–2317; facsimile number (919) 541–5689; electronic mail (e-mail) address: hellwig.vinson@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by e-mail to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® file format. All comments and data submitted in electronic form must note the docket number: A–97–52. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Mr. Vinson Hellwig, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division(C539–03), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–7946 at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also contact Ms. Eck at least 2 days in advance of the public hearing to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed emission standards.

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

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

Regulated Entities. The source category, which is divided into the five subcategories listed in Table 1, includes facilities that apply coatings to wood building products. In general, facilities that coat wood building products are covered under the Standard Industrial Classification (SIC) and North American Industrial Classification System (NAICS) codes listed in Table 1.

However, facilities classified under other SIC or NAICS codes may be subject to the proposed standards. Not all facilities classified under the SIC and NAICS codes in Table 1 will be subject to the proposed standards because some of the classifications cover products outside the scope of the NESHAP for wood building products.

TABLE 1.—SUBCATEGORIES AND ENTITIES POTENTIALLY REGULATED BY THE PROPOSED STANDARDS

Subcategory	SIC	NAICS	Examples of regulated entities include those facilities that apply a surface coating to . . .
1. Doors and Windows	2431, 2499 [a]	321911, 321918, 321999 [a]	Doors and windows and any millwork and moulding associated with doors and windows.
2. Flooring	2426, 2421, 2499 [a]	321918, 321999 [a]	Solid wood flooring, engineered wood flooring, laminated flooring, and any millwork or moulding associated with flooring.
3. Interior Wall Paneling and Tileboard.	2435, 2499 [a]	321211, 321999 [a]	Interior wall paneling or tileboard.
4. Other Interior Panels	2435, 2436, 2493, 2499 [a]	321211, 321212, 321219, 321999 [a].	Panels used for purposes other than interior wall paneling, such as sheathing, insulation board, pegboard, and ceiling tiles.
5. Exterior Siding, Doorskins, and Miscellaneous.	2435, 2493, 2499 [a]	321211, 321219, 321999 [a]	Panel siding, trimboard, lap siding, trim associated with siding, doorskins, and other miscellaneous wood products.

[a] The subcategory of the SIC code and NAICS code depends on the final end use of the product.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding subcategories and entities likely to be regulated by this action. To determine whether your coating operation is regulated by this action, you should examine the applicability criteria in § 63.4681 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Background Information Document and Economic Impact Analysis. The Background Information Document (BID) and the Economic Impact Analysis (EIA) for the proposed rule may be obtained from the TTNWeb; the wood building products (surface coating) docket (A–97–52); the EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777; or the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone (703) 487–4650. Please refer to ''Background Information Document—National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Wood Building Products (Surface Coating) Industry'' (EPA–453/R–00–003) and the ''Industry Profile: Wood Building Products Industry'' (EPA–453/R–01–002).

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What is the source of authority for development of NESHAP?
B. What criteria are used in the development of NESHAP?
C. What are the health effects associated with HAP emissions from surface coating of wood building products?
II. Summary of the Proposed Rule
A. What source categories and subcategories are affected by the proposed rule?
B. What is the relationship to other rules?
C. What are the primary sources of emissions and what are the emissions?
D. What is the affected source?
E. What are the emission limits, operating limits, and work practice standards?
F. When must I comply with the proposed rule?
G. What are the testing and initial compliance requirements?
H. What are the continuous compliance provisions?
I. What are the notification, recordkeeping, and reporting requirements?
III. Rationale for Selecting the Proposed Standards
A. How did we select the source category and subcategories?
B. How did we select the regulated pollutants?
C. How did we select the affected source?
D. How did we determine the basis and level of the proposed standards for new or reconstructed and existing sources?
E. How did we select the format of the proposed standards?
F. How did we select the testing and initial compliance requirements?
G. How did we select the proposed continuous compliance requirements?
H. How did we select notification, recordkeeping, and reporting requirements?
IV. Summary of Environmental, Energy, and Economic Impacts
A. What are the air impacts?
B. What are the cost impacts?
C. What are the economic impacts?
D. What are the non-air health, environmental, and 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

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The Flatwood Paneling (Surface Coating) category of major sources was listed on July, 16, 1992 (57 FR 31576) under the Surface Coating Processes industry group. The name of the source category was subsequently changed to Wood Building Products (Surface Coating) on November 18, 1999 (64 FR 63025) to reflect more accurately the types of surface coating operations currently used in the industry. Major sources of HAP are those that emit or have the

potential to emit equal to or greater than 9.1 Mg/yr (10 tpy) of any one HAP or 22.7 Mg/yr (25 tpy) of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new or reconstructed 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 the 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 or reconstructed 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 or reconstructed sources, but they cannot be less stringent than the average emission limit 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 the cost of achieving the emission reductions, any non-air quality health and environmental impacts, and energy requirements.

C. What Are the Health Effects Associated With HAP Emissions From Surface Coating of Wood Building Products?

The primary HAP emitted from the surface coating of wood building products include xylene, toluene, ethyl benzene, EGBE, and glycol ethers (not including EGBE). These compounds account for more than 84 percent of the nationwide HAP emissions from this source category. Other HAP identified in emissions include MEK, MIBK, methanol, styrene, and formaldehyde. The HAP that would be controlled with the proposed rule are associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (e.g., irritation of the lungs, eyes, and mucus membranes and effects on the central nervous system) and acute health disorders (e.g., lung irritation and congestion, alimentary effects such as nausea and vomiting, and effects on the central nervous system).

We do not have the type of current detailed data on each of the facilities covered by the proposed emission standards for this subcategory and the people living around the facilities that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these facilities and potential for resultant health effects. Therefore, we do not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, the proposed rule would reduce emissions and subsequent exposures.

II. Summary of the Proposed Rule

A. What Source Categories and Subcategories Are Affected by the Proposed Rule?

The proposed rule would apply to you if you own or operate a wood building products surface coating facility that uses at least 4,170 liters (1,100 gallons (gal)) of coatings per year and is a major source, is located at a major source, or is part of a major source of HAP emissions, whether or not you manufacture the wood building product substrate. The surface coating operations are not required to be major sources of HAP emissions in order for the surface coating operations at a major source facility to be covered by the proposed rule. As long as some part of the total facility causes it to be a major source (e.g., the wood substrate manufacturing process), the surface coating operations would be subject to the proposed standards.

We have defined a wood building products surface coating facility as any facility engaged in the finishing or laminating of a wood building product. A wood building product is any product that contains more than 50 percent by weight wood or wood fiber and is used in the construction, either interior or exterior, of a residential, commercial, or institutional building. As explained later, we have established five subcategories in the wood building products surface coating source category, including: (1) Doors and windows; (2) flooring; (3) interior wall paneling and tileboard; (4) other interior panels; and (5) exterior siding, doorskins, and miscellaneous (see Table 1 of this preamble).

Facilities that manufacture or apply surface coatings to prefabricated/premanufactured or mobile/modular homes are not subject to the proposed NESHAP requirements. These facilities were found to have very low -or no-HAP emissions because coatings applied to these homes are typically waterborne (latex) formulations. Based on the data submitted by 70 of these facilities, no major sources of HAP emissions were identified in the database (docket A–97–52).

You would not be subject to the proposed rule if your wood building products surface coating facility is located at an area source. An area source of HAP is any facility that has the potential to emit HAP but is not a major source. You may establish area source status by limiting the source's potential to emit HAP through appropriate mechanisms available through the permitting authority.

The source category does not include research or laboratory facilities; janitorial, building, and facility construction or maintenance operations; or hobby shops that are operated for personal rather than for commercial purposes. The source category also does not include coating applications using handheld nonrefillable aerosol containers.

B. What Is the Relationship to Other Rules?

Affected sources subject to the proposed rule may also be subject to other rules. We specifically request comments on how monitoring, recordkeeping, and reporting requirements can be consolidated for sources that are subject to more than one rule.

Some wood building products surface coating facilities also manufacture the substrate that is subsequently coated. Any process associated with wood building products substrate manufacturing would be subject to the future NESHAP for plywood and composite wood products (future 40 CFR part 63, subpart DDDD).

Some wood building products surface coating facilities manufacture products that are used in the production of wood furniture or wood furniture components. These wood building products are subject to the NESHAP for wood furniture manufacturing operations (40 CFR part 63, subpart JJ). The surface coating of millwork and trim associated with cabinet manufacturing is also covered under the wood furniture NESHAP.

Wood treatment and preservation operations, which were delisted from the source category list, would not be subject to the wood building products (surface coating) NESHAP. Wood treatment and preservation operations include wood treatment or fire retardant operations located at wood building product facilities that involve impregnating the wood product with the wood treatment chemicals or fire retardant by using a retort or other pressure vessel. This includes operations that are normally not considered coating operations. We request specific comments on the wood treatment and fire retardant operations.

C. What Are the Primary Sources of Emissions and What Are the Emissions?

Emissions from coating application and drying/curing account for most of the HAP emissions from wood building products surface coating operations. The remaining emissions are primarily from mixing and/or thinning and cleaning operations. In most cases, HAP emissions from surface preparation, storage, handling, and waste/wastewater operations are relatively small.

Available emission data collected during the development of the proposed NESHAP show that the primary organic HAP emitted from the surface coating of wood building products includes xylene, toluene, ethyl benzene, EGBE, and other glycol ethers. These compounds account for 84 percent of this source category's nationwide organic HAP emissions. Other significant organic HAP identified include MEK, MIBK, methanol, styrene, and formaldehyde.

Based on information reported in survey responses during the development of the proposed NESHAP, inorganic HAP, including chromium, manganese, and antimony compounds, are components of some coatings used by this source category. No inorganic HAP were reported in thinners or cleaning materials. Most of the coating operations do not cause the coating material to become airborne. Where spraying is performed, most of the inorganic HAP components remain as solids in the dry coating film on the parts being coated or are deposited on the walls, floor, and grates of the spray booths in which they are applied. Some of the inorganic HAP particles are entrained in the spray booth exhaust air. Spray booths in the wood building products industry typically have either water curtains or dry filters to remove overspray particles. Therefore, inorganic HAP emission levels are expected to be very low and have not been quantified.

D. What Is the Affected Source?

We define an affected source as a stationary source, a group of stationary sources, or part of a stationary source to which a specific emission standard applies. The proposed rule defines the affected source as the collection of all operations associated with the surface coating of wood building products. These operations include preparation of a coating for application (e.g., mixing with thinners); surface preparation of the wood building products; coating application, curing, and drying equipment; equipment cleaning; and storage, transfer, and handling of coatings, thinners, cleaning materials, and waste materials.

E. What Are the Emission Limits, Operating Limits, and Work Practice Standards?

Emission Limits. We are proposing to limit organic HAP emissions from each new or reconstructed affected source using the emission limits in Table 2. The proposed emission limits for each existing affected source are given in Table 3. These limits are based on five subcategories that group similar operations and types of coatings. We request specific comments on the proposed emission limits for both existing and new or reconstructed sources for these subcategories. You can choose from several compliance options in the proposed rule to achieve the emission limits. You could comply by applying materials (coatings, thinners, and cleaning materials) that meet the emission limits, either individually or collectively. You could also use a capture system and add-on control device to meet the emission limits or comply by using a combination of both approaches.

Some wood building products facilities surface coat more than one product, and occasionally the products are in different subcategories. For purposes of the proposed standards, those affected sources coating multiple products covered by two or more subcategories must maintain product-or subcategory-specific records in order to demonstrate compliance with each applicable emission limit for all products coated at the affected source.

TABLE 2.—EMISSION LIMITS FOR NEW OR RECONSTRUCTED AFFECTED SOURCES

For any affected source applying coating to. . .	The organic HAP emission limit you must meet, in kilograms (kg) HAP/liter solids applying (pounds (lb) HAP/gal solids), is:
1. Doors and windows	0.06 (0.48)
2. Flooring	0.00 (0.00)
3. Interior wall paneling or tileboard	0.00 (0.04)
4. Other interior panels	0.00 (0.00)
5. Exterior siding, doorskins, and miscellaneous	0.00 (0.00)

TABLE 3.—EMISSION LIMITS FOR EXISTING AFFECTED SOURCES

For any affected source applying coating to. . .	The organic HAP emission limit you must meet, in kg HAP/liter solids (lb HAP/gal solids), is:
1. Doors and windows	0.17 (1.45)
2. Flooring	0.09 (0.78)
3. Interior wall paneling or tileboard	0.18 (1.53)
4. Other interior panels	0.00 (0.01)
5. Exterior siding, doorskins, and miscellaneous	0.01 (0.06)

Operating Limits. If you reduce emissions by using a capture system and add-on control device (other than a solvent recovery system for which you conduct a liquid-liquid material balance), the proposed operating limits would apply to you. These limits are site-specific parameter limits you determine during the initial performance test of the system. For capture systems that are not permanent total enclosures (PTE), you would establish average volumetric flow rates or duct static pressure limits for each capture device (or enclosure) in each capture system. For capture systems that are PTE, you would establish limits on average facial velocity or pressure drop across openings in the enclosure.

For thermal oxidizers, you would monitor the combustion temperature. For catalytic oxidizers, you would monitor the temperature immediately before and after the catalyst bed, or you would monitor the temperature before the catalyst bed and implement a site-specific inspection and maintenance plan for the catalytic oxidizer. For carbon adsorbers for which you do not conduct a liquid-liquid material

balance, you would monitor the carbon bed temperature and the amount of steam or nitrogen used to desorb the bed. For condensers, you would monitor the outlet gas temperature from the condenser. For concentrators, you would monitor the temperature of the desorption concentrate stream and the pressure drop of the dilute stream across the concentrator.

All site-specific parameter limits that you establish must reflect operation of the capture system and control devices during a performance test that demonstrates achievement of the emission limits during representative operating conditions. We request specific comments on the proposed operating limits for this source category.

Work Practice Standards. If you use an emission capture system and control device for compliance, you would be required to develop and implement a work practice plan to minimize organic HAP emissions from mixing operations, storage tanks and other containers, and handling operations for coatings, thinners, cleaning materials, and waste materials. The work practice plan must include steps to ensure that, at a minimum: All organic HAP coatings, thinners, cleaning materials, and waste materials must be stored in closed containers; spills of organic HAP coatings, thinners, cleaning materials, and waste materials must be minimized; organic HAP coatings, thinners, cleaning materials, and waste materials must be conveyed from one location to another in closed containers or pipes; mixing vessels which contain organic HAP coatings and other materials must be closed except when adding to, removing, or mixing the contents; and emissions of organic HAP must be minimized during cleaning of storage, mixing, and conveying equipment.

If your affected source has an existing documented plan that incorporates steps taken to minimize emissions from the aforementioned sources, then your existing plan could be used to satisfy the requirement for a work practice plan.

If you use a capture system and control device for compliance, you would be required to develop and operate according to a startup, shutdown, and malfunction plan (SSMP) during periods of startup, shutdown, or malfunction of the capture system and control device.

The General Provisions (40 CFR part 63, subpart A) also would apply to you as indicated in the proposed rule. The General Provisions codify certain procedures and criteria for all 40 CFR part 63 NESHAP. The General Provisions contain administrative procedures, preconstruction review procedures for new sources, and procedures for conducting compliance-related activities such as notifications, reporting and recordkeeping, performance testing, and monitoring. The proposed rule refers to individual sections of the General Provisions to emphasize key sections that are relevant. However, unless specifically overridden in the proposed rule, all of the applicable General Provisions requirements would apply to you.

F. When Must I Comply With the Proposed Rule?

Existing wood building products facilities must comply within 3 years of the date the promulgated rule is published in the **Federal Register**. New sources that commence construction after today's date must comply immediately upon initial startup or the effective date of the rule, whichever is later.

G. What Are the Testing and Initial Compliance Requirements?

New or reconstructed affected sources would have to be in compliance upon initial startup of the affected source or by the effective date of the final rule, whichever is later. Existing affected sources would have to be in compliance with the final standards no later than 3 years after the effective date of the final rule. The effective date is the date on which the final rule is published in the **Federal Register**.

Compliance with the emission limits is based on a rolling 12-month organic HAP emission rate determined each month. Each 12-month period is a compliance period. The initial compliance period, therefore, is the 12-month period beginning on the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period begins on the compliance date and extends through the end of that month plus the following 12 months. We have defined ''month'' as a calendar month or a pre-specified period of 28 to 35 days to allow for flexibility at sources where data are based on a business accounting period.

Being ''in compliance'' means that the owner or operator of the affected source meets the requirements to achieve the proposed emission limitations during the initial compliance period. At the end of the initial compliance period, the owner or operator would use the data and records generated to determine whether or not the affected source is in compliance with the organic HAP emission limit and other applicable requirements for that period. If the affected source does not meet the applicable limits and other requirements, it is out of compliance for the entire initial compliance period. We welcome specific comments on the compliance dates and the data collection activities required for the initial compliance period.

Emission Limits. There are several proposed options for complying with the proposed emission limits, and the testing and initial compliance requirements vary accordingly. You would be able to use different compliance options for different coating operations in the affected source and also for the same coating operation at different times.

Option 1: Compliance based on the compliant material option. If you demonstrate compliance based on the compliant material option, you would determine the mass of organic HAP in all coatings, thinners, and cleaning materials used and the volume fraction of coating solids in all coatings used each month during the initial compliance period. You would be required to demonstrate that the organic HAP content of each coating meets the applicable emission limit and that you use no organic HAP thinners or cleaning materials.

To determine the mass fraction of organic HAP in coatings, thinners, and cleaning materials and the volume fraction of coating solids, you could either rely on manufacturer's data or on test results using the test methods listed below. You may use alternative test methods provided you get EPA approval in accordance with the NESHAP General Provisions in 40 CFR 63.7(f). However, if there is any inconsistency between the test method results (either EPA's or an approved alternative) and manufacturer's data, the test method results would prevail for compliance and enforcement purposes:

- For mass fraction of organic HAP, use Method 311 of 40 CFR part 63, appendix A;
- The proposed rule would allow you to use nonaqueous volatile matter as a surrogate for organic HAP, which would include all organic HAP plus all other organic compounds, and excluding water. If you choose this option, then you would use Method 24 of 40 CFR part 60, appendix A; and
- For volume fraction of coating solids, use either information from the supplier or manufacturer of the material, ASTM Method D2697–86 (1998), or ASTM Method D6093–97.

To demonstrate initial compliance based on the material used, you would be required to demonstrate that the organic HAP content of each coating

meets the applicable emission limit and that you use no organic HAP thinners or cleaning materials.

Option 2: Compliance based on the emission rate without add-on controls option. If you demonstrate compliance based on the emission rate without add-on controls option, you would determine the mass fraction of organic HAP in all coatings, thinners, and cleaning materials and the volume fraction of coating solids used each month during the initial compliance period. You would use the same methods as described above for Option 1. You would also:

- Determine the quantity of each coating, thinner, and cleaning material used.
- Calculate the total mass of organic HAP in all materials and total volume of coating solids used each month. You may subtract the total mass of organic HAP contained in waste materials you send to a hazardous waste treatment, storage, and disposal facility regulated under 40 CFR part 262, 264, 265, or 266.
- Calculate the total mass of organic HAP emissions and total volume of coating solids for the initial compliance period by adding together all the monthly values for mass of organic HAP and for volume of coating solids for the 12 months in the initial compliance period.
- Calculate the ratio of the total mass of organic HAP for the materials used to the total volume of coating solids used for the initial compliance period.
- Record the calculations and results and include them in your Notification of Compliance Status.

Option 3: Compliance based on the emission rate with add-on controls option. If you use a capture system and add-on control device, other than a solvent recovery system for which you conduct a liquid-liquid material balance, your testing and initial compliance requirements are as follows:

- Conduct an initial performance test to determine the capture and control efficiencies of the equipment and to establish operating limits to be achieved on a continuous basis. The performance test would have to be completed by the compliance date for existing sources and no later than 180 days after the compliance date for new or reconstructed affected sources.
- Determine the mass fraction of organic HAP in each material and the volume fraction of coating solids for each coating used each month of the initial compliance period.
- Calculate the total mass of organic HAP in all materials and total volume of coating solids used each month in the coating operation or group of coating operations. You may subtract from the total mass of organic HAP the amount contained in waste materials you send to a hazardous waste treatment, storage, and disposal facility regulated under 40 CFR part 262, 264, 265, or 266.
- Calculate the organic HAP emission reductions for the controlled coating operations using the capture and control efficiencies determined during the performance test and the total mass of organic HAP in materials used in controlled coating operations.
- Calculate the total mass of organic HAP emissions and total volume of coating solids for the initial compliance period by adding together all monthly values for mass of organic HAP and for volume of coating solids for the 12 months in the initial compliance period.
- Calculate the ratio of the total mass of organic HAP emissions to the total volume of coating solids used during the initial compliance period.
- Record the calculations and results and include them in the Notification of Compliance Status.

If you use a capture system and add-on control device, other than a solvent recovery system for which you conduct liquid-liquid material balances, you would determine both the efficiency of the capture system and the emission reduction efficiency of the control device. To determine the capture efficiency, you would either verify the presence of a PTE using EPA Method 204 of 40 CFR part 51, appendix M (and all materials must be applied and dried within the enclosure); or use one of the protocols in § 63.4765 of the proposed rule to measure capture efficiency. If you have a PTE and all the materials are applied and dried within the enclosure and you route all exhaust gases from the enclosure to a control device, then you would assume 100 percent capture.

To determine the emission reduction efficiency of the control device, you would conduct measurements of the inlet and outlet gas streams. The test would consist of three runs, each run lasting at least 1 hour, using the following EPA Methods in 40 CFR part 60, appendix A:

- Method 1 or 1A for selection of the sampling sites.
- Method 2, 2A, 2C, 2D, 2F, or 2G to determine the gas volumetric flow rate.
- Method 3, 3A, or 3B for gas analysis to determine dry molecular weight.
- Method 4 to determine stack moisture.
- Method 25 or 25A to determine organic volatile matter concentration. Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, and approved by the Administrator, could be used.

If you use a solvent recovery system, you could determine the overall control efficiency using a liquid-liquid material balance instead of conducting an initial performance test. If you use the material balance alternative, you would be required to measure the amount of all materials used in the coating operations served by the solvent recovery system during each month of the initial compliance period and determine the volatile matter contained in these materials. You would also measure the amount of volatile matter recovered by the solvent recovery system each month of the initial compliance period. Then you would compare the amount recovered for the 12-month initial compliance period to the amount used to determine the overall control efficiency, and apply this efficiency to the ratio of organic HAP to coating solids for the materials used. You would record the calculations and results and include them in your Notification of Compliance Status.

Operating Limits. As mentioned above, you would establish operating limits as part of the initial performance test of a capture system and control device, other than a solvent recovery system for which you conduct liquid-liquid material balances. The operating limits are the minimum or maximum (as applicable) values achieved for capture systems and control devices during the most recent performance test that demonstrated compliance with the emission limits.

The proposed rule specifies the parameters to monitor for the types of emission control systems commonly used in the industry. You would be required to install, calibrate, maintain, and continuously operate all monitoring equipment according to the manufacturer's specifications and ensure that the continuous parameter monitoring systems (CPMS) meet the requirements in § 63.4768 of the proposed rule. If you use control devices other than those identified in the proposed rule, you would submit the operating parameters to be monitored to the Administrator for approval. The authority to approve the parameters to be monitored is retained by EPA and is not delegated to States.

If you use a thermal oxidizer, you would continuously monitor the appropriate temperature and record it at least every 15 minutes. The temperature monitor is placed in the firebox or in the duct immediately downstream of the firebox before any substantial heat exchange occurs. The operating limit would be the average temperature

measured during the performance test, and for each consecutive 3-hour period, the average temperature would have to be at or above this limit. If you use a catalytic oxidizer, you may choose from two methods to determine operating limits. In the first method, you would continuously monitor the temperature immediately before and after the catalyst bed and record it at least every 15 minutes. The operating limits would be the average temperature before the catalyst bed and the average temperature difference across the catalyst bed during the performance test, and for each 3-hour period, the average temperature and the average temperature difference would have to be at or above these limits. In the alternative method, you would continuously monitor the temperature immediately before the catalyst bed and record it at least every 15 minutes. The operating limit would be the average temperature just before the catalyst bed during the performance test, and for each 3-hour period, the average temperature would have to be at or above these limits. As part of the alternative method, you must also develop and implement an inspection and maintenance plan for your catalytic oxidizer.

If you use a carbon adsorber and do not conduct liquid-liquid material balances to demonstrate compliance, you would monitor the carbon bed temperature after each regeneration and the total amount of steam or nitrogen used to desorb the bed for each regeneration. The operating limits would be the carbon bed temperature (not to be exceeded) and the amount of steam or nitrogen used for desorption (to be met as a minimum).

If you use a condenser, you would monitor the outlet gas temperature to ensure that the air stream is being cooled to a low enough temperature. The operating limit would be the average condenser outlet gas temperature measured during the performance test, and for each consecutive 3-hour period, the average temperature would have to be at or below this limit.

If you use a concentrator, you would monitor the desorption concentrate stream gas temperature and the pressure drop of the dilute stream across the concentrator. The operating limits would be the desorption concentrate gas stream temperature (to be met as a minimum) and the dilute stream pressure drop (not to be exceeded).

For each capture system that is not a PTE, you would establish operating limits for gas volumetric flow rate or duct static pressure for each enclosure or capture device. The operating limit would be the average volumetric flow rate or duct static pressure during the performance test, to be met as a minimum. For each capture system that is a PTE, the operating limit would require the average facial velocity of air through all natural draft openings to be at least 200 feet per minute or the pressure drop across the enclosure to be at least 0.007 inches water.

Work Practices. If you use the emission rate with add-on controls option, you would be required to develop and implement on an ongoing basis a work practice plan for minimizing organic HAP emissions from storage, mixing, material handling, and waste handling operations. You would have to make the plan available for inspection if the Administrator requests to see it. We believe work practice standards are appropriate to further reduce emissions. We request specific comments on the work practice standards required for this source category.

If your affected source has an existing documented plan that incorporates steps taken to minimize emissions from the aforementioned sources, then your existing plan may be used to satisfy the requirement for a work practice plan.

If you use a capture system and control device for compliance, you would be required to develop and operate according to a SSMP during periods of startup, shutdown, or malfunction of the capture system and control device.

H. What Are the Continuous Compliance Provisions? Emission Limits.

Option 1: Compliance based on the compliant material option. If you demonstrate compliance with the proposed emission limits based on the compliant material option, you would demonstrate continuous compliance if, for each 12-month compliance period, the organic HAP content of each coating used does not exceed the applicable emission limit and you use no thinner or coating material that contains organic HAP. You would follow the same procedures for determining compliance that you used for the initial compliance period.

Option 2: Compliance based on the emission rate without add-on controls option. If you demonstrate compliance with the proposed emission limits based on the emission rate without add-on controls option, you would demonstrate continuous compliance if, for each 12-month compliance period, the ratio of total mass of organic HAP to total volume of coating solids used is less than or equal to the applicable emission limit. You would follow the same procedures for calculating the organic HAP to coating solids ratio that you used for the initial compliance period.

Option 3: Compliance based on the emission rate with add-on controls option. For each coating operation on which you use a capture system and control device other than a solvent recovery system for which you conduct a liquid-liquid material balance, the continuous parameter monitoring results for each month would affect your compliance determination. If the monitoring results indicate no deviations from the operating limits and there were no bypasses of the control device, you would assume the capture system and control device are achieving the same percent emission reduction efficiency as they did during the most recent performance test in which compliance was demonstrated. You would then apply this percent reduction to the total mass of organic HAP in materials used in controlled coating operations to determine the monthly mass of organic HAP emissions from those operations. If there were any deviations from the operating limits during the month or any bypasses of the control device, you would account for them in the calculation of the monthly emissions by assuming the capture system and control device were achieving zero emission reduction during the periods of deviation. Then, you would determine the organic HAP emission rate by dividing the total mass of organic HAP emissions by the total volume of coating solids used during the 12-month compliance period. Every month, you would calculate the emission rate for the previous 12-month period.

For each coating operation on which you use a solvent recovery system and conduct a liquid-liquid material balance each month, you would use the liquid-liquid material balance to determine control efficiency. To determine the overall control efficiency, you must measure the amount of all materials used during each month and determine the volatile matter content of these materials. You must also measure the amount of volatile matter recovered by the solvent recovery system during the month, calculate the overall control efficiency, and apply it to the total mass of organic HAP in the materials used to determine total organic HAP emissions. Then, you would determine the 12-month organic HAP emission rate in the same manner as described above.

Operating Limits. If you use an emission capture system and control device, the proposed rule would require

you to achieve, on a continuous basis, the operating limits you establish during the performance test. If the continuous monitoring shows that the capture system and control device is operating outside the range of values established during the performance test, you have deviated from the established operating limits.

If you operate a capture system and control device that allow emissions to bypass the control device, you would have to demonstrate that organic HAP emissions collected by the capture system are being routed to the control device by monitoring for potential bypass of the control device. You may choose from the following four monitoring procedures:

- Flow control position indicator to provide a record of whether the exhaust stream is directed to the control device;
- Car-seal or lock-and-key valve closures to secure the bypass line valve in the closed position when the control device is operating;
- Valve closure monitoring to ensure any bypass line valve or damper is closed when the control device is operating; or
- Automatic shutdown system to stop the coating operation when flow is diverted from the control device.

If the bypass monitoring procedures indicate that emissions are not routed to the control device, you have deviated from the emission limits.

Work practices. If you use the emission rate with add-on controls option, you would be required to implement, on an ongoing basis, the work practice plan you developed during the initial compliance period. If you did not develop a plan for reducing organic HAP emissions or you do not implement the plan, this would be a deviation from the work practice standard.

If your affected source has an existing documented plan that incorporates steps taken to minimize emissions from the aforementioned sources, then your existing plan may be used to satisfy the requirement for a work practice plan.

If you use a capture system and control device for compliance, you would be required to operate according to your SSMP during periods of startup, shutdown, or malfunction of the capture system and control device.

I. What Are the Notification, Recordkeeping, and Reporting Requirements?

You are required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in the proposed rule. The General Provisions notification requirements include: initial notifications, notification of performance test if you are complying using a capture system and control device, notification of compliance status, and additional notifications required for affected sources with continuous monitoring systems. The General Provisions also require certain records and periodic reports.

Initial Notifications. If the proposed standards apply to you, you must send a notification to the EPA Regional Office in the region where your facility is located, and to your State agency, within 120 days after the date of initial startup for new or reconstructed sources, or 120 days after publication of the final rule, whichever is later. Existing affected sources must send the initial notification within 120 days after publication of the final rule. The report notifies us and your State agency that you have constructed a new facility, reconstructed an existing facility, or you have an existing facility that is subject to the proposed rule. Thus, it allows you and the permitting authority to plan for compliance activities. You will also need to send a notification of planned construction or reconstruction of a source that would be subject to the proposed rule and apply for approval to construct or reconstruct.

Notification of Performance Test. If you demonstrate compliance by using a capture system and control device for which you do not conduct a liquid-liquid material balance, you would conduct a performance test. The performance test would be required no later than 180 days after initial startup or 180 days after publication of the final rule, whichever is later for a new or reconstructed affected source and no later than the compliance date for an existing affected source (3 years after publication of the final rule). You must notify us (or the delegated State or local agency) at least 60 calendar days before the performance test is scheduled to begin, as indicated in the General Provisions for the NESHAP.

Notification of Compliance Status. You would send us a Notification of Compliance Status within 30 days after the end of the initial compliance period. Your compliance procedures would depend on which compliance option you choose. In the notification, you would certify whether the affected source has complied with the proposed standards, identify the option(s) you used to demonstrate initial compliance, and provide calculations supporting the compliance demonstration.

If you elect to comply by using a capture system and control device for which you conduct performance tests, you must provide the results of the tests. Your notification would also include the measured range of each monitored parameter and the operating limits established during the performance test, and information showing whether the source has complied with its operating limits during the initial compliance period.

Recordkeeping Requirements. You would be required to keep records of reported information and all other information necessary to document compliance with the proposed rule for 5 years. As required under the General Provisions, records for the 2 most recent years must be kept on-site; the other 3 years may be kept off-site. Records pertaining to the design and operation of the control and monitoring equipment must be kept for the life of the equipment.

Depending on the compliance option that you choose, you may need to keep records of the organic HAP content, volatile matter content, coating solids content, and quantity of the coatings, thinners, and cleaning materials used during each compliance period.

If you demonstrate compliance by using a capture system and control device, you would also need to keep records of the following:

- All required measurements, calculations, and supporting documentation needed to demonstrate compliance with the standards;
- All results of performance tests and parameter monitoring;
- All information necessary to demonstrate conformance with the requirements for minimizing emissions from mixing, storage, and handling operations for coatings, thinners, and cleaning materials;
- All information necessary to demonstrate conformance with the affected source's SSMP when the plan procedures are followed;
- The occurrence and duration of each startup, shutdown, or malfunction of the emission capture system and control device;
- Actions taken during startup, shutdown, or malfunction that are different from the procedures specified in the affected source's SSMP; and
- Each period during which a CPMS is malfunctioning or inoperative (including out-of-control periods).

The proposed rule would require you to collect and keep records according to certain minimum data requirements for the CPMS. Failure to collect and keep the specified minimum data would be a deviation that is separate from any emission limits, operating limits, or work practice standards.

Deviations, as determined from these records, will need to be recorded and also reported. A deviation is any instance when any requirement or obligation established by the proposed rule, including but not limited to, the emission limits, operating limits, and work practice standards, is not met.

If you use a capture system and control device to reduce organic HAP emissions, you would have to make your SSMP available for inspection if the Administrator requests to see it. The plan will stay in your records for the life of the affected source or until the affected source is no longer subject to the proposed standards. If you revise the plan, you would need to keep the previous superceded versions on record for 5 years following the revision.

Periodic Reports. Each reporting year is divided into two semiannual reporting periods. If no deviations occur during a semiannual reporting period, you would submit a semiannual report stating that the affected source has been in continuous compliance. If deviations occur, you would need to include them in the report as follows:

- Report each deviation from the emission limits.
- Report each deviation from the work practice standards if you use a emission capture system and control device.
- If you use a emission capture system and control device other than a solvent recovery system for which you conduct liquid-liquid material balances, report each deviation from an operating limit and each time a bypass line diverts emissions from the control device to the atmosphere.
- Report other specific information on the periods of time and details of deviations that occurred.

You would also have to include in each semiannual report an identification of the compliance option(s) you used and of time periods when you changed to another option.

Other Reports. You would be required to submit reports for periods of startup, shutdown, or malfunction of the capture system and control device. If the procedures you follow during any startup, shutdown, or malfunction are inconsistent with your plan, you would report those procedures with your semiannual reports in addition to immediate reports required by § 63.10(d)(5)(ii) of the NESHAP General Provisions.

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Source Category and Subcategories?

The surface coating of wood building products is a source category that is on the list of source categories to be regulated because it contains major sources that emit or have the potential to emit at least 9.07 Mg (10 tons) of any one HAP or at least 22.7 Mg (25 tons) of any combination of HAP annually. The proposed rule would control HAP emissions from both new or reconstructed sources and existing major sources. Area sources are not being regulated under the proposed rule.

The surface coating of wood building products as described in the listing includes any facility engaged in the surface coating of wood building products, whether they manufacture the wood building product or not. We use wood building products lists contained in the SIC and NAICS code descriptions to describe the vast array of wood building products.

We intend the source category to include facilities for which the surface coating of wood building products is either their principal activity or is an integral part of a production process that is the principal activity. Most coating operations are located at plant sites such as these. However, some may be located at plant sites for which some other activity is principal. Collocated surface coating operations comparable to the types and sizes of the dedicated facilities, in terms of the coating operations and applicable emission control techniques, are included in the source category. The definition of the source category is intended to reflect this inclusion.

Due to the broad scope of the wood building products surface coating industry, the category definition likewise needs to be broad in order to include the varieties of operations and activities that might occur at these facilities. However, a broad description has the potential to unintentionally include coating operations that we would not consider part of the category. Therefore, we reviewed the available data and information to identify a descriptor common to all the sources in the database that would further help to describe the category. Based on our review, we believe that the quantity of coating usage is the most equitable description for purposes of defining the scope of the category. Other descriptions that could have been used but that we have chosen not to propose because they would be too difficult to implement or they are not as equitable as coating usage include production rate, quantity of emissions, and solvent usage.

Facilities in the affected source category for which the data were available to us reported annual usage of coatings to be higher than 4,170 liters per year (1,100 gal per year). Therefore, the types of coatings and coating application methods that were evaluated in developing these proposed standards represent only those known to be used at facilities applying more than 4,170 liters (1,100 gal) of coatings per year.

To be consistent with the available data, we propose to define the source category to include any wood building products surface coating operation that is a major source of HAP emissions or that is located at or is part of a major source and uses at least 4,170 liters per year (1,100 gal per year) of coatings annually. This definition is intended to include all facilities dedicated to wood building product surface coating operations, and similar types and sizes of surface coating operations that are collocated at major sources for which the principal activity is something other than surface coating. The source category does not include research or laboratory facilities; janitorial, building, and facility construction or maintenance operations; or hobby shops that are operated for personal rather than for commercial purposes. The source category also does not include coating applications using handheld nonrefillable aerosol containers. We request specific comments on the source category definition.

Subcategory Selection. The statute gives us discretion to determine if and how to subcategorize. Once the floor has been determined for new or reconstructed and existing affected sources for a source category or subcategory, we must set MACT standards that are no less stringent than the MACT floor. Such standards must then be met by all sources within the source category or subcategory. A subcategory is a group of similar sources within a given source category. As part of the regulatory development process, we evaluate the similarities and differences between industry segments or groups of facilities comprising a source category. In establishing subcategories, we consider factors such as process operations (type of process, raw materials, chemistry/formulation data, associated equipment, and final products); emission characteristics (amount and type of HAP); control device applicability; and opportunities for pollution prevention. We may also

consider existing regulations or guidance from States and other regulatory agencies in determining subcategories.

After reviewing survey responses from the industry, facility site visit reports, and information received from stakeholder meetings, we found that the wood building products surface coating industry may be grouped into five subcategories with differing coating and performance requirements. The five subcategories are: (1) Doors and windows; (2) flooring; (3) interior wall paneling and tileboard; (4) other interior panels; and (5) exterior siding, doorskins, and miscellaneous.

We specifically invite comments on the selection of subcategories in the proposed rule. For example, we are interested in whether there may be significant differences in product quality or manufacture that could appropriately be addressed by additional subcategories. The EPA notes that cost-effectiveness estimates for some of the subcategories covered by the proposed rule suggest that achieving the MACT floor will be expensive in comparison to the volume of organic HAP controlled. The data suggest that there is a great deal of variation in emission rates even within many of the subcategories. The EPA is interested in data or information that can be used to better address subcategorization and on the costs of the proposed rule and any alternative approaches that commenters may suggest.

Doors and Windows. The doors and windows subcategory typically includes the priming and sometimes prefinishing of doors and/or windows, including associated door and window components such as moulding or trim. Moulding and trim are decorative or ornamental wood products that are assembled with doors and windows to create a fixture. Facilities typically produce both doors and windows and door and window components at the same site. This is primarily to achieve consistency in the appearance of the coatings applied and to aid in the assembly of the end product or complete fixture (e.g., door or window assembly).

Door and window manufacturing and assembly operations are not typically performed at the same site as doorskin manufacturing due to the different manufacturing operations and types of coatings used. Doors are manufactured by applying adhesive to a core and frame and then pressing a doorskin on either side of the core and frame. Doorskins are thin pieces of wood, such as veneer or fiberboard, which are typically only primed at the doorskin manufacturing location prior to being sent to a location that manufactures a door.

The doors and windows segment of the industry is faced with two separate coating problems due to the exposure to both inside and outside environments, which require substantially different performance requirements. First, the primers and prefinishes that will be subject to exterior conditions must have weather resistant properties similar to those of exterior siding. Second, the coatings subject to interior conditions must have stain and scrub resistant properties similar to interior coatings that may or may not be pigmented, but must still resist ultraviolet (UV) (sunlight) damage.

Related to those performance requirements, doors and windows are the only products in the industry that require solvent-borne wood treatment/preservative coatings prior to finishing. More than half of the coatings (57 percent) reported by the facilities in the database are high-HAP content wood treatment/preservative coatings. These are low-solids solvent-borne coatings that must penetrate the wood to protect from moisture and decay. There are no known low- or no-HAP alternatives for these coatings, and the average organic HAP content was 2.34 kg HAP/liter solids (19.5 lb HAP/gal solids), based on a sample of door and window facilities.

The sharp angles, small areas, and openings associated with moulding and trim of doors and windows are more difficult to coat than the other relatively flat surfaces coated in the other subcategories of this industry. Door and window surface coating operations utilize either hang or flat lines and coat using spray systems due to non-flat surfaces that prevent the use of roll coating. Line speeds for doors and windows are also much slower than most ''flat'' products (e.g., 100 doors per day versus 70,000 doorskins per day). Dip tanks are sometimes used for the wood treatment/preservative coatings, which allows the product to soak in the coating.

Although some doors are marketed with only a factory-applied primer, most are coated with a prefinish system that must meet industry performance standards. The prefinish system used is either solvent-based aminoplast technology or conventional solvent-based coating technology. Conventional solvent-based coating systems are typically used for interior doors while solvent-based aminoplast technology is used primarily for exterior doors to impart weather resistance characteristics without compromising aesthetic requirements. The commercial resin systems available for mixing with aminoplast coats are diluted with xylene and/or toluene. We believe that the performance requirements and various coating operations of this industry segment warrant creation of a subcategory.

Flooring. The flooring subcategory includes facilities involved in the finishing or lamination of a wood building product to be used as hardwood or wood laminate flooring. Hardwood flooring is cut and grooved and typically finished in 8-foot or 12-foot strips. Laminate flooring is becoming increasingly popular in the United States and is manufactured using adhesives (typically urea formaldehyde or melamine formaldehyde) that are applied to a paper backing to one side of a thin piece of particleboard and a decorative laminate.

Flooring is limited by the coating types used, including the predominant use of solvent-borne stains and UV sealers and topcoats. Based on a sample of flooring operations, UV sealers and topcoats accounted for approximately 65 percent of all coatings and zero organic HAP emissions. Stains made up the other 35 percent of coatings and averaged 2.82 kg HAP/liter solids (23.5 lb HAP/gal solids). No other industry segment has this unique finishing scenario. Solvent-based stains are prevalent in the industry, and some industry representatives state they are needed in order to obtain the clarity of the wood grain. Recent technology advancements over the past few years have moved to water-borne stains, which in the past have tended to cause ''fuzziness'' in the appearance of the wood grain. In addition to the hardwood flooring products, the use of adhesives in laminated flooring distinguishes this operation from the remainder of the industry. For these reasons, we believe that a separate subcategory is appropriate for flooring.

Interior Wall Paneling and Tileboard. The interior wall paneling and tileboard subcategory includes the application of a coating to a panel used only as a wall covering. Interior wall paneling is usually grooved, frequently embossed, and sometimes grain printed to resemble various wood species. The substrate can be hardboard, plywood, medium density fiberboard (MDF), or particleboard. Tileboard is a premium interior wall paneling product used in areas of the home such as kitchens and bathrooms. If tileboard is manufactured at a facility, then interior wall paneling is typically manufactured at the same facility. Tileboard, however, is not always manufactured at facilities that manufacture interior wall paneling.

Interior wall paneling and tileboard are the primary components of the interior panel product subgroup of wood building products. Product specifications are established by consensus standards for both interior wall paneling and tileboard. Interior wall paneling has more decorative coating requirements than other products and is typically manufactured at the same facilities as tileboard, although in much smaller quantities. Tileboard has even more stringent product performance requirements (i.e., adhesion and hardness standards, household stain, scrub and moisture resistance, while maintaining a relative smooth surface) compared to standard interior wall paneling.

Decorative appearance (embossed, grooved, or grain-printed) and performance of the intermediate and end products require multiple coating layers and coating steps far exceeding other subcategories. Production speeds of 30 to 35 boards per minute require that coalescent solvents be used that come out of the wet film without leaving cure blisters and without leaving residual solvent in the coating film or substrate. Residual solvents can cause product ''blocking'' (products sticking together) during storage. Tileboard coatings average 0.71 kg HAP/liter solids (5.9 lb HAP/gal solids), and interior wall paneling coatings average around 0.19 kg HAP/liter solids (1.6 lb HAP/gal solids). Both products utilize high-temperature aminoplast crosslinkable coatings that are used on substrates that can tolerate higher processing temperatures. These coatings have traditionally been tied to solvent-borne technology where the main resins are supplied in toluene, xylene, and butyl alcohols. The aforementioned coating elements of this industry segment support the creation of a separate subcategory.

Other Interior Panels. The other interior panels subcategory typically includes the application of a coating to interior panels that are sold for uses other than wall paneling, such as sheathing, insulation board, pegboard, and ceiling tiles. Panels in this category are normally not embossed, grooved, or grain-printed. Other interior panels are frequently cut to size after coating either by the coater or the purchaser. In addition to hardwood plywood and hardboard substrates, softboard, fiberboard, particleboard, and MDF are other substrates that are shipped to, or produced at, wood building products facilities and used to produce coated interior panels.

Some facilities produce interior panels that are used in final products such as shelving, drawersides, cabinetry, store fixtures, display cases, and many other wood furniture components. These types of facilities that are major sources of organic HAP emissions will not be covered under the wood building products (surface coating) NESHAP because they are already covered under the wood furniture NESHAP (40 CFR part 63, subpart JJ).

Other interior panels make up the rest of the interior panels subcategory of wood building products. In this segment of the industry, product specifications are established between the buyer and seller and not by consensus standards. These products are used for interior applications other than wall paneling or tileboard and use fewer coating layers. Other interior panels typically are produced with a single color and have fewer coating steps, less stringent product performance requirements, and some UV applications that provide low organic HAP emission rates. Primers and basecoats comprise 32 percent of all the coatings used on these products and average 0.21 kg HAP/liter solids (1.8 lb HAP/gal solids); prefinishes (clearcoats, paints/inks, sealers, stains, and topcoats) make up 47 percent of the coating usage and average 0.20 kg HAP/liter solids (1.7 lb HAP/gal solids). These product differences support a separate subcategory.

Exterior Siding, Doorskin, and Miscellaneous. Exterior siding may be made of solid wood, hardboard, or waferboard. Siding made of solid wood and hardboard is typically primed at the manufacturing facility and finished in the field, although some finishing may be performed during manufacturing on a limited basis. Exterior trim (material made out of siding panels and used for edges and corners around the siding) is typically manufactured at the same facility and coated with the same coatings as siding.

Facilities that produce waferboard or oriented strandboard siding typically use a coated paper overlay with a water-borne primer. Since the coating paper overlay is often added prior to the press, which is considered to be part of the substrate manufacturing process, these facilities will not be covered under the wood building products (surface coating) NESHAP, but will be covered under the plywood and composite wood products NESHAP (40 CFR part 63, subpart DDDD).

Doorskins are thin pieces of wood, such as veneer or fiberboard, used on the outside surfaces or facings of a door. Doorskin manufacturing is almost always performed at a separate location from door manufacturing. Also, many facilities manufacture and finish both exterior siding and doorskins at the same site.

There are several miscellaneous wood building products that are surface coated and for which there is little or no emissions or product performance information available. However, several of the miscellaneous wood building products are used on the exterior of buildings or structures, which would require similar protection as exterior siding. These miscellaneous wood building products include, but are not limited to, shutters, shingles, awnings, laminated veneer lumber, and millwork that is not associated with doors and windows or flooring.

This industry segment involves exterior products that must have coatings able to withstand extreme and long-term weather conditions. The predominant use of primers (82 percent of all coatings) relates to a compatibility issue for all subsequent coating layers and warranty provisions. These primers are low-HAP content coatings that average 0.01 kg HAP/liter solids (0.1 lb HAP/gal solids). The prefinishes, including basecoats, sealers, stains, and topcoats, have a higher average HAP content, 0.07 kg HAP/liter solids (0.6 lb HAP/gal solids), and comprise the remaining 18 percent of the coatings used by these facilities. The typical siding facility produces mainly primed siding, but has a small percentage of prefinished material as well. Also, many exterior siding facilities coat doorskins at the same location.

In summary, an important aspect in the determination of subcategories for wood building products surface coating operations relates to the differences in the performance requirements of the coatings used, which relates to the type and the amount of coatings required to meet the end-product specifications. The effectiveness of an applied coating system depends on the extent to which the adhesion of the coating to the substrate or other coating layers can take place, the chemical nature and physical properties of the coating material, and the severity of service environment. The durability and quality of coatings depend on cohesion and adhesion properties. The EPA believes that coatings and surface multiplicity differences, as outlined above, warrant establishing subcategories for the wood building products source category.

B. How Did We Select the Regulated Pollutants?

Available emission data collected during the development of the proposed NESHAP show that the primary organic HAP emitted from the surface coating of

wood building products include xylene, toluene, ethyl benzene, EGBE, and glycol ethers (not including EGBE). These compounds account for 84 percent of this source category's nationwide organic HAP emissions. However, many other organic HAP are used in wood building products coatings, thinners, and cleaning materials. Therefore, the proposed rule would regulate emissions of all organic HAP.

Although most of the coatings used in this source category do not contain inorganic HAP, some special purpose coatings used by this source category do contain inorganic HAP such as chromium, manganese, and antimony. Emissions of these materials to the atmosphere are minimal because the facilities in this source category employ either water curtains or dry filters that remove overspray particles from the spray booth exhaust. Therefore, at this time, it does not appear that emissions of inorganic HAP from this source category warrant Federal regulation.

C. How Did We Select the Affected Source?

In selecting the affected source(s) for emission standards, our primary goal is to ensure that MACT is applied to HAP-emitting operations or activities within the source category or subcategory being regulated. The affected source also serves to determine where new source MACT applies under a particular standard. Specifically, the General Provisions in subpart A of 40 CFR part 63 define the terms ''construction'' and ''reconstruction'' with reference to the term ''affected source'' (40 CFR 60.2) and provide that new source MACT applies when construction or reconstruction of an affected source occurs (40 CFR 60.5). The collection of equipment and activities evaluated in determining MACT (including the MACT floor) is used in defining the affected source.

When emission standards are based on a collection of emission sources, or total facility emissions relative to products with similar coating operations, we select an affected source based on that same collection of emission sources, or the total facility emissions relative to products with similar coating operations, as well. This approach for defining the affected source broadly is particularly appropriate for industries where affected source-wide emission standards provide the opportunity and incentive for owners and operators to utilize control strategies that are more cost effective than if separate standards were established for each emission point within a facility.

The affected source for these proposed standards is broadly defined to include all operations associated with the surface coating of wood building products and the cleaning of coating operation equipment. In selecting the affected source, we considered, for each operation, the extent to which HAP materials are used and the amount of HAP that are emitted. The organic HAP emissions from surface coating operations at wood building products facilities originate from the surface coating application, drying/curing, thinning and/or mixing, and cleaning operations; storage, handling, and transfer of coatings, thinners, and cleaning materials; and waste materials related to the various coatings applied to the wood building products. Consequently, the magnitude of emissions depends heavily on the amount and HAP content of the coatings used, the application method used, the amount and HAP content of solvents used, the drying/curing operations used, and the efficiency of any capture systems and add-on control devices. These factors are determined by the purpose or function of the coating, the wood building products surface coating method, and specific requirements related to the end use of the wood building product.

A broad definition of the affected source was selected to provide maximum flexibility in complying with the proposed emission limits for organic HAP. In planning its total usage of organic HAP materials, each affected source can select among available coatings, thinners, and cleaning materials to comply with the proposed limits. Additional information on the wood building products surface coating operations selected for regulation, and other operations, are included in the docket for the proposed standards.

D. How Did We Determine the Basis and Level of the Proposed Standards for New or Reconstructed and Existing Sources?

After we identify the specific source categories or subcategories of sources to regulate under section 112 of the CAA, we must develop emission standards for each category and subcategory. Section 112(d)(3) establishes a minimum baseline or ''floor'' for standards. For new or reconstructed sources in a category or subcategory, the standards cannot be less stringent than the emission control achieved in practice by the best-controlled similar source for which we have emission information. The standards for existing sources can be less stringent than standards for new or reconstructed sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (or the best-performing five existing sources for categories or subcategories with fewer than 30 sources) for which we have emission information.

Within the wood building products industry, organic HAP emission control for cleaning and surface coating operations is accomplished primarily through the use of low- or no-HAP coatings, thinners, and cleaning materials. Add-on capture and control systems for organic HAP are rarely used by the industry. While low- or no-HAP materials have achieved broad use throughout the industry, each particular coating technology is not used at every facility. Rather, facilities use various combinations of low- or no-HAP coatings, thinners, and cleaning materials. Thus, we judged the most reasonable approach to establishing a MACT floor to be the evaluation of a facility's organic HAP emissions from all coating-related operations. To account for differences in production levels from one facility to another, we normalized the organic HAP emission rate by the volume of coating solids used. We believe coating solids usage is an appropriate indicator of overall production levels.

We used information obtained from industry survey responses to estimate the sourcewide organic HAP emission rate from each survey respondent. We calculated total organic HAP emissions by assuming that 100 percent of the volatile components in all coatings (including adhesives), thinners, and cleaning materials are emitted. Sources used for determining the MACT floor emission limits were identified as those facilities that listed ''major source'' or ''synthetic minor source'' as their title V status on their questionnaire response, and other facilities whose data indicated that they have the capacity to increase their organic HAP emissions to at least 9.1 Mg/yr (10 tpy), even though they did not identify themselves as major or synthetic minor sources.

The survey response information was used to determine the total volume of coating solids used by each source. We included decorative, protective, and functional coatings in this total.

Using the sourcewide organic HAP emissions and the total volume of coating solids used for each survey respondent, we calculated the normalized organic HAP emissions (emission rate) in units of kg organic HAP per liter of coating solids (lb

organic HAP per gal of coating solids) used. The facilities were then ranked from the lowest to the highest emission rate in each of the five subcategories.

For two of the five subcategories, the existing source MACT floor was based on the top 12 percent of the facilities because the subcategories were projected to have more than 30 sources. The existing source MACT floor for the other three subcategories was based on the top five facilities because the subcategories were projected to have fewer than 30 sources. The ''average'' emission rate for each subcategory was interpreted as the median emission rate. The median emission rate was selected rather than the mean or mode because it is associated with an actual emission rate being achieved by a real facility.

The best performing facilities in each subcategory in the database achieved the emission limits for new or reconstructed sources in Table 2 of this preamble. The MACT floor process for existing sources resulted in the emission limits identified in Table 3 of this preamble by subcategory. The survey data showed no appreciable differences between the floor facilities and the remaining facilities in each subcategory in terms of the substrates coated, the coating technologies used, or the applicability of control measures across the various operations. Therefore, we believe the floor levels of control are achievable by the sources in each subcategory.

After the floors have been determined for new or reconstructed and existing sources in a source category or subcategory, we must set emission standards that are technically achievable and no less stringent than the floors. Such standards must then be met by all sources within the source category or subcategory. We identify and consider any reasonable regulatory alternatives that are ''beyond-the-floor,'' taking into account emission reductions, cost, non-air quality health and environmental impacts, and energy requirements. These alternatives may be different for new or reconstructed and existing sources because of different MACT floors, and separate standards may be established for new or reconstructed and existing sources.

We identified and considered control levels more stringent than the MACT floor level of control for organic HAP. The more stringent option was the use of capture systems and add-on control devices at every facility. The add-on control device chosen for the beyond-the-floor analysis was a regenerative thermal oxidizer (RTO). An RTO was chosen to achieve the highest reduction level possible.

In evaluating the beyond-the-floor option, we calculated the additional costs and emission reductions associated with the use of a capture system and RTO. Since most affected sources do not have any form of add-on control to reduce organic HAP emissions from surface coating operations, we believe that almost all of the facilities, including the few facilities with existing add-on control, would need to install a new capture system and an RTO to achieve the more stringent level of control.

We calculated the cost to reduce each ton of organic HAP emissions using the more stringent level of control. Requiring sources to meet the beyond-the-floor level results in an estimated emission reduction of 4,800 Mg/yr (5,300 tpy) at an estimated cost of $133.5 million per year or $27,900 per Mg HAP ($25,300 per ton HAP) reduced.

Without having information on the benefits that would be achieved by reducing emissions beyond-the-floor, we determined that the additional emission reductions that could be achieved do not warrant the costs that each existing source could incur by using add-on controls. Therefore, we are not requiring beyond-the-floor levels of emission reductions at this time. After implementation of these standards, we will evaluate the health and environmental risks that may be posed as a result of exposure to emissions from the wood building products source category. At that time, we will determine whether the additional costs are warranted in light of the available risk information.

For new or reconstructed sources, the organic HAP emission limits are zero or near zero kg HAP/liter of solids (lb HAP/gal of solids). These limits will achieve 100 percent or nearly 100 percent organic HAP emission reductions. Therefore, there are no other control technologies that need to be considered as a beyond-the-floor option for controlling organic HAP from new or reconstructed sources.

For new or reconstructed sources, we based the proposed standards on the new source MACT floor. For existing sources, we based the proposed standards on the existing source MACT floor. As described earlier, we determined that the beyond-the-floor option was not technically or economically feasible for all existing sources.

The MACT levels of control for new or reconstructed and existing sources can be achieved in several different ways. Many sources would be able to use low- or no-HAP coatings, although they may not be available to meet the needs of every source. If a source is also using thinners or cleaning materials that contain organic HAP, then it may be able to switch to low- or no-HAP thinners and cleaning materials, which are widely available, to reduce the sourcewide organic HAP emissions rate to the MACT level. Other available options are the use of UV coatings or capture systems and add-on control devices to reduce emissions.

We note here that our assumption, used in the development of the MACT floors, that 100 percent of the organic HAP in the materials used are emitted by the affected source would not apply when the source sends organic HAP waste materials to a facility for treatment or disposal. We made that assumption because the industry survey responses provided little information as to the amount of organic HAP recovered and recycled or treated and disposed. We, therefore, concluded that the practice may not be common within the wood building products surface coating industry. We recognize, however, that some wood building products facilities may conduct such activities and should be allowed to account for such activities in determining their emissions. Thus, the proposed rule allows you to reduce the organic HAP emissions by the amount of any organic HAP contained in waste treated or disposed at a hazardous waste treatment, storage, and disposal facility that is regulated under 40 CFR part 262, 264, 265, or 266.

E. How Did We Select the Format of the Proposed Standards?

We selected the format of the standards to be mass of organic HAP per volume of coating solids. The proposed format would allow wood building products surface coating operation owners and operators flexibility in choosing any combination of means (including coating reformulation, use of low- or no-HAP materials, solvent elimination, work practices, and add-on control devices) to comply with the applicable emission limit that is workable for their particular situations.

We selected volume of coating solids as a component of the proposed standards to normalize the rate of organic HAP emissions across all sizes and types of facilities. We also selected the volume of coating solids used because it is directly related to the surface area coated and, therefore, provides an equitable basis for all coatings, regardless of differences in coating densities. A format based on the mass or weight of coating solids (instead of volume) could result in inequitable standards for higher-density pigmented

coatings, such as basecoats or enamels, compared to coatings with lower densities per unit volume.

Other choices for the format of the standards that we considered, but chose not to propose, included a usage limit (mass per unit of production) and a percent reduction limit based on a capture system and add-on control device. As it is not our intent to limit a facility's production under the proposed standards, we are not proposing a usage limit. We also evaluated, but are not proposing, a percent reduction limit, as most wood building products facilities are not expected to use capture systems and add-on control devices for compliance.

In lieu of emission standards, section 112(h) of the CAA allows work practice standards or other requirements to be established when a pollutant cannot be emitted through a conveyance or capture system, or when measurement is not practicable because of technological and economic limitations. Many wood building products facilities use some type of work practice measure to reduce HAP emissions from mixing, cleaning, storage, and waste handling areas as part of their standard operating procedures. They use these measures to decrease solvent usage and minimize exposure to workers. However, we do not have data to quantify accurately the emission reductions achievable by the work practice measures. The level of emissions depends on the type of equipment and the work practices used at the facility and would be very site-specific. For example, emissions from solvent-laden rags used to clean spray booths would depend on the method used to isolate and store such rags. In addition to lacking adequate data and information to quantify an emissions level for such operations, it is not practicable to measure emissions from these operations since they often occur in large open areas not amenable to testing. Therefore, work practice standards are appropriate for such operations under section 112(h) of the CAA.

We request specific comments on work practice standards and their applicability to this source category.

Under the option where emissions are reduced by using low- or no-HAP materials, we assume that all the organic HAP in the materials entering the affected source are volatilized (emitted). Therefore, emissions from operations occurring within the affected source (e.g., mixing operations) are accounted for in the determination of total materials usage at the affected source. However, when you comply by using capture systems and add-on control devices, emissions from mixing, storage, and waste handling operations are often not routed to the control devices and would not be practicable to measure for inclusion in a determination of compliance with emission limits. Therefore, the proposed rule would require development and implementation of an emission reduction work practice plan to assure that emissions are reduced from such operations.

F. How Did We Select the Testing and Initial Compliance Requirements?

The proposed standards would allow you to choose among several options to demonstrate compliance with the proposed standards for organic HAP.

Option 1: Compliant material option. You would be required to document the organic HAP content of all coatings and show that each is less than the applicable emission limit. You would also have to show that each thinner and cleaning material used contains no organic HAP. Method 311 is the method developed by EPA for determining the mass fraction of organic HAP in coatings and has been used in previous surface coating NESHAP. We have not identified any other methods that provide advantages over Method 311 for use in the proposed standards.

Method 24 is the method developed by EPA for determining the mass fraction of volatile matter for coatings and can be used if you choose to determine the nonaqueous volatile matter content as a surrogate for organic HAP. In other NESHAP, volatile organic compound emission control measures have been implemented in coating industries, with Method 24 as the compliance method. We have not identified any other methods that provide advantages over Method 24 for use in the proposed standards.

The proposed methods for determining volume fraction of coating solids are either ASTM Method D2697–86 (1998) or ASTM Method D6093–97. These are voluntary consensus standards (VCS) determined to be appropriate for the proposed rule; they represent the consensus of the coating industry and other experts involved in their development.

Option 2: Emission rate without add-on controls option. To demonstrate initial compliance using this option, you would calculate the organic HAP emission rate for one or more of your coating operation(s) in the affected source, based on the mass of organic HAP in all coatings, thinners, and cleaning materials and the volume of coating solids used during the initial compliance period. You would be required to demonstrate that the organic HAP emission rate does not exceed the applicable emission limit using the methods discussed previously.

Option 3: Emission rate with add-on controls option. If you use a capture system and control device other than a solvent recovery device for which you conduct a liquid-liquid material balance, you would be required to conduct an initial performance test of the system to determine its overall control efficiency. For a solvent recovery system for which you conduct a liquid-liquid material balance, you would determine the quantity of volatile matter applied and the quantity recovered during the initial compliance period to determine its overall control efficiency. For both cases, the overall control efficiency would be combined with the monthly mass of organic HAP in the coatings, thinners, and cleaning materials used to calculate the monthly organic HAP emission rate in kg HAP/liter of coating solids (lb HAP/gal of coating solids). If you conduct a performance test, you would also determine parameter operating limits during the test. The test methods that the proposed standards would require for the performance test have been required in many standards of performance for industrial surface coating sources under 40 CFR part 60 and NESHAP under 40 CFR part 63. We have not identified any other methods that provide advantages over these methods.

G. How Did We Select the Proposed Continuous Compliance Requirements?

To demonstrate continuous compliance with the emission limits, you would need records of the quantity of coatings, thinners, and cleaning materials used and the data and calculations supporting your determination of their organic HAP content. If you conduct liquid-liquid material balances, you would need records of the quantity of volatile matter used and the quantity recovered by the solvent recovery system each month.

To ensure continuous compliance with the proposed organic HAP emission limits and operating limits, the proposed standards would require continuous parameter monitoring of capture systems and control devices and recordkeeping. We selected the following requirements based on reasonable cost, ease of execution, and usefulness of the resulting data to both the owners or operators and EPA for ensuring continuous compliance with the emission limits and operating limits.

We are proposing that certain parameters be continuously monitored

for the types of capture systems and control devices commonly used in the industry. These monitoring parameters have been used in other standards for similar industries. The values of these parameters that correspond to compliance with the proposed emission limits are established during the initial or most recent performance test that demonstrates compliance. These values are your operating limits for the capture system and control device.

You would be required to determine 3-hour average values for most monitored parameters for the affected source. We selected this averaging period to reflect operating conditions during the performance test to ensure the control system is continuously operating at the same or better control level as during a performance test demonstrating compliance with the emission limits.

H. How Did We Select Notification, Recordkeeping, and Reporting Requirements?

You would be required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in Table 4 of the proposed subpart QQQQ. We evaluated the General Provisions requirements and included those we determined to be the minimum notification, recordkeeping, and reporting necessary to ensure compliance with, and effective enforcement of, the proposed standards, modifying them as appropriate for the wood building products surface coating category.

IV. Summary of Environmental, Energy, and Economic Impacts

The proposed standards will affect an estimated 205 major source facilities that surface coat wood building products. The impacts are presented relative to a baseline reflecting the level of control prior to the standards. Due to consolidation throughout the industry, there is not expected to be any net growth within the wood building products surface coating industry during the next 5 years. Therefore, there are no projected impacts for new sources. For a facility that is already in compliance with the proposed standards, only monitoring, recordkeeping, and reporting cost impacts were estimated. For more information on how impacts were estimated, see the BID in the docket.

A. What Are the Air Impacts?

The proposed emission limits are expected to reduce nationwide organic HAP emissions from existing major sources by 3,200 Mg/yr (3,500 tpy). This represents a reduction of 61 percent from the baseline organic HAP emissions of 5,100 Mg/yr (5,600 tpy).

B. What Are the Cost Impacts?

We have estimated the costs related to complying with the emission limitations and meeting the monitoring, recordkeeping, and reporting requirements. The costs to comply with the emission limitations include the increased cost of low- or no-HAP coating materials and, for sources that choose to use existing emission capture and control systems, performance testing costs. We have assumed for this analysis that all affected sources will use low- or no-HAP coatings, thinners, and cleaning materials, and that these materials can be utilized without the need for capital expenditure. Annual costs to meet the monitoring, recordkeeping, and reporting requirements of the proposed rule have also been included.

To comply with the proposed standards, existing sources will likely use low- or no-HAP coatings, thinners, and cleaning materials. Compliance costs were estimated based on an incremental cost difference between the materials currently used and the complying materials. For purposes of the proposed rule, low- or no-HAP coatings used to comply with the standard are expected to be more expensive than the higher-HAP content coatings that are currently being used.

Performance testing costs for the facilities that choose to use existing control devices to comply with the standard include the labor hours required to conduct performance testing and monitoring on each emission capture system and control device used, and to develop the associated data elements for recordkeeping and reporting purposes.

Recordkeeping and reporting includes all labor hours related to the tracking of coating usage, the cost of purchasing computer equipment, the labor hours required to write and submit reports, and the labor hours required to train the coating personnel.

The total annual costs for the approximate 205 existing major sources are estimated at $27.3 million. According to estimates, recordkeeping and reporting costs will contribute $5.5 million to the overall cost of these proposed NESHAP; material costs will contribute $21.6 million; and performance testing and monitoring will contribute $246,000. We specifically invite comments on how the EPA might reduce the overall cost and cost by subcategory for the proposed rule and thereby increase the rule's cost-effectiveness.

C. What Are the Economic Impacts?

We performed an EIA to provide an estimate of the facility and market impacts of the proposed standards as well as the social costs. In general, we expect the economic impacts of the proposed standards to be minimal, with price increases for affected wood building products surface coating facilities of only 0.04 percent.

For affected sources, the median profit margin will remain unchanged, with small entities being slightly more affected by the proposed standards. The median profit margin for small entities is expected to decrease from 2.8 percent to 2.7 percent while the median profit margin for large entities is expected to decrease from 3.3 percent to 3.2 percent. Therefore, we do not expect an adverse economic impact on the industry as a whole.

The distribution of costs across wood building products surface coating facilities is slanted toward the lower impact levels with many facilities incurring costs related only to annually recurring monitoring, recordkeeping, and reporting, and for only a few sources that choose to use their existing add-on controls, initial performance testing, and parameter monitoring. The EIA indicates that these regulatory costs are expected to represent only 0.2 percent of the value of coating services, which should not cause producers to cease or alter their current operations. Hence, no firms or facilities are at risk of closure because of the proposed standards. For more information, refer to the ''Industry Profile: Wood Building Products Industry'' (docket A–97–52).

D. What Are the Non-Air Health, Environmental, and Energy Impacts?

Based on information from the industry survey responses, we found no indication that the use of low- or no-organic-HAP content coatings, thinners, and cleaning materials at existing sources would result in any increase or decrease in non-air health, environmental, and energy impacts. There would be no change in utility requirements associated with the use of these materials, so there would be no change in the amount of energy consumed as a result of the material conversion. Also, there would be no significant change in the amount of materials used or the amount of waste produced.

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, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Executive Order 13132, Federalism

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

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

The proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Pursuant to the terms of Executive Order 13132, it has been determined that the proposed rule does not have ''federalism implications'' because it does not meet the necessary criteria. Thus, the requirements of Section 6 of the Executive Order do not apply to the proposed rule. Although Section 6 of Executive Order 13132 does not apply to the proposed rule, EPA did consult with State and local officials to enable them to provide timely input in the development of the proposed 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 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

The proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No tribal governments own or operate wood building products surface coating facilities. Thus, Executive Order 13175 does not apply to the proposed rule.

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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Executive Order has the potential to influence the regulation. The proposed rule is not subject to Executive Order 13045 because it does not establish environmental standards based on an assessment of health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, the proposed 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

The proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that the proposed rule is not likely to have any adverse energy effects. Affected sources are expected to comply with the proposed rule through pollution prevention rather than end-of-pipe controls, and therefore, there would be no increase in energy usage.

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 to State, local, and tribal governments, in aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed 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 maximum total annual cost of the proposed rule has been estimated to be less than $27.3 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed 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 us 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 the purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business whose parent company has no more than 500 employees; (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 that is independently owned and operated and is not dominant in its field.

In accordance with the RFA and SBREFA, EPA conducted an assessment of the proposed standards on small businesses within the wood building products surface coating industry. Based on Small Business Administration size definitions and reported sales and employment data, EPA's survey identified 4 out of 44 known facilities (4 out of 19 known companies) as being owned by small businesses that will be affected by the proposed standards. Small businesses own 9 percent of the facilities and represent 21 percent of the companies within the source category that will be affected by the proposed standards and are expected to incur less than 10 percent of the total industry compliance costs of $27 million. There are no small firms with compliance costs equal to or greater than 1 percent of their sales. The EPA believes the sample of firms included in this small entity analysis is representative of the small firms that may be affected by the proposed rule.

The EPA also notes that, while economies of scale will require individual small firms to pay a somewhat higher proportion of revenues than large firms for compliance, the burden on most small firms is quite low nevertheless. The median compliance cost is well below 1 percent of sales for both small and large firms affected by the proposed standards (0.18 and 0.02 percent of sales for small and large firms, respectively). After reviewing the range of costs to be borne by small businesses, EPA has determined the costs are typically small and, thus, certifies that this action will not have a significant economic impact on a substantial number of small entities. In addition, EPA has determined that the certification that this action will not have a significant economic impact on a substantial number of small entities does not change if this analysis is done using the NAICS-based small business size standards and NAICS industry data. For more information, please consult the memorandum ''Small Entity Impact Analysis Results Comparison for Proposed Wood Building Products NESHAP'' (docket A–97–52).

Although the proposed rule will not have a significant economic impact on a substantial number of small entities, EPA has nonetheless worked aggressively to minimize the impact of the proposed rule on small entities, consistent with our obligations under the CAA. Along with soliciting input from small entities during the data-gathering phase of the proposed rulemaking, three separate small business outreach activities were conducted. First, the Western States Air Resources Council was contacted about small business participation in a meeting held on October 12, 1999. (For more information, see docket A–57–92.) The second activity was a random screening of approximately 250 affected companies within the wood building products surface coating industry. Internet searches led to a list of ten possible small entities. These small entities were then invited to join a small business panel to assist in the development of the wood building products (surface coating) NESHAP. The third outreach program was conducted through SCOPe, which is a cooperative agreement between the EPA and the National Association of Schools of Public Affairs and Administration. Meetings are facilitated by local public affairs and administration faculty and are used to inform small entities of pending regulations. The informal meetings allow potentially affected facilities to voice concerns which will then be communicated to the EPA prior to the rulemaking. According to outreach in Georgia, Oregon, North Carolina, and Pennsylvania, small entities are aware of low- or no-HAP coatings that have the potential to reduce HAP emissions. Many of the small entities currently use low- or no-HAP coatings and agree that they are often less expensive than higher-HAP options, do not affect the quality of the final product, and the choices are

becoming more widespread. Therefore, small entities will not be adversely affected by the use of low- or no-HAP coatings. (For more information, see docket A–97–52.)

Another aspect of the small business outreach was the participation in meetings that focus on impacts on small entities. The EPA representatives for the wood building products (surface coating) NESHAP have attended conferences and trade association meetings that have included small entities. By attending conferences sponsored by the Center for Advanced Wood Processing, the Laminating Materials Association, and RadTech International North America, and being involved in coatings-related industry and trade association meetings, information about the proposed wood building product (surface coating) NESHAP has been shared with other communities concerned with impacts on small entities.

We believe these actions will significantly reduce the compliance burden for small entities, thereby mitigating potential impacts and preventing any duplication of effort. In addition, we are proposing compliance options which give small entities flexibility in choosing the most cost effective and least burdensome alternative for their operation. For example, a facility could purchase and use low- or no-HAP coatings, thinners, and cleaning materials (i.e., pollution prevention) that meet the proposed standards rather than being required to purchase add-on control systems. The low- or no-HAP option can be demonstrated with minimum burden by using already-maintained purchase and usage records. No testing of materials would be required, as the facility owners could show that their coatings meet the emission limits by providing formulation data supplied by the manufacturer.

We are also proposing one option that allows compliance demonstrations to be conducted on a rolling 12-month basis, meaning that the facility would each month calculate a 12-month organic HAP emission rate for the previous 12 months to determine compliance. This will give affected small entities extra flexibility in complying with the emission limits since small entities are more likely to use lower monthly volumes and/or a limited number of materials. Furthermore, we are proposing the minimum monitoring, recordkeeping, and reporting requirements needed for enforcement and compliance assurance.

We continue to be interested in the potential impacts of the proposed standards on small entities and welcome comments on issues related to such impacts. For more information consult docket A–97–52.

H. Paperwork Reduction Act

The information collection requirements in the proposed rule will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2034.01) and a copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email at auby.susan@epa.gov, or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), 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 the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The proposed standards would require maintaining records of all coatings, thinners, and cleaning materials data and calculations used to determine compliance. This information includes the volume used during each compliance period, mass fraction of organic HAP, density, and, for coatings only, volume fraction of coating solids.

If an add-on control device is used, records will need to be kept of the capture efficiency of the capture device, destruction or removal efficiency of the control device, and the monitored operating parameters. In addition, records will need to be kept of each calculation of the affected sourcewide emissions for each compliance period and all data, calculations, test results, and other supporting information.

The monitoring, recordkeeping, and reporting burden for this collection (averaged over the first 3 years after the effective date of the final rule) is estimated to be approximately 2,100 labor hours per year at a total annual cost of $119,500. For facilities assumed to use add-on control devices, this estimate includes a one-time performance test and report (with repeat tests where needed) and a one-time submission of a SSMP with semiannual reports for any event when the procedures in the plan were not followed. For all facilities, this estimate includes semiannual compliance status reports and recordkeeping. The total capital/startup costs associated with the monitoring requirements is $58,000. We request specific comments on the labor hours and costs associated with the monitoring, recordkeeping, and reporting burden associated with this source category.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's rules are listed in 40 CFR part 9 and 48 CFR chapter 15. Under the Paperwork Reduction Act, EPA must consider the paperwork burden imposed by any ICR in a proposed or final rule. The proposed standards will not impose any new information collection requirements beyond those specified in the ICR document.

Comments are requested on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. By U.S. Postal Service, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Ave., NW, Washington, DC 20460; or by courier, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1301 Constitution Avenue, NW, Room 6143, Washington, DC 20460 (Call (202) 566–1700); and to the Office of Information and Regulatory

Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after June 21, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by July 22, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in the proposal.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Public Law 104–113; 15 U.S.C. 272 note) directs us to use VCS in regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, and business practices) that are developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when EPA does not use available and applicable VCS.

The proposed rule involves technical standards. We propose in this rule to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 24, 25, 25A, 204, 204A-F, and 311. Consistent with the NTTAA, we conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, and 204A-F. The search and review results have been documented and are available in the docket (A–97–52) of the proposed rule.

Two VCS were identified for determining the volume solids content of coatings, and we propose to use them in the rule. The standards are ASTM D2697–86 (1998), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings,'' and ASTM D6093–97, ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer.'' These standards fill a void in EPA Method 24 which directs that volume solids content be calculated from the coating manufacturer's formulation. The proposed rule does allow for the use of the volume solids content values calculated from the coating manufacturer's formulation; however, test results will take precedence if they do not agree with calculated values.

Six VCS: ASTM D1475–90, ASTM D2369–95, ASTM D3792–91, ASTM D4017–96a, ASTM D4457–85 (Reapproved 1991), and ASTM D5403–93, are already incorporated by reference (IBR) in EPA Method 24. In addition, we are separately specifying the use of ASTM D1475–90 for measuring the density of individual coating components, such as organic solvents.

Five VCS: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS 9–94 are IBR in EPA Method 311.

In addition to the VCS we propose to use in this rule, the search for emissions measurement procedures identified 14 other VCS. We determined that 11 of these 14 standards identified for measuring emissions of the HAP or surrogate subject to emission standards in the proposed rule were impractical alternatives to EPA test methods for the purposes of the proposed rule. Therefore, the EPA does not intend to adopt these standards. (See docket A–97–52 for further information on the methods.)

The EPA takes comment on the compliance demonstration requirements in the proposed rule and specifically invites the public to identify potentially-applicable VCS. Commenters should also explain why the proposed rule should adopt these VCS in lieu of or in addition to EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, appendix A, was used).

Sections 63.4730, 63.4741, 63.4761, 63.4765, 63.4766, and Table 3 to proposed subpart QQQQ lists the EPA testing methods included in the proposed rule. Under § 63.8 of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative monitoring in place of any of the EPA testing methods.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements, Surface coating, Wood building products.

Dated: May 23, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

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

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

2. Part 63 is amended by adding subpart QQQQ to read as follows:

Subpart QQQQ—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products

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What This Subpart Covers

§ 63.4680 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for wood building products surface coating facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.4681 Am I subject to this subpart?

(a) Except as provided in paragraph (c) of this section, the source category to which this subpart applies is surface coating of wood building products, which means the application of coatings using, for example, roll coaters or curtain coaters in the finishing or laminating of any wood building product that contains more than 50 percent by weight wood or wood fibers and is used in the construction, either interior or exterior, of a residential, commercial, or institutional building. The wood building products source category includes the subcategories listed in paragraphs (a)(1) through (5) of this section.

(1) *Doors and windows.* The doors and windows subcategory includes doors and windows and door and window components, such as millwork, moulding, or trim.

(2) *Flooring.* The flooring subcategory includes solid wood flooring, engineered wood flooring, and wood laminate flooring.

(3) *Interior wall paneling and tileboard.* The interior wall paneling and tileboard subcategory includes interior wall paneling products. Tileboard is a premium interior wall paneling product.

(4) *Other interior panels.* The other interior panel subcategory includes panels that are sold for uses other than interior wall paneling, such as sheathing, insulation board, pegboard, and ceiling tiles.

(5) *Exterior siding, doorskins, and miscellaneous.* The exterior siding, doorskins, and miscellaneous subcategory includes lap or panel siding, trimboard, doorskins, and other miscellaneous wood building products, including, but not limited to, shingles, awnings, shutters, and laminated veneer lumber.

(b) You are subject to this subpart if you own or operate a new, reconstructed, or existing affected source, as defined in § 63.4682, that uses 4,170 liters (1,100 gallons) per year, or more, of coatings in the source category defined in paragraph (a) of this section and that is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants (HAP). A major source of HAP emissions 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 9.07 megagrams (Mg) (10 tons) or more per year or any combination of HAP at a rate of 22.68 Mg (25 tons) or more per year.

(c) This subpart does not apply to surface coating and other operations that meet the criteria of paragraphs (c)(1) through (5) of this section.

(1) Surface coating in the processes identified in paragraphs (c)(1)(i) through (x) of this section that are part of plywood and composite wood product manufacturing subject to subpart DDDD of this part:

(i) Edge seals applied to a reconstituted wood product or plywood.

(ii) Anti-skid coatings applied to reconstituted wood products.

(iii) Primers applied to waferboard or oriented strand board (OSB) siding at the site of manufacture of the waferboard or OSB siding.

(iv) Painting of company logo information on plywood or reconstituted wood products.

(v) Application of trademarks and grade stamp to reconstituted wood products or plywood.

(vi) Application of nail lines to reconstituted wood products.

(vii) Synthetic patches, wood patches, and wood putty applied to plywood.

(viii) Application of concrete forming oil to wood building products.

(ix) Veneer composing.

(x) Application of shelving edge fillers to reconstituted wood products.

(2) Surface coating of wood furniture subject to subpart JJ of this part, including finishing, gluing, cleaning, and washoff operations associated with the production of wood furniture or wood furniture components. The surface coating of millwork and trim associated with cabinet manufacturing is also subject to subpart JJ of this part but not to this subpart.

(3) Surface coating that occurs during the manufacture of prefabricated homes and mobile/modular homes.

(4) Surface coating that occurs at research or laboratory facilities; janitorial, building, and facility construction or maintenance operations; or hobby shops that are operated for personal rather than for commercial purposes. The source category also does not include coating applications using handheld nonrefillable aerosol containers.

(5) Wood treatment or fire retardant operations located at wood building products facilities that involve impregnating the wood product with the wood treatment chemicals or fire retardant by using a retort or other pressure vessel.

§ 63.4682 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, and existing affected source.

(b) The affected source is the collection of all of the items listed in paragraphs (b)(1) through (4) of this section that are used for surface coating of wood building products:

(1) All coating operations as defined in § 63.4781;

(2) All storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed;

(3) All manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and

(4) All storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation.

(c) An affected source is a new affected source if you commenced its construction after June 21, 2002, and the construction is of a completely new wood building products surface coating facility where previously no wood building products surface coating facility had existed.

(d) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.4683 When do I have to comply with this subpart?

The date by which you must comply with this subpart is called the compliance date. The compliance date for each type of affected source is specified in paragraphs (a) through (c) of this section. The compliance date begins the initial compliance period during which you conduct the initial compliance demonstration described in §§ 63.4740, 63.4750, and 63.4760.

(a) For a new or reconstructed affected source, the compliance date is the applicable date in paragraph (a)(1) or (2) of this section:

(1) If the initial startup of your new or reconstructed affected source is before [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], the compliance date is [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

(2) If the initial startup of your new or reconstructed affected source occurs after [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], the compliance date is the date of initial startup of your affected source.

(b) For an existing affected source, the compliance date is the date 3 years after [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

(c) For an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP emissions, the compliance date is specified in paragraphs (c)(1) and (2) of this section.

(1) For any portion of the source that becomes a new or reconstructed affected source subject to this subpart, the compliance date is the date of initial startup of the affected source or [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], whichever is later.

(2) For any portion of the source that becomes an existing affected source subject to this subpart, the compliance date is the date 1 year after the area source becomes a major source or 3 years after [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], whichever is later.

(d) You must meet the notification requirements in § 63.4710 according to the dates specified in that section and in subpart A of this part. Some of the notifications must be submitted before the compliance dates described in paragraphs (a) through (c) of this section.

Emission Limitations

§ 63.4690 What emission limits must I meet?

(a) For a new or reconstructed affected source, you must limit organic HAP emissions to the atmosphere to no more than the applicable emission limit(s) in Table 1 to this subpart, determined according to the requirements in §§ 63.4741, 63.4751, or 63.4761.

(b) For an existing affected source, you must limit organic HAP emissions to the atmosphere to no more than the applicable emission limit(s) in Table 2 to this subpart, determined according to the requirements in § 63.4741, § 63.4751, or § 63.4761.

(c) If the affected source applies coatings to products that are in different subcategories as described in § 63.4681(a), then you must demonstrate initial and continuous compliance by conducting separate compliance demonstrations for each applicable subcategory emission limit and reflect these separate determinations in notifications, reports, and records required by §§ 63.4710, 63.4720, and 63.4730, respectively.

§ 63.4691 What are my options for meeting the emission limits?

You must include all coatings, thinners, and cleaning materials used in the affected source when determining whether the organic HAP emission rate is equal to or less than the applicable emission limit in § 63.4690. To make this determination, you must use at least one of the three compliance options listed in paragraphs (a) through (c) of this section. You may apply any of the compliance options to an individual coating operation or to multiple coating operations as a group or to the entire affected source. You may use different compliance options for different coating operations or at different times on the same coating operation. However, you may not use different compliance options at the same time on the same coating operation. If you switch between compliance options for any coating operation or group of coating operations, you must document this switch as required by § 63.4730(c), and you must report it in the next semiannual compliance report required in § 63.4720.

(a) *Compliant material option.* Demonstrate that the organic HAP content of each coating used in the coating operation(s) is less than or equal to the applicable emission limit(s) in § 63.4690, and that each thinner and each cleaning material used contains no organic HAP. You must meet all the requirements of §§ 63.4740, 63.4741, and 63.4742 to demonstrate compliance with the emission limit using this option.

(b) *Emission rate without add-on controls option.* Demonstrate that, based on the coatings, thinners, and cleaning materials used in the coating operation(s), the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit(s) in § 63.4690, calculated as a rolling 12-month emission rate and determined on a monthly basis. You must meet all the requirements of §§ 63.4750, 63.4751, and 63.4752 to demonstrate compliance with the emission limit using this option.

(c) *Emission rate with add-on controls option.* Demonstrate that, based on the coatings, thinners, and cleaning materials used in the coating operation(s) and the emission reductions achieved by emission capture systems and add-on controls, the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit(s) in § 63.4690, calculated as a rolling 12-month emission rate and determined on a monthly basis. If you use this compliance option, you must also demonstrate that all emission capture systems and add-on control devices for the coating operation(s) meet the operating limits required in § 63.4692, except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4761(j), and that you meet the work practice standards required in § 63.4693. You must meet all the requirements of §§ 63.4760 through 63.4768 to demonstrate compliance with the emission limits, operating limits, and work practice standards using this option.

§ 63.4692 What operating limits must I meet?

(a) For any coating operation(s) on which you use the compliant material

option or the emission rate without add-on controls option, you are not required to meet any operating limits.

(b) For any controlled coating operation(s) on which you use the emission rate with add-on controls option, except those for which you use a solvent recovery system and conduct a liquid-liquid material balance according to § 63.4761(j), you must meet the operating limits specified in Table 3 to this subpart. These operating limits apply to the emission capture and control systems on the coating operation(s) for which you use this option, and you must establish the operating limits during the performance test according to the requirements in § 63.4767. You must meet the operating limits at all times after you establish them.

(c) If you use an add-on control device other than those listed in Table 3 to this subpart, or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the Administrator for approval of alternative monitoring under § 63.8(f).

§ 63.4693 What work practice standards must I meet?

(a) For any coating operation(s) on which you use the compliant material option or the emission rate without add-on controls option, you are not required to meet any work practice standards.

(b) If you use the emission rate with add-on controls option, you must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, the coating operation(s); or you must meet an alternative standard as provided in paragraph (d) of this section. The plan must specify practices and procedures to ensure that, at a minimum, the elements specified in paragraphs (b)(1) through (5) of this section are implemented. You must make the plan available for inspection if the Administrator requests to see it.

(1) All organic-HAP coatings, thinners, cleaning materials, and waste materials must be stored in closed containers.

(2) Spills of organic-HAP coatings, thinners, cleaning materials, and waste materials must be minimized.

(3) Organic-HAP coatings, thinners, cleaning materials, and waste materials must be conveyed from one location to another in closed containers or pipes.

(4) Mixing vessels which contain organic-HAP coatings and other materials must be closed except when adding to, removing, or mixing the contents.

(5) Emissions of organic-HAP must be minimized during cleaning of storage, mixing, and conveying equipment.

(c) If your affected source has an existing documented plan that incorporates steps taken to minimize emissions from the sources specified in paragraphs (b)(1) through (5) of this section, then your existing plan can be used to meet the requirement for a work practice plan as specified in paragraph (b) of this section.

(d) As provided in § 63.6(g), we, the U.S. Environmental Protection Agency (EPA), may choose to grant you permission to use an alternative to the work practice standards in this section.

General Compliance Requirements

§ 63.4700 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations in this subpart as specified in paragraphs (a)(1) and (2) of this section.

(1) Any coating operation(s) for which you use the compliant material option or the emission rate without add-on controls option, as specified in § 63.4691(a) and (b), must be in compliance with the applicable emission limit in § 63.4690 at all times.

(2) Any coating operation(s) for which you use the emission rate with add-on controls option, as specified in § 63.4691(c), must be in compliance with the emission limitations as specified in paragraphs (a)(2)(i) through (iii) of this section.

(i) The coating operation(s) must be in compliance with the applicable emission limit in § 63.4690 at all times, except during periods of startup, shutdown, and malfunction.

(ii) The coating operation(s) must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.4692 at all times, except during periods of startup, shutdown, and malfunction, and except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4761(j).

(iii) The coating operation(s) must be in compliance with the work practice standards in § 63.4693 at all times.

(b) You must always operate and maintain your affected source, including all air pollution control and monitoring equipment you use for purposes of complying with this subpart, according to the provisions in § 63.6(e)(1)(i).

(c) If your affected source uses an emission capture system and add-on control device, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date specified for your affected source in § 63.4683 and the date when the initial emission capture system and add-on control device performance tests have been completed, as specified in § 63.4760. This requirement does not apply to a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4761(j) in lieu of conducting performance tests.

(d) If your affected source uses an emission capture system and add-on control device, you must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). The plan must address startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control device. The plan must also address any coating operation equipment that may cause increased emissions or that would affect capture efficiency if the process equipment malfunctions, such as conveyors that move parts among enclosures.

§ 63.4701 What parts of the General Provisions apply to me?

Table 4 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

Notifications, Reports, and Records

§ 63.4710 What notifications must I submit?

(a) *General.* You must submit the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (e) and (h) that apply to you by the dates specified in those sections, except as provided in paragraphs (b) and (c) of this section.

(b) *Initial notification.* You must submit the Initial Notification required by § 63.9(b) for a new or reconstructed affected source no later than 120 days after initial startup or 120 days after [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], whichever is later. For an existing affected source, you must submit the Initial Notification no later than 120 days after [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

(c) *Notification of compliance status.* You must submit the Notification of Compliance Status required by § 63.9(h) no later than 30 calendar days following the end of the initial compliance period described in § 63.4740, § 63.4750, or § 63.4760 that applies to your affected

source. The Notification of Compliance Status must contain the information specified in paragraphs (c)(1) through (9) of this section and in § 63.9(h).

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of the report and beginning and ending dates of the reporting period. The reporting period is the initial compliance period described in § 63.4740, § 63.4750, or § 63.4760 that applies to your affected source.

(4) Identification of the compliance option or options specified in § 63.4691 that you used on each coating operation in the affected source during the initial compliance period.

(5) Statement of whether or not the affected source achieved the emission limitations for the initial compliance period.

(6) If you had a deviation, include the information in paragraphs (c)(6)(i) and (ii) of this section.

(i) A description and statement of the cause of the deviation.

(ii) If you failed to meet the applicable emission limit in § 63.4690, include all the calculations you used to determine the kilogram (kg) organic HAP emitted per liter of coating solids used (pounds (lb) organic HAP emitted per gallon of coating solids used). You do not need to submit information provided by the materials suppliers or manufacturers, or test reports.

(7) For each of the data items listed in paragraphs (c)(7)(i) through (iv) of this section that is required by the compliance option(s) you used to demonstrate compliance with the emission limit, include an example of how you determined the value, including calculations and supporting data. Supporting data can include a copy of the information provided by the supplier or manufacturer of the example coating or material or a summary of the results of testing conducted according to § 63.4741(a), (b), or (c). You do not need to submit copies of any test reports.

(i) Mass fraction of organic HAP for one coating, for one thinner, and for one cleaning material.

(ii) Volume fraction of coating solids for one coating.

(iii) Density for one coating, one thinner, and one cleaning material, except that if you use the compliant material option, only the example coating density is required.

(iv) The amount of waste materials and the mass of organic HAP contained in the waste materials for which you are claiming an allowance in Equation 1 of § 63.4751.

(8) The calculation of kg organic HAP emitted per liter coating solids used (lb organic HAP emitted per gallon coating solids used) for the compliance option(s) you used, as specified in paragraphs (c)(8)(i) through (iii) of this section.

(i) For the compliant material option, provide an example calculation of the organic HAP content for one coating, using Equation 1 of § 63.4741.

(ii) For the emission rate without add-on controls option, provide the calculation of the total mass of organic HAP emissions for each month; the calculation of the total volume of coating solids used each month; and the calculation of the 12-month organic HAP emission rate, using Equations 1 and 1A through 1C, 2, and 3, respectively, of § 63.4751.

(iii) For the emission rate with add-on controls option, provide the calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.4751; the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.4751; the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.4761, and Equations 2, 3, and 3A through 3C of § 63.4761, as applicable; the calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.4761, as applicable; and the calculation of the 12-month organic HAP emission rate, using Equation 5 of § 63.4761.

(9) For the emission rate with add-on controls option, you must include the information specified in paragraphs (c)(9)(i) through (iv) of this section, except that the requirements in paragraphs (c)(9)(i) through (iii) of this section do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4761(j).

(i) For each emission capture system, a summary of the data and copies of the calculations supporting the determination that the emission capture system is a permanent total enclosure (PTE) or a measurement of the emission capture system efficiency. Include a description of the protocol followed for measuring capture efficiency, summaries of any capture efficiency tests conducted, and any calculations supporting the capture efficiency determination. If you use the data quality objective (DQO) or lower confidence limit (LCL) approach, you must also include the statistical calculations to show you meet the DQO or LCL criteria in appendix A to subpart KK of this part. You do not need to submit complete test reports.

(ii) A summary of the results of each add-on control device performance test. You do not need to submit complete test reports.

(iii) A list of each emission capture system and add-on control device operating limits and a summary of the data used to calculate those limits.

(iv) A statement of whether or not you developed and implemented the work practice plan required by § 63.4693.

§ 63.4720 What reports must I submit?

(a) *Semiannual compliance reports.* You must submit semiannual compliance reports for each affected source according to the requirements of paragraphs (a)(1) through (7) of this section. The semiannual compliance reporting requirements may be satisfied by reports required under other parts of the Clean Air Act (CAA), as specified in paragraph (a)(2) of this section.

(1) *Dates.* Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must prepare and submit each semiannual compliance report according to the dates specified in paragraphs (a)(1)(i) through (iv) of this section. Note that the information reported for each of the months in the reporting period will be based on the last 12 months of data prior to the date of each monthly calculation.

(i) The first semiannual compliance report must cover the first semiannual reporting period which begins the day after the end of the initial compliance period described in § 63.4740, § 63.4750, or § 63.4760 that applies to your affected source and ends on June 30 or December 31, whichever occurs first following the end of the initial compliance period.

(ii) Each subsequent semiannual compliance report must cover the subsequent semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iii) Each semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(iv) 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 date specified in paragraph (a)(1)(iii) of this section.

(2) *Inclusion with title V report.* Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a semiannual compliance report pursuant to this section 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 semiannual compliance report includes all required information concerning deviations from any emission limitation in this subpart, its submission shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a semiannual compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permitting authority.

(3) *General requirements.* The semiannual compliance report must contain the information specified in paragraphs (a)(3)(i) through (v) of this section, and the information specified in paragraphs (a)(4) through (7) and (c)(1) of this section that is applicable to your affected source.

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period. The reporting period is the 6-month period ending on June 30 or December 31. Note that the information reported for each of the 6 months in the reporting period will be based on the last 12 months of data prior to the date of each monthly calculation.

(iv) Identification of the compliance option or options specified in § 63.4691 that you used on each coating operation during the reporting period. If you switched between compliance options during the reporting period, you must report the beginning and ending dates you used each option.

(v) If you used the emission rate without add-on controls or the emission rate with add-on controls compliance option (§ 63.4691(b) or (c)), the calculation results for each rolling 12-month organic HAP emission rate during the 6-month reporting period.

(4) *No deviations.* If there were no deviations from the emission limitations in §§ 63.4690, 63.4392, and 63.4393 that apply to you, the semiannual compliance report must include a statement that there were no deviations from the emission limitations during the reporting period. If you used the emission rate with add-on controls option and there were no periods during which the continuous parameter monitoring systems (CPMS) were out-of-control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were out-of-control during the reporting period.

(5) *Deviations: compliant material option.* If you used the compliant material option, and there was a deviation from the applicable emission limit in § 63.4690, the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (iv) of this section.

(i) Identification of each coating used that deviated from the emission limit, each thinner and cleaning material used that contained organic HAP, and the dates and time periods each was used.

(ii) The calculation of the organic HAP content (using Equation 1 of § 63.4741) for each coating identified in paragraph (a)(5)(i) of this section. You do not need to submit background data supporting this calculation (e.g., information provided by coating suppliers or manufacturers, or test reports).

(iii) The determination of mass fraction of organic HAP for each coating, thinner, and cleaning material identified in paragraph (a)(5)(i) of this section. You do not need to submit background data supporting this calculation (e.g., information provided by material suppliers or manufacturers, or test reports).

(iv) A statement of the cause of each deviation.

(6) *Deviations: emission rate without add-on controls option.* If you used the emission rate without add-on controls option and there was a deviation from the applicable emission limit in § 63.4690, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (iii) of this section.

(i) The beginning and ending dates of each compliance period during which the 12-month organic HAP emission rate exceeded the applicable emission limit in § 63.4690.

(ii) The calculations used to determine the 12-month organic HAP emission rate for the compliance period in which the deviation occurred. You must provide the calculations for Equations 1, 1A through 1C, 2, and 3 in § 63.4751; and if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.4751(e)(4). You do not need to submit background data supporting these calculations, (e.g., information provided by materials suppliers or manufacturers, or test reports).

(iii) A statement of the cause of each deviation.

(7) *Deviations: emission rate with add-on controls option.* If you used the emission rate with add-on controls option and there was a deviation from an emission limitation (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xiv) of this section. This includes periods of startup, shutdown, and malfunction during which deviations occurred.

(i) The beginning and ending dates of each compliance period during which the 12-month organic HAP emission rate exceeded the applicable emission limit in § 63.4690.

(ii) The calculations used to determine the 12-month organic HAP emission rate for each compliance period in which a deviation occurred. You must provide the calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.4751; and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.4751(e)(4); the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.4751; the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.4761, and Equations 2, 3, and 3A through 3C of § 63.4761, as applicable; the calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.4761; and the calculation of the 12-month organic HAP emission rate, using Equation 5 of § 63.4761. You do not need to submit the background data supporting these calculations (e.g., information provided by materials suppliers or manufacturers, or test reports).

(iii) The date and time that each malfunction started and stopped.

(iv) A brief description of the CPMS.

(v) The date of the latest CPMS certification or audit.

(vi) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(vii) The date, time, and duration that each CPMS was out-of-control, including the information in § 63.8(c)(8).

(viii) The date and time period of each deviation from an operating limit in Table 3 to this subpart; date and time period of any bypass of the add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(ix) A summary of the total duration of each deviation from an operating limit in Table 3 to this subpart, each bypass of the add-on control device during the semiannual reporting period, and the total duration as a percent of the total source operating time during that semiannual reporting period.

(x) A breakdown of the total duration of the deviations from the operating limits in Table 3 to this subpart and bypasses of the add-on control device during the semiannual reporting period by identifying deviations due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(xi) A summary of the total duration of CPMS downtime during the semiannual reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that semiannual reporting period.

(xii) A description of any changes in the CPMS, coating operation, emission capture system, or add-on control device since the last semiannual reporting period.

(xiii) For each deviation from the work practice standards, a description of the deviation, the date and time period of the deviation, and the actions you took to correct the deviation.

(xiv) A statement of the cause of each deviation.

(b) *Performance test reports.* If you use the emission rate with add-on controls option, you must submit reports of performance test results for emission capture systems and add-on control devices no later than 60 days after completing the tests as specified in § 63.10(d)(2).

(c) *Startup, shutdown, malfunction reports.* If you used the emission rate with add-on controls option and you had a startup, shutdown, or malfunction during the semiannual reporting period, you must submit the reports specified in paragraphs (c)(1) and (2) of this section.

(1) If your actions were consistent with your startup, shutdown, and malfunction plan, you must include the information specified in § 63.10(d) in the semiannual compliance report required by paragraph (a) of this section.

(2) If your actions were not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report as described in paragraph (c)(2)(i) and (ii) of this section.

(i) You must describe the actions taken during the event in a report delivered by facsimile, telephone, or other means to the Administrator within 2 working days after starting actions that are inconsistent with the plan.

(ii) You must submit a letter to the Administrator within 7 working days after the end of the event, unless you have made alternative arrangements with the Administrator as specified in § 63.10(d)(5)(ii). The letter must contain the information specified in § 63.10(d)(5)(ii).

§ 63.4730 What records must I keep?

You must collect and keep records of the data and information specified in this section. Failure to collect and keep these records is a deviation from the applicable standard.

(a) A copy of each notification and report that you submitted to comply with this subpart, and the documentation supporting each notification and report.

(b) A current copy of information provided by materials suppliers or manufacturers, such as manufacturer's formulation data, or test data used to determine the mass fraction of organic HAP and density for each coating, thinner, and cleaning material and the volume fraction of coating solids for each coating. If you conducted testing to determine mass fraction of organic HAP, density, or volume fraction of coating solids, you must keep a copy of the complete test report. If you use information provided to you by the manufacturer or supplier of the material that was based on testing, you must keep the summary sheet of results provided to you by the manufacturer or supplier. You are not required to obtain the test report or other supporting documentation from the manufacturer or supplier.

(c) For each compliance period, the records specified in paragraphs (c)(1) through (4) of this section.

(1) A record of the coating operations at which you used each compliance option and the time periods (beginning and ending dates and times) you used each option.

(2) For the compliant material option, a record of the calculation of the organic HAP content for each coating, using Equation 1 of § 63.4741.

(3) For the emission rate without add-on controls option, a record of the calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used each month, using Equations 1, 1A through 1C, and 2 of § 63.4751; and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.4751(e)(4); the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.4751; and the calculation of each 12-month organic HAP emission rate, using Equation 3 of § 63.4751.

(4) For the emission rate with add-on controls option, records of the calculations specified in paragraphs (c)(4)(i) through (v) of this section.

(i) The calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.4751; and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.4751(e)(4).

(ii) The calculation of the total volume of coating solids used each month, using Equation 2 of § 63.4751.

(iii) The calculation of the mass of organic HAP emission reduction by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.4761, and Equations 2, 3, and 3A through 3C of § 63.4761, as applicable.

(iv) The calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.4761.

(v) The calculation of each 12-month organic HAP emission rate, using Equation 5 of § 63.4761.

(d) A record of the name and volume of each coating, thinner, and cleaning material used during each compliance period.

(e) A record of the mass fraction of organic HAP for each coating, thinner, and cleaning material used during each compliance period.

(f) A record of the volume fraction of coating solids for each coating used during each compliance period.

(g) A record of the density for each coating used during each compliance period; and, if you use either the emission rate without add-on controls or the emission rate with add-on controls compliance option, the density for each thinner and cleaning material used during each compliance period.

(h) If you use an allowance in Equation 1 of § 63.4751 for organic HAP

contained in waste materials sent to or designated for shipment to a treatment, storage, and disposal facility (TSDF) according to § 63.4751(e)(4), you must keep records of the information specified in paragraphs (h)(1) through (3) of this section.

(1) The name and address of each TSDF to which you sent waste materials for which you use an allowance in Equation 1 of § 63.4751; a statement of which subparts under 40 CFR parts 262, 264, 265, and 266 apply to the facility; and the date of each shipment.

(2) Identification of the coating operations producing waste materials included in each shipment and the month or months in which you used the allowance for these materials in Equation 1 of § 63.4751.

(3) The methodology used in accordance with § 63.4751(e)(4) to determine the total amount of waste materials sent to or the amount collected, stored, and designated for transport to a TSDF each month; and the methodology to determine the mass of organic HAP contained in these waste materials. This must include the sources for all data used in the determination, methods used to generate the data, frequency of testing or monitoring, and supporting calculations and documentation, including the waste manifest for each shipment.

(i) [Reserved]

(j) You must keep records of the date, time, and duration of each deviation.

(k) If you use the emission rate with add-on controls option, you must keep the records specified in paragraphs (k)(1) through (8) of this section.

(1) For each deviation, a record of whether the deviation occurred during a period of startup, shutdown, or malfunction.

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) The records required to show continuous compliance with each operating limit specified in Table 3 to this subpart that applies to you.

(4) For each capture system that is a PTE, the data and documentation you used to support a determination that the capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and has a capture efficiency of 100 percent, as specified in § 63.4765(a).

(5) For each capture system that is not a PTE, the data and documentation you used to determine capture efficiency according to the requirements specified in §§ 63.4764 and 63.4765(b) through (e), including the records specified in paragraphs (k)(5)(i) through (iii) of this section that apply to you.

(i) *Records for a liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* Records of the mass of total volatile hydrocarbon (TVH) as measured by Method 204A or F of appendix M to 40 CFR part 51 for each material used in the coating operation, and the total TVH for all materials used during each capture efficiency test run, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(ii) *Records for a gas-to-gas protocol using a temporary total enclosure or a building enclosure.* Records of the mass of TVH emissions captured by the emission capture system as measured by Method 204B or C of appendix M to 40 CFR part 51 at the inlet to the add-on control device, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(iii) *Records for an alternative protocol.* Records needed to document a capture efficiency determination using an alternative method or protocol as specified in § 63.4765(e), if applicable.

(6) The records specified in paragraphs (k)(6)(i) and (ii) of this section for each add-on control device organic HAP destruction or removal efficiency determination as specified in § 63.4766.

(i) Records of each add-on control device performance test conducted according to §§ 63.4764 and 63.4766.

(ii) Records of the coating operation conditions during the add-on control device performance test showing that the performance test was conducted under representative operating conditions.

(7) Records of the data and calculations you used to establish the emission capture and add-on control device operating limits as specified in § 63.4767 and to document compliance with the operating limits as specified in Table 3 to this subpart.

(8) A record of the work practice plan required by § 63.4693, and documentation that you are implementing the plan on a continuous basis.

§ 63.4731 In what form and for 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). Where appropriate, the records may be maintained as electronic spreadsheets or as a database.

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records off site for the remaining 3 years.

Compliance Requirements for the Compliant Material Option

§ 63.4740 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements in § 63.4741. The initial compliance period begins on the applicable compliance date specified in § 63.4683 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. The initial compliance demonstration includes the calculations according to § 63.4741 and supporting documentation showing that during the initial compliance period, you used no coating with an organic HAP content that exceeded the applicable emission limit in § 63.4690, and that you used no thinners or cleaning materials that contained organic HAP.

§ 63.4741 How do I demonstrate initial compliance with the emission limitations?

You may use the compliant material option for any individual coating operation, for any group of coating operations in the affected source, or for all the coating operations in the affected source. You must use either the emission rate without add-on controls option or the emission rate with add-on

controls option for any coating operation in the affected source for which you do not use this option. To demonstrate initial compliance using the compliant material option, the coating operation or group of coating operations must use no coating with an organic HAP content that exceeds the applicable emission limit in § 63.4690 and must use no thinner or cleaning material that contains organic HAP as determined according to this section. Any coating operation for which you use the compliant material option is not required to meet the operating limits or work practice standards required in §§ 63.4692 and 63.4693, respectively. To demonstrate initial compliance with the emission limitations using the compliant material option, you must meet all the requirements of this section for the coating operation or group of coating operations using this option. Use the procedures in this section on each coating, thinner, and cleaning material in the condition it is in when it is received from its manufacturer or supplier and prior to any alteration. You do not need to redetermine the mass of organic HAP in coatings, thinners, or cleaning materials that have been reclaimed onsite and reused in the coating operation(s) for which you use the compliant material option, provided these materials in their condition as received were demonstrated to comply with the compliant material option.

(a) *Determine the mass fraction of organic HAP for each material used.* You must determine the mass fraction of organic HAP for each coating, thinner, and cleaning material used during the compliance period by using one of the options in paragraphs (a)(1) through (5) of this section.

(1) *Method 311 (appendix A to 40 CFR part 63).* You may use Method 311 for determining the mass fraction of organic HAP. Use the procedures specified in paragraphs (a)(1)(i) and (ii) of this section when performing a Method 311 test.

(i) Count each organic HAP that is measured to be present at 0.1 percent by mass or more for Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4), and at 1.0 percent by mass or more for other organic HAP compounds. For example, if toluene (not an OSHA carcinogen) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (e.g., 0.3791).

(ii) Calculate the total mass fraction of organic HAP in the test material by adding up the individual organic HAP mass fractions and truncating the result to three places after the decimal point (e.g., 0.763).

(2) *Method 24 (appendix A to 40 CFR part 60).* For coatings, you may use Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP.

(3) *Alternative method.* You may use an alternative test method for determining the mass fraction of organic HAP once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4), and at 1.0 percent by mass or more for other organic HAP compounds. For example, if toluene (not an OSHA carcinogen) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence.

(5) *Solvent blends.* Solvent blends may be listed as single components for some materials in data provided by manufacturers or suppliers. Solvent blends may contain organic HAP which must be counted toward the total organic HAP mass fraction of the materials. When test data and manufacturer's data for solvent blends are not available, you may use the default values for the mass fraction of organic HAP in these solvent blends listed in Table 5 or 6 to this subpart. If you use the tables, you must use the values in Table 5 for all solvent blends that match Table 5 entries, and you may only use Table 6 if the solvent blends in the materials you use do not match any of the solvent blends in Table 5 and you only know whether the blend is aliphatic or aromatic. However, if the results of a Method 311 test indicate higher values than those listed on Table 5 or 6 to this subpart, the Method 311 results will take precedence.

(b) *Determine the volume fraction of coating solids for each coating.* You must determine the volume fraction of coating solids (liters of coating solids per liter of coating) for each coating used during the compliance period by a test or by information provided by the supplier or the manufacturer of the material, as specified in paragraphs (b)(1) and (2) of this section. If test results obtained according to paragraph (b)(1) of this section do not agree with the information obtained under paragraph (b)(2) of this section, the test results will take precedence.

(1) *ASTM Method D2697–86 (1998) or D6093–97.* You may use ASTM Method D2697–86 (1998) or D6093–97 to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids.

(2) *Information from the supplier or manufacturer of the material.* You may obtain the volume fraction of coating solids for each coating from the supplier or manufacturer.

(c) *Determine the density of each coating.* Determine the density of each coating used during the compliance period from test results using ASTM Method D1475–98 or information from the supplier or manufacturer of the material. If there is disagreement between ASTM Method D1475–98 test results and the supplier's or manufacturer's information, the test results will take precedence.

(d) *Calculate the organic HAP content of each coating.* Calculate the organic HAP content, kg organic HAP per liter coating solids, of each coating used during the compliance period, using Equation 1 of this section:

$$H_C = \frac{(D_C)(W_C)}{V_S} \qquad \text{(Eq. 1)}$$

Where:

H_c = organic HAP content of the coating, kg organic HAP per liter coating solids.

D_c = density of coating, kg coating per liter coating, determined according to paragraph (c) of this section.

W_c = mass fraction of organic HAP in the coating, kg organic HAP per kg coating, determined according to paragraph (a) of this section.

V_s = volume fraction of coating solids, liter coating solids per liter coating, determined according to paragraph (b) of this section.

(e) *Compliance demonstration.* The organic HAP content for each coating used during the initial compliance period, determined using Equation 1 of this section, must be less than or equal to the applicable emission limit in § 63.4690; and each thinner and cleaning material used during the initial compliance period must contain no organic HAP, determined according to

paragraph (a) of this section. You must keep all records required by §§ 63.4730 and 63.4731. As part of the Notification of Compliance Status required in § 63.4710, you must identify the coating operation(s) for which you used the compliant material option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because you used no coatings for which the organic HAP content exceeded the applicable emission limit in § 63.4690, and you used no thinners or cleaning materials that contained organic HAP, determined according to paragraph (a) of this section.

§ 63.4742 How do I demonstrate continuous compliance with the emission limitations?

(a) For each compliance period to demonstrate continuous compliance, you must use no coating for which the organic HAP content determined using Equation 1 of § 63.4741, exceeds the applicable emission limit in § 63.4690; and use no thinner or cleaning material that contains organic HAP, determined according to § 63.4741(a). A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.4740 is the end of a compliance period consisting of that month and the preceding 11 months.

(b) If you choose to comply with the emission limitations by using the compliant material option, the use of any coating, thinner, or cleaning material that does not meet the criteria specified in paragraph (a) of this section is a deviation from the emission limitations that must be reported as specified in §§ 63.4710(c)(6) and 63.4720(a)(5).

(c) As part of each semiannual compliance report required by § 63.4720, you must identify the coating operation(s) for which you used the compliant material option. If there were no deviations from the emission limitations in § 63.4690, submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the reporting period because you used no coating for which the organic HAP content exceeded the applicable emission limit in § 63.4690, and you used no thinner or cleaning material that contained organic HAP, determined according to § 63.4741(a).

(d) You must maintain records as specified in §§ 63.4730 and 63.4731.

Compliance Requirements for the Emission Rate Without Add-On Controls Option

§ 63.4750 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.4751. The initial compliance period begins on the applicable compliance date specified in § 63.4683 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coating solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the calculations according to § 63.4751 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the applicable emission limit in § 63.4690.

§ 63.4751 How do I demonstrate initial compliance with the emission limitations?

You may use the emission rate without add-on controls option for any individual coating operation, for any group of coating operations in the affected source, or for all the coating operations in the affected source. You must use either the compliant material option or the emission rate with add-on controls option for any coating operation in the affected source for which you do not use this option. To demonstrate initial compliance using the emission rate without add-on controls option, the coating operation or group of coating operations must meet the applicable emission limit in § 63.4690. Any coating operation for which you use the emission rate without add-on controls option is not required to meet the operating limits or work practice standards required in §§ 63.4692 and 63.4693, respectively. You must meet all the requirements of this section to demonstrate initial compliance with the applicable emission limit in § 63.4690 for the coating operation(s). When calculating the organic HAP emission rate according to this section, do not include any coatings, thinners, or cleaning materials used on coating operations for which you use the compliant material option or the emission rate with add-on controls option. You do not need to redetermine the mass of organic HAP in coatings, thinners, or cleaning materials that have been reclaimed onsite and reused in the coating operation(s) for which you use the emission rate without add-on controls option.

(a) *Determine the mass fraction of organic HAP for each material.* Determine the mass fraction of organic HAP for each coating, thinner, and cleaning material used during each month according to the requirements in § 63.4741(a).

(b) *Determine the volume fraction of coating solids for each coating.* Determine the volume fraction of coating solids for each coating used during each month according to the requirements in § 63.4741(b).

(c) *Determine the density of each material.* Determine the density of each coating, thinner, and cleaning material used during each month from test results using ASTM Method D1475–98, information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM Method D1475–98 test results and such other information sources, the test results will take precedence.

(d) *Determine the volume of each material used.* Determine the volume (liters) of each coating, thinner, and cleaning material used during each month by measurement or usage records.

(e) *Calculate the mass of organic HAP emissions.* The mass of organic HAP emissions is the combined mass of organic HAP contained in all coatings, thinners, and cleaning materials used during each month minus the organic HAP in certain waste materials. Calculate it using Equation 1 of this section.

$$H_e = A + B + C - R_w \qquad \text{(Eq. 1)}$$

Where:

H_e = total mass of organic HAP emissions during the month, kg.

A = total mass of organic HAP in the coatings used during the month, kg, as calculated in Equation 1A of this section.

B = total mass of organic HAP in the thinners used during the month, kg, as calculated in Equation 1B of this section.

C = total mass of organic HAP in the cleaning materials used during the month, kg, as calculated in Equation 1C of this section.

R_w = total mass of organic HAP in waste materials sent or designated for shipment to a hazardous waste TSDF for treatment or disposal

during the month, kg, determined according to paragraph (e)(4) of this section. (You may assign a value of zero to R_w if you do not wish to use this allowance.)

(1) Calculate the mass of organic HAP in the coatings used during the month, using Equation 1A of this section:

$$A = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 1A)}$$

Where:

A = total mass of organic HAP in the coatings used during the month, kg.

$Vol_{c,i}$ = total volume of coating, i, used during the month, liters.

$D_{c,i}$ = density of coating, i, kg coating per liter coating.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, kg organic HAP per kg coating.

M = number of different coatings used during the month.

(2) Calculate the mass of organic HAP in the thinners used during the month, using Equation 1B of this section:

$$B = \sum_{j=1}^{n} \left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 1B)}$$

Where:

B = total mass of organic HAP in the thinners used during the month, kg.

$Vol_{t,j}$ = total volume of thinner, j, used during the month, liters.

$D_{t,j}$ = density of thinner, j, kg per liter.

$W_{t,j}$ = mass fraction of organic HAP in thinner, j, kg organic HAP per kg thinner.

n = number of different thinners used during the month.

(3) Calculate the mass of organic HAP in the cleaning materials used during the month using Equation 1C of this section:

$$C = \sum_{k=1}^{p} \left(Vol_{s,k}\right)\left(D_{s,k}\right)\left(W_{s,k}\right) \qquad \text{(Eq. 1C)}$$

Where:

C = total mass of organic HAP in the cleaning materials used during the month, kg.

$Vol_{s,k}$ = total volume of cleaning material, k, used during the month, liters.

$D_{s,k}$ = density of cleaning material, k, kg per liter.

$W_{s,k}$ = mass fraction of organic HAP in cleaning material, k, kg organic HAP per kg material.

p = number of different cleaning materials used during the month.

(4) If you choose to account for the mass of organic HAP contained in waste materials sent or designated for shipment to a hazardous waste TSDF in Equation 1 of this section, then you must determine it according to paragraphs (e)(4)(i) through (iv) of this section.

(i) You may include in the determination only waste materials that are generated by coating operations for which you use Equation 1 of this section and that will be treated or disposed of by a facility regulated as a TSDF under 40 CFR part 262, 264, 265, or 266. The TSDF may be either off-site or on-site. You may not include organic HAP contained in wastewater.

(ii) You must determine either the amount of the waste materials sent to a TSDF during the month or the amount collected and stored during the month and designated for future transport to a TSDF. Do not include in your determination any waste materials sent to a TSDF during a month if you have already included them in the amount collected and stored during that month or a previous month.

(iii) Determine the total mass of organic HAP contained in the waste materials specified in paragraph (e)(4)(ii) of this section.

(iv) You may use any reasonable methodology to determine the amount of waste materials and the total mass of organic HAP they contain, and you must document your methodology as required in § 63.4730(h). To the extent that waste manifests include this information, they may be used as part of the documentation of the amount of waste materials and mass of organic HAP contained in them.

(f) *Calculate the total volume of coating solids used.* Determine the total volume of coating solids used which is the combined volume of coating solids for all the coatings used during each month, using Equation 2 of this section:

$$V_{st} = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(V_{s,i}\right) \qquad \text{(Eq. 2)}$$

Where:

V_{st} = total volume of coating solids used during the month, liters.

$Vol_{c,i}$ = total volume of coating, i, used during the month, liters.

$V_{s,i}$ = volume fraction of coating solids for coating, i, liter solids per liter coating, determined according to § 63.4741(b).

m = number of coatings used during the month.

(g) *Calculate the organic HAP emission rate.* Calculate the organic HAP emission rate for the 12-month compliance period, kg organic HAP per liter coating solids used, using Equation 3 of this section:

$$H_{yr} = \frac{\sum_{y=1}^{12} H_e}{\sum_{y=1}^{12} V_{st}} \qquad \text{(Eq. 3)}$$

Where:

H_{yr} = organic HAP emission rate for the 12-month compliance period, kg organic HAP per liter coating solids.

H_e = total mass of organic HAP emissions, kg, from all materials used during month, y, as calculated by Equation 1 of this section.

V_{st} = total volume of coating solids used during month, y, liters, as calculated by Equation 2 of this section.

y = identifier for months.

(h) *Compliance demonstration.* The organic HAP emission rate for the initial 12-month compliance period, calculated using Equation 3 of this section, must be less than or equal to the applicable emission limit in § 63.4690. You must keep all records as required by §§ 63.4730 and 63.4731. As part of the Notification of Compliance Status required by § 63.4710, you must identify the coating operation(s) for which you used the emission rate without add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.4690, determined according to this section.

§ 63.4752 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance, the organic HAP emission rate for each compliance period, calculated using Equation 3 of § 63.4751, must be less than or equal to the applicable emission limit in § 63.4690. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.4750 is the end of a compliance period consisting of that month and the preceding 11 months. You must perform the calculations in § 63.4751(a) through (g) on a monthly basis using data from the previous 12 months of operation.

(b) If the organic HAP emission rate for any 12-month compliance period exceeded the applicable emission limit in § 63.4690, this is a deviation from the emission limitations for that compliance period and must be reported as specified in §§ 63.4710(c)(6) and 63.4720(a)(6).

(c) As part of each semiannual compliance report required by § 63.4720, you must identify the coating operation(s) for which you used the emission rate without add-on controls option. If there were no deviations from the emission limitations, you must submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.4690, determined according to § 63.4751(a) through (g).

(d) You must maintain records as specified in §§ 63.4730 and 63.4731.

Compliance Requirements for the Emission Rate With Add-On Controls Option

§ 63.4760 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) *New and reconstructed affected sources.* For a new or reconstructed affected source, you must meet the requirements of paragraphs (a)(1) through (4) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.4683. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4761(j), you must conduct a performance test of each capture system and add-on control device according to §§ 63.4764, 63.4765, and 63.4766, and establish the operating limits required by § 63.4692 no later than 180 days after the applicable compliance date specified in § 63.4683. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4761(j), you must initiate the first material balance no later than 180 days after the applicable compliance date specified in § 63.4683.

(2) You must develop and begin implementing the work practice plan required by § 63.4693 no later than the compliance date specified in § 63.4683.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.4761. The initial compliance period begins on the applicable compliance date specified in § 63.4683 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coating solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.4764, 63.4765, and 63.4766; results of liquid-liquid material balances conducted according to § 63.4761(j); calculations according to § 63.4761 and supporting documentation showing that during the initial compliance period, the organic HAP emission rate was equal to or less than the emission limit in § 63.4690(a); the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.4768; and documentation of whether you developed and implemented the work practice plan required by § 63.4693.

(4) You do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.4692 until after you have completed the performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits for your affected source on the date you complete the performance tests specified in paragraph (a)(1) of this section. The requirements in this paragraph do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements in § 63.4761(j).

(b) *Existing affected sources.* For an existing affected source, you must meet the requirements of paragraphs (b)(1) through (3) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.4683. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4761(j), you must conduct a performance test of each capture system and add-on control device according to the procedures in §§ 63.4764, 63.4765, and 63.4766 and establish the operating limits required by § 63.4692 no later than the applicable compliance date specified in § 63.4683. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4761(j), you must initiate the first material balance no later than the compliance date specified in § 63.4683.

(2) You must develop and begin implementing the work practice plan required by § 63.4693 no later than the compliance date specified in § 63.4683.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.4761. The initial compliance period begins on the applicable compliance date specified in § 63.4683 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coating solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.4764, 63.4765, and 63.4766; results of liquid-liquid material balances conducted according to § 63.4761(j); calculations according to § 63.4761 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the emission limit in § 63.4690(b); the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.4768; and documentation of whether you developed and implemented the work practice plan required by § 63.4693.

§ 63.4761 How do I demonstrate initial compliance?

(a) You may use the emission rate with add-on controls option for any coating operation, for any group of coating operations in the affected source, or for all of the coating operations in the affected source. You may include both controlled and uncontrolled coating operations in a group for which you use this option. You must use either the compliant material option or the emission rate without add-on controls option for any coating operation in the affected source for which you do not use the emission rate with add-on controls option. To demonstrate initial compliance, the coating operation(s) for which you use the emission rate with add-on controls option must meet the applicable emission limitations in §§ 63.4690, 63.4692, and 63.4693. You must meet

all the requirements of this section to demonstrate initial compliance with the emission limitations. When calculating the organic HAP emission rate according to this section, do not include any coatings, thinners, or cleaning materials used on coating operations for which you use the compliant material option or the emission rate without add-on controls option. You do not need to redetermine the mass of organic HAP in coatings, thinners, or cleaning materials that have been reclaimed and reused in the coating operation(s) for which you use the emission rate with add-on controls option.

(b) *Compliance with operating limits.* Except as provided in § 63.4760(a)(4), and except for solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements of § 63.4761(j), you must establish and demonstrate continuous compliance during the initial compliance period with the operating limits required by § 63.4692, using the procedures specified in §§ 63.4767 and 63.4768.

(c) *Compliance with work practice requirements.* You must develop, implement, and document your implementation of the work practice plan required by § 63.4693 during the initial compliance period, as specified in § 63.4730.

(d) *Compliance with emission limits.* You must follow the procedures in paragraphs (e) through (n) of this section to demonstrate compliance with the applicable emission limit in § 63.4690.

(e) *Determine the mass fraction of organic HAP, density, volume used, and volume fraction of coating solids.* Follow the procedures specified in § 63.4751(a) through (d) to determine the mass fraction of organic HAP, density, and volume of each coating, thinner, and cleaning material used during each month; and the volume fraction of coating solids for each coating used during each month.

(f) *Calculate the total mass of organic HAP emissions before add-on controls.* Using Equation 1 of § 63.4751, calculate the total mass of organic HAP emissions before add-on controls from all coatings, thinners, and cleaning materials used during each month in the coating operation or group of coating operations for which you use the emission rate with add-on controls option.

(g) *Calculate the organic HAP emission reduction for each controlled coating operation.* Determine the mass of organic HAP emissions reduced for each controlled coating operation during each month. The emission reduction determination quantifies the total organic HAP emissions that pass through the emission capture system and are destroyed or removed by the add-on control device. Use the procedures in paragraph (h) of this section to calculate the mass of organic HAP emission reduction for each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances. For each controlled coating operation using a solvent recovery system for which you conduct a liquid-liquid material balance, use the procedures in paragraph (j) of this section to calculate the organic HAP emission reduction.

(h) *Calculate the organic HAP emission reduction for each controlled coating operation not using liquid-liquid material balances.* For each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction, using Equation 1 of this section. The calculation applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coatings, thinners, and cleaning materials that are used in the coating operation served by the emission capture system and add-on control device during each month. For any period of time a deviation specified in § 63.4763(c) or (d) occurs in the controlled coating operation, including a deviation during a period of startup, shutdown, or malfunction, you must assume zero efficiency for the emission capture system and add-on control device. Equation 1 of this section treats the materials used during such a deviation as if they were used on an uncontrolled coating operation for the time period of the deviation.

$$H_c = \left(A_c + B_c + C_c - H_{unc}\right)\left(\frac{CE}{100} \times \frac{DRE}{100}\right) \qquad \text{(Eq. 1)}$$

Where:

H_C = mass of organic HAP emission reduction for the controlled coating operation during the month, kg.

A_c = total mass of organic HAP in the coatings used in the controlled coating operation during the month, kg.

B_c = total mass of organic HAP in the thinners used in the controlled coating operation during the month, kg, as calculated in Equation 1B of this section.

C_c = total mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, kg, as calculated in Equation 1C of this section.

H_{unc} = total mass of organic HAP in the coatings, thinners, and cleaning materials used during all deviations specified in § 63.4763(c) and (d) that occurred during the month in the controlled coating operation, kg, as calculated in Equation 1D of this section.

CE = capture efficiency of the emission capture system vented to the add-on control device, percent. Use the test methods and procedures specified in §§ 63.4764 and 63.4765 to measure and record capture efficiency.

DRE = organic HAP destruction or removal efficiency of the add-on control device, percent. Use the test methods and procedures in §§ 63.4764 and 63.4766 to measure and record the organic HAP destruction or removal efficiency.

(1) Calculate the mass of organic HAP in the coatings used in the controlled coating operation, kg, using Equation 1A of this section:

$$A_c = \sum_{i=1}^{m}\left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 1A)}$$

Where:

$A_{c,}$ = total mass of organic HAP in the coatings used in the controlled coating operation, kg.

$Vol_{c,i}$ = total volume of coating, i, used during the month, liters.

$D_{c,i}$ = density of coating, i, kg per liter.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, kg per kg.

m = number of different coatings used.

(2) Calculate the mass of organic HAP in the thinners used in the controlled coating operation, kg, using Equation 1B of this section:

$$B_c = \sum_{j=1}^{n}\left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 1B)}$$

Where:

B_c = total mass of organic HAP in the thinners used in the controlled coating operation during the month, kg.
$Vol_{t,j}$ = total volume of thinner, j, used during the month, liters.
$D_{t,j}$ = density of thinner, j, kg per liter.
$W_{t,j}$ = mass fraction of organic HAP in thinner, j, kg per kg.
n = number of different thinners used.

(3) Calculate the mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, kg, using Equation 1C of this section:

$$C_c = \sum_{k=1}^{p} (Vol_{s,k})(D_{s,k})(W_{s,k}) \qquad \text{(Eq. 1C)}$$

Where:

C_c = total mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, kg.
$Vol_{s,k}$ = total volume of cleaning material, k, used during the month, liters.
$D_{s,k}$ = density of cleaning material, k, kg per liter.
$W_{s,k}$ = mass fraction of organic HAP in cleaning material, k, kg per kg.
p = number of different cleaning materials used.

(4) Calculate the mass of organic HAP in the coatings, thinners, and cleaning materials used in the controlled coating operation during deviations specified in § 63.4763(c) and (d), using Equation 1D of this section:

$$H_{unc} = \sum_{h=1}^{q} (Vol_h)(D_h)(W_h) \qquad \text{(Eq. 1D)}$$

Where:

H_{unc} = total mass of organic HAP in the coatings, thinners, and cleaning materials used during all deviations specified in § 63.4763(c) and (d) that occurred during the month in the controlled coating operation, kg.
Vol_h = total volume of coating, thinner, or cleaning material, h, used in the controlled coating operation during deviations, liters.
D_h = density of coating, thinner, or cleaning material, h, kg per liter.
W_h = mass fraction of organic HAP in coating, thinner, or cleaning material, h, kg organic HAP per kg coating.
q = number of different coatings, thinners, or cleaning materials.

(i) [Reserved]

(j) *Calculate the organic HAP emission reduction for each controlled coating operation using liquid-liquid material balances.* For each controlled coating operation using a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction by applying the volatile organic matter collection and recovery efficiency to the mass of organic HAP contained in the coatings, thinners, and cleaning materials that are used in the coating operation controlled by the solvent recovery system during each month. Perform a liquid-liquid material balance for each month as specified in paragraphs (j)(1) through (6) of this section. Calculate the mass of organic HAP emission reduction by the solvent recovery system as specified in paragraph (j)(7) of this section.

(1) For each solvent recovery system, install, calibrate, maintain, and operate according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile organic matter recovered by the solvent recovery system each month. The device must be initially certified by the manufacturer to be accurate to within ± 2.0 percent of the mass of volatile organic matter recovered.

(2) For each solvent recovery system, determine the mass of volatile organic matter recovered for the month, kg, based on measurement with the device required in paragraph (j)(1) of this section.

(3) Determine the mass fraction of volatile organic matter for each coating, thinner, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, kg volatile organic matter per kg coating. You may determine the volatile organic matter mass fraction using Method 24 of 40 CFR part 60, appendix A, or an EPA approved alternative method, or you may use information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of Method 24 of 40 CFR part 60, appendix A, or an approved alternative method, the test method results will govern.

(4) Determine the density of each coating, thinner, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, kg per liter, according to § 63.4751(c).

(5) Measure the volume of each coating, thinner, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, liters.

(6) Each month, calculate the solvent recovery system's volatile organic matter collection and recovery efficiency, using Equation 2 of this section:

$$R_v = 100 \times \frac{M_{vr}}{\sum_{i=1}^{m} (Vol_i)(D_i)(WV_{c,i}) + \sum_{j=1}^{n} (Vol_j)(D_j)(WV_{t,j}) + \sum_{k=1}^{p} (Vol_k)(D_k)(WV_{s,k})}$$

Where:

R_V = volatile organic matter collection and recovery efficiency of the solvent recovery system during the month, percent.
M_{VR} = mass of volatile organic matter recovered by the solvent recovery system during the month, kg.
Vol_i = volume of coating, i, used in the coating operation controlled by the solvent recovery system during the month, liters.
D_i = density of coating, i, kg per liter.
$WV_{c,i}$ = mass fraction of volatile organic matter for coating, i, kg volatile organic matter per kg coating.
Vol_j = volume of thinner, j, used in the coating operation controlled by the solvent recovery system during the month, liters.
D_j = density of thinner, j, kg per liter.
$WV_{t,j}$ = mass fraction of volatile organic matter for thinner, j, kg volatile organic matter per kg thinner.
Vol_k = volume of cleaning material, k, used in the coating operation controlled by the solvent recovery system during the month, liters.
D_k = density of cleaning material, k, kg per liter.
$WV_{s,k}$ = mass fraction of volatile organic matter for cleaning material, k, kg volatile organic matter per kg cleaning material.
m = number of different coatings used in the coating operation controlled by the solvent recovery system during the month.
n = number of different thinners used in the coating operation controlled by

the solvent recovery system during the month.

p = number of different cleaning materials used in the coating operation controlled by the solvent recovery system during the month.

(7) Calculate the mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system during the month, using Equation 3 of this section:

$$H_{CSR} = \left(A_{CSR} + B_{CSR} + C_{CSR}\right)\left(\frac{R_V}{100}\right) \qquad \text{(Eq. 3)}$$

Where:

H_{CSR} = mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system during the month, kg.

A_{CSR} = total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 3A of this section.

B_{CSR} = total mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 3B of this section.

C_{CSR} = total mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 3C of this section.

R_V = volatile organic matter collection and recovery efficiency of the solvent recovery system, percent, from Equation 2 of this section.

(i) Calculate the mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, kg, using Equation 3A of this section:

$$A_{CSR} = \sum_{i=1}^{m}\left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 3A)}$$

Where:

A_{CSR} = total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system during the month, kg.

$Vol_{c,i}$ = total volume of coating, i, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{c,i}$ = density of coating, i, kg per liter.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, kg per kg.

m = number of different coatings used.

(2) Calculate the mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system, kg, using Equation 3B of this section:

$$B_{CSR} = \sum_{j=1}^{n}\left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 3B)}$$

Where:

B_{CSR} = total mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system during the month, kg.

$Vol_{t,j}$ = total volume of thinner, j, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{t,j}$ = density of thinner, j, kg per liter.

$W_{t,j}$ = mass fraction of organic HAP in thinner, j, kg per kg.

n = number of different thinners used.

(3) Calculate the mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system during the month, kg, using Equation 3C of this section.

$$C_{CSR} = \sum_{k=1}^{p}\left(Vol_{s,k}\right)\left(D_{s,k}\right)\left(W_{s,k}\right) \qquad \text{(Eq. 3C)}$$

Where:

C_{CSR} = total mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system during the month, kg.

$Vol_{s,k}$ = total volume of cleaning material, k, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{s,k}$ = density of cleaning material, k, kg per liter.

$W_{s,k}$ = mass fraction of organic HAP in cleaning material, k, kg per kg.

p = number of different cleaning materials used.

(k) *Calculate the total volume of coating solids used.* Determine the total volume of coating solids used, liters, which is the combined volume of coating solids for all the coatings used during each month in the coating operation or group of coating operations for which you use the emission rate with add-on controls option, using Equation 2 of § 63.4751.

(l) *Calculate the mass of organic HAP emissions for each month.* Determine the mass of organic HAP emissions, kg, during each month, using Equation 4 of this section. (Eq. 4)

$$H_{HAP} = H_e - \sum_{i=1}^{q}\left(H_{c,i}\right) - \sum_{j=1}^{r}\left(H_{CSR,j}\right) \qquad \text{(Eq. 4)}$$

Where:

H_{HAP} = total mass of organic HAP emissions for the month, kg.

H_e = total mass of organic HAP emissions before add-on controls from all the coatings, thinners, and cleaning materials used during the month, kg, determined according to paragraph (f) of this section.

$H_{C,i}$ = total mass of organic HAP emission reduction for controlled coating operation, i, not using a liquid-liquid material balance, during the month, kg, from Equation 1 of this section.

$H_{CSR,j}$ = total mass of organic HAP emission reduction for coating operation, j, controlled by a solvent recovery system using a liquid-liquid material balance, during the

month, kg, from Equation 3 of this section.

q = number of controlled coating operations not using a liquid-liquid material balance.

r = number of coating operations controlled by a solvent recovery system using a liquid-liquid material balance.

(m) *Calculate the organic HAP emission rate for the 12-month compliance period.* Determine the organic HAP emission rate for the 12-month compliance period, kg organic HAP per liter coating solids used, using Equation 5 of this section:

$$H_{annual} = \frac{\sum_{y=1}^{12} H_{HAP,y}}{\sum_{y=1}^{12} V_{st,y}} \qquad \text{(Eq. 5)}$$

Where:

H_{annual} = organic HAP emission rate for the 12-month compliance period, kg organic HAP per liter coating solids.

$H_{HAP,y}$ = organic HAP emission rate for month, y, determined according to Equation 4 of this section.

$V_{st,y}$ = total volume of coating solids, liters, used during month, y, from Equation 2 of § 63.4751.

y = identifier for months.

(n) *Compliance demonstration.* To demonstrate initial compliance with the emission limit, the organic HAP emission rate, calculated using Equation 5 of this section, must be less than or equal to the applicable emission limit in § 63.4690. You must keep all records as required by §§ 63.4730 and 63.4731. As part of the Notification of Compliance Status required by § 63.4710, you must identify the coating operation(s) for which you used the emission rate with add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.4690, and you achieved the operating limits required by § 63.4692 and the work practice standards required by § 63.4693.

§ 63.4762 [Reserved]

§ 63.4763 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance with the applicable emission limit in § 63.4690, the organic HAP emission rate for each compliance period, calculated using Equation 5 of § 63.4761, must be equal to or less than the applicable emission limit in § 63.4690. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.4760 is the end of a compliance period consisting of that month and the preceding 11 months. You must perform the calculations in § 63.4761 on a monthly basis using data from the previous 12 months of operation.

(b) If the organic HAP emission rate for any 12-month compliance period exceeded the applicable emission limit in § 63.4690, this is a deviation from the emission limitation for that compliance period and must be reported as specified in §§ 63.4710(c)(6) and 63.4720(a)(7).

(c) You must demonstrate continuous compliance with each operating limit required by § 63.4692 that applies to you, as specified in Table 3 to this subpart.

(1) If an operating parameter is out of the allowed range specified in Table 3 to this subpart, this is a deviation from the operating limit that must be reported as specified in §§ 63.4710(c)(6) and 63.4720(a)(7).

(2) If an operating parameter deviates from the operating limit specified in Table 3 to this subpart, then you must assume that the emission capture system and add-on control device were achieving zero efficiency during the time period of the deviation. For the purposes of completing the compliance calculations specified in § 63.4761(h), you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation, as indicated in Equation 1 of § 63.4761.

(d) You must meet the requirements for bypass lines in § 63.4768(b) for controlled coating operations for which you do not conduct liquid-liquid material balances. If any bypass line is opened and emissions are diverted to the atmosphere when the coating operation is running, this is a deviation that must be reported as specified in §§ 63.4710(c)(6) and 63.4720(a)(7). For the purposes of completing the compliance calculations specified in § 63.4761(h), you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation, as indicated in Equation 1 of § 63.4761.

(e) You must demonstrate continuous compliance with the work practice standards in § 63.4693. If you did not develop a work practice plan, or you did not implement the plan, or you did not keep the records required by § 63.4730(k)(8), this is a deviation from the work practice standards that must be reported as specified in §§ 63.4710(c)(6) and 63.4720(a)(7).

(f) As part of each semiannual compliance report required in § 63.4720, you must identify the coating operation(s) for which you used the emission rate with add-on controls option. If there were no deviations from the emission limitations, submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.4690, and you achieved the operating limits required by § 63.4692 and the work practice standards required by § 63.4693 during each compliance period.

(g) During periods of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency, you must operate in accordance with the startup, shutdown, and malfunction plan required by § 63.4700(d).

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan. The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

(i) [Reserved]

(j) You must maintain records as specified in §§ 63.4730 and 63.4731.

§ 63.4764 What are the general requirements for performance tests?

(a) You must conduct each performance test required by § 63.4760 according to the requirements in § 63.7(e)(1) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of startup, shutdown, or malfunction, and during periods of nonoperation do not constitute

representative conditions. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation.

(2) *Representative emission capture system and add-on control device operating conditions.* You must conduct the performance test when the emission capture system and add-on control device are operating at a representative flow rate, and the add-on control device is operating at a representative inlet concentration. You must record information that is necessary to document emission capture system and add-on control device operating conditions during the test and explain why the conditions represent normal operation.

(b) You must conduct each performance test of an emission capture system according to the requirements in § 63.4765. You must conduct each performance test of an add-on control device according to the requirements in § 63.4766. § 63.4765 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of the performance test required by § 63.4760.

(a) *Assuming 100 percent capture efficiency.* You may assume the capture system efficiency is 100 percent if both of the conditions in paragraphs (a)(1) and (2) of this section are met:

(1) The capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and directs all the exhaust gases from the enclosure to an add-on control device.

(2) All coatings, thinners, and cleaning materials used in the coating operation are applied within the capture system; coating solvent flash-off and coating, curing, and drying occurs within the capture system; and the removal or evaporation of cleaning materials from the surfaces they are applied to occurs within the capture system. For example, this criterion is not met if parts enter the open shop environment when being moved between a spray booth and a curing oven.

(b) *Measuring capture efficiency.* If the capture system does not meet both of the criteria in paragraphs (a)(1) and (2) of this section, then you must use one of the three protocols described in paragraphs (c), (d), and (e) of this section to measure capture efficiency. The capture efficiency measurements use TVH capture efficiency as a surrogate for organic HAP capture efficiency. For the protocols in paragraphs (c) and (d) of this section, the capture efficiency measurement must consist of three test runs. Each test run must be at least 3 hours in duration or the length of a production run, whichever is longer, up to 8 hours. For the purposes of this test, a production run means the time required for a single part to go from the beginning to the end of production, which includes surface preparation activities and drying or curing time.

(c) *Liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* The liquid-to-uncaptured-gas protocol compares the mass of liquid TVH in materials used in the coating operation to the mass of TVH emissions not captured by the emission capture system. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (c)(1) through (6) of this section to measure emission capture system efficiency using the liquid-to-uncaptured-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings, thinners, and cleaning materials are applied, and all areas where emissions from these applied coatings and materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions for routing to an add-on control device, such as the entrance and exit areas of an oven or spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204A or 204F of appendix M to 40 CFR part 51 to determine the mass fraction of TVH liquid input from each coating, thinner, and cleaning material used in the coating operation during each capture efficiency test run. To make the determination, substitute TVH for each occurrence of the term volatile organic compounds (VOC) in the methods.

(3) Use Equation 1 of this section to calculate the total mass of TVH liquid input from all the coatings, thinners, and cleaning materials used in the coating operation during each capture efficiency test run.

$$TVH_{used} = \sum_{i=1}^{n} (TVH_i)(Vol_i)(D_i) \quad \text{(Eq. 1)}$$

Where:

TVH_{used} = mass of liquid TVH in materials used in the coating operation during the capture efficiency test run, kg.

TVH_i = mass fraction of TVH in coating, thinner, or cleaning material, i, that is used in the coating operation during the capture efficiency test run, kg TVH per kg material.

Vol_i = total volume of coating, thinner, or cleaning material, i, used in the coating operation during the capture efficiency test run, liters.

D_i = density of coating, thinner, or cleaning material, i, kg material per liter material.

n = number of different coatings, thinners, and cleaning materials used in the coating operation during the capture efficiency test run.

(4) Use Method 204D or E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D of appendix M to 40 CFR part 51 if the enclosure is a temporary total enclosure.

(ii) Use Method 204E of appendix M to 40 CFR part 51 if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the coating operation for which capture efficiency is being determined, must be shut down, but all fans and blowers must be operating normally.

(5) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 2 of this section:

$$CE = \frac{(TVH_{used} - TVH_{uncaptured})}{TVH_{used}} \times 100 \quad \text{(Eq. 2)}$$

Where:

CE = capture efficiency of the emission capture system vented to the add-on control device, percent.

TVH_{used} = total mass of TVH liquid input used in the coating operation during the capture efficiency test run, kg.

$TVH_{uncaptured}$ = total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, kg, determined according to paragraph (c)(4) of this section.

(6) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(d) *Gas-to-gas protocol using a temporary total enclosure or a building enclosure.* The gas-to-gas protocol compares the mass of TVH emissions captured by the emission capture system to the mass of TVH emissions not captured Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (d)(1) through (5) of this section to measure emission capture system efficiency using the gas-to-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings, thinners, and cleaning materials are applied, and all areas where emissions from these applied coatings and materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions generated by the coating operation for routing to an add-on control device, such as the entrance and exit areas of an oven or a spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204B or 204C of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions captured by the emission capture system during each capture efficiency test run as measured at the inlet to the add-on control device. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) The sampling points for the Method 204B or 204C of appendix M to 40 CFR part 51 measurement must be upstream from the add-on control device and must represent total emissions routed from the capture system and entering the add-on control device.

(ii) If multiple emission streams from the capture system enter the add-on control device without a single common duct, then the emissions entering the add-on control device must be simultaneously measured in each duct, and the total emissions entering the add-on control device must be determined.

(3) Use Method 204D or 204E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D of appendix M to 40 CFR part 51 if the enclosure is a temporary total enclosure.

(ii) Use Method 204E of appendix M to 40 CFR part 51 if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the coating operation for which capture efficiency is being determined, must be shut down, but all fans and blowers must be operating normally.

(4) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 3 of this section:

$$CE = \frac{TVH_{captured}}{\left(TVH_{captured} + TVH_{uncaptured}\right)} \times 100 \qquad \text{(Eq. 3)}$$

Where:

CE = Capture efficiency of the emission capture system vented to the add-on control device, percent.

$TVH_{captured}$ = Total mass of TVH captured by the emission capture system as measured at the inlet to the add-on control device during the emission capture efficiency test run, kg, determined according to paragraph (d)(2) of this section.

$TVH_{uncaptured}$ = Total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, kg, determined according to paragraph (d)(3) of this section.

(5) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(e) *Alternative capture efficiency protocol.* As an alternative to the procedures specified in paragraphs (c) and (d) of this section, you may determine capture efficiency using any other capture efficiency protocol and test methods that satisfy the criteria of either the DQO or LCL approach as described in appendix A to subpart KK of this part.

§ 63.4766 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance test required by § 63.4760. You must conduct three test runs as specified in § 63.7(e)(3), and each test run must last at least 1 hour.

(a) For all types of add-on control devices, use the test methods specified in paragraphs (a)(1) through (5) of this section.

(1) Use Method 1 or 1A of appendix A to 40 CFR part 60, as appropriate, to select sampling sites and velocity traverse points.

(2) Use Method 2, 2A, 2C, 2D, 2F, or 2G of appendix A to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use Method 3, 3A, or 3B of appendix A to 40 CFR part 60, as appropriate, for gas analysis to determine dry molecular weight.

(4) Use Method 4 of appendix A to 40 CFR part 60, to determine stack gas moisture.

(5) Methods for determining gas volumetric flow rate, dry molecular weight, and stack gas moisture must be performed, as applicable, during each test run.

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either Method 25 or 25A of appendix A to 40 CFR part 60, as specified in paragraphs (b)(1) through (3) of this section. You must use the

same method for both the inlet and outlet measurements.

(1) Use Method 25 of appendix A to 40 CFR part 60 if the add-on control device is an oxidizer, and you expect the total gaseous organic concentration as carbon to be more than 50 parts per million (ppm) at the control device outlet.

(2) Use Method 25A of appendix A to 40 CFR part 60 if the add-on control device is an oxidizer, and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use Method 25A of appendix A to 40 CFR part 60 if the add-on control device is not an oxidizer.

(c) If two or more add-on control devices are used for the same emission stream, then you must measure emissions at the outlet of each device. For example, if one add-on control device is a concentrator with an outlet for the high-volume, dilute stream that has been treated by the concentrator, and a second add-on control device is an oxidizer with an outlet for the low-volume, concentrated stream that is treated with the oxidizer, you must measure emissions at the outlet of the oxidizer and the high volume dilute stream outlet of the concentrator.

(d) For each test run, determine the total gaseous organic emissions mass flow rates for the inlet and the outlet of the add-on control device, using Equation 1 of this section. If there is more than one inlet or outlet to the add-on control device, you must calculate the total gaseous organic mass flow rate using Equation 1 of this section for each inlet and each outlet and then total all of the inlet emissions and total all of the outlet emissions.

$$M_f = Q_{sd} C_c (12)(0.0416)\left(10^{-6}\right) \quad \text{(Eq. 1)}$$

Where:

M_f = total gaseous organic emissions mass flow rate, kg/per hour (h).

C_c = concentration of organic compounds as carbon in the vent gas, as determined by Method 25 or Method 25A, parts per million by volume (ppmv), dry basis.

Q_{sd} = volumetric flow rate of gases entering or exiting the add-on control device, as determined by Method 2, 2A, 2C, 2D, 2F, or 2G, dry standard cubic meters/hour (dscm/h).

0.0416 = conversion factor for molar volume, kg-moles per cubic meter (mol/m^3) (@ 293 Kelvin (K) and 760 millimeters of mercury (mmHg)).

(e) For each test run, determine the add-on control device organic emissions destruction or removal efficiency, using Equation 2 of this section:

$$DRE = 100 \times \frac{M_{fi} - M_{fo}}{M_{fi}} \quad \text{(Eq. 2)}$$

Where:

DRE = organic emissions destruction or removal efficiency of the add-on control device, percent.

M_{fi} = total gaseous organic emissions mass flow rate at the inlet(s) to the add-on control device, using Equation 1 of this section, kg/h.

M_{fo} = total gaseous organic emissions mass flow rate at the outlet(s) of the add-on control device, using Equation 1 of this section, kg/h.

(f) Determine the emission destruction or removal efficiency of the add-on control device as the average of the efficiencies determined in the three test runs and calculated in Equation 2 of this section.

§ 63.4767 How do I establish the emission capture system and add-on control device operating limits during the performance test?

During the performance test required by § 63.4760 and described in §§ 63.4764, 63.4765, and 63.4766, you must establish the operating limits required by § 63.4692 according to this section, unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.4692.

(a) *Thermal oxidizers.* If your add-on control device is a thermal oxidizer, establish the operating limits according to paragraphs (a)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) Use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. This average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) *Catalytic oxidizers.* If your add-on control device is a catalytic oxidizer, establish the operating limits according to either paragraphs (b)(1) and (2) or paragraphs (b)(3) and (4) of this section.

(1) During the performance test, you must monitor and record the temperature just before the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. These are the minimum operating limits for your catalytic oxidizer.

(3) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During the performance test, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer.

(4) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (b)(3) of this section. The plan must address, at a minimum, the elements specified in paragraphs (b)(4)(i) through (iii) of this section.

(i) Annual sampling and analysis of the catalyst activity (i.e, conversion efficiency) following the manufacturer's or catalyst supplier's recommended procedures.

(ii) Monthly inspection of the oxidizer system, including the burner assembly and fuel supply lines for problems and, as necessary, adjust the equipment to assure proper air-to-fuel mixtures.

(iii) Annual internal and monthly external visual inspection of the catalyst bed to check for channeling, abrasion, and settling. If problems are found, you must take corrective action consistent with the manufacturer's recommendation and conduct a new performance test to determine destruction efficiency according to § 63.4766.

(c) *Carbon adsorbers.* If your add-on control device is a carbon adsorber, establish the operating limits according to paragraphs (c)(1) and (2) of this section.

(1) You must monitor and record the total regeneration desorbing gas (e.g., steam or nitrogen) mass flow for each regeneration cycle, and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately

preceding or immediately following the performance test.

(2) The operating limits for your carbon adsorber are the minimum total desorbing gas mass flow recorded during the regeneration cycle, and the maximum carbon bed temperature recorded after the cooling cycle.

(d) *Condensers.* If your add-on control device is a condenser, establish the operating limits according to paragraphs (d)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(e) *Concentrators.* If your add-on control device includes a concentrator, you must establish operating limits for the concentrator according to paragraphs (e)(1) through (4) of this section.

(1) During the performance test, you must monitor and record the desorption concentrate stream gas temperature at least once every 15 minutes during each of the three runs of the performance test.

(2) Use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption concentrate gas stream temperature.

(3) During the performance test, you must monitor and record the pressure drop of the dilute stream across the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(4) Use the data collected during the performance test to calculate and record the average pressure drop. This is the maximum operating limit for the dilute stream across the concentrator.

(f) *Emission capture system.* For each capture device that is not part of a PTE that meets the criteria of § 63.4765(a), establish an operating limit for either the gas volumetric flow rate or duct static pressure, as specified in paragraphs (f)(1) and (2) of this section. The operating limit for a PTE is specified in Table 3 to this subpart.

(1) During the capture efficiency determination required by § 63.4760 and described in §§ 63.4764 and 63.4765, you must monitor and record either the gas volumetric flow rate or the duct static pressure for each separate capture device in your emission capture system at least once every 15 minutes during each of the three test runs at a point in the duct between the capture device and the add-on control device inlet.

(2) Calculate and record the average gas volumetric flow rate or duct static pressure for the three test runs for each capture device. This average gas volumetric flow rate or duct static pressure is the minimum operating limit for that specific capture device.

§ 63.4768 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) *General.* You must install, operate, and maintain each CPMS specified in paragraphs (c), (e), (f), and (g) of this section according to paragraphs (a)(1) through (6) of this section. You must install, operate, and maintain each CPMS specified in paragraphs (b) and (d) of this section according to paragraphs (a)(3) through (5) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four equally spaced successive cycles of CPMS operation in 1 hour.

(2) You must determine the average of all recorded readings for each successive 3-hour period of the emission capture system and add-on control device operation.

(3) You must record the results of each inspection, calibration, and validation check of the CPMS.

(4) You must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments).

(6) You must not use emission capture system or add-on control device parameter data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities when calculating data averages. You must use all the data collected during all other periods in calculating the data averages for determining compliance with the emission capture system and add-on control device operating limits.

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out-of-control and data are not available for required calculations is a deviation from the monitoring requirements.

(b) *Capture system bypass line.* You must meet the requirements of paragraphs (b)(1) and (2) of this section for each emission capture system that contains bypass lines that could divert emissions away from the add-on control device to the atmosphere.

(1) You must monitor or secure the valve or closure mechanism controlling the bypass line in a nondiverting position in such a way that the valve or closure mechanism cannot be opened without creating a record that the valve was opened. The method used to monitor or secure the valve or closure mechanism must meet one of the requirements specified in paragraphs (b)(1)(i) through (iv) of this section.

(i) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that takes a reading at least once every 15 minutes and provides a record indicating whether the emissions are directed to the add-on control device or diverted from the add-on control device. The time of occurrence and flow control position must be recorded, as well as every time the flow direction is changed. The flow control position indicator must be installed at the entrance to any bypass line that could divert the emissions away from the add-on control device to the atmosphere.

(ii) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. You must visually inspect the seal or closure mechanism at least once every month to ensure that the valve is maintained in the closed position, and the emissions are not diverted away from the add-on control device to the atmosphere.

(iii) *Valve closure monitoring.* Ensure that any bypass line valve is in the closed (non-diverting) position through monitoring of valve position at least once every 15 minutes. You must inspect the monitoring system at least once every month to verify that the monitor will indicate valve position.

(iv) *Automatic shutdown system.* Use an automatic shutdown system in which the coating operation is stopped when flow is diverted by the bypass line away from the add-on control device to the atmosphere when the coating operation is running. You must inspect the automatic shutdown system at least

once every month to verify that it will detect diversions of flow and shut down the coating operation.

(2) If any bypass line is opened, you must include a description of why the bypass line was opened and the length of time it remained open in the semiannual compliance reports required in § 63.4720.

(c) *Thermal oxidizers and catalytic oxidizers.* If you are using a thermal oxidizer or catalytic oxidizer as an add-on control device (including those used with concentrators or with carbon adsorbers to treat desorbed concentrate streams), you must comply with the requirements in paragraphs (c)(1) through (3) of this section:

(1) For a thermal oxidizer, install a gas temperature monitor in the firebox of the thermal oxidizer or in the duct immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For a catalytic oxidizer, you must install a gas temperature monitor in the gas stream immediately before the catalyst bed, and if you established operating limits according to § 63.4767(b)(1) and (2), also install a gas temperature monitor in the gas stream immediately after the catalyst bed.

(i) If you establish operating limits according to § 63.4767(b)(1) and (2), then you must install the gas temperature monitors both upstream and downstream of the catalyst bed. The temperature monitors must be in the gas stream immediately before and after the catalyst bed to measure the temperature difference across the bed.

(ii) If you establish operating limits according to § 63.4767(b)(3) and (4), then you must install a gas temperature monitor upstream of the catalyst bed. The temperature monitor must be in the gas stream immediately before the catalyst bed to measure the temperature.

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a) and (c)(3)(i) through (vii) of this section for each gas temperature monitoring device.

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) Use a temperature sensor with a measurement sensitivity of 4 degrees Fahrenheit or 0.75 percent of the temperature value, whichever is larger.

(iii) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(iv) If a gas temperature chart recorder is used, it must have a measurement sensitivity in the minor division of at least 20 degrees Fahrenheit.

(v) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 30 degrees Fahrenheit of the process temperature sensor reading.

(vi) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(vii) At least monthly, inspect components for integrity and electrical connections for continuity, oxidation, and galvanic corrosion.

(d) *Carbon adsorbers.* If you are using a carbon adsorber as an add-on control device, you must monitor the total regeneration desorbing gas (e.g., steam or nitrogen) mass flow for each regeneration cycle, the carbon bed temperature after each regeneration and cooling cycle, and comply with paragraphs (a)(3) through (5) and (d)(1) and (2) of this section.

(1) The regeneration desorbing gas mass flow monitor must be an integrating device having a measurement sensitivity of plus or minus 10 percent capable of recording the total regeneration desorbing gas mass flow for each regeneration cycle.

(2) The carbon bed temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater, and must be capable of recording the temperature within 15 minutes of completing any carbon bed cooling cycle.

(e) *Condensers.* If you are using a condenser, you must monitor the condenser outlet (product side) gas temperature and comply with paragraphs (a) and (e)(1) and (2) of this section.

(1) The gas temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater.

(2) The temperature monitor must provide a gas temperature record at least once every 15 minutes.

(f) *Concentrators.* If you are using a concentrator, such as a zeolite wheel or rotary carbon bed concentrator, you must comply with the requirements in paragraphs (f)(1) and (2) of this section.

(1) You must install a temperature monitor in the desorption gas stream. The temperature monitor must meet the requirements in paragraphs (a) and (c)(3) of this section.

(2) You must install a device to monitor pressure drop across the zeolite wheel or rotary carbon bed. The pressure monitoring device must meet the requirements in paragraphs (a) and (f)(2)(i) through (vii) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Use a gauge with a minimum tolerance of 0.5 inch of water or a transducer with a minimum tolerance of 1 percent of the pressure range.

(iv) Check the pressure tap daily.

(v) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(vi) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vii) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(g) *Emission capture systems.* The capture system monitoring system must comply with the applicable requirements in paragraphs (g)(1) and (2) of this section.

(1) For each flow measurement device, you must meet the requirements in paragraphs (a) and (g)(1)(i) through (iv) of this section.

(i) Locate a flow sensor in a position that provides a representative flow measurement in the duct from each capture device in the emission capture system to the add-on control device.

(ii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iii) Conduct a flow sensor calibration check at least semiannually.

(iv) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(2) For each pressure drop measurement device, you must comply with the requirements in paragraphs (a) and (g)(2)(i) through (vi) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure drop across each opening you are monitoring.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Check pressure tap pluggage daily.

(iv) Using an inclined manometer with a measurement sensitivity of 0.0002 inch water, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vi) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

Other Requirements and Information

§ 63.4780 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the 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, in addition to the EPA, has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of 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 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section:

(1) Approval of alternatives to the work practice standards under § 63.4693.

(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 changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.4781 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in 40 CFR 63.2, the General Provisions of this part, and in this section as follows:

Add-on control means an air pollution control device, such as a thermal oxidizer or carbon adsorber, that reduces pollution in an air stream by destruction or removal before discharge to the atmosphere.

Adhesive means any chemical substance that is applied for the purpose of bonding two surfaces together.

Capture device means a hood, enclosure, room, floor sweep, or other means of containing or collecting emissions and directing those emissions into an add-on air pollution control device.

Capture efficiency or *capture system efficiency* means the portion (expressed as a percentage) of the pollutants from an emission source that is delivered to an add-on control device.

Capture system means one or more capture devices intended to collect emissions generated by a coating operation in the use of coatings or cleaning materials, both at the point of application and at subsequent points where emissions from the coatings or cleaning materials occur, such as flashoff, drying, or curing. As used in this subpart, multiple capture devices that collect emissions generated by a coating operation are considered a single capture system.

Cleaning material means a solvent used to remove contaminants and other materials, such as dirt, grease, oil, and dried or wet coating (e.g., depainting), from a substrate before or after coating application or from equipment associated with a coating operation, such as spray booths, spray guns, racks, tanks, and hangers. Thus, it includes any cleaning material used on substrates or equipment or both.

Coating means a material applied to a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, sealants, caulks, inks, adhesives, and maskants. Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances are not considered coatings for the purposes of this subpart.

Coating operation means equipment used to apply cleaning materials to a substrate to prepare it for coating application or to remove dried coating (surface preparation); to apply coating to a substrate (coating application) and to dry or cure the coating after application; or to clean coating operation equipment (equipment cleaning). A single coating operation may include any combination of these types of equipment, but always includes at least the point at which a coating or cleaning material is applied and all subsequent points in the affected source where organic HAP emissions from that coating or cleaning material occur. There may be multiple coating operations in an affected source. Coating application with hand-held nonrefillable aerosol containers, touchup markers, or marking pens is not a coating operation for the purposes of this subpart.

Coating solids means the nonvolatile portion of the coating that makes up the dry film.

Continuous parameter monitoring system means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart used to sample, condition (if applicable), analyze, and provide a record of coating operation, or capture system, or add-on control device parameters.

Controlled coating operation means a coating operation from which some or all of the organic HAP emissions are routed through an emission capture system and add-on control device.

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, or 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, or operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means an emission limit, operating limit, or work practice standard.

Enclosure means a structure that surrounds a source of emissions and captures and directs the emissions to an add-on control device.

Exempt compound means a specific compound that is not considered a VOC due to negligible photochemical reactivity. The exempt compounds are listed in 40 CFR 51.100(s).

Finished wood product means any wood building product to which a protective, decorative, or functional layer has been applied. Materials used include, but are not limited to, paints, stains, sealers, topcoats, basecoats, primers, enamels, inks, and adhesives.

Laminated wood product means any wood building product to which a protective, decorative, or functional layer has been bonded with an adhesive. Products that are produced by bonding layers to the substrate as a part of the substrate manufacturing process are not considered laminated products under this subpart.

Manufacturer's formulation data means data on a material (such as a coating) that are supplied by the material manufacturer based on knowledge of the ingredients used to manufacture that material, rather than based on testing of the material with the test methods specified in § 63.4741. Manufacturer's formulation data may include, but are not limited to, information on density, organic HAP content, volatile organic matter content, and coating solids content.

Mass fraction of organic HAP means the ratio of the mass of organic HAP to the mass of a material in which it is contained, expressed as kg of organic HAP per kg of material.

Month means a calendar month or a pre-specified period of 28 days to 35 days to allow for flexibility in recordkeeping when data are based on a business accounting period.

Organic HAP content means the mass of organic HAP per volume of coating solids for a coating calculated using Equation 1 of § 63.4741. The organic HAP content is determined for the coating in the condition it is in when received from its manufacturer or supplier and does not account for any alteration after receipt.

Permanent total enclosure (PTE) means a permanently installed enclosure that meets the criteria of Method 204 of appendix M, 40 CFR part 51, for a PTE and that directs all the exhaust gases from the enclosure to an add-on control device.

Protective oil means an organic material that is applied to metal for the purpose of providing lubrication or protection from corrosion without forming a solid film. This definition of protective oil includes, but is not limited to, lubricating oils, evaporative oils (including those that evaporate completely), and extrusion oils.

Research or laboratory facility means a facility whose primary purpose is for research and development of new processes and products, that is conducted under the close supervision of technically trained personnel, and is not engaged in the manufacture of final or intermediate products for commercial purposes, except in a de minimis manner.

Responsible official means responsible official as defined in 40 CFR 70.2.

Startup, initial means the first time equipment is brought online in a facility.

Surface preparation means use of a cleaning material on a portion of or all of a substrate. This includes use of a cleaning material to remove dried coating, which is sometimes called ''depainting.''

Temporary total enclosure means an enclosure constructed for the purpose of measuring the capture efficiency of pollutants emitted from a given source as defined in Method 204 of appendix M, 40 CFR part 51.

Thinner means an organic solvent that is added to a coating after the coating is received from the supplier.

Tileboard means hardboard that meets the specifications for Class I given by the standard ANSI/AHA A135.4–1995 as approved by the American National Standards Institute. The standard specifies requirements and test methods for water absorption, thickness swelling, modulus of rupture, tensile strength, surface finish, dimensions, squareness, edge straightness, and moisture content for five classes of hardboard. Tileboard is also known as Class I hardboard or tempered hardboard.

Total volatile hydrocarbon (TVH) means the total amount of nonaqueous volatile organic matter determined according to Methods 204 and 204A through 204F of appendix M to 40 CFR part 51 and substituting the term TVH each place in the methods where the term VOC is used. The TVH includes both VOC and non-VOC.

Uncontrolled coating operation means a coating operation from which none of the organic HAP emissions are routed through an emission capture system and add-on control device.

Volatile organic compound (VOC) means any compound defined as VOC in 40 CFR 51.100(s).

Volume fraction of coating solids means the ratio of the volume of coating solids (also known as volume of nonvolatiles) to the volume of coating; liters of coating solids per liter of coating.

Wastewater means water that is generated in a coating operation and is collected, stored, or treated prior to being discarded or discharged.

Tables

You must comply with the emission limits that apply to your affected source in the following table as required by § 63.4690:

TABLE 1 TO SUBPART QQQQ OF PART 63.—EMISSION LIMITS FOR NEW OR RECONSTRUCTED AFFECTED SOURCES

If the affected source applies coating to products in the following subcategory . . .	Then, the organic HAP emission limit for the affected source, in kg HAP/liter solids (lb HAP/gal solids)[1, 2] is:
1. Doors and windows	0.06 (0.48)
2. Flooring	0.00 (0.00)
3. Interior wall paneling or tileboard	0.00 (0.04)
4. Other interior panels	0.00 (0.00)
5. Exterior siding, doorskins, and miscellaneous	0.00 (0.00)

[1] Determined as a rolling 12-month emission rate according to the requirements in § 63.4741, § 63.4751, or § 63.4761, as applicable.

[2] If the affected source applies coatings to products in more than one of the subcategories listed in the table, then you must determine the applicable emission limit according to § 63.4690(c).

You must comply with the emission limits that apply to your affected source in the following table as required by § 63.4690:

TABLE 2 TO SUBPART QQQQ OF PART 63.—EMISSION LIMITS FOR EXISTING AFFECTED SOURCES

If the affected source applies coating to products in the following subcategory . . .	Then, the organic HAP emission limit for the affected source, in kg HAP/liter solids (lb HAP/gal solids)[1, 2] is:
1. Doors and windows	0.17 (1.45)
2. Flooring	0.09 (0.78)
3. Interior wall paneling or tileboard	0.18 (1.53)
4. Other interior panels	0.00 (0.01)
5. Exterior siding, doorskins, and miscellaneous	0.01 (0.06)

[1] Determined as a rolling 12-month emission rate according to the requirements in § 63.4741, § 63.4751, or § 63.4761, as applicable.

[2] If the affected source applies coatings to products in more than one of the subcategories listed in the table, then you must determine the applicable emission limit according to § 63.4690(c).

If you are required to comply with operating limits by § 63.4692, you must comply with the applicable operating limits in the following table:

TABLE 3 TO SUBPART QQQQ OF PART 63.—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION

For the following device . . .	You must meet the following operating limit . . .	And you must demonstrate continuous compliance with the operating limit by . . .
1. Thermal oxidizer	a. The average combustion temperature in any 3-hour period must not fall below the combustion temperature limit established according to § 63.4767(a).	i. Collecting the combustion temperature data according to § 63.4768(c); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average combustion temperature at or above the temperature limit.
2. Catalytic oxidizer	a. The average temperature measured just before the catalyst bed in any 3-hour period must not fall below the limit established according to § 63.4767(b).	i. Collecting the temperature data according to § 63.4768(c); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average temperature before the catalyst bed at or above the temperature limit.
	b. Either ensure that the average temperature difference across the catalyst bed in any 3-hour period does not fall below the temperature difference limit established according to § 63.4767(b)(2) or develop and implement an inspection and maintenance plan according to § 63.4767(b)(3) and (4).	i. Either collecting the temperature data according to § 63.4768(c), reducing the data to 3-hour block averages, and maintaining the 3-hour average temperature difference at or above the temperature difference limit; or ii. Complying with the inspection and maintenance plan developed according to § 63.4767(b)(3) and (4).
3. Carbon adsorber	a. The total regeneration desorbing gas (e.g., steam or nitrogen) mass flow for each carbon bed regeneration cycle must not fall below the total regeneration desorbing gas mass flow limit established according to § 63.4767(c).	i. Measuring the total regeneration desorbing gas (e.g., steam or nitrogen) mass flow for each regeneration cycle according to § 63.4768(d); and ii. Maintaining the total regeneration desorbing gas mass flow at or above the mass flow limit.
	b. The temperature of the carbon bed, after completing each regeneration and any cooling cycle, must not exceed the carbon bed temperature limit established according to § 63.4767(c).	i. Measuring the temperature of the carbon bed, after completing each regeneration and any cooling cycle, according to § 63.4768(d); and ii. Operating the carbon beds such that each carbon bed is not returned to service until completing each regeneration and any cooling cycle until the recorded temperature of the carbon bed is at or below the temperature limit.
4. Condenser	a. The average condenser outlet (product side) gas temperature in any 3-hour period must not exceed the temperature limit established according to § 63.4767(d).	i. Collecting the condenser outlet (product side) gas temperature according to § 63.4768(e); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average gas temperature at the outlet at or below the temperature limit.
5. Emission capture system that is a PTE according to § 63.4765(a).	a. The direction of the air flow at all times must be into the enclosure; and either.	i. Collecting the direction of air flow; and either the facial velocity of air through all natural draft openings according to § 63.4768(f)(1) or the pressure drop across the enclosure according to § 63.4768(f)(2); and ii. Maintaining the facial velocity of air flow through all natural draft openings or the pressure drop at or above the facial velocity limit or pressure drop limit, and maintaining the direction of air flow into the enclosure at all times.
	b. The average facial velocity of air through all natural draft openings in the enclosure must be at least 200 feet per minute; or.	i. See items 5a.i. and ii.
	c. The pressure drop across the enclosure must be at least 0.007 inch H_2O, as established in Method 204 of appendix M to 40 CFR part 51.	i. See items 5a.i. and ii.

TABLE 3 TO SUBPART QQQQ OF PART 63.—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION—Continued

For the following device . . .	You must meet the following operating limit . . .	And you must demonstrate continuous compliance with the operating limit by . . .
6. Emission capture system that is not a PTE according to § 63.4765(a).	a. The average gas volumetric flow rate or duct static pressure in each duct between a capture device and add-on control device inlet in any 3-hour period must not fall below the average volumetric flow rate or duct static pressure limit established for that capture device according to § 63.4747(e).	i. collecting the gas volumetric flow rate or duct static pressure for each capture device according to § 63.4768(f); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average gas volumetric flow rate or duct static pressure for each capture device at or above the gas volumetric flow rate or duct static pressure limit.
7. Concentrators, including zeolite wheels and rotary carbon adsorbers.	a. The average gas temperature of the desorption concentrate stream in any 3-hour period must not fall below the limit established according to § 63.4767(g).	i. Collecting the temperature data according to § 63.4768(g); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average temperature at or above the temperature limit.
	b. The average pressure drop of the dilute stream across the concentrator in any 3-hour period must not fall below the limit established according to § 63.4767(g).	i. Collecting the pressure drop data according to § 63.4768(g); and ii. Reducing the pressure drop data to 3-hour block averages; and iii. Maintaining the 3-hour average pressure drop at or above the pressure drop limit.

You must comply with the applicable General Provisions requirements according to the following table:

TABLE 4 TO SUBPART QQQQ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQ OF PART 63

Citation	Subject	Applicable to subpart QQQQ	Explanation
§ 63.1(a)(1)–(14)	General Applicability	Yes.	
§ 63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability to subpart QQQQ is also specified in § 63.4681.
§ 63.1(c)(1)	Applicability After Standard Established.	Yes.	
§ 63.1(c)(2)–(3)	Applicability of Permit Program for Area Sources.	No	Area sources are not subject to subpart QQQQ.
§ 63.1(c)(4)–(5)	Extensions and Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are specified in § 63.4781.
§ 63.3(a)–(c)	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(5)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Severability	Yes.	
§ 63.5(a)	Construction/Reconstruction	Yes.	
§ 63.5(b)(1)–(6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes.	
§ 63.5(d)	Application for Approval of Construction/Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction.	Yes.	

TABLE 4 TO SUBPART QQQQ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQ OF PART 63—Continued

Citation	Subject	Applicable to subpart QQQQ	Explanation
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§ 63.6(a)	Compliance With Standards and Maintenance Requirements—Applicability.	Yes.	
§ 63.6(b)(1)–(7)	Compliance Dates for New and Reconstructed Sources.	Yes	§ 63.4683 specifies the compliance dates.
§ 63.6(c)(1)–(5)	Compliance Dates for Existing Sources.	Yes	§ 63.4683 specifies the compliance dates.
§ 63.6(e)(1)–(2)	Operation and Maintenance	Yes.	
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan.	Yes	Only sources using an add-on control device to comply with the standard must complete startup, shutdown, and malfunction plans.
§ 63.6(f)(1)	Compliance Except during Startup, Shutdown, and Malfunction.	Yes	Applies only to sources using an add-on control device to comply with the standard.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Yes.	
§ 63.6(g)(1)–(3)	Use of an Alternative Standard	Yes.	
§ 63.6(h)	Compliance With Opacity/Visible Emission Standards.	No	Subpart QQQQ does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(16)	Extension of Compliance	Yes.	
§ 63.6(j)	Presidential Compliance Exemption.	Yes.	
§ 63.7(a)(1)	Performance Test Requirements—Applicability.	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§ 63.4764, 63.4765, and 63.4766.
§ 63.7(a)(2)	Performance Test Requirements—Dates.	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standard. § 63.4760 specifies the schedule for performance test requirements that are earlier than those specified in § 63.7(a)(2).
§ 63.7(a)(3)	Performance Tests Required by the Administrator.	Yes.	
§ 63.7(b)–(e)	Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing, Conditions During Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§ 63.7(f)	Performance Test Requirements—Use of Alternative Test Method.	Yes	Applies to all test methods except those used to determine capture system efficiency.

TABLE 4 TO SUBPART QQQQ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQ OF PART 63—Continued

Citation	Subject	Applicable to subpart QQQQ	Explanation
§ 63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§ 63.8(a)(1)–(3)	Monitoring Requirements—Applicability.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for monitoring are specified in § 63.4768.
§ 63.8(a)(4)	Additional Monitoring Requirements.	No	Subpart QQQQ does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes.	
§ 63.8(c)(1)–(3)	Continuous Monitoring System (CMS) Operation and Maintenance.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for CMS operations and maintenance are specified in § 63.4768.
§ 63.8(c)(4)	CMSs	No	§ 63.4768 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(5)	COMS	No	Subpart QQQQ does not have opacity or visible emission standards.
§ 63.8(c)(6)	CMS Requirements	No	§ 63.4768 specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(7)	CMS Out-of-Control Periods	Yes.	
§ 63.8(c)(8)	CMS out-of-control periods reporting.	No	§ 63.4720 requires reporting of CMS out-of-control periods.
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No	Subpart QQQQ does not require the use of continuous emissions monitoring systems.
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method.	Yes.	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	No	Subpart QQQQ does not require the use of continuous emissions monitoring systems.
§ 63.8(g)(1)–(5)	Data Reduction	No	§§ 63.4767 and 63.4768 specify monitoring data reduction.
§ 63.9(a)–(d)	Notification Requirements	Yes.	

TABLE 4 TO SUBPART QQQQ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQ OF PART 63—Continued

Citation	Subject	Applicable to subpart QQQQ	Explanation
§ 63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standard.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart QQQQ does not have opacity or visible emission standards.
§ 63.9(g)(1)–(3)	Additional Notifications When Using CMS.	No	Subpart QQQQ does not require the use of continuous emissions monitoring systems.
§ 63.9(h)	Notification of Compliance Status	Yes	§ 63.4710 specifies the dates for submitting the notification of compliance status.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements.	Yes	Additional requirements are specified in §§ 63.4730 and 63.4731.
§ 63.10(b)(2)(i)–(v)	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS.	Yes	Requirements for Startup, Shutdown, and Malfunction records only apply to add-on control devices used to comply with the standard.
§ 63.10(b)(2)(vi)–(xi)		Yes.	
§ 63.10(b)(2)(xii)	Records	Yes.	
§ 63.10(b)(2)(xiii)		No	Subpart QQQQ does not require the use of continuous emissions monitoring systems.
§ 63.10(b)(2)(xiv)		Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)(1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(7)–(8)		No	The same records are required in § 63.4720(a)(7).
§ 63.10(c)(9)–(15)		Yes.	
§ 63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in § 63.4720.
§ 63.10(d)(2)	Report of Performance Test Results.	Yes	Additional requirements are specified in § 63.4720(b).
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart QQQQ does not require opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes.	

TABLE 4 TO SUBPART QQQQ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQ OF PART 63—Continued

Citation	Subject	Applicable to subpart QQQQ	Explanation
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Yes	Applies only to add-on control devices at sources using these to comply withthe standard.
§ 63.10(e)(1)–(2)	Additional CMS Reports	No	Subpart QQQQ does not require the use of continuous emissions monitoringsystems.
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports.	No	§ 63.4720(b) specifies the contents of periodic compliance reports.
§ 63.10(e)(4)	COMS Data Reports	No	Subpart QQQQ does not specify requirements for opacity or COMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements/Flares.	No	Subpart QQQQ does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Availability of Information/Confidentiality.	Yes.	

You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data:

TABLE 5 TO SUBPART QQQQ OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS

Solvent/solvent blend	CAS. No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
1. Toluene	108–88–3	1.0	Toluene.
2. Xylene(s)	1330–20–7	1.0	Xylenes, ethylbenzene.
3. Hexane	110–54–3	0.5	n-hexane.
4. n-Hexane	110–54–3	1.0	n-hexane.
5. Ethylbenzene	100–41–4	1.0	Ethylbenzene.
6. Aliphatic 140		0	None.
7. Aromatic 100		0.02	1% xylene, 1% cumene.
8. Aromatic 150		0.09	Naphthalene.
9. Aromatic naphtha	64742–95–6	0.02	1% xylene, 1% cumene.
10. Aromatic solvent	64742–94–5	0.1	Naphthalene.
11. Exempt mineral spirits	8032–32–4	0	None.
12. Ligroines (VM & P)	8032–32–4	0	None.
13. Lactol spirits	64742–89–6	0.15	Toluene.
14. Low aromatic white spirit	64742–82–1	0	None.
15. Mineral spirits	64742–88–7	0.01	Xylenes.
16. Hydrotreated naphtha	64742–48–9	0	None.

TABLE 5 TO SUBPART QQQQ OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS—Continued

Solvent/solvent blend	CAS. No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
17. Hydrotreated light distillate	64742–47–8	0.001	Toluene.
18. Stoddard solvent	8052–41–3	0.01	Xylenes.
19. Super high-flash naphtha	64742–95–6	0.05	Xylenes.
20. Varsol® solvent	8052–49–3	0.01	0.5% xylenes, 0.5% ethylbenzene.
21. VM & P naphtha	64742–89–8	0.06	3% toluene, 3% xylene.
22. Petroleum distillate mixture	68477–31–6	0.08	4% naphthalene, 4% biphenyl.

You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data:

TABLE 6 TO SUBPART QQQQ OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR PETROLEUM SOLVENT GROUPS[a]

Solvent type	Average organic HAP mass fraction	Typical organic HAP, percent by mass
Aliphatic[b]	0.03	1% xylene, 1% toluene, and 1% ethylbenzene.
Aromatic[c]	0.06	4% xylene, 1% toluene, and 1% ethylbenzene.

[a] Use this table only if the solvent blend does not match any of the solvent blends in Table 5 to this subpart and you only know whether the blend is aliphatic or aromatic.

[b] e.g., Mineral Spirits 135, Mineral Spirits 150 EC, Naphtha, Mixed Hydrocarbon, Aliphatic Hydrocarbon, Aliphatic Naphtha, Naphthol Spirits, Petroleum Spirits, Petroleum Oil, Petroleum Naphtha, Solvent Naphtha, Solvent Blend.

[c] e.g., Medium-flash Naphtha, High-flash Naphtha, Aromatic Naphtha, Light Aromatic Naphtha, Light Aromatic Hydrocarbons, Aromatic Hydrocarbons, Light Aromatic Solvent.

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Federal Register

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June 21, 2002

Part V

Department of Transportation

Federal Aviation Adminstration

14 CFR Part 129

Security Considerations for the Flightdeck on Foreign Operated Transport Category Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 129

[Docket No. FAA–2002–12504; Amendment No. 129–33]

RIN 2120–AH70

Security Considerations for the Flightdeck on Foreign Operated Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule requires improved flightdeck security and operational and procedures changes to prevent unauthorized access to the flightdeck on passenger-carrying aircraft and some cargo aircraft operated by foreign carriers under the provisions of part 129. It is being adopted to further enhance air carrier security in response to the heightened threat to civil aviation in the United States. This final rule applies the same flightdeck security enhancements to foreign air carriers as apply to U.S. air carriers.

DATES: This final rule is effective June 21, 2002. Comments must be received on or before August 20, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–12504 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing comments to this final rule in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

Comments that you may consider to be of a sensitive security nature should not be sent to the docket management system. Send those comments to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: For part 25 issues contact Jeff Gardlin, FAA Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2136, facsimile (425) 227–1149; e-mail: *jeff.gardlin@faa.gov.* For parts 121 and 129 issues contact Thomas Penland, FAA Program Management Branch, AFS–260, Flight Standards Service, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3764, facsimile (202) 267–5229, e-mail: *thomas.pendland@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), however, provide that, to the maximum extent possible, operating administrations of the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or international trade impacts that might result from this amendment are also invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the DOT Docket Management System address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this final rule, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2002–12504.'' The postcard will be date stamped and mailed to the commenter.

The FAA will be holding a public meeting during the comment period for this final rule. Details will be announced in the **Federal Register**.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/arm/nprm.cfm* or the **Federal Register**'s web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number and amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requirements for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBFEFA on the Internet at our site, *http://www.gov/avr/arm/sbrefa.htm.* For more information on SBREFA, e-mail us at 9-AWA-SFREFA@faa.gov.

Background

On September 11, 2001, the United States experienced terrorist attacks when aircraft were commandeered and used as weapons. These actions demonstrated that there is a need to improve the design, operational, and procedural security of the flightdeck. On November 19, 2001, Congress enacted Public Law 107–71, the Aviation and Transportation Security Act (the Act), which specifies that improved flightdeck security must be applied to aircraft operating in air transportation.

Section 104 of the Act directed the FAA to issue a final rule, without seeking public comment prior to adoption, addressing the security requirement for aircraft that are currently required to have flightdeck doors.

In response to section 104(a)(1) of the Act, the FAA issued Amendment 121–288 to 14 CFR Part 121, which requires that certain U.S. air carriers install reinforced flightdeck doors that provide intrusion resistance and ballistic penetration resistance (67 FR 2881, January 15, 2002). Amendment 121–288 applies to transport category airplanes operating in commercial service that are required by § 121.313(f) to have a door installed between the flightdeck and the passenger cabin and to all cargo aircraft that have such a door installed on or after January 15, 2002. The reinforced doors must be installed by April 9, 2003. Additionally, the amendment requires that the operators adopt operational changes restricting access to the flightdeck in flight.

The FAA also issued a series of Special Federal Aviation Regulations (SFAR–92) (66 FR 51546, October 9, 2001; 66 FR 52835, October 17, 2001; 66 FR 58650, November 21, 2001; and 67 FR 12820, March 19, 2002) that first allowed, then required, the installation of internal locking devices on the flightdeck doors. The internal locking devices are intended to provide enhanced flightdeck security pending installation of the reinforced doors required by Amendment 121–288.

As discussed in the preamble to Amendment 121–288, the FAA expected that foreign operators conducting service to and from the United States under part 129 would have flightdeck security measures commensurate with those of U.S. carriers.

Part 129 governs foreign operators who operate either within the United States, or who operate solely outside the United States, but with aircraft registered in the United States. In the case of operations within the United States, part 129 is effectively equivalent to part 121 in terms of the types of operations conducted and the aircraft used. With part 121 flightdeck security improved, the FAA was concerned that part 129 operations would be more attractive targets for terrorist actions if security was not similarly improved. Amendment 121–288 solicited comments on this issue and clearly stated that the FAA intended to have consistent flightdeck door security requirements for parts 121 and 129. The FAA received no comments objecting to the stated intention to adopt consistent standards.

The FAA has discussed in numerous international settings its intent to have consistent flightdeck door security requirements for parts 121 and 129. Below is a listing of international meetings with European and other authorities and industry where this issue was discussed:

October 17, 2001 FAA/Joint Aviation Authorities (JAA) Executive Board Meeting, Rome, Italy

November 28–30, 2001 FAA/JAA Certification Management Team Meeting, Washington, DC

January 8, 2002 Special FAA meeting with regional Asian-Pacific Civil Aviation Authorities and industry, Kuala, Lumpur, Malaysia

January 22, 2002 FAA/European Civil Aviation Conference Security Meeting, Washington, DC

January 23, 2002 Aircraft Certification and Flight Standards directors visit Brussels, Belgium, and meet with La Direction Général de l'Aviation Civile and Luftfahrt-Bundesamt representatives, officials from European Parliament, the European Commission's Director of Aviation Safety, and the International Air Transport Association (IATA)

February 19–20, 2002 International Civil Aviation Organization Aviation Security Ministerial Meeting, Montreal, Canada

March 2002 Latin American Civil Aviation Commission, Asunción, Paraguay

March 5, 2002 FAA/JAA Certification Management Team Meeting, Hoofddorp, Netherlands

March 18–20, 2002 Central America and Panama Directors General Meeting, Mexico City, Mexico

April 3, 2002 FAA/JAA Executive Board Meeting, Washington, DC

April 3, 2002 12th International Air & Space Fair, FIDAE 2002, Santiago, Chile

April 9, 2002 IATA Operations Council Meeting, Brussels, Belgium

April 13–14, 2002 FAA/Asia-Pacific Bilateral Partners Meeting, Tokyo, Japan

May 7, 2002 Transport Canada Civil Aviation Annual Safety Meeting, Niagara on the Lake, Canada

Since the adoption of Amendment 121–288, the International Civil Aviation Organization (ICAO) has moved to adopt standards for flightdeck security similar to those adopted by the FAA. The ICAO is an international body consisting of 187 member countries. The ICAO adopts standards under Amendment 97 to Annex 8 to the Convention on International Civil Aviation (Chicago Convention). The ICAO recently adopted standards relating to the incorporation of security into the design of aircraft. The ICAO flightdeck security standards will require that passenger-carrying aircraft of 60 passengers or more, or with a maximum certificated takeoff weight of 100,000 pounds, be protected from intrusion and ballistic threats.

The FAA wholly supports this change. This requirement, however, is not mandatory until November 2003, 7 months after the FAA's requirements must be met. It does not apply to cargo aircraft, as does Amendment 121–288. In addition, there is an ICAO requirement for the installation of flightdeck door internal locking devices by November 28, 2002. Absent additional action by the FAA, foreign operators can operate to and from the U.S. without any mandatory flightdeck door security measures in the interim.

The foreign operations subject to this rule use the same aircraft and conduct the same types of operations as U.S. operators. They use many of the same airports into and out of the U.S. They also present targets for a repeat of the September 11, 2001 terrorist attacks.

Under SFAR 92, U.S. operators already have installed internal locking devices to deter entry to the flightdeck. Not all foreign operators have. After April 2003, U.S. operators will have reinforced flightdeck doors. Foreign operators may not.

The FAA finds that it is unacceptable to create two levels of flightdeck protection for the same operations to and from U.S. airports. It would be irresponsible to expose passengers, and those on the ground, to greater risks based solely upon the country of registration of the aircraft. In this case security considerations clearly demand that this rule be issued as a necessary complement to Amendment 121–288 and SFAR 92. And to meet this goal of corresponding protection, it is essential that the standards be imposed at the same time. If the requirements do not have a synchronized compliance time, the security risk will be shifted to the unprotected aircraft. Unsynchronized implementation of the security measures should not create a more attractive target for terrorists.

Because of the need to synchronize the effective dates, this rule must be adopted immediately. The time required for public notice and comment would make compliance by the required date impossible, and the resulting lack of synchronization would increase vulnerability to terrorist attack. Therefore, the FAA finds that it is necessary to adopt a new rule for part 129 operators, without prior notice and

public comment, to prevent an unacceptable disparity in flight deck security between domestic and foreign operators in the United States. In accordance with § 553(b)(3)(B) of the Administrative Procedures Act, the requirements of notice and opportunity for comment do not apply when the agency, for good cause, finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Authority To Amend Part 129

Under the Chicago Convention, signatory states agree that the country of registry regulates the airworthiness of aircraft. The Convention also provides, however, that the state whose airspace is being entered may require that its operational rules be followed. This case presents security issues, which have always been considered operational. The FAA has in the past required foreign air carriers to implement additional security measures for operations to and from the U.S. The FAA has determined that safe operation in the U.S. and on overflights demands a minimum level of flightdeck security, in the same way as does collision avoidance equipment, or basic radio systems. Collision avoidance equipment and radio systems are operational requirements. Because flightdeck security is an operational issue, the U.S. and the FAA have authority to regulate it irrespective of the country of registry.

Compliance with these requirements may, in fact, result in modifications to aircraft that affect airworthiness. The issue in this rulemaking, however, is not the airworthiness of the aircraft, but the ability to operate the aircraft safely in the face of evident threats to security. The ICAO itself has reinforced this position by adopting the requirements for intrusion resistant flightdeck doors into its requirements. Although the ICAO compliance dates differ from those adopted here, the intent is the same.

Discussion of the Final Rule

This amendment requires changes to aircraft operated by foreign operators in accordance with part 129, similar to changes made on aircraft operated under part 121. The requirements consist of enhancements to protect against forcible intrusion by persons, ballistic penetration of the flightdeck, and access to the flightdeck while the aircraft is operated. As discussed, the intent of these requirements is to provide a consistent level of flightdeck security among those aircraft that operate in parts 121 and 129. Accordingly, the presence of a flightdeck door is essential, as is currently mandated in § 121.313. For the purposes of this requirement, the FAA has assumed that all affected aircraft are already equipped with flightdeck doors. To ensure a consistent level of flightdeck security, however, § 129.28(a) mandates that there be a flightdeck door on passenger carrying operations. This requirement is intended to prevent the removal of flightdeck doors, and is not expected to result in installation of flightdeck doors where none existed. In the unlikely event that an operator is compelled to install a flightdeck door as a result of this requirement, the FAA will address such instances on a case by case basis.

Internal Flight Deck Door Locking Devices

The SFAR 92 series rules initially permitted, and subsequently required, quick installation of simple enhancements to the flightdeck door for improved security. Section 129.28(a) adopts a requirement for a similar improvement in flightdeck security. This requirement is consistent with SFAR 92 and requires that internal locking devices be installed within 60 days of the effective date of this amendment.

As noted in the preamble to SFAR 92, modifications required by this provision have the potential to compromise other airworthiness standards. As a result, § 129.28(b) of this rule provides relief from the otherwise applicable provisions of § 129.13. Because the FAA does not directly regulate airworthiness of foreign registered aircraft, however, modifications to install the internal locking devices may also require relief from the country of registry. Based on correspondence with other airworthiness authorities, the FAA has concluded that most are prepared to grant this relief, and this amendment should not create a conflict with the standards of the local authority. In the event that a country is not willing to grant such relief, the FAA will work to reach a mutually acceptable solution.

Reinforced Flight Deck Doors

This amendment adopts increased long-term standards for flightdeck intrusion resistance in keeping with standards adopted for part 121 operators in Amendment 121–288. This amendment also provides for compliance with an alternative standard, acceptable to the Administrator, in the event that the country of registry adopts a different intrusion resistance standard. Operators wishing to comply with this amendment using an alternative standard should submit their proposal to the Manager, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055–4056.

As also discussed in Amendment 121–288, § 129.28(c) requires design precautions to be taken to minimize the penetration of shrapnel from a fragmentation device and small arms projectiles (i.e., ballistics) which might be fired through the flightdeck doors from occupied compartments. These requirements have been adopted by ICAO and will be effective November 2003. The standards are key elements to protect the flightdeck from intrusion because any compromise in the integrity of the flightdeck door from a ballistic threat could enable an intruder to gain access to the flightdeck.

The flightdeck door is already subject to several requirements that affect its structural integrity. These include protection during decompression where the door may incorporate venting features to prevent a large pressure differential; egress considerations to permit the flightcrew to enter the cabin in the event the door becomes jammed during an accident; and the capacity to allow rescue personnel to enter the flightdeck in the event the flightcrew are unable to egress on their own. The door may also be integral in meeting ventilation requirements. After reviewing several design proposals, the FAA has determined that all the requirements can be accommodated by proper design of the door installation. As a result, aircraft meeting the requirements of this rule should continue to meet all the requirements necessary to maintain a valid certificate of airworthiness from the country of registry.

The rule requires installation of doors meeting this standard by April 9, 2003. The FAA evaluated several factors in establishing this compliance time. The most important is synchronization of the compliance date with the requirements of Amendment 121–288. The FAA considers this synchronization to be essential. This is an aggressive schedule; given the events of September 11, 2001, however, the issue demands aggressive action. Also, the prior imposition of the door design standard on part 121 operators means that manufacturers have made substantial progress in developing reinforced doors to meet the standard. These new doors can be installed on part 129 as well as part 121 aircraft.

Flightdeck Access Provisions

A new § 129.28(d) is adopted to require procedures to restrict access to

the flightdeck, except as authorized in that section. This action is consistent with the requirements of Amendment 121–288 and adopts many of the same provisions, but provides additional flexibility with respect to the allowances made by the airworthiness authority of the country of registry.

Finally, the FAA is amending § 129.11(a) by adding a new paragraph (5). This paragraph requires that the operator identify those aircraft that are subject to these requirements in the operator's operations specification. This requirement is necessary to identify the specific aircraft that will be operated within the United States and on overflights, because part 129 operators typically have some aircraft in their fleets that do not operate within the United States.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no requirements for information collection associated with this rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The need for improved flightdeck security is an operational and security issue and is demonstrably necessary to provide safe operation within the United States. Even though this amendment may result in modifications to aircraft, the basis of the rule is to provide for safe operation and is appropriately an operational requirement of part 129.

Regulatory Evaluation Summary

Regulatory Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Act Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency proposing or adopting a regulation to first make a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this act requires agencies to consider international standards, and use them where appropriate as the basis for U.S. standards. Fourth, the Unfunded Mandates Act of 1995 requires agencies to prepare a written assessment of the costs and benefits, and other effects of proposed and final rules. An assessment must be prepared only for rules that impose a Federal mandate on State, local, or tribal governments, or on the private sector, likely to result in a total expenditure of $100 million or more (adjusted for inflation) in any one year.

In conducting these analyses, the FAA determined that this rule has benefits that justify the costs; will not have a significant impact on a substantial number of small entities; has no effect on trade-sensitive activity; and does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

Benefits and Costs

This rule is part of a series of FAA rules to improve aviation safety and security, as directed by the Aviation and Transportation Security Act. This rule establishes the requirements for flightdeck door enhancements on aircraft operated to and from the U.S. by foreign operators. Accordingly, the benefits of this rule are to ensure the safety and security of the flying public. Because this rule is one of several being promulgated to avoid a reoccurrence of an event like that of September 11, 2001, the benefits will be shared by the entire set of rules designed to prevent such a recurrence.

The September 11, 2001, attacks demonstrated that foreign terrorists may choose civil aviation as a tool as well as a target. They have demonstrated their ability to circumvent security practices and gain possession of improvised weapons in flight. Flightdeck doors provide a last line of defense and can either prevent entry or delay entry while other intervention occurs.

The most recent compelling evidence of the benefit provided by fortifying flightdeck doors was seen on February 7, 2002, when a man on a United Airlines flight from Miami to Buenos Aires was able to insert his torso through the lower blowout panel of the flightdeck door. The door had been retrofitted with a steel bar and was locked, preventing the man from completely entering the flightdeck, and enabling the flightcrew to subdue the intruder before another disaster occurred.

As was witnessed on September 11, 2001, terrorist acts can result in the complete destruction of an aircraft with the loss of all on board, with the collateral damage far exceeding that to the aircraft and passengers. The losses from the September 11 terrorist attack are estimated to be several billions of dollars, and the costs of another incident could possibly be even higher due to the economic impact of passengers choosing not to fly and thereby losing the benefits of air transportation.

The FAA is not able to accurately estimate the actual net social cost and the corollary benefit gained by preventing future aviation-related terrorist acts. The insurance industry's cancellation of war risk coverage for aircraft indicates both the difficulty of estimating the benefits of preventing future incidents, and the broad impact of those terrorist acts. There is, however, ample basis for judging the likelihood of attaining benefits by averting future attacks to justify this rule.

The rule applies to aircraft belonging to foreign carriers, engaged in air transportation serving the U.S. As discussed previously, any of these aircraft operated by foreign carriers could provide a likely target for terrorists interested in their massive destructive power. The FAA estimates that 4,689 aircraft are operated by air carriers certificated under part 129, and could be potentially affected by this rule. Not all of these aircraft, however, will be utilized for operations to the U.S.

A review of the air carriers' fleets and the Official Airline Guide allowed the FAA to significantly reduce the number of aircraft potentially affected by this rule. The selection process eliminated those aircraft that, although in a foreign carrier's fleet, could not be feasibly utilized for service to the U.S. An example would include turboprops, regional jets, and some smaller narrowbody aircraft based in Europe and Asia. With the remaining aircraft, the FAA recognizes that some carriers have dedicated aircraft to fly to the U.S., but conservatively estimated that any aircraft in the carrier's fleet could be put in service on a route to the U.S., and will therefore need to be retrofitted. An example is the large contingent of Boeing 747s in Japan Airlines' and British Airways' fleets. Although only a portion of those aircraft might be dedicated to U.S. routes, the FAA assumes that they will all be retrofitted. The aforementioned analysis resulted in an estimate of 1,921 aircraft that will be affected by this rule. This figure does not include aircraft in charter service.

For this analysis, the FAA assumed that the estimated costs of future compliant flightdeck doors will be approximately $17,000, installed. The

flightdeck door applications to meet the new standards have not yet been approved; therefore, the FAA used an upper bound cost of what the agency believes is a door that meets the intent of the rule.

Not knowing exactly how many aircraft have doors that are already compliant with the rule, the FAA proceeded with the assumption that all 1,921 aircraft will be required to be retrofitted with new doors, at a base case cost of approximately $17,000 each. This will result in a base case cost of $32.7 million. Because no foreign repair stations have applied for door certification, it is possible that several foreign carriers will opt to have their doors installed by the aircraft's original equipment manufacturer. This will mean an increased cost to about $27,500 per door for narrowbody aircraft, and $39,900 for widebody aircraft. Based on the affected fleet, the average cost per door will be just under $36,000, plus installation. These figures, released by Boeing and partner C&D Interiors, are consistent with a door that far exceeds the intent of the rule, but it is still likely to be the choice of carriers due to convenience. The upper bound cost to foreign air carriers to purchase and install the compliant door could, therefore, be as high as $72.0 million.

Many flightdeck door manufacturers claimed that their version of a secure flightdeck door could be installed by airline technicians overnight, or during an extended overnight. Some claim that their kit can be installed in four hours or less. The plan is for the manufacturers' mechanics to train the airlines' technicians, supervise the first several installations, and then allow the airlines to complete the installations on their own. Based on this information, the FAA believes that there will be no need to take aircraft out of service for any significant amount of time.

Commercial air carrier operators will, however, incur costs attributable to the increased fuel consumption resulting from heavier doors. The industry estimates that a typical door currently weighs approximately 25 pounds, and that a new compliant door will weigh approximately 75 pounds. The weight increase of approximately 50 pounds will translate into increased fuel consumption for aircraft affected by the rule. The increase in fuel consumption was calculated based on the projected aircraft utilization of 8.6 block hours per day and rate of fuel burn increase. At a current cost of $0.62 per gallon, and forecasted price based on the FAA Aerospace Forecast, the additional weight is expected to impose an additional cost to foreign air carriers of $11.2 million ($8.3 million, discounted) over the next decade.

When all costs are accounted for, the total cost of this rule over the next decade is expected to be $43.8 million ($40.9 million discounted). Using an average cost of $36,000 per door, instead of the base case cost of $17,000, the total cost of this rule would increase to $83.1 million ($80.2 million discounted).

This rule will ensure that any attempts to enter through the flightdeck door of foreign operated aircraft flying to the U.S. will be very difficult. The new standards will deter terrorists from attempting to take over the flightdeck. If an attempt is made, implementation of the standards will significantly delay efforts to gain entry, thus allowing additional security efforts to be implemented. In addition to meeting a requirement of the Aviation and Transportation Security Act, the potential benefits of this rule greatly exceed the costs. Accordingly, the FAA believes that the rule is cost-beneficial and is necessary to ensure the level of aviation security expected by the American public, and passengers flying to/from the U.S. on foreign carriers.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

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

If an agency determines, however, that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. This rule will not have a significant impact on a substantial number of small entities, therefore a full Regulatory Flexibility Analysis is not necessary. The rule affects only foreign air carriers, not U.S. businesses.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety and security, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

A single level of safety among aircraft, regardless of registry, is paramount to the protection of the American public, as well as for the passengers on-board the aircraft. In January 2002, the FAA adopted a rule requiring, by April 2003, the hardening of cockpit doors on all U.S. aircraft in scheduled commercial service requiring a door between the passenger and crew compartments and transport category cargo aircraft with flightdeck doors. U.S. carriers have not been the first to fortify flightdeck doors. In fact, recognizing the terrorist threat, El Al Israel Airlines' aircraft have had secure cockpits for many years, and so have several other aircraft in various fleets around the world.

To promote uniformity in the security of aircraft, in March 2002, ICAO established a universally acceptable international standard, requiring that all of the world's airlines meet the standard by November 2003. Some carriers, such as British Airways and All Nippon Airways, voluntarily opted to strengthen their flightdeck doors soon after September 11. Despite the fact that some aircraft are already compliant, the 7-month gap between the FAA regulation and ICAO mandate, and the lack of an ICAO cargo aircraft requirement, could pose a threat to the American public and the passengers of those carriers who are not voluntarily protecting their flightdecks.

The FAA therefore feels that extending the same requirements imposed on U.S. carriers to foreign carriers serving U.S. airports is warranted. The fortification will be required by ICAO just several months later, and is likely to be required by insurance companies extending war risk insurance.

The FAA has assessed the potential effect of this rule and has determined that the objective of this rule is the safety and security of the United States; the rule is therefore not considered an

unnecessary obstacle to international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), 2 U.S.C. 1531–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

This rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Good Cause for Immediate Adoption

As discussed previously, the FAA finds that notice and public comment on this final rule are impracticable, unnecessary, and contrary to the public interest. The rule requires implementation of security requirements related to protection of the flightdeck. It provides means to protect the flightdeck from small arms fire or fragmentation devices, as well as means to protect against intrusion by unauthorized persons. Providing one standard for U.S. operators while allowing a lower standard for foreign operators only invites a shift of terrorist focus. It is essential that the rules impose the same standards at the same time. The only way to make this requirement effective concurrently with the previously adopted requirement for U.S. operators is to immediately adopt this requirement.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, we determined that this rule would not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 129

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration (FAA) amends part 129 of Title 14 Code of Federal Regulations, as follows:

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

1. The authority citation for part 129 is revised to read as follows:

Authority: 49 U.S.C. 1372, 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Pub. L. 107–71 sec. 104.

2. Section 129.11 is amended by adding a new paragraph (a)(5) to read as follows:

§ 129.11 Operations specifications.

(a) * * *

(5) Registration and markings of each aircraft that meets equipment requirements of § 129.28(a).

3. In § 129.13, paragraph (a) is revised to read as follows:

§ 129.13 Airworthiness and registration certificates.

(a) Except as provided in § 129.28(b) of this part, no foreign air carrier may operate any aircraft within the United States unless that aircraft carries current registration and airworthiness certificates issued or validated by the country of registry and displays the nationality and registration markings of that country.

* * * * *

4. Part 129 is amended by adding a new § 129.28 to read as follows:

§ 129.28 Flightdeck security.

(a) After August 20, 2002, no foreign air carrier covered by § 129.1(a), may operate:

(1) A passenger carrying transport category aircraft within the United States or on overflights unless the aircraft is equipped with a door between the passenger and pilot compartment that incorporates features to restrict the unwanted entry of persons into the flightdeck that are operable from the flightdeck only; or

(2) A transport category all-cargo airplane, within the United States or on overflights, that has a door installed between the pilot compartment and any other occupied compartment on or after January 15, 2002, unless the door incorporates features to restrict the unwanted entry of persons into the flightdeck that are operable from the flightdeck only.

(b) To the extent necessary to meet the requirements of paragraph (a) of this section, the requirements of § 129.13(a) to maintain airworthiness certification are waived until April 9, 2003. After that date, the requirements of § 129.13(a) apply in full.

(c) After April 9, 2003, no foreign air carrier covered by § 129.1(a) may operate a passenger carrying transport category airplane, or a transport category all-cargo airplane that has a door installed between the pilot compartment and any other occupied compartment on or after June 21, 2002, within the United States or on overflights unless the aircraft's flightdeck door installation meets the requirements of paragraphs (c)(1) and (2) of this section or an alternative standard found acceptable to the Administrator.

(1) Resist forcible intrusion by unauthorized persons and be capable of withstanding impacts of 300 joules (221.3 foot-pounds) at the critical locations on the door, as well as a 1,113-newton (250 pounds) constant tensile load on the knob or handle, and

(2) Resist penetration by small arms fire and fragmentation devices to a level equivalent to level IIIa of the National Institute of Justice Standard (NIJ) 0101.04.

(d) After August 20, 2002, no foreign air carrier covered by § 129.1 may operate a passenger carrying transport category airplane, or a transport category all-cargo airplane that has a door installed between the pilot compartment and any other occupied compartment on or after June 21, 2002, within the United States or on overflights unless the carrier has procedures in place that are acceptable to the civil aviation authority responsible for oversight of the part 129 operator to prevent access to the flightdeck except as authorized as follows:

(1) No person other than a person who is assigned to perform duty on the flight

deck may have a key to the flight deck door that will provide access to the flightdeck.

(2) Except when it is necessary to permit access and egress by persons authorized in accordance with paragraph (d)(3) of this section, a pilot in command of an aircraft that has a lockable flight deck door in accordance with § 129.28(a) and that is carrying passengers shall ensure that the door separating the flight crew compartment from the passenger compartment is closed and locked at all times when the aircraft is being operated.

(3) No person may admit any person to the flight deck of an aircraft unless the person being admitted is—

(i) A crewmember,

(ii) An inspector of the civil aviation authority responsible for oversight of the part 129 operator, or

(iii) Any other person authorized by the civil aviation authority responsible for oversight of the part 129 operator.

Issued in Washington, DC, on June 14, 2002.

Jane F. Garvey,

Administrator.

[FR Doc. 02–15524 Filed 6–18–02; 12:01 pm]

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Federal Register

Friday,
June 21, 2002

Part VI

Department of Labor

Office of Disability Employment Policy; Solicitation of Nominations for Department of Labor's Inaugural New Freedom Award; Notice

DEPARTMENT OF LABOR

Office of Disability Employment Policy; Solicitation of Nominations for Department of Labor's Inaugural New Freedom Award

[OMB Number 1230–0002]

The Department of Labor's Inaugural New Freedom Initiative Award

Presented By Secretary Elaine L. Chao, United States Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210

1. *Subject:* New Freedom Initiative Award(s).

2. *Purpose:* To outline the eligibility criteria, the nomination process and the administrative procedures for the New Freedom Initiative Award(s), and to solicit New Freedom Initiative Award(s) nominations.

3. *Originator:* Office of Disability Employment Policy (ODEP).

4. *Background:* To encourage the use of public-private partnerships, the Secretary of Labor will present the Inaugural New Freedom Initiative Award(s). Initiated in 2002, this award will be made annually to individual(s), non-profit organization(s), or corporation(s) that have, through programs or activities, demonstrated exemplary and innovative efforts in furthering the employment objectives of President George W. Bush's New Freedom Initiative. *See http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.* By increasing access to assistive technologies, and utilizing innovative training, hiring, and retention strategies, the recipient(s) will have established and instituted comprehensive strategies to enhance the ability of Americans with disabilities to enter and advance within the 21st Century workforce and to participate in daily community life.

5. *Eligibility Criteria:* The following criteria apply to the New Freedom Initiative Award Nominees:

A. The nominees must be individuals, corporations, or non-profit organizations whose activities exemplify the goals of the President's New Freedom Initiative which include the Office of Disability Employment Policy's mission of increasing employment opportunities for youth and adults with disabilities. Nominations may be submitted, however, by other entities with the knowledge and permission of the nominee. Self-nomination is also encouraged.

B. Nominees must have developed and implemented a multi-faceted program directed toward increasing employment opportunities for people with disabilities through increased access to assistive technologies, and use of innovative training, hiring, and retention techniques.

C. Nominees must report any unresolved violations of state or Federal law, as determined by compliance evaluations, complaint investigations, or other Federal inspections and investigations. In addition, the nominee must also report any pending Federal or state enforcement actions, and any corrective actions or consent decrees that have resulted from litigation under laws enforced by the Department of Labor (DOL).

6.*Nomination Submission Requirements:*

A. The single program or multiple programs for which the individual or company is being nominated must demonstrate a commitment to people with disabilities, and clearly show measurable results in terms of significantly enhancing employment opportunities for people with disabilities. The programs or activities may also address such issues as the widening skills gap among persons with disabilities, a diversified 21st Century workforce, and discrimination based on disability.

B. The nomination packages should be limited to only that information relevant to the nominee's program(s). Nomination packages should be no longer than twenty (20) typed pages double-spaced. A page is 8.5'' x 11'' (on one side only) with one-inch margins (top, bottom, and sides).

C. Nomination packages must include the following for consideration:

1. The nomination package should include an executive summary prepared by the nominee, which clearly identifies the specific program(s) under nomination and fully describes the results achieved.

2. The specific activities, program(s), or establishment for which the nomination is being submitted.

3. Specific data on training, placements, resources expended and other relevant information that will facilitate evaluation of the nominee's submission.

4. A description of how the program(s) and/or activities that are the subject of the nomination have had a positive and measurable impact on the employment of people with disabilities.

5. A data summary on the nominee. See Section 6(D).

D. A Data summary on Nominee will include the following:

1. Name(s) of the individual, organization or corporation being nominated.

2. Full address and telephone number.

3. Name of highest ranking official(s) (where appropriate).

4. Name of executive(s) responsible for human resources, equal employment opportunity, and/or disability awareness at nominee's establishment and/or corporate office (where appropriate).

5. Name of parent company (where appropriate).

6. Name, address and telephone number of CEO or President of parent company (where appropriate).

7. Name, title, address and telephone number of a contact person.

8. Number of employees at the establishment or corporation being nominated (where appropriate).

9. Name and description of principal program(s) or service(s).

7. *Timing and Acceptable Methods of Submission of Nominations:* Nomination packages must be submitted to the Office of Disability Employment Policy, Room S–1303, 200 Constitution Avenue NW., Washington, DC 20210 by July 22, 2002. Any application received after 4:45 p.m. EDST on July 22, 2002 will not be considered unless it was received before the award is made and:

1. It was sent by registered or certified mail no later than the fifth calendar day before July 22, 2002;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 P.M. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to July 22, 2002.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date will be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S.

Department of Labor is the date/time stamp of the Office of Disability Employment Policy on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted; however, the applicant bears the responsibility of timely submission.

All nominees are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the recent concerns involving anthrax contamination. All nominees must take this into consideration when preparing to meet the application deadline. Therefore, it is recommended that you confirm receipt of your application by contacting Lisa Lahrman, U.S. Department of Labor, Office of Disability Employment Policy, telephone (202) 693–7880; TTY (202) 693–4920 (these are not toll-free numbers), prior to the closing deadline.

8. The Administrative Review Process

A. The ODEP Steering Committee will perform preliminary administrative review to determine the sufficiency of all submitted application packages.

B. An Executive Evaluation Committee made up of representatives appointed by the Secretary of Labor from Department of Labor employees will perform secondary review.

C. The Secretary of Labor will conduct the final review and selections.

9. Other Factors to be Considered During the Administrative Review Process

A. If a nominee merges with another company during the evaluation process, only that information relative to the nominated company will be evaluated, and the award, if any, will be limited to the nominated company.

B. Prior receipt of this award will not preclude a nominee from being considered for the New Freedom Initiative Award in subsequent years. Programs and activities serving as the basis of a prior award, however, may not be considered as the basis for a subsequent award application.

10. Procedures Following Selection

A. Awardees will be notified of their selection via the contact person identified in the application package at least six weeks prior to the awards ceremony. Non-selected nominees will also be notified within 45 days of the selection of the awardees.

B. As a precondition to acceptance of the award, the nominee agrees to perform two out of the following activities:

1. Submit a two-minute video of the program(s) or activity(ies) for which it is being recognized to ODEP within 30 days of notification;

2. Display an exhibit or showcase of the program(s)/activity(ies) for which it is being recognized at the awards ceremony;

3. Participate in any New Freedom Initiative workshops hosted by ODEP in conjunction with the awards ceremony.

C. Materials developed by the awardees in conjunction with Section 10(B) will be subject to review by the Office of the Solicitor's Division of Legislative and Legal Counsel at the Department of Labor to ensure compliance with applicable ethics standards.

11. Location:

The awards ceremony will generally be held during the month of October at a location to be determined by the Secretary of Labor.

Paperwork Reduction Act Notice (Public Law 104–13)

Persons are not required to respond to a collection of information unless is displays a currently valid Office of Management and Budget (OMB) control number. This collection of information is approved under OMB Number 1230–0002 (Expiration Date: 10/31/02). The obligation to respond to this information collection is voluntary; however, only nominations that follow to nomination procedures outlined in this notice will receive consideration. The average time to respond to this information of collection is estimated to be 10 hours per response; including the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Submit comments regarding this estimate; including suggestions for reducing response time to the U.S. Department of Labor, Office of Disability Employment Policy, Room S–1303, 200 Constitution Avenue NW., Washington DC 20210. Please reference OMB Number 1230–0002.

We are very interested in your thoughts and suggestions about your experience in preparing and filing this nomination packet for the Department of Labor's New Freedom Initiative Inaugural Award. Your comments will be very useful to the Office of Disability Employment Policy in making improvements in our solicitation for nominations for this award in subsequent years. All comments are strictly voluntary and strictly private. We would appreciate your taking a few minutes to tell us—for example—whether you thought the instructions were sufficiently clear; what you liked or disliked; what worked or didn't work; whether it satisfied your need for information or if it didn't, or anything else that you think is important for us to know. Your comments will be most helpful if you can be very specific in relating your experience.

We value your comments, and would really like to hear from you. Please send any comments you have to Rhonda *Basha at basha-rhonda@dol.gov* or via mail to the Office of Disability Employment Policy, Room S–1303, 200 Constitution Avenue NW., Washington DC 20210. Thank you.

Signed at Washington, DC this 17th day of June 2002.

William J. Mea,

Deputy Assistant Secretary, Office of Disability Employment Policy.

[FR Doc. 02–15744 Filed 6–20–02; 8:45 am]

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Federal Register

Friday,
June 21, 2002

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 187

Fees for FAA Services for Certain Flights; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 187

RIN 2120–AG17

Fees for FAA Services for Certain Flights

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of agency reconsideration of Final Rule.

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

The Aviation and Transportation Security Act (the 2001 Act), enacted on November 19, 2001, amended the Overflight Fee authorization in several respects. First, the 2001 Act changed the wording of the operative standard by substituting ''reasonably'' for ''directly'' (thereby requiring that fees be ''reasonably related'' to costs, rather than ''directly related'') and ''Administration's costs as determined by the Administrator'' for ''Administration's costs.'' Second, the 2001 Act provided that ''the determination of such costs by the Administrator is not subject to judicial review.''

On May 6, 2002, the FAA published a notice of inquiry in the **Federal Register** seeking public comment on whether and to what extent, if any, these statutory changes require the FAA to modify its Final Rule on Overflight Fees (67 FR 30334). That rule is the subject of a petition for review before the United States Court of Appeals for the District of Columbia Circuit (the Court).

The purpose of this document is to summarize the public comments received, to indicate the disposition of those comments, and to advise the public of the results of the FAA's reconsideration of the Final Rule.

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

SUPPLEMENTARY INFORMATION:

History

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

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

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

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

Although the 1997 IFR had been removed, the statutory requirement that FAA establish Overflight Fees by IFR remained in effect. Therefore, in 1998 the FAA began developing a new IFR on Overflight Fees using a different methodology. The fees this time were to be derived from cost data produced by the agency's new Cost Accounting System (CAS), then under development. On June 6, 2000, the FAA published a new IFR with a request for comments and notice of another public meeting (65 FR 36002, June 6, 2000). The FAA held the public meeting on June 29, 2000, and 12 individuals representing 10 different organizations made presentations. A discussion of the comments made at the public meeting can be found in the docket of this rulemaking (Docket No. FAA–00–7018). (This may be found on the Internet by going to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page *http://dms.dot.gov/search*), typing in the last four digits of the Docket number (7018), and clicking on ''search.'') The FAA began charging fees under the new IFR on August 1, 2000. The FAA twice extended the comment period; first on October 6, 2000 (65 FR 59713), and again on October 27, 2000 (65 FR 64401), closing it finally on December 26, 2000.

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

Just before the August 1, 2000, effective date of the fees, the ATAC and seven foreign air carriers again petitioned the Court to review the new IFR. The petitions were again consolidated into a single case (*ATAC* v. *FAA*). Issues raised by the petitioners included some of the same process and procedure questions raised in the previous litigation. Petitioners also, raise new issues regarding the adequacy of information provided by the FAA to support the fees and whether the fees met the then existing statutory requirement of being ''directly related''

to the FAA's costs of providing the services. The Court heard oral arguments on May 14, 2001 and, on July 13, 2001, issued an Opinion finding that the FAA had failed to provide an adequate explanation for one assumption in its fee setting methodology (*i.e.*, that the costs, on a per-mile basis, of providing ATC and related services to Overflights are the same as the costs of providing such services to flights that take off and/or hand in the United States). Because the FAA had failed to address this assumption, the Opinion directed that the IFR be vacated. At the time the Opinion was issued, the FAA was in the final stages of Executive Branch review of a Final Rule on Overflight Fees, which contained a detailed explanation of the assumption in question. Because the Court faulted only FAA's failure to provide an *explanation of an assumption* in support of the IFR, and not the *substance* of the IFR itself, the FAA decided to proceed with issuance of the Final Rule in order to both meet the requirements of the Act and address the concerns of the Court.

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

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

Legislative Action

On November 19, 2001, the President signed new legislation addressing Overflight Fees. The Aviation and Transportation Security Act (the 2001 Act), Public Law No. 107–71, contained the following amendment (Section 119(d)):

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

Thus, the statutory authorization for the Overflight Fees (49 U.S.C. 45301(b)(1)(B)) now provides:

(the Administrator) shall ensure that each of the fees required by subsection (a) is reasonably related to the Administration's costs, as determined by the Administrator, of providing the service rendered. Services for which costs may be recovered include the costs of air traffic control, navigation, weather services, training and emergency services which are available to facilitate safe transportation over the United States, and other services provided by the Administrator or by programs financed by the Administrator to flights that neither take off nor land in the United States. The Determination of such costs by the Administrator is not subject to judicial review.

The accompanying Conference Committee Managers' Report on the 2001 Act (the Report) addressed the amendment of the ''Overflight Fee'' language, as follows:

The Conference substitute amends section 45301(b) of title 49, United States Code, with respect to limitations on overflight fees to (1) to make the language consistent with the new security fee language of this Act, and (2) to clarify Congressional intent with respect to the FAA costs upon which the fees can be based. Specifically, the conference substitute replaces the word ''directly'' with ''reasonably,'' since the word directly has been a source of much confusion and narrow interpretation, and has been a primary cause of securing litigation which as frustrated and delayed the FAA's imposition of the overflight fees for a number of years. Additionally, this amendment specifies that the FAA's costs upon which the fees are based are to be determined solely by the Administrator. This is a clarify that the Administrator has full authority to determine costs by appropriate means. This amendment is not intended to require revision of the fees recently promulgated by the FAA (66 FR 43680, Aug. 20, 2001) but rather, to clarify longstanding Congressional intent that the FAA expeditiously and continuously collect the fees authorized under section 453012(a) of title 49.

Reconsideration of Final Rule

Remand of Record in Final Rule Case

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

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

The FAA's motion also explained that it intended to seek public comment on the new legislation:

Although the FAA believes that it could proceed without additional notice and comment (*see* 5 U.S.C. 553(b)(A) (excepting interpretive rules from notice and comment rulemaking)), it has concluded that providing an opportunity for such comment would be in the public interest. Accordingly, before making its decision as to whether the statutory change requires a modification of the final rule, the FAA would provide a 30-day period in which interested parties could address the matter of the new provision's requirements.

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

Request for Comments

The FAA published a notice of inquiry in the **Federal Register** on May 6, 2002, seeking public comment (within 30 days, or by no later than June 5, 2002) regarding the extent, if any, to which the statutory changes require the FAA to modify its Final Rule.

Summary of Comments and Disposition

The FAA received two comments in response to its notice; from (1) Britannia Airways, Ltd., and (2) the seven petitioners in the ongoing Overflight Fee litigation, who submitted joint comments prepared by their counsel in the litigation (referred to hereafter as ''the ATAC comments'').

Both the Britannia and the ATAC comments state that the November 2001 amendments to 49 U.S.C. 45301 (section 119(d) of the 2001 Act) do not affect or apply to the Final Rule issued by the FAA in August 2001, and therefore do not require any rulemaking with regard to the Final Rule. In reaching this conclusion, both comments refer to the legislative history of the 2001 Act, citing

the statement in the Report that the amendment ''is not intended to require revision of the fees recently promulgated by the FAA. . .''

The ATAC comments make three points: (1) That Section 119(d) is not retroactive; (2) that Section 119(d) is not self-executing; and (3) that the Final Rule is invalid. The Britannia comments review the history of 49 U.S.C. 45301 and conclude that the November 2001 amendments are ''entirely prospective.'' With respect to the first two points, while agreeing with the conclusion that the amendments do not require any rulemaking by the FAA at this time, the FAA rejects, as detailed below, the commenters' assertion that Section 119(d) has no application to the Final Rule and is ''entirely prospective.'' The FAA will not address the third point because it is beyond the narrow scope of this notice, but notes that in connection with the issuance of the Final Rule, the FAA fully explained why the Final Rule meets all statutory requirements.

Agency Consideration of Effects of Statutory Changes

The FAA has carefully considered all relevant comments received, as well as all applicable legislative history and applicable statutes. The FAA concludes that the 2001 Act does not require rulemaking because the statute merely clarifies and amplifies congressional intent so as to provide further validation of both the Interim and Final Rules. More specifically, the FAA concludes that, first, the 2001 Act applies to both rules, and second, the Interim and Final Rules, both issued under the previous version of 49 U.S.C. 45301, meet the requirements of the 2001 Act. This conclusion is consistent with the explicit language of the Act, the Report, and applicable case law.

The FAA finds that these conclusions are supported by analysis of the changes made in 49 U.S.C. 45301 by the 2001 Act, as detailed below:

(1) *By striking ''directly'' and inserting ''reasonably''.*

As previously noted, Congress made this change to clarify how the FAA's methodology for setting Overflight Fees is measured. Instead of the previous language stating that fees must be ''directly'' related to costs, the statute now states that fees must be ''reasonably'' related to costs, which, according to the Report, is what Congress intended when it originally enacted 49 U.S.C. 45301.

Congress has not prescribed a precise method that must be followed by the FAA in setting Overflight Fees, but rather has set the parameters within which final action must fall. The change in the ''reasonably related'' language makes clear Congress' desire that the FAA have reasonable latitude to establish Overflight Fees within the basic parameter that such fees be cost-based. As a result, a fee-setting methodology that is acceptable under the ''directly related'' language must also be acceptable as ''reasonably related'' to costs. The FAA has already concluded that the fee-setting methodology first used in the Interim Final Rule and then in the Final Rule meets the ''direct related'' standard. The FAA now finds that this methodology also, necessarily, meets the ''reasonably related'' standard.

In its discussion of the amendment of the statutory standard, the Report emphasized that the ''directly related'' standard ''has been a source of much confusion and narrow interpretation, and has been a primary cause of recurring litigation which has frustrated and delayed the FAA's imposition of the overflight fees for a number of years.'' When Congress, as a matter of *clarification,* changed the ''directly related'' language to ''reasonably related,'' the Report indicated that ''directly related'' was always intended to be broadly construed. Consequently, the clear significance of the change in the statutory language, coupled with the new limitation on judicial review of these fees, is that Congress wants a standard affording the agency reasonable latitude applied to both the Interim Final and the Final Rules. In this regard, the Report specifically notes that Congress did not ''intend to require revision of the fees'' already promulgated, and directs the FAA to ''expeditiously and continuously collect the fees'' as Congress always intended since enactment of the Overflight Fee authorization in 1996.

Thus, the FAA believes that the new statutory language applies to the fees previously established by the IFR and by the Final Rule of August 20, 2001. In the FAA's view, those fees were properly established under the ''directly related'' standard, and the Congress' clarification of that standard by the change in language to ''reasonably related'' necessitates no further rulemaking. Even if one were to conclude that the fees established in the IFR and the Final Rule of August 20, 2001 were not ''directly related,''—a conclusion with which the FAA would disagree—the fees nevertheless would clearly meet the ''reasonably related'' standard to costs. Accordingly, no further rulemaking would be required.

(2) *By striking ''Administration's costs'' and inserting ''Administration's costs, as determined by the Administrator,''*

One of the issues raised in the current litigation has been whether the FAA's CAS accurately captures the FAA's costs of providing air traffic control and related services to overflying aircraft. Both the 2001 Act and the Report address this issue. First, by the Act, stating that costs are to be determined solely by the Administrator as well as the determination is not subject to judicial review. Then, by the Report emphasizing that ''the FAA's costs upon which the fees are based are to be determined solely by the Administrator. This is to clarify that the Administrator has full authority to determine costs by appropriate means.''

This language explicitly provides that the Administrator may use whatever methods or systems she deems appropriate (such as the CAS) in making cost determinations for fee setting purposes. It is entirely her decision. While the FAA believes that the Administrator could delegate this authority, like other Administrator authorities, to others in the FAA, in fact the Administrator personally approved both the Interim Final Rule and the Final Rule. Thus, because the costs for Overflight Fee purposes have already been determined personally by the Administrator, both of those determinations are within the explicit provisions of the revised statute. Therefore, she need make no further determinations under the 2001 Act with regard to either the Interim Final Rule or the Final Rule.

(3) *By adding at the end ''The Determination of such costs by the Administrator is not subject to judicial review.''*

This provision pertains solely to the jurisdiction of the reviewing court and thus is unrelated to the substance of the Interim and Final Rules, the matter at issue here. The FAA believes it is noteworthy, however, that the provision supports the decision of the FAA not to initiate rulemaking in response to the 2001 Act. Clearly, Congress acted to limit judicial review in order to help keep the current rules in place and to allow the FAA to ''expeditiously and continuously collect the fees* * * .''

In summary, based on careful analysis of the 2001 Act and all relevant comments, the FAA has concluded that the current Final Rule and Interim Final Rule comply fully with the amended statutory standard for Overflight fees. The FAA has considered the two comments received during the course of the proceeding, and finds that no further notice and public comment is required under the Administrative Procedure Act

or was contemplated by the Congress when it made the statutory change. The FAA has also concluded that an additional round of notice and comments in the context of a rulemaking proceeding addressing Congress' recent changes to the statute would not be in the public interest. As the Conference Committee Managers' Report says:

This amendment is not intended to require revision of the fees recently promulgated by the FAA (66 FR 43680, Aug. 20, 2001) but rather, to clarify longstanding Congressional intent that the FAA expeditiously and continuously collect the fees authorized under section 45301(a) of title 49.

Dated: June 19, 2002.

Jane F. Garvey,

Administrator.

[FR Doc. 02–15825 Filed 6–20–02; 8:45 am]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 21, 2002

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Hazardous waste:
- Identification and listing—
  - Exclusions; published 6-21-02

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Nomenclature changes; technical amendments; published 6-21-02

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:
- Texas; published 5-22-02

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:
- Foreign operated transport category airplanes; flightdeck security concerns; published 6-21-02

Airworthiness directives:
- Raytheon; published 5-9-02
- Rolls-Royce plc; published 6-6-02

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Practice and procedure:
- Complaint and investigation procedures—
  - Arbitration; various matters relating to use as effective means of resolving disputes subject to Board's jurisdiction; published 5-28-02

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Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):
- Brucellosis in cattle and bison—
  - Rodeo bulls; testing requirement eliminated; comments due by 6-24-02; published 4-25-02 [FR 02-10110]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Electric loans:
- RUS operational controls; exceptions under Section 306E of the RE Act; comments due by 6-24-02; published 5-24-02 [FR 02-13102]

AGRICULTURE DEPARTMENT

Highly erodible land and wetland conservation:
- Categorical minimal effect exemptions; comments due by 6-24-02; published 4-23-02 [FR 02-09700]

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Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Pacific halibut and red king crab; comments due by 6-27-02; published 5-28-02 [FR 02-13255]

Marine mammals:
- Sea turtle conservation—
  - Shrimp trawling requirements; Atlantic waters; turtle excluder devices; comments due by 6-24-02; published 5-30-02 [FR 02-13564]

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- Trading facilities and clearing organizations; new regulatory framework; amendments; comments due by 6-25-02; published 4-26-02 [FR 02-10031]

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Acquisition regulations:
- Berry Amendment; codification and modification; comments due by 6-25-02; published 4-26-02 [FR 02-10094]
- Foreign military sales customer involvement; comments due by 6-25-02; published 4-26-02 [FR 02-10093]
- Purchases from required source; competition requirements; comments due by 6-25-02; published 4-26-02 [FR 02-10097]

Federal Acquisition Regulation (FAR):
- Compensation cost principle; comments due by 6-24-02; published 4-23-02 [FR 02-09665]

DEFENSE DEPARTMENT

Engineers Corps

Natural disaster procedures; preparedness, response, and recovery activities; comments due by 6-28-02; published 4-25-02 [FR 02-10124]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Metal furniture surface coating operations; comments due by 6-24-02; published 4-24-02 [FR 02-07224]
- Miscellaneous organic chemical and coating manufacturing; comments due by 6-28-02; published 5-1-02 [FR 02-10728]
- Municipal solid waste landfills; comments due by 6-24-02; published 5-23-02 [FR 02-12845]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Wisconsin; comments due by 6-28-02; published 5-29-02 [FR 02-13112]

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 6-24-02; published 5-23-02 [FR 02-12839]
- Colorado; comments due by 6-24-02; published 5-23-02 [FR 02-12965]
- Illinois; comments due by 6-28-02; published 5-29-02 [FR 02-13246]
- Maryland; comments due by 6-27-02; published 5-28-02 [FR 02-13110]
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- Pennsylvania; comments due by 6-24-02; published 5-23-02 [FR 02-12837]

Air quality planning purposes; designation of areas:
- Alaska; comments due by 6-24-02; published 5-23-02 [FR 02-12966]

Hazardous waste:
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  - Chemical Waste Management, Inc., Kettleman City, CA; treatment variance; comments due by 6-27-02; published 5-28-02 [FR 02-13114]
  - Chemical Waste Management, Inc., Kettleman City, CA; treatment variance; comments due by 6-27-02; published 5-28-02 [FR 02-13115]

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- Hazardous oil-bearing secondary materials from petroleum refining industry and other materials processed in gasification system to produce synthesis gas; comments due by 6-24-02; published 3-25-02 [FR 02-07097]

Water pollution; effluent guidelines for point source categories:
- Meat and poultry products processing facilities; comments due by 6-25-02; published 4-24-02 [FR 02-10040]

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- California; comments due by 6-24-02; published 5-15-02 [FR 02-11980]
- Georgia; comments due by 6-24-02; published 5-10-02 [FR 02-11672]
- Michigan; comments due by 6-24-02; published 5-9-02 [FR 02-11606]
- New York; comments due by 6-24-02; published 5-9-02 [FR 02-11607]
- Texas; comments due by 6-24-02; published 5-9-02 [FR 02-11609]

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Telemarketing sales rule
- User fees; comments due by 6-28-02; published 5-29-02 [FR 02-13320]

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- Compensation cost principle; comments due by 6-24-02; published 4-23-02 [FR 02-09665]

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Critical habitat designations—
Plant species from Kauai and Niihau, HI; comments due by 6-27-02; published 5-28-02 [FR 02-13189]

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Practice and procedure:
Filing of documents in electronic form instead of in paper form; comments due by 6-25-02; published 4-26-02 [FR 02-10346]

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Nuclear Energy Institute; comments due by 6-24-02; published 4-8-02 [FR 02-08386]

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Ports and waterways safety:
Boston Harbor, Weymouth Fore River, and Salem Harbor, MA; safety and security zones; comments due by 6-28-02; published 4-29-02 [FR 02-10407]
Lake Erie, Perry, OH; security zone; comments due by 6-24-02; published 5-24-02 [FR 02-13137]

Regattas and marine parades:
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 1366/P.L. 107–190

To designate the United States Post Office building located at 3101 West Sunflower Avenue in Santa Ana, California, as the "Hector G. Godinez Post Office Building". (June 18, 2002; 116 Stat. 710)

H.R. 1374/P.L. 107–191

To designate the facility of the United States Postal Service located at 600 Calumet Street in Lake Linden, Michigan, as the "Philip E. Ruppe Post Office Building". (June 18, 2002; 116 Stat. 711)

H.R. 3789/P.L. 107–192

To designate the facility of the United States Postal Service located at 2829 Commercial Way in Rock Springs, Wyoming, as the "Teno Roncalio Post Office Building". (June 18, 2002; 116 Stat. 712)

H.R. 3960/P.L. 107–193

To designate the facility of the United States Postal Service located at 3719 Highway 4 in Jay, Florida, as the "Joseph W. Westmoreland Post Office Building". (June 18, 2002; 116 Stat. 713)

H.R. 4486/P.L. 107–194

To designate the facility of the United States Postal Service located at 1590 East Joyce Boulevard in Fayetteville, Arkansas, as the "Clarence B. Craft Post Office Building". (June 18, 2002; 116 Stat. 714)

H.R. 4560/P.L. 107–195

Auction Reform Act of 2002 (June 19, 2002; 116 Stat. 715)

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